

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 3773) TO AMEND THE
FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 TO ESTABLISH A
PROCEDURE FOR AUTHORIZING CERTAIN ACQUISITIONS OF FOREIGN
INTELLIGENCE, AND FOR OTHER PURPOSES

OCTOBER 16, 2007.—Referred to the House Calendar and ordered to be printed

Mr. HASTINGS of Florida, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 746]

The Committee on Rules, having had under consideration House Resolution 746, by a record vote of 8 to 4, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 3773, the “RESTORE Act of 2007,” under a closed rule. The resolution provides for 90 minutes of debate, with 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence.

The resolution waives all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI. In lieu of the amendments recommended by the Committee on the Judiciary and the Permanent Select Committee on Intelligence, the resolution considers as adopted the amendment in the nature of a substitute printed in part A of this report, modified by the amendment printed in part B of this report, and considers the bill, as amended, as read. The resolution waives all points of order against provisions in the bill, as amended. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure). The resolution provides one motion to recommit with or without instructions. Finally, the resolution permits the Chair, during consideration of the bill, to postpone further consideration of it to a time designated by the Speaker.

EXPLANATION OF WAIVERS

The waiver of all points of order against the bill and its consideration (except those arising under clause 9 or 10 of rule XXI) includes a waiver of clause 3(c)(4) of rule XIII (statement of performance goals) with respect to the report of the Permanent Select Committee on Intelligence.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 351

Date: October 16, 2007.

Measure: H.R. 3773.

Motion by: Mr. Dreier.

Summary of motion: To grant an open rule.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 352

Date: October 16, 2007.

Measure: H.R. 3773.

Motion by: Mr. Dreier.

Summary of motion: To make in order and provide appropriate waivers for an Amendment in the Nature of a Substitute by Rep. Forbes (VA), #9, which would incorporate the Bush Administration's proposed FISA Modernization Act of 2007 from April 2007.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 353

Date: October 16, 2007.

Measure: H.R. 3773.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Issa (CA), #5, which would extend liability protection to telecommunications and other communication providers who relied on directives or orders from the government to assist the government with intelligence activities intended to protect the United States from another terrorist attack, from the period beginning on September 11, 2001 and ending on the date of enactment of this Act.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 354

Date: October 16, 2007.

Measure: H.R. 3773.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Lungren (CA), #4, which would extend FISA to include individuals and groups engaged in the proliferation of weapons of mass destruction.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 355

Date: October 16, 2007.

Measure: H.R. 3773.

Motion by: Mr. Hastings (WA).

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Gohmert (TX), #8, which would eliminate the requirements in the bill that the government obtain a FISA court order to acquire communications of non-United States persons who are reasonably believed to be located outside the United States.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 356

Date: October 16, 2007.

Measure: H.R. 3773.

Motion by: Mr. Hastings (WA).

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Hoekstra (MI), #19, which would strike the sunset provision in the RESTORE Act, currently December 31, 2009.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 357

Date: October 16, 2007.

Measure: H.R. 3773.

Motion by: Mr. Hastings (WA).

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Hoekstra (MI), #24, which would strike provisions in the bill that limit the definition of “foreign intelligence information” to information necessary to protect against attack by a foreign power or information with respect to a foreign power that relates to national defense. The amendment would broaden the bill’s definition of FII to information with re-

spect to a foreign power that could be necessary to the foreign affairs of the United States.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 358

Date: October 16, 2007.

Measure: H.R. 3773.

Motion by: Mr. McGovern.

Summary of motion: To grant the rule.

Results: Adopted 8–4.

Vote by Members: McGovern—Yea; Hastings (FL)—Yea; Matsui—Yea; Cardoza—Yea; Welch—Yea; Castor—Yea; Arcuri—Yea; Dreier—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Slaughter—Yea.

SUMMARY OF AMENDMENT IN PART A TO BE CONSIDERED AS ADOPTED

The RESTORE Act would provide a new authority for the Executive Branch to conduct surveillance of persons reasonably believed to be located outside the United States. This new authority allows the government to obtain a single order to authorize surveillance on multiple targets and provides for immediate surveillance in the event of an emergency. It also includes several provisions to allow for independent oversight by the courts, the Congress and the Department of Justice Inspector General. Additional sections of the Act provide resources to Department of Justice, NSA, and the FISA Court needed to assist in auditing these new authorities and to expedite the FISA applications process. The RESTORE Act would also require the Department of Justice Inspector General to conduct an audit of the Administration's warrantless surveillance programs—to include providing authorizations and legal memoranda to Congress. It includes a sunset provision that would repeal the RESTORE Act by December 31, 2009.

