



The Foreign Intelligence Surveillance Act: Comparison of House-Passed H.R. 3773, S. 2248 as Reported by the Senate Select Committee on Intelligence, and S. 2248 as Reported Out of the Senate Judiciary Committee

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Summary

On November 15, 2007, the House of Representatives passed H.R. 3773, the RESTORE Act of 2007. On October 26, 2007, Senator Rockefeller reported S. 2248, the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007 or the FISA Amendment Act of 2007, an original bill, from the Senate Select Committee on Intelligence. On November 16, 2007, S. 2248 was reported out of the Senate Judiciary Committee by Senator Leahy with an amendment in the nature of a substitute. On December 17, 2007, the Senate considered a motion to proceed with consideration of S. 2248. Cloture on the motion to proceed was invoked by a vote of 76-10, Record Vote Number 435. After some debate in the closing hours before the Senate broke for the holidays, a decision was made to revisit the measure when the Members returned in January. Senate floor activities on S. 2248 resumed on January 23 and 24, 2008. A modified version of the Senate Judiciary Committee's amendment in the nature of a substitute to S. 2248 was tabled. Senator Reid sought unanimous consent for consideration of the House-passed bill, H.R. 3773, but Senator McConnell objected. Senator Rockefeller, for himself and Senator Bond, proposed an amendment in the nature of a substitute to S. 2248 (S.Amdt. 3911). A cloture motion by Senator McConnell on this amendment did not pass.

On January 29, 2008, both the House and the Senate passed H.R. 5104, a 15-day extension to the sunset for the Protect America Act, to allow further time to consider, pass, and go to conference on proposed legislation to amend FISA, while ensuring that the intelligence community would have the authority it needed in the intervening period. Pursuant to an agreement and order of January 31, 2008, S.Amdt. 3909, as modified, 3932, as modified, 3960, as modified, and S.Amdt. 3945 were agreed to, while other amendments were scheduled for floor debate. In the ensuing floor consideration to date, S.Amdt. 3941 was agreed to, while S.Amdts. 3913 and 3915 failed to pass on February 7, 2008. S.Amdt. 3930 fell short of the requisite 60 votes and was withdrawn on February 6, 2008. Still pending are S.Amdts. 3938, as modified, 3911, 3907, 3927, 3919, 3920, and 3910. Floor debate is anticipated to continue early next week, with additional votes expected on Tuesday, February 12, 2008.

H.R. 3773, S. 2248, and the Senate Judiciary Committee's amendment in the nature of a substitute to S. 2248 each includes amendments to the Foreign Intelligence Surveillance Act. This report provides a side by side comparison of the provisions of these three measures. A glossary of FISA terms from section 101 of FISA, 50 U.S.C. § 1801 is attached. Other FISA bills have also been introduced, such as S. 2440, S. 2441, and S. 2402. These bills are not included in this side-by-side comparison.

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Introduction

During the 110th Congress, several House and Senate committees have engaged in oversight activities, including hearings and requests for expeditious production of documents and information regarding the Administration's warrantless foreign intelligence surveillance programs, as possible changes to the Foreign Intelligence Surveillance Act of 1978, as amended, were explored. In July 2007, an unclassified summary of the National Intelligence Estimate on "The Terrorist Threat to the U.S. Homeland" was released. It expressed the judgment, in part, that the U/S. Homeland will face a persistent and evolving threat over the next three years, the main threat coming from Islamic terrorist groups and cells, particularly Al Qaeda. On August 2, 2007, the Director of National Intelligence (DNI) released a statement on "Modernization of the Foreign Intelligence Surveillance Act." In his statement, Admiral McConnell viewed such modernization as necessary to respond to technological changes and to meet the Nation's current intelligence collection needs. He deemed it essential for the Intelligence Community to provide warning of threats to the United States. He perceived two critically needed changes. First, he stated that a court order should not be required for gathering foreign intelligence from foreign targets located overseas, although he did agree to court review of related procedures after commencement of the needed collection. Second, he contended that liability protection was needed for those who furnished aid to the government in carrying out its foreign intelligence collection efforts.

