

110TH CONGRESS
1ST SESSION

S. 1927

AN ACT

To amend the Foreign Intelligence Surveillance Act of 1978 to provide additional procedures for authorizing certain acquisitions of foreign intelligence information 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protect America Act
3 of 2007”.

4 **SEC. 2. ADDITIONAL PROCEDURE FOR AUTHORIZING CER-**
5 **TAIN ACQUISITIONS OF FOREIGN INTEL-**
6 **LIGENCE INFORMATION.**

7 The Foreign Intelligence Surveillance Act of 1978
8 (50 U.S.C. 1801 et seq.) is amended by inserting after
9 section 105 the following:

10 “CLARIFICATION OF ELECTRONIC SURVEILLANCE OF
11 PERSONS OUTSIDE THE UNITED STATES

12 “SEC. 105A. Nothing in the definition of electronic
13 surveillance under section 101(f) shall be construed to en-
14 compass surveillance directed at a person reasonably be-
15 lieved to be located outside of the United States.

16 “ADDITIONAL PROCEDURE FOR AUTHORIZING CERTAIN
17 ACQUISITIONS CONCERNING PERSONS LOCATED OUT-
18 SIDE THE UNITED STATES

19 “SEC. 105B. (a) Notwithstanding any other law, the
20 Director of National Intelligence and the Attorney Gen-
21 eral, may for periods of up to one year authorize the acqui-
22 sition of foreign intelligence information concerning per-
23 sons reasonably believed to be outside the United States
24 if the Director of National Intelligence and the Attorney
25 General determine, based on the information provided to
26 them, that—

1 “(1) there are reasonable procedures in place
2 for determining that the acquisition of foreign intel-
3 ligence information under this section concerns per-
4 sons reasonably believed to be located outside the
5 United States, and such procedures will be subject
6 to review of the Court pursuant to section 105C of
7 this Act;

8 “(2) the acquisition does not constitute elec-
9 tronic surveillance;

10 “(3) the acquisition involves obtaining the for-
11 eign intelligence information from or with the assist-
12 ance of a communications service provider, custo-
13 dian, or other person (including any officer, em-
14 ployee, agent, or other specified person of such serv-
15 ice provider, custodian, or other person) who has ac-
16 cess to communications, either as they are trans-
17 mitted or while they are stored, or equipment that
18 is being or may be used to transmit or store such
19 communications;

20 “(4) a significant purpose of the acquisition is
21 to obtain foreign intelligence information; and

22 “(5) the minimization procedures to be used
23 with respect to such acquisition activity meet the
24 definition of minimization procedures under section
25 101(h).

1 “‘This determination shall be in the form of a written
2 certification, under oath, supported as appropriate by affi-
3 davit of appropriate officials in the national security field
4 occupying positions appointed by the President, by and
5 with the consent of the Senate, or the Head of any Agency
6 of the Intelligence Community, unless immediate action by
7 the Government is required and time does not permit the
8 preparation of a certification. In such a case, the deter-
9 mination of the Director of National Intelligence and the
10 Attorney General shall be reduced to a certification as
11 soon as possible but in no event more than 72 hours after
12 the determination is made.

13 “(b) A certification under subsection (a) is not re-
14 quired to identify the specific facilities, places, premises,
15 or property at which the acquisition of foreign intelligence
16 information will be directed.

17 “(c) The Attorney General shall transmit as soon as
18 practicable under seal to the court established under sec-
19 tion 103(a) a copy of a certification made under sub-
20 section (a). Such certification shall be maintained under
21 security measures established by the Chief Justice of the
22 United States and the Attorney General, in consultation
23 with the Director of National Intelligence, and shall re-
24 main sealed unless the certification is necessary to deter-
25 mine the legality of the acquisition under section 105B.

1 “(d) An acquisition under this section may be con-
2 ducted only in accordance with the certification of the Di-
3 rector of National Intelligence and the Attorney General,
4 or their oral instructions if time does not permit the prep-
5 aration of a certification, and the minimization procedures
6 adopted by the Attorney General. The Director of Na-
7 tional Intelligence and the Attorney General shall assess
8 compliance with such procedures and shall report such as-
9 sessments to the Permanent Select Committee on Intel-
10 ligence of the House of Representatives and the Select
11 Committee on Intelligence of the Senate under section
12 108(a).

13 “(e) With respect to an authorization of an acquisi-
14 tion under section 105B, the Director of National Intel-
15 ligence and Attorney General may direct a person to—

16 “(1) immediately provide the Government with
17 all information, facilities, and assistance necessary
18 to accomplish the acquisition in such a manner as
19 will protect the secrecy of the acquisition and
20 produce a minimum of interference with the services
21 that such person is providing to the target; and

22 “(2) maintain under security procedures ap-
23 proved by the Attorney General and the Director of
24 National Intelligence any records concerning the ac-

1 quisition or the aid furnished that such person wish-
2 es to maintain.

3 “(f) The Government shall compensate, at the pre-
4 vailing rate, a person for providing information, facilities,
5 or assistance pursuant to subsection (e).