SUMMARY OF AMENDMENT IN PART B TO BE CONSIDERED AS ADOPTED

The amendment would clarify that no court order is required for surveillance where the sender and recipients are not known to be United States persons and reasonably believed to be located outside the United States. It would also allow the FISA Court to issue temporary orders authorizing surveillance pending the appeal of an application under section 105B. Further, it would require that any directive seeking the assistance of a communications service provider in conducting surveillance include a certification that the directive is in compliance with specific, relevant provisions of FISA. It would extend the statute of limitations for the penalty provisions of FISA from five years to ten years. Finally, it would clarify that the RESTORE Act does not confer any rights or privileges on non-United States persons.

**PART A—TEXT OF AMENDMENT TO BE CONSIDERED AS
ADOPTED**

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007” or “RESTORE Act of 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification of electronic surveillance of non-United States persons outside the United States.
- Sec. 3. Additional authorization of acquisitions of communications of non-United States persons located outside the United States who may be communicating with persons inside the United States.
- Sec. 4. Emergency authorization of acquisitions of communications of non-United States persons located outside the United States who may be communicating with persons inside the United States.
- Sec. 5. Oversight of acquisitions of communications of non-United States persons located outside of the United States who may be communicating with persons inside the United States.
- Sec. 6. Foreign Intelligence Surveillance Court en banc.
- Sec. 7. Foreign Intelligence Surveillance Court matters.
- Sec. 8. Reiteration of FISA as the exclusive means by which electronic surveillance may be conducted for gathering foreign intelligence information.
- Sec. 9. Enhancement of electronic surveillance authority in wartime and other collection.
- Sec. 10. Audit of warrantless surveillance programs.
- Sec. 11. Record-keeping system on acquisition of communications of United States persons.
- Sec. 12. Authorization for increased resources relating to foreign intelligence surveillance.
- Sec. 13. Document management system for applications for orders approving electronic surveillance.
- Sec. 14. Training of intelligence community personnel in foreign intelligence collection matters.
- Sec. 15. Information for Congress on the terrorist surveillance program and similar programs.
- Sec. 16. Technical and conforming amendments.
- Sec. 17. Sunset; transition procedures.

SEC. 2. CLARIFICATION OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

Section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

“CLARIFICATION OF ELECTRONIC SURVEILLANCE OF NON-UNITED
STATES PERSONS OUTSIDE THE UNITED STATES

“SEC. 105A. (a) **FOREIGN TO FOREIGN COMMUNICATIONS.**—Notwithstanding any other provision of this Act, a court order is not required for the acquisition of the contents of any communication between persons that are not United States persons and are not located within the United States for the purpose of collecting foreign intelligence information, without respect to whether the communication passes through the United States or the surveillance device is located within the United States.

“(b) **COMMUNICATIONS OF NON-UNITED STATES PERSONS OUTSIDE OF THE UNITED STATES.**—Notwithstanding any other provision of this Act other than subsection (a), electronic surveillance that is directed at the acquisition of the communications of a person that is

reasonably believed to be located outside the United States and not a United States person for the purpose of collecting foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) by targeting that person shall be conducted pursuant to—

“(1) an order approved in accordance with section 105 or 105B; or

“(2) an emergency authorization in accordance with section 105 or 105C.”.

SEC. 3. ADDITIONAL AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH INSIDE THE UNITED STATES.

Section 105B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

“ADDITIONAL AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES

“SEC. 105B. (a) IN GENERAL.—Notwithstanding any other provision of this Act, the Director of National Intelligence and the Attorney General may jointly apply to a judge of the court established under section 103(a) for an ex parte order, or the extension of an order, authorizing for a period of up to one year the acquisition of communications of persons that are reasonably believed to be located outside the United States and not United States persons for the purpose of collecting foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) by targeting those persons.