On August 5, 2007, the Protect America Act of 2007, P.L. 110-55, was enacted into law with a 180 day sunset provision, providing a temporary solution to concerns raised by the Director of National Intelligence. Both the House and the Senate have considered or are considering possible legislation to provide a longer-term statutory approach to these concerns. On November 15, 2007, the House of Representatives passed H.R. 3773, the Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007 or the RESTORE Act of 2007. On October 26, 2007, Senator Rockefeller reported S. 2248, the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007 or the FISA Amendment Act of 2007, an original bill, from the Senate Select Committee on Intelligence. S. 2248 was referred to the Senate Judiciary Committee on November 1, 2007. On November 16, 2007, S. 2248 was reported out of the Senate Judiciary Committee by Senator Leahy with an amendment in the nature of a substitute. On December 14, 2007, Senator Reid made a motion to proceed with consideration of S. 2248, and presented a cloture motion on the motion to proceed. The motion to proceed was then withdrawn. On December 17, 2007, the Senate considered the motion to proceed with the measure. Cloture on the motion to proceed was invoked by a vote of 76-10, Record Vote Number 435. After some debate in the closing hours before the Senate broke for the holidays, a decision was made to revisit the measure when the Members returned in January.

Senate floor activities on S. 2248 resumed on January 23 and 24, 2008. A modified version of the Senate Judiciary Committee's amendment in the nature of a substitute to S. 2248 was tabled. Senator Reid sought unanimous consent for consideration of the House-passed bill, H.R. 3773, but Senator McConnell objected. Senator Rockefeller, for himself and Senator Bond, proposed an amendment in the nature of a substitute to S. 2248 (S.Amdt. 3911). On January 28, 2008, a cloture motion by Senator McConnell on this amendment failed to pass. A cloture motion on an amendment proposed by Senator Reid to S. 2248 to extend the sunset on the Protect America Act for an additional 30 days (S.Amdt. 3918) also fell short of the required votes. Other amendments to S. 2248 have been proposed. On January 29, 2008, both the House and the Senate passed H.R. 5104, a 15-day extension to the sunset for the Protect America Act, to allow further time to

consider, pass, and go to conference on proposed legislation to amend FISA, while ensuring that the intelligence community would have the authority it needed in the intervening period. Pursuant to an agreement and order of January 31, 2008, S.Amdts. 3909, as modified; 3932, as modified; 3960, as modified; and S.Amdt. 3945 were agreed to, while other amendments were scheduled for floor debate. In the ensuing floor consideration to date, S.Amdt. 3941 was agreed to, while S.Amdts. 3913 and 3915 failed to pass on February 7, 2008. S.Amdt. 3930 fell short of the requisite 60 votes and was withdrawn on February 6, 2008. Still pending are S.Amdts. 3938, as modified, 3911, 3907, 3927, 3919, 3920, and 3910. Floor debate is anticipated to continue early next week, with additional votes expected on Tuesday, February 12, 2008.

H.R. 3773, S. 2248 and the Senate amendment in the nature of a substitute to S. 2248, each includes amendments to the Foreign Intelligence Surveillance Act. This report provides a side by side comparison of the provisions of these three measures, using H.R. 3773 as the basis for the comparison. As title I of FISA defines a number of key terms critical to understanding the import of the bills' language, a glossary of FISA terms as defined in section 101 of FISA, 50 U.S.C. § 1801 is attached to assist in understanding the effect of these measures. Senator Reid introduced two additional FISA bills on December 10, 2007, S. 2440 and S. 2441, which were read twice the following day and placed on the Senate Legislative Calendar as Numbers 529 and 530, respectively. S. 2402 was introduced by Senator Specter on December 3, 2007, and referred to the Senate Judiciary Committee. In Committee markup on December 13, 2007, an amendment in the nature of a substitute to S. 2402 was adopted by unanimous consent. Then, by a vote of 5-13, the Committee rejected S. 2402, as amended. The proposal would have permitted substitution of the government for electronic communication service providers in law suits where certain criteria were met. These bills will not be included in this side-by-side comparison.