6 “(g) In the case of a failure to comply with a directive
7 issued pursuant to subsection (e), the Attorney General
8 may invoke the aid of the court established under section
9 103(a) to compel compliance with the directive. The court
10 shall issue an order requiring the person to comply with
11 the directive if it finds that the directive was issued in
12 accordance with subsection (e) and is otherwise lawful.
13 Failure to obey an order of the court may be punished
14 by the court as contempt of court. Any process under this
15 section may be served in any judicial district in which the
16 person may be found.

17 “(h)(1)(A) A person receiving a directive issued pur-
18 suant to subsection (e) may challenge the legality of that
19 directive by filing a petition with the pool established
20 under section 103(e)(1).

21 “(B) The presiding judge designated pursuant to sec-
22 tion 103(b) shall assign a petition filed under subpara-
23 graph (A) to one of the judges serving in the pool estab-
24 lished by section 103(e)(1). Not later than 48 hours after
25 the assignment of such petition, the assigned judge shall

1 conduct an initial review of the directive. If the assigned
2 judge determines that the petition is frivolous, the as-
3 signed judge shall immediately deny the petition and af-
4 firm the directive or any part of the directive that is the
5 subject of the petition. If the assigned judge determines
6 the petition is not frivolous, the assigned judge shall, with-
7 in 72 hours, consider the petition in accordance with the
8 procedures established under section 103(e)(2) and pro-
9 vide a written statement for the record of the reasons for
10 any determination under this subsection.

11 “(2) A judge considering a petition to modify or set
12 aside a directive may grant such petition only if the judge
13 finds that such directive does not meet the requirements
14 of this section or is otherwise unlawful. If the judge does
15 not modify or set aside the directive, the judge shall imme-
16 diately affirm such directive, and order the recipient to
17 comply with such directive.

18 “(3) Any directive not explicitly modified or set aside
19 under this subsection shall remain in full effect.

20 “(i) The Government or a person receiving a directive
21 reviewed pursuant to subsection (h) may file a petition
22 with the Court of Review established under section 103(b)
23 for review of the decision issued pursuant to subsection
24 (h) not later than 7 days after the issuance of such deci-
25 sion. Such court of review shall have jurisdiction to con-

1 sider such petitions and shall provide for the record a writ-
2 ten statement of the reasons for its decision. On petition
3 for a writ of certiorari by the Government or any person
4 receiving such directive, the record shall be transmitted
5 under seal to the Supreme Court, which shall have juris-
6 diction to review such decision.

7 “(j) Judicial proceedings under this section shall be
8 concluded as expeditiously as possible. The record of pro-
9 ceedings, including petitions filed, orders granted, and
10 statements of reasons for decision, shall be maintained
11 under security measures established by the Chief Justice
12 of the United States, in consultation with the Attorney
13 General and the Director of National Intelligence.

14 “(k) All petitions under this section shall be filed
15 under seal. In any proceedings under this section, the
16 court shall, upon request of the Government, review ex
17 parte and in camera any Government submission, or por-
18 tions of a submission, which may include classified infor-
19 mation.

20 “(l) Notwithstanding any other law, no cause of ac-
21 tion shall lie in any court against any person for providing
22 any information, facilities, or assistance in accordance
23 with a directive under this section.

24 “(m) A directive made or an order granted under this
25 section shall be retained for a period of not less than 10

1 years from the date on which such directive or such order
2 is made.”.

3 **SEC. 3. SUBMISSION TO COURT REVIEW AND ASSESSMENT**
4 **OF PROCEDURES.**

5 The Foreign Intelligence Surveillance Act of 1978
6 (50 U.S.C. 1801 et seq.) is amended by inserting after
7 section 105B the following:

8 “SUBMISSION TO COURT REVIEW OF PROCEDURES

9 “SEC. 105C. (a) No later than 120 days after the
10 effective date of this Act, the Attorney General shall sub-
11 mit to the Court established under section 103(a), the pro-
12 cedures by which the Government determines that acquisi-
13 tions conducted pursuant to section 105B do not con-
14 stitute electronic surveillance. The procedures submitted
15 pursuant to this section shall be updated and submitted
16 to the Court on an annual basis.

17 “(b) No later than 180 days after the effective date
18 of this Act, the court established under section 103(a)
19 shall assess the Government’s determination under section
20 105B(a)(1) that those procedures are reasonably designed
21 to ensure that acquisitions conducted pursuant to section
22 105B do not constitute electronic surveillance. The court’s
23 review shall be limited to whether the Government’s deter-
24 mination is clearly erroneous.

25 “(c) If the court concludes that the determination is
26 not clearly erroneous, it shall enter an order approving

1 the continued use of such procedures. If the court con-
2 cludes that the determination is clearly erroneous, it shall
3 issue an order directing the Government to submit new
4 procedures within 30 days or cease any acquisitions under
5 section 105B that are implicated by the court's order.