“(b) APPLICATION INCLUSIONS.—An application under subsection (a) shall include—

“(1) a certification by the Director of National Intelligence and the Attorney General that—

“(A) the targets of the acquisition of foreign intelligence information under this section are persons reasonably believed to be located outside the United States who may be communicating with persons inside the United States;

“(B) the targets of the acquisition are reasonably believed to be persons that are not United States persons;

“(C) the acquisition involves obtaining the foreign intelligence information from, or with the assistance of, a communications service provider or custodian, or an officer, employee, or agent of such service provider or custodian, who has authorized access to the communications to be acquired, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications; and

“(D) a significant purpose of the acquisition is to obtain foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)); and

“(2) a description of—

“(A) the procedures that will be used by the Director of National Intelligence and the Attorney General during the duration of the order to determine that there is a reasonable belief that the persons that are the targets of the ac-

quisition are located outside the United States and not United States persons;

“(B) the nature of the information sought, including the identity of any foreign power against whom the acquisition will be directed;

“(C) minimization procedures that meet the definition of minimization procedures under section 101(h) to be used with respect to such acquisition; and

“(D) the guidelines that will be used to ensure that an application is filed under section 104, if otherwise required by this Act, when a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States.

“(c) SPECIFIC PLACE NOT REQUIRED.—An application under subsection (a) is not required to identify the specific facilities, places, premises, or property at which the acquisition of foreign intelligence information will be directed.

“(d) REVIEW OF APPLICATION.—Not later than 15 days after a judge receives an application under subsection (a), the judge shall review such application and shall approve the application if the judge finds that—

“(1) the proposed procedures referred to in subsection (b)(2)(A) are reasonably designed to determine whether the targets of the acquisition are located outside the United States and not United States persons;

“(2) the proposed minimization procedures referred to in subsection (b)(2)(C) meet the definition of minimization procedures under section 101(h); and

“(3) the guidelines referred to in subsection (b)(2)(D) are reasonably designed to ensure that an application is filed under section 104, if otherwise required by this Act, when a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States.

“(e) ORDER.—

“(1) IN GENERAL.—A judge approving an application under subsection (d) shall issue an order—

“(A) authorizing the acquisition of the contents of the communications as requested, or as modified by the judge;

“(B) requiring the communications service provider or custodian, or officer, employee, or agent of such service provider or custodian, who has authorized access to the information, facilities, or technical assistance necessary to accomplish the acquisition to provide such information, facilities, or technical assistance necessary to accomplish the acquisition and to produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition;

“(C) requiring such communications service provider, custodian, officer, employee, or agent, upon the request of the applicant, to maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished;

“(D) directing the Federal Government to—

“(i) compensate, at the prevailing rate, a person for providing information, facilities, or assistance pursuant to such order; and

“(ii) provide a copy of the portion of the order directing the person to comply with the order to such person; and

“(E) directing the applicant to follow—

“(i) the procedures referred to in subsection (b)(2)(A) as proposed or as modified by the judge;

“(ii) the minimization procedures referred to in subsection (b)(2)(C) as proposed or as modified by the judge; and

“(iii) the guidelines referred to in subsection (b)(2)(D) as proposed or as modified by the judge.

“(2) FAILURE TO COMPLY.—If a person fails to comply with an order issued under paragraph (1), the Attorney General may invoke the aid of the court established under section 103(a) to compel compliance with the order. Failure to obey an order of the court may be punished by the court as contempt of court. Any process under this section may be served in any judicial district in which the person may be found.

“(3) LIABILITY OF ORDER.—Notwithstanding any other law, no cause of action shall lie in any court against any person for providing any information, facilities, or assistance in accordance with an order issued under this subsection.

“(4) RETENTION OF ORDER.—The Director of National Intelligence and the court established under subsection 103(a) shall retain an order issued under this section for a period of not less than 10 years from the date on which such order is issued.

“(5) ASSESSMENT OF COMPLIANCE WITH COURT ORDER.—At or before the end of the period of time for which an acquisition is approved by an order or an extension under this section, the court established under section 103(a) shall, not less frequently than once each quarter, assess compliance with the procedures and guidelines referred to in paragraph (1)(E) and review the circumstances under which information concerning United States persons was acquired, retained, or disseminated.”.

SEC. 4. EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES.

Section 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

“EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES

“SEC. 105C. (a) APPLICATION AFTER EMERGENCY AUTHORIZATION.—As soon as is practicable, but not more than 7 days after the Director of National Intelligence and the Attorney General authorize an acquisition under this section, an application for an order authorizing the acquisition in accordance with section 105B shall be submitted to the judge referred to in subsection (b)(2) of this

section for approval of the acquisition in accordance with section 105B.