Table 1. Comparison of H.R. 3773 as Passed by the House, S. 2248 as Reported by the Senate Select Committee on Intelligence, and S. 2248 as Reported Out of the Senate Judiciary Committee with an Amendment in the Nature of a Substitute

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
Short Title—"Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007" or "RESTORE Act of 2007"	Short Title—"Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007" or the "FISA Amendments Act of 2007"	Short Title—"Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007" or the "FISA Amendments Act of 2007"
Limitation on Definition of Electronic Surveillance		
No similar provision.	Limitation on Definition of Electronic Surveillance: Under section 701 of a new title VII of FISA, nothing in the definition of "electronic surveillance" under section 101(f) of FISA, 50 U.S.C. § 1801(f), shall be construed to encompass surveillance that is targeted in accordance with proposed title VII of the Foreign Intelligence Surveillance Act (FISA) at a person reasonably believed to be located outside the United States	No similar provision.
Definitions		
No similar provision.	New section 702 of FISA: Definitions. See also section 802 of FISA on definitions.	New section 701 of FISA: Definitions.
Warrantless Electronic Surveillance or Targeting of Certain Persons Reasonably Believed to be Outside the United States		
Sec. 2 of the bill: Clarification of electronic surveillance of non-U.S. persons outside the United States. Under amended section 105A of FISA, no court order is needed for electronic surveillance directed at acquisition of contents of communications between persons not known to be U.S. persons who are reasonably believed to be located outside the United States regardless of whether communication passed through United States or surveillance device is in United States.	New section 703 of FISA: Permits Attorney General (AG) and the Director of National Intelligence (DNI) to jointly authorize, for up to 1 year, targeting of persons reasonably believed to be outside United States to acquire foreign intelligence information. Such an acquisition:	New section 702 of FISA: Permits AG and DNI to jointly authorize, for up to 1 year, targeting of persons reasonably believed to be outside United States to acquire foreign intelligence information.
No similar provision.	—may not intentionally target any person known at the time of the acquisition to be located in the United States	Same provision as S. 2248 (SSCI version).

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
<p>No similar provision, but see section 105B as amended, below.</p> <p>No similar provision.</p> <p>If a communication involving a U.S. person or a person in the United States is inadvertently intercepted in the course of such electronic surveillance, its contents must be handled in accordance with minimization procedures adopted by the AG. Under those procedures, no contents of any communication to which a U.S. 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 of FISA is obtained or unless the AG determines that the information indicates a threat of death or serious bodily harm to any person.</p>	<p>—may not intentionally target a person reasonably believed to be outside the United States if <i>the purpose</i> of the acquisition is to target for surveillance a particular, known person reasonably believed to be in the United States, except in accordance with title I of FISA.</p> <p>—must be conducted in a manner consistent with the fourth amendment to the U.S. Constitution.</p> <p>No similar provision.</p>	<p>—may not intentionally target a person reasonably believed to be outside the United States if <i>a significant purpose</i> of such acquisition is to acquire the communications of a specific person reasonably believed to be in the United States, except in accordance with title I of FISA.</p> <p>Same provision as S. 2248 (SSCI version).</p> <p>No similar provision.</p>
Acquisition Inside the United States of Communications of United States Persons Reasonably Believed to be Outside the United States		
No similar provision.	<p>Acquisition under new subsection 703(a) of FISA inside the United States of U.S. persons outside the United States. If such an acquisition occurs inside the United States, it may not target a U.S. person reasonably believed to be outside the United States, except in accordance with the provisions of title I of FISA.</p>	<p>Acquisition under new subsection 702(a) of FISA inside the United States of U.S. persons outside the United States. If such an acquisition constitutes electronic surveillance and occurs inside the United States, it may not intentionally target a U.S. person reasonably believed to be outside the United States, except in accordance with the procedures under title I of FISA.</p>
Acquisition of Communications of Certain Persons Reasonably Believed to be Outside the United States		
<p>Amended section 105A(b) of FISA, Communications of Non-United States Persons Outside of the United States: A Foreign Intelligence Surveillance Court (FISC) order under section 105 or 105B of FISA or an emergency authorization under section 105 or 105C of FISA is required for electronic surveillance targeting a person reasonably believed to be located outside the United States and not a U.S. person</p>	No similar provision, <i>but</i> see new section 703 of FISA procedures for acquiring the communications of certain persons outside the United States, which permit the AG and DNI to jointly authorize, for up to 1 year, targeting of persons reasonably believed to be outside the United States to acquire foreign intelligence information.	No similar provision, <i>but</i> see new section 702 of FISA procedures for acquiring the communications of certain persons outside the United States, which permit the AG and DNI to jointly authorize, for up to 1 year, targeting of persons reasonably believed to be outside the United States to acquire foreign intelligence information.