6 “(d) The Government may appeal any order issued
7 under subsection (c) to the court established under section
8 103(b). If such court determines that the order was prop-
9 erly entered, the court shall immediately provide for the
10 record a written statement of each reason for its decision,
11 and, on petition of the United States for a writ of certio-
12 rari, the record shall be transmitted under seal to the Su-
13 preme Court of the United States, which shall have juris-
14 diction to review such decision. Any acquisitions affected
15 by the order issued under subsection (c) of this section
16 may continue during the pendency of any appeal, the pe-
17 riod during which a petition for writ of certiorari may be
18 pending, and any review by the Supreme Court of the
19 United States.”.

20 **SEC. 4. REPORTING TO CONGRESS.**

21 On a semi-annual basis the Attorney General shall
22 inform the Select Committee on Intelligence of the Senate,
23 the Permanent Select Committee on Intelligence of the
24 House of Representatives, the Committee on the Judiciary
25 of the Senate, and the Committee on the Judiciary of the

1 House of Representatives, concerning acquisitions under
2 this section during the previous 6-month period. Each re-
3 port made under this section shall include—

4 (1) a description of any incidents of non-compli-
5 ance with a directive issued by the Attorney General
6 and the Director of National Intelligence under sec-
7 tion 105B, to include—

8 (A) incidents of non-compliance by an ele-
9 ment of the Intelligence Community with guide-
10 lines or procedures established for determining
11 that the acquisition of foreign intelligence au-
12 thorized by the Attorney General and Director
13 of National Intelligence concerns persons rea-
14 sonably to be outside the United States; and

15 (B) incidents of noncompliance by a speci-
16 fied person to whom the Attorney General and
17 Director of National Intelligence issue a direc-
18 tive under this section; and

19 (2) the number of certifications and directives
20 issued during the reporting period.

21 **SEC. 5. TECHNICAL AMENDMENT AND CONFORMING**
22 **AMENDMENTS.**

23 (a) IN GENERAL.—Section 103(e) of the Foreign In-
24 telligence Surveillance Act of 1978 (50 U.S.C. 1803(e))
25 is amended—

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

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

5 (b) TABLE OF CONTENTS.—The table of contents in
6 the first section of the Foreign Intelligence Surveillance
7 Act of 1978 (50 U.S.C. 1801 et seq.) is amended by in-
8 serting after the item relating to section 105 the following:

“105A. Clarification of electronic surveillance of persons outside the United
States.

“105B. Additional procedure for authorizing certain acquisitions concerning
persons located outside the United States.

“105C. Submission to court review of procedures.”.

9 **SEC. 6. EFFECTIVE DATE; TRANSITION PROCEDURES.**

10 (a) EFFECTIVE DATE.—Except as otherwise pro-
11 vided, the amendments made by this Act shall take effect
12 immediately after the date of the enactment of this Act.

13 (b) TRANSITION PROCEDURES.—Notwithstanding
14 any other provision of this Act, any order in effect on the
15 date of enactment of this Act issued pursuant to the For-
16 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
17 1801 et seq.) shall remain in effect until the date of expi-
18 ration of such order, and, at the request of the applicant,
19 the court established under section 103(a) of such Act (50
20 U.S.C. 1803(a)) shall reauthorize such order as long as
21 the facts and circumstances continue to justify issuance
22 of such order under the provisions of the Foreign Intel-
23 ligence Surveillance Act of 1978, as in effect on the day

1 before the applicable effective date of this Act. The Gov-
2 ernment also may file new applications, and the court es-
3 tablished under section 103(a) of the Foreign Intelligence
4 Surveillance Act of 1978 (50 U.S.C. 1803(a)) shall enter
5 orders granting such applications pursuant to such Act,
6 as long as the application meets the requirements set forth
7 under the provisions of such Act as in effect on the day
8 before the effective date of this Act. At the request of the
9 applicant, the court established under section 103(a) of
10 the Foreign Intelligence Surveillance Act of 1978 (50
11 U.S.C. 1803(a)), shall extinguish any extant authorization
12 to conduct electronic surveillance or physical search en-
13 tered pursuant to such Act. Any surveillance conducted
14 pursuant to an order entered under this subsection shall
15 be subject to the provisions of the Foreign Intelligence
16 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as in
17 effect on the day before the effective date of this Act.

18 (c) SUNSET.—Except as provided in subsection (d),
19 sections 2, 3, 4, and 5 of this Act, and the amendments
20 made by this Act, shall cease to have effect 180 days after
21 the date of the enactment of this Act.

22 (d) AUTHORIZATIONS IN EFFECT.—Authorizations
23 for the acquisition of foreign intelligence information pur-
24 suant to the amendments made by this Act, and directives
25 issued pursuant to such authorizations, shall remain in ef-

1 fect until their expiration. Such acquisitions shall be gov-
2 erned by the applicable provisions of such amendments
3 and shall not be deemed to constitute electronic surveil-
4 lance as that term is defined in section 101(f) of the For-
5 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
6 1801(f)).

Passed the Senate August 3, 2007.

Attest:

Secretary.

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To amend the Foreign Intelligence Surveillance Act of 1978 to provide additional procedures for authorizing certain acquisitions of foreign intelligence information and for other purposes.