“(b) EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, the Director of National Intelligence and the Attorney General may jointly authorize the emergency acquisition of foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) for a period of not more than 45 days if—

“(1) the Director of National Intelligence and the Attorney General jointly determine that—

“(A) an emergency situation exists with respect to an authorization for an acquisition under section 105B before an order approving the acquisition under such section can with due diligence be obtained;

“(B) the targets of the acquisition of foreign intelligence information under this section are persons reasonably believed to be located outside the United States who may be communicating with persons inside the United States;

“(C) the targets of the acquisition are reasonably believed to be persons that are not United States persons;

“(D) there are procedures in place that will be used by the Director of National Intelligence and the Attorney General during the duration of the authorization to determine if there is a reasonable belief that the persons that are the targets of the acquisition are located outside the United States and not United States persons;

“(E) the acquisition involves obtaining the foreign intelligence information from, or with the assistance of, a communications service provider or custodian, or an officer, employee, or agent of such service provider or custodian, who has authorized access to the communications to be acquired, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications;

“(F) a significant purpose of the acquisition is to obtain foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e));

“(G) minimization procedures to be used with respect to such acquisition activity meet the definition of minimization procedures under section 101(h); and

“(H) there are guidelines that will be used to ensure that an application is filed under section 104, if otherwise required by this Act, when a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States; and

“(2) the Director of National Intelligence and the Attorney General, or their designees, inform a judge having jurisdiction to approve an acquisition under section 105B at the time of the authorization under this section that the decision has been made to acquire foreign intelligence information.

“(c) INFORMATION, FACILITIES, AND TECHNICAL ASSISTANCE.—Pursuant to an authorization of an acquisition under this section, the Attorney General may direct a communications service provider, custodian, or an officer, employee, or agent of such service provider or custodian, who has the lawful authority to access the informa-

tion, facilities, or technical assistance necessary to accomplish such acquisition to—

“(1) furnish the Attorney General forthwith with such information, facilities, or technical assistance in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition; and

“(2) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished.”.

SEC. 5. OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 105C the following new section:

“OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES

“SEC. 105D. (a) APPLICATION; PROCEDURES; ORDERS.—Not later than 7 days after an application is submitted under section 105B(a) or an order is issued under section 105B(e), the Director of National Intelligence and the Attorney General shall submit to the appropriate committees of Congress—

“(1) in the case of an application—

“(A) a copy of the application, including the certification made under section 105B(b)(1); and

“(B) a description of the primary purpose of the acquisition for which the application is submitted; and

“(2) in the case of an order, a copy of the order, including the procedures and guidelines referred to in section 105B(e)(1)(E).

“(b) REGULAR AUDITS.—

“(1) AUDIT.—Not later than 120 days after the date of the enactment of this section, and every 120 days thereafter until the expiration of all orders issued under section 105B, the Inspector General of the Department of Justice shall complete an audit on the implementation of and compliance with the procedures and guidelines referred to in section 105B(e)(1)(E) and shall submit to the appropriate committees of Congress, the Attorney General, the Director of National Intelligence, and the court established under section 103(a) the results of such audit, including, for each order authorizing the acquisition of foreign intelligence under section 105B—

“(A) the number of targets of an acquisition under such order that were later determined to be located in the United States;

“(B) the number of persons located in the United States whose communications have been acquired under such order;

“(C) the number and nature of reports disseminated containing information on a United States person that was collected under such order; and

“(D) the number of applications submitted for approval of electronic surveillance under section 104 for targets whose communications were acquired under such order.

“(2) REPORT.—Not later than 30 days after the completion of an audit under paragraph (1), the Attorney General shall submit to the appropriate committees of Congress and the court established under section 103(a) a report containing the results of such audit.

“(c) COMPLIANCE REPORTS.—Not later than 60 days after the date of the enactment of this section, and every 120 days thereafter until the expiration of all orders issued under section 105B, the Director of National Intelligence and the Attorney General shall submit to the appropriate committees of Congress and the court established under section 103(a) a report concerning acquisitions under section 105B during the previous period. Each report submitted under this section shall include a description of any incidents of non-compliance with an order issued under section 105B(e), including incidents of non-compliance by—

“(1) an element of the intelligence community with procedures referred to in section 105B(e)(1)(E)(i);

“(2) an element of the intelligence community with minimization procedures referred to in section 105B(e)(1)(E)(ii);

“(3) an element of the intelligence community with guidelines referred to in section 105B(e)(1)(E)(iii); and

“(4) a person directed to provide information, facilities, or technical assistance under such order.

“(d) REPORT ON EMERGENCY AUTHORITY.—The Director of National Intelligence and the Attorney General shall annually submit to the appropriate committees of Congress a report containing the number of emergency authorizations of acquisitions under section 105C and a description of any incidents of non-compliance with an emergency authorization under such section.