H.R. 3773 as passed by the House**S. 2248 as reported by the Senate Select
Committee on Intelligence****S. 2248, amendment in the nature of a substitute
reported by the Senate Judiciary Committee**

where the surveillance is directed at acquisition of that person's communications to collect most types of foreign intelligence information (as defined in sections 101(e)(1) or (2)(A) of FISA; see glossary).

Sec. 3 of the bill, section 105B of FISA, as amended: Additional authorization of acquisitions of communications of non-U.S. persons located outside the United States who may be communicating with persons inside the United States. Pursuant to FISC order, amended section 105B of FISA permits acquisitions for up to 1 year of communications of non-U.S. persons reasonably believed to be outside the United States to collect most types of foreign intelligence information (all but information with respect to a foreign power or foreign territory that relates to, and if concerning a U.S. person is necessary to the conduct of the foreign affairs of the United States) by targeting those persons.

New section 703(c)(2) of FISA, restricts the circumstances in which a surveillance device outside the United States may be used to intentionally target U.S. persons reasonably believed to be outside the United States to acquire certain wire and radio communications to and from them. New section 703(c)(2) of FISA prohibits use of a surveillance device outside the United States to intentionally target U.S. persons reasonably believed to be outside the United States to acquire the contents of wire and radio communications to and from those persons under circumstances where there is a reasonable expectation of privacy and a warrant would be required for law enforcement purposes within the United States, unless the FISC finds probable cause to believe the targets are foreign powers or agents of foreign powers and issues an ex parte order as requested or as modified approving the targeting of that person. The probable cause finding must be based upon the basis of facts submitted in an application by the AG or his designee.

New section 702(c)(2) restricts the circumstances in which a surveillance device outside the United States may be used to intentionally target U.S. persons reasonably believed to be outside the United States to acquire certain wire and radio communications to and from them. New section 702(c)(2) of FISA prohibits use of a surveillance device outside the United States to intentionally target U.S. persons reasonably believed to be outside the United States to acquire the contents of wire and radio communications to and from those persons under circumstances where there is a reasonable expectation of privacy and a warrant would be required for law enforcement purposes within the United States, unless:

- the FISC has entered an order approving electronic surveillance of that U.S. person under section 105, or in the case of an emergency situation, electronic surveillance against the target is being conducted in a manner consistent with title I; or
- the FISC has entered a order under new section 703(c)(2)(B) of FISA that there is probable cause to believe that the U.S. person is a foreign power or an agent of a foreign power;
- the AG has established minimization procedures for that acquisition that meet the definition of minimization procedures under section 101(h); and
- the dissemination provisions of such minimization procedures for the acquisition have been approved under new section 702(c)(2)(C).

New section 702(c)(2)(B) permits the AG to submit to the FISC his determination, together with any supporting affidavits, that a U.S. person who is outside the United States is a foreign power or an agent of a foreign power. The FISC, in reviewing such a determination, is limited to whether, on the basis of the

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<p>Requirements for AG/DNI certification as part of an application for a FISC order or extension of an order: Such an application must include a certification by the DNI and the AG that satisfies specific requirements. The DNI and the AG must certify:</p> <p>—the targets are persons reasonably believed to be outside the United States who may be communicating with persons inside the United States;</p> <p>No similar provision.</p> <p>—the targets are reasonably believed to be persons who are not U.S. persons;</p>	<p>Requirements for AG/DNI certification as prerequisite to an acquisition, new section 703(g) of FISA: Before initiation of an acquisition, the AG and the DNI shall provide, under oath, a written certification attesting that:</p> <p>—there are reasonable procedures in place for determining that the acquisition authorized is targeted at persons reasonably believed to be located outside the United States and that such procedures have been approved by, or will promptly be submitted for approval by, the FISC;</p> <p>—the procedures are consistent with the requirements of the fourth amendment to the U.S. Constitution and do not permit the intentional targeting of any person who is known at the time of acquisition to be located in the United States;</p> <p>No similar provision, but, under new section 703(c)(3), within 30 days after enactment of proposed title VII of FISA, the AG must submit to the FISC the procedures to be used to determine whether a target reasonably believed to be outside the United States is a U.S. person. FISC approval of the procedures is a prerequisite to their use to make such a determination.</p>	<p>facts submitted by the AG, there is probable cause to believe that the U.S. person who is outside the United States is a foreign power or an agent of a foreign power. If the FISC determines such probable cause exists, it must issue an order approving the acquisition. Such order shall be for 90 days, and can be renewed for additional 90 day periods. If the FISC finds no probable cause, it shall enter an order so stating and provide a written statement for the record of its reasons. The government may appeal such an order to the FISC.</p> <p>Requirements for AG/DNI certification as prerequisite to an acquisition, new section 702(g) of FISA: Similar, but not identical, provisions.</p> <p>—similar provision to S. 2248 (SSCI version)</p> <p>—similar provision to S. 2248 (SSCI version)</p> <p>No similar provision, but, under new section 702(c)(3), within 30 days after enactment of the bill, the AG must submit to the FISC the procedures to be used to determine whether a target reasonably determined to be outside the United States is a U.S. person. FISC approval of the procedures is a prerequisite to their use to make such a determination.</p> <p>The government may appeal an FISC order to the FISC where the FISC finds the procedures do not meet the statutory requirements. Any targeting of persons reasonably believed to be located outside the United States shall use the procedures approved by the FISC.</p>

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
<p>—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</p>	<p>—the acquisition involves obtaining the foreign intelligence information from or with the assistance of an electronic communication service provider;</p>	<p>—similar provision to S. 2248 (SSCI version)</p>
<p>No similar provision.</p>	<p>—the acquisition does not constitute electronic surveillance, as limited by section 701;</p>	<p>No similar provision.</p>
<p>—a significant purpose of the acquisition is to obtain foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)).</p>	<p>—a significant purpose of the acquisition is to obtain foreign intelligence information; and</p>	<p>Similar provision to S. 2248 (SSCI version).</p>
<p>An application must also include criteria for determining if such a significant purpose exists. Such criteria must require consideration of whether the federal department or agency conducting the acquisition has sought information on the specific U.S. person from, or provided information that identifies the specific U.S. person to, another federal department or agency; and whether the federal department or agency conducting the acquisition has determined that the specific U.S. person has been the subject of ongoing interest or repeated investigation by a federal department or agency. Consideration must also be given to whether the specific U.S. person is a natural person.</p>	<p>No similar provision.</p>	<p>No similar provision.</p>
<p>Such application must also include a description of—</p>	<p>No similar provision, but the AG/DNI certification must attest that there are reasonable procedures in place for determining that the acquisition authorized is targeted at persons reasonably believed to be located outside the United States and that such procedures have been approved by, or will promptly be submitted for approval by, the FISC.</p>	<p>Similar provision to S. 2248 (SSCI version).</p>
<p>—the procedures that will be used by the DNI and the AG during the duration of the order to determine that there is a reasonable belief that the targets are non-U.S. persons located outside the United States;</p>		