“(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Permanent Select Committee on Intelligence of the House of Representatives;

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

“(3) the Committees on the Judiciary of the House of Representatives and the Senate.”.

SEC. 6. FOREIGN INTELLIGENCE SURVEILLANCE COURT EN BANC.

Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

“(g) In any case where the court established under subsection (a) or a judge of such court is required to review a matter under this Act, the court may, at the discretion of the court, sit en banc to review such matter and issue any orders related to such matter.”.

SEC. 7. FOREIGN INTELLIGENCE SURVEILLANCE COURT MATTERS.

(a) AUTHORITY FOR ADDITIONAL JUDGES.—Section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) is amended—

- (1) by inserting “(1)” after “(a)”;
- (2) in paragraph (1) (as so designated)—
 - (A) by striking “11” and inserting “15”; and
 - (B) by inserting “at least” before “seven of the United States judicial circuits”; and
- (3) by designating the second sentence as paragraph (3) and indenting such paragraph, as so designated, two ems from the left margin.

(b) **CONSIDERATION OF EMERGENCY APPLICATIONS.**—Such section is further amended by inserting after paragraph (1) (as designated by subsection (a)(1)) the following new paragraph:

“(2) A judge of the court shall make a determination to approve, deny, or modify an application submitted pursuant to section 105(f), section 304(e), or section 403 not later than 24 hours after the receipt of such application by the court.”.

SEC. 8. REITERATION OF FISA AS THE EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE MAY BE CONDUCTED FOR GATHERING FOREIGN INTELLIGENCE INFORMATION.

(a) **EXCLUSIVE MEANS.**—Notwithstanding any other provision of law, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which electronic surveillance may be conducted for the purpose of gathering foreign intelligence information.

(b) **SPECIFIC AUTHORIZATION REQUIRED FOR EXCEPTION.**—Subsection (a) shall apply until specific statutory authorization for electronic surveillance, other than as an amendment to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such specific statutory authorization shall be the only exception to subsection (a).

SEC. 9. ENHANCEMENT OF ELECTRONIC SURVEILLANCE AUTHORITY IN WARTIME AND OTHER COLLECTION.

Sections 111, 309, and 404 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1811, 1829, and 1844) are amended by striking “Congress” and inserting “Congress or an authorization for the use of military force described in section 2(c)(2) of the War Powers Resolution (50 U.S.C. 1541(c)(2)) if such authorization contains a specific authorization for foreign intelligence collection under this section, or if the Congress is unable to convene because of an attack upon the United States.”.

SEC. 10. AUDIT OF WARRANTLESS SURVEILLANCE PROGRAMS.

(a) **AUDIT.**—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall complete an audit of all programs of the Federal Government involving the acquisition of communications conducted without a court order on or after September 11, 2001, including the Terrorist Surveillance Program referred to by the President in a radio address on December 17, 2005. Such audit shall include acquiring all documents relevant to such programs, including memoranda concerning the legal authority of a program, authorizations of a program, certifications to telecommunications carriers, and court orders.

(b) **REPORT.**—

(1) **IN GENERAL.**—Not later than 30 days after the completion of the audit under subsection (a), the Inspector General shall

submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report containing the results of such audit, including all documents acquired pursuant to conducting such audit.

(2) FORM.—The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(c) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall ensure that the process for the investigation and adjudication of an application by the Inspector General or the appropriate staff of the Office of the Inspector General of the Department of Justice for a security clearance necessary for the conduct of the audit under subsection (a) is conducted as expeditiously as possible.

SEC. 11. RECORD-KEEPING SYSTEM ON ACQUISITION OF COMMUNICATIONS OF UNITED STATES PERSONS.

(a) RECORD-KEEPING SYSTEM.—The Director of National Intelligence and the Attorney General shall jointly develop and maintain a record-keeping system that will keep track of—

(1) the instances where the identity of a United States person whose communications were acquired was disclosed by an element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) that collected the communications to other departments or agencies of the United States; and

(2) the departments and agencies of the Federal Government and persons to whom such identity information was disclosed.

(b) REPORT.—The Director of National Intelligence and the Attorney General shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on the record-keeping system created under subsection (a), including the number of instances referred to in paragraph (1).

SEC. 12. AUTHORIZATION FOR INCREASED RESOURCES RELATING TO FOREIGN INTELLIGENCE SURVEILLANCE.