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
<p>—the nature of the information sought, including the identity of any foreign power against whom the acquisition will be directed;</p>	<p>No similar provision.</p>	<p>No similar provision.</p>
<p>—minimization procedures that meet the definition of minimization procedures under section 101(h) to be used with respect to such acquisition;</p>	<p>—the minimization procedures to be used with respect to such acquisition meet the definition of minimization procedures under section 101(h); and have been approved by, or will promptly be submitted for approval by, the FISC.</p>	<p>Similar provision to S. 2248 (SSCI version).</p>
<p>—guidelines to be used to ensure that an application is filed under section 104 of FISA, if otherwise required by this act, when a <i>significant purpose</i> of an acquisition is to acquire the communications of a specific U.S. person reasonably believed to be located in the United States; and</p>	<p>No similar provision, but, under new section 703 of FISA, an acquisition may not intentionally target a person reasonably believed to be outside the United States if <i>the purpose</i> of the acquisition is to target for surveillance a particular, known person reasonably believed to be in the United States, except in accordance with title I of FISA.</p>	<p>No provision similar to this provision of H.R. 3773, but new section 702 is similar to section 703 of S. 2248 (SSCI version).</p>
<p>No similar provision.</p>	<p>The certification must be supported, as appropriate, by the affidavit of any appropriate official in the area of national security who is appointed by the President, by and with the consent of the Senate; or the head of any element of the intelligence community.</p>	<p>Similar provision to S. 2248 (SSCI version).</p>
<p>Such an application is not required to identify the specific facilities, places, premises, or property at which the acquisition of foreign intelligence information will be directed.</p>	<p>Such a certification is not required to identify the specific facilities, places, premises, or property at which the acquisition will be directed or conducted.</p>	

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
<p>No similar provision. <i>Cf.</i>, requirements for emergency authorizations of acquisitions under section 105C of FISA as amended by the bill.</p>	<p>Exception to certification requirement where immediate government action required: If the AG and the DNI determine that immediate federal government action is required and time does not permit the preparation of a certification before initiation of an acquisition, the AG and the DNI shall prepare a certification, including such determination, as soon as possible but in no event more than 168 hours after the determination is made.</p> <p>The AG must transmit a copy of a certification any supporting affidavit under seal to the FISC as soon as possible within 5 days after such certification is made, there to be maintained under security measures adopted by the Chief Justice of the United States and the AG, in consultation with the DNI.</p> <p>Conduct of acquisition: Such an acquisition may be conducted only in accordance with the AG/DNI certification; targeting procedures, adopted by the AG in consultation with the DNI, and subject to judicial review by the FISC, that are reasonably designed to ensure that any such acquisition is limited to targeting persons reasonably believed to be outside the United States; and minimization procedures, adopted by the AG in consultation with the DNI, which are consistent with the definition of minimization procedures under section 101(h) of FISA and are subject to judicial review by the FISC.</p>	<p>Similar provision to S. 2248 (SSCI version).</p> <p>Conduct of acquisition: Such an acquisition may be conducted only in accordance with the AG/DNI certification and the required targeting and minimization procedures.</p>
Adoption of Targeting Procedures and Minimization Procedures and Judicial Review of Procedures and Certifications		
<p>No similar provision.</p>	<p>Adoption of procedures and submittal to the FISC of targeting procedures, minimization procedures, and certifications; judicial review: New section 703 of FISA requires submission to the FISC of certifications, targeting procedures, and minimization procedures for judicial review.</p> <p>—Within 30 days of enactment, the AG must submit to the FISC procedures to be utilized in determining whether a target reasonably believed to be outside the United States is a U.S. person. These procedures may</p>	<p>Similar provision to S. 2248 (SSCI version).</p> <p>Similar provision to S. 2248 (SSCI version).</p>

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
No similar provision.	<p>only be used upon FISC approval. Any targeting of persons authorized jointly by the AG and DNI must utilize these procedures.</p> <p>No similar provision.</p>	
No similar provision.	<p>Adoption and judicial review of targeting procedures: The AG, in consultation with the DNI, must adopt targeting procedures reasonably designed to ensure that any acquisition under new subsection 703(a) of FISA is limited to targeting persons reasonably believed to be outside the United States The procedures are to be submitted to the FISC by the AG within 5 days of their adoption or amendment. The FISC shall review these procedures to assess whether they meet this standard.</p>	<p>Transition procedures concerning targeting of U.S. persons overseas, new section 702(c)(4) of FISA: Any authorization in effect on the date of enactment of S. 2248, the FISA Amendments Act of 2007, under section 2.5 of Executive Order 12333 to intentionally target a U.S. person reasonably believed to be located outside the United States, to acquire the contents of a wire or radio communication sent by or intended to be received by that U.S. person, shall remain in effect, and shall constitute a sufficient basis for conducting such an acquisition of a U.S. person located outside the United States, until that authorization expires or 90 days after the date of enactment of the FISA Amendments Act of 2007, whichever is earlier.</p>
No similar provision.	<p>Adoption and judicial review of minimization procedures: The AG, in consultation with the DNI, must adopt minimization procedures for acquisitions under the joint AG/DNI authority under new section 703(a). These procedures must be consistent with the requirements for minimization procedures in section 101(h) of FISA (see glossary), and shall be reviewed by the FISC to assess whether the minimization procedures for acquisitions meet the section 101(h) standard. The AG is to submit the minimization procedures and any amendment thereto to the FISC within 5 days of adoption or amendment.</p>	<p>Similar provision to S. 2248 (SSCI version).</p>

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
No similar provision.	<p>Judicial review of certifications: Certifications are to be submitted by the AG to the FISC within 5 days after making or amending the certification. The FISC shall review the certification to determine whether the certification contains all the required elements.</p> <p>If the FISC finds the certification contains all such required elements and the targeting and minimization procedures meet the required standards and are consistent with the fourth amendment to the U.S. Constitution, the court must enter an order approving the continued use of the procedures for the acquisition authorized under new section 703(a). If the FISC finds any deficiencies, the court directing the government, at the government's election and to the extent required by the FISC order, to either correct any deficiency identified by the order within 30 days of issuance of the order, or to cease the acquisition.</p>	Similar provision to S. 2248 (SSCI version).
No similar provision.	<p>Appeals of any FISC order to FISC and petitions for certiorari to the U.S. Supreme Court: The government may appeal any FISC order to the Foreign Intelligence Surveillance Court of Review (FISCR) and may file a petition for certiorari to the U.S. Supreme Court to review an FISCR decision. The FISC and the FISCR must provide a written statement of the reasons for its decision. Judicial proceedings shall be as expeditious as possible.</p> <p>All petitions are to be filed under seal. Upon the request of the government, any government submission or portions thereof which may include classified information shall be reviewed ex parte and in camera. Records of such proceedings must be maintained under security measures adopted by the Chief Justice of the United States in consultation with the AG and the DNI. A directive or an order granted under new section 703 of FISA must be retained for at least 10 years. New section 703(l) of FISA.</p>	Similar provision to S. 2248 (SSCI version).
No similar provision, <i>but see</i> new section 105B(d)(2) of FISA temporary order, appeals.	Continuation of acquisition pending rehearing or appeal . Any acquisitions affected by a court order directing correction of deficiencies or cessation of an	Similar, but not identical provisions to S. 2248 (SSCI version). Under new section 702(i)(6)(B) of FISA, the Government may move for a stay of any order of the