(a) IN GENERAL.—There are authorized to be appropriated the Department of Justice, for the activities of the Office of the Inspector General, the appropriate elements of the National Security Division, and the National Security Agency such sums as may be necessary to meet the personnel and information technology demands to ensure the timely and efficient processing of—

(1) applications and other submissions to the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a));

(2) the audit and reporting requirements under—

(A) section 105D of such Act; and

(B) section 10; and

(3) the record-keeping system and reporting requirements under section 11.

(b) ADDITIONAL PERSONNEL FOR PREPARATION AND CONSIDERATION OF APPLICATIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE AND PHYSICAL SEARCH.—

(1) NATIONAL SECURITY DIVISION OF THE DEPARTMENT OF JUSTICE.—

(A) ADDITIONAL PERSONNEL.—The National Security Division of the Department of Justice is hereby authorized such additional personnel as may be necessary to carry out the prompt and timely preparation, modification, and review of applications under Foreign Intelligence Surveillance Act of 1978 for orders under that Act for foreign intelligence purposes.

(B) ASSIGNMENT.—The Attorney General shall assign personnel authorized by paragraph (1) to and among appropriate offices of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) in order that such personnel may directly assist personnel of the Intelligence Community in preparing applications described in that paragraph and conduct prompt and effective oversight of the activities of such agencies under Foreign Intelligence Surveillance Court orders.

(2) DIRECTOR OF NATIONAL INTELLIGENCE.—

(A) ADDITIONAL LEGAL AND OTHER PERSONNEL.—The Director of National Intelligence is hereby authorized such additional legal and other personnel as may be necessary to carry out the prompt and timely preparation of applications under the Foreign Intelligence Surveillance Act of 1978 for orders under that Act approving electronic surveillance for foreign intelligence purposes.

(B) ASSIGNMENT.—The Director of National Intelligence shall assign personnel authorized by paragraph (1) to and among the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))), including the field offices of the Federal Bureau of Investigation, in order that such personnel may directly assist personnel of the intelligence community in preparing applications described in that paragraph.

(3) ADDITIONAL LEGAL AND OTHER PERSONNEL FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT.—There is hereby authorized for the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) such additional staff personnel as may be necessary to facilitate the prompt and timely consideration by that court of applications under such Act for orders under such Act approving electronic surveillance for foreign intelligence purposes. Personnel authorized by this paragraph shall perform such duties relating to the consideration of such applications as that court shall direct.

(4) SUPPLEMENT NOT SUPPLANT.—The personnel authorized by this section are in addition to any other personnel authorized by law.

SEC. 13. DOCUMENT MANAGEMENT SYSTEM FOR APPLICATIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE.

(a) SYSTEM REQUIRED.—The Attorney General shall, in consultation with the Director of National Intelligence and the Foreign Intelligence Surveillance Court, develop and implement a secure, classified document management system that permits the prompt

preparation, modification, and review by appropriate personnel of the Department of Justice, the Federal Bureau of Investigation, the National Security Agency, and other applicable elements of the United States Government of applications under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) before their submission to the Foreign Intelligence Surveillance Court.

(b) **SCOPE OF SYSTEM.**—The document management system required by subsection (a) shall—

(1) permit and facilitate the prompt submittal of applications to the Foreign Intelligence Surveillance Court under the Foreign Intelligence Surveillance Act of 1978; and

(2) permit and facilitate the prompt transmittal of rulings of the Foreign Intelligence Surveillance Court to personnel submitting applications described in paragraph (1), and provide for the secure electronic storage and retrieval of all such applications and related matters with the court and for their secure transmission to the National Archives and Records Administration.

SEC. 14. TRAINING OF INTELLIGENCE COMMUNITY PERSONNEL IN FOREIGN INTELLIGENCE COLLECTION MATTERS.

The Director of National Intelligence shall, in consultation with the Attorney General—

(1) develop regulations to establish procedures for conducting and seeking approval of electronic surveillance, physical search, and the installation and use of pen registers and trap and trace devices on an emergency basis, and for preparing and properly submitting and receiving applications and orders under the Foreign Intelligence Surveillance Act of 1978; and

(2) prescribe related training on the Foreign Intelligence Surveillance Act of 1978 and related legal matters for the personnel of the applicable agencies of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))).

SEC. 15. INFORMATION FOR CONGRESS ON THE TERRORIST SURVEILLANCE PROGRAM AND SIMILAR PROGRAMS.

As soon as practicable after the date of the enactment of this Act, but not later than seven days after such date, the President shall fully inform each member of the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate on the following:

(1) The Terrorist Surveillance Program of the National Security Agency.

(2) Any program in existence from September 11, 2001, until the effective date of this Act that involves, whether in part or in whole, the electronic surveillance of United States persons in the United States for foreign intelligence or other purposes, and which is conducted by any department, agency, or other element of the United States Government, or by any entity at the direction of a department, agency, or other element of the United States Government, without fully complying with the procedures set forth in the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or chapter 119, 121, or 206 of title 18, United States Code.

SEC. 16. TECHNICAL AND CONFORMING AMENDMENTS.

(a) **TABLE OF CONTENTS.**—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to sections 105A, 105B, and 105C and inserting the following new items:

- “Sec. 105A. Clarification of electronic surveillance of non-United States persons outside the United States.
- “Sec. 105B. Additional authorization of acquisitions of communications of non-United States persons located outside the United States who may be communicating with persons inside the United States.
- “Sec. 105C. Emergency authorization of acquisitions of communications of non-United States persons located outside the United States who may be communicating with persons inside the United States.
- “Sec. 105D. Oversight of acquisitions of communications of non-United States persons located outside of the United States who may be communicating with persons inside the United States.”.

(b) **SECTION 103(e) OF FISA.**—Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

- (1) in paragraph (1), by striking “105B(h) or”; and
- (2) in paragraph (2), by striking “105B(h) or”.

(c) **REPEAL OF CERTAIN PROVISIONS OF THE PROTECT AMERICA ACT.**—Sections 4 and 6 of the Protect America Act (Public Law 110–55) are hereby repealed.

SEC. 17. SUNSET; TRANSITION PROCEDURES.

(a) **SUNSET OF NEW PROVISIONS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), effective on December 31, 2009—

(A) sections 105A, 105B, 105C, and 105D of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) are hereby repealed; and

(B) the table of contents in the first section of such Act is amended by striking the items relating to sections 105A, 105B, 105C, and 105D.

(2) **ACQUISITIONS AUTHORIZED PRIOR TO SUNSET.**—Any authorization or order issued under section 105B of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2009, shall continue in effect until the date of the expiration of such authorization or order.

(b) **ACQUISITIONS AUTHORIZED PRIOR TO ENACTMENT.**—

(1) **EFFECT.**—Notwithstanding the amendments made by this Act, an authorization of the acquisition of foreign intelligence information under section 105B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) made before the date of the enactment of this Act shall remain in effect until the date of the expiration of such authorization or the date that is 180 days after such date of enactment, whichever is earlier.

(2) **REPORT.**—Not later than 30 days after the date of the expiration of all authorizations of acquisition of foreign intelligence information under section 105B of the Foreign Intelligence Surveillance Act of 1978 (as added by Public Law 110–55) made before the date of the enactment of this Act in accordance with paragraph (1), the Director of National Intelligence and the Attorney General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select

Committee on Intelligence and the Committee on the Judiciary of the Senate a report on such authorizations, including—

(A) the number of targets of an acquisition under section 105B of such Act (as in effect on the day before the date of the enactment of this Act) that were later determined to be located in the United States;

(B) the number of persons located in the United States whose communications have been acquired under such section;

(C) the number of reports disseminated containing information on a United States person that was collected under such section;

(D) the number of applications submitted for approval of electronic surveillance under section 104 of such Act based upon information collected pursuant to an acquisition authorized under section 105B of such Act (as in effect on the day before the date of the enactment of this Act); and

(E) a description of any incidents of non-compliance with an authorization under such section, including incidents of non-compliance by—

(i) an element of the intelligence community with procedures referred to in subsection (a)(1) of such section;

(ii) an element of the intelligence community with minimization procedures referred to in subsection (a)(5) of such section; and

(iii) a person directed to provide information, facilities, or technical assistance under subsection (e) of such section.

(3) INTELLIGENCE COMMUNITY DEFINED.—In this subsection, the term “intelligence community” has the meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

PART B—TEXT OF AMENDMENT TO BE CONSIDERED AS ADOPTED

Page 2, strike lines 10 through 18 and insert the following:

“SEC. 105A. (a) FOREIGN TO FOREIGN COMMUNICATIONS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this Act, a court order is not required for electronic surveillance directed at the acquisition of the contents of any communication between persons that are not known to be United States persons and are reasonably believed to be located outside the United States for the purpose of collecting foreign intelligence information, without respect to whether the communication passes through the United States or the surveillance device is located within the United States.