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
<p>Temporary Order; appeals . At the request of the government, an FISC judge who has denied an application under amended section 105B of FISA, may issue a temporary order authorizing the acquisition in accordance with the denied application under section 105B of FISA during the pendency of the appeal from the denial. The government may appeal the denial of a section 105B application or a temporary order to the Foreign Intelligence Surveillance Court of Review (FISCR), and may seek U.S. Supreme Court review by filing a certiorari petition.</p>	<p>acquisition shall continue during the pendency of a rehearing by the FISC en banc or any appeal to the FISCR. See section 109(b) of the bill creating FISC en banc authority. Section 109 of the bill gives the FISC authority, on its own initiative, or upon the request of the government or of a party under sections 501(f) or new 703(h)(4) or (5) of FISA, to hold a hearing or rehearing en banc when ordered by a majority of the FISC judges upon a determination that en banc consideration is necessary to secure or maintain uniformity of the court's decisions, or the proceeding involves a question of exceptional importance.</p> <p>No similar provision, <i>but see</i> new section 703(i)(6)(B) dealing with continuation of acquisition during pendency of appeals from correction of deficiency order.</p>	<p>Foreign Intelligence Surveillance Court under new 702(i)(5)(B)(i) of FISA directing correction of deficiencies or cessation of an acquisition pending review by the FISC en banc or pending appeal to the FISCR. Section 109 of the bill gives the FISC authority, on its own initiative, or upon the request of the government or of a party under sections 501(f) or new 702(h)(4) or (5) of FISA, to hold a hearing or rehearing en banc when ordered by a majority of the FISC judges upon a determination that en banc consideration is necessary to secure or maintain uniformity of the court's decisions, or the proceeding involves a question of exceptional importance.</p> <p>No similar provision, <i>but see</i> new section 702(i)(6)(B) dealing with stay of FISC order during pendency of appeal from correction of deficiency order.</p>
Requirements for or Directives to Electronic Communications Service Providers		
<p>Requirements for FISC order under section 105B(e) of FISA, as amended, approving application: An order issued by an FISC judge approving an such an application authorizing the acquisition of the contents of such communications must comply with requirements for the communications service provider; the federal government; and for the applicant.</p> <p>Requirements for the communications service provider:</p> <p>The order must require the communications service provider or custodian, or officer, employee, or agent of</p>	<p>Directives to electronic communications service provider in connection with an acquisition authorized jointly by the AG and the DNI, new section 703(h) of FISA: The AG and the DNI may direct in writing an electronic communication service</p>	<p>Similar provision to S. 2248 (SSCI version), new section 702(h) of FISA.</p>

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<p>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 produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition; and to maintain any records concerning the acquisition or the aid furnished under security procedures approved by the AG and the DNI.</p>	<p>provider, as defined in new section 701 of FISA, to immediately provide the government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target; and 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 that such electronic communication service provider wishes to maintain.</p>	
<p>Requirements for the federal government: The order must direct the federal government to:</p>	<p>Compensation—the federal government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance.</p>	<p>Similar provision to S. 2248 (SSCI version), new section 702(h)(2) of FISA.</p>
<p>—compensate, at the prevailing rate, a person for providing information, facilities, or assistance pursuant to such order;</p>		
<p>—provide that person with a copy of the portion of the order directing the person to comply with the order (<i>cf.</i>, Sec. 19(a) of the bill, imposing a similar requirement under section 102(a) of FISA, 50 U.S.C. § 1802(a) and section 105(c)(2) of FISA, 50 U.S.C. § 1805(c)(2); and Sec. 4 of the bill, amending section 105C(b) of FISA imposing a similar requirement in emergency authorization context); and</p>		
<p>—provide a certification stating that the acquisition is authorized under section 105B of FISA, as amended, and that all requirements of this section have been met (<i>cf.</i>, Sec. 19(a) of the bill, imposing a similar requirement under section 102(a) of FISA, 50 U.S.C. § 1802(a), and Sec. 4 of the bill, amending section 105C(b) of FISA imposing a similar requirement in emergency authorization context).</p>		
<p>Requirements for the applicant for the order: The order must direct the applicant for the order to follow the procedures, as proposed or as modified by the judge, to be used by the AG and the DNI during the duration of the order to determine that there is a reasonable</p>		

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<p>belief that the targets of the acquisition are non-U.S. persons located outside the United States; the minimization procedures; and the guidelines 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 U.S. person reasonably believed to be located in the United States.</p>		
<p>No similar provision.</p>	<p>Challenging of directives: Permits an electronic communication service provider receiving such a directive to challenge it by filing a petition to modify it