“(2) TREATMENT OF INADVERTENT INTERCEPTIONS.—If electronic surveillance referred to in paragraph (1) inadvertently collects a communication in which at least one party to the communication is located inside the United States or is a United States person, the contents of such communication shall be handled in accordance with minimization procedures adopted by the Attorney General that require that no contents of any communication to which a United States person is a

party shall be disclosed, disseminated, or used for any purpose or retained for longer than 7 days unless a court order under section 105 is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

Page 3, line 16 strike **“COMMUNICATING WITH”** and insert **“COMMUNICATING WITH PERSONS”**.

Page 6, line 20, strike **“APPLICATION.—Not later than”** and insert the following: **“APPLICATION; APPEALS.—**

“(1) REVIEW OF APPLICATION.—Not later than”

Page 6, line 24, redesignate paragraph (1) as subparagraph (A).

Page 7, line 4, redesignate paragraph (2) as subparagraph (B).

Page 7, line 8, redesignate paragraph (3) as subparagraph (C).

Page 7, after line 14 insert the following:

“(2) TEMPORARY ORDER; APPEALS.—

“(A) TEMPORARY ORDER.—A judge denying an application under paragraph (1) may, at the application of the United States, issue a temporary order to authorize an acquisition under section 105B in accordance with the application submitted under subsection (a) during the pendency of any appeal of the denial of such application.

“(B) APPEALS.—The United States may appeal the denial of an application for an order under paragraph (1) or a temporary order under subparagraph (A) in accordance with section 103.

Page 8, line 19, strike **“and”**.

Page 8, after line 22 insert the following:

“(iii) a certification stating that the acquisition is authorized under this section and that all requirements of this section have been met; and”.

Page 14, line 2, strike **“ASSISTANCE.—Pursuant to”** and insert the following: **“ASSISTANCE.—**

“(1) DIRECTIVE.—Pursuant to”

Page 14, line 9, redesignate paragraph (1) as subparagraph (A).

Page 14, line 16, redesignate paragraph (2) as subparagraph (B).

Page 14, line 19, strike the quotation mark and the second period.

Page 14, after line 19 insert the following:

“(2) PARAMETERS; CERTIFICATIONS.—The Attorney General shall provide to any person directed to provide assistance under paragraph (1) with—

“(A) a document setting forth the parameters of the directive;

“(B) a certification stating that—

“(i) the emergency authorization has been issued pursuant to this section;

“(ii) all requirements of this section been met;

“(iii) a judge has been informed of the emergency authorization in accordance with subsection (b)(2); and

“(iv) an application will be submitted in accordance with subsection (a); and

“(C) a certification that the recipient of the directive shall be compensated, at the prevailing rate, for providing information, facilities, or assistance pursuant to such directive.”

Page 31, line 2, strike “Protect America Act” and insert “Protect America Act of 2007”.

At the appropriate place in the bill insert the following new section:

SEC. ____ . CERTIFICATION TO COMMUNICATIONS SERVICE PROVIDERS THAT ACQUISITIONS ARE AUTHORIZED UNDER FISA.

(a) AUTHORIZATION UNDER SECTION 102.—Section 102(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)) is amended by striking “furnishing such aid” and inserting “furnishing such aid and shall provide such carrier with a certification stating that the electronic surveillance is authorized under this section and that all requirements of this section have been met”.

(b) AUTHORIZATION UNDER SECTION 105.—Section 105(c)(2) of such Act (50 U.S.C. 1805(c)(2)) is amended—

(1) in subparagraph (C), by striking “; and” and inserting “;”;

(2) in subparagraph (D), by striking “aid.” and inserting “aid; and”; and

(3) by adding at the end the following new subparagraph:

“(E) that the applicant provide such carrier, landlord, custodian, or other person with a certification stating that the electronic surveillance is authorized under this section and that all requirements of this section have been met.”.

At the appropriate place in the bill insert the following new section:

SEC. ____ . STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following new subsection:

“(e) STATUTE OF LIMITATIONS.—No person shall be prosecuted, tried, or punished for any offense under this section unless the indictment is found or the information is instituted not later than 10 years after the commission of the offense.”.

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

At the appropriate place in the bill insert the following new section:

SEC. ____ . NO RIGHTS UNDER THE RESTORE ACT FOR UNLAWFUL RESIDENTS.

Nothing in this Act or the amendments made by this Act shall be construed to prevent lawfully conducted surveillance of or grant any rights to an alien not lawfully permitted to be in or remain in the United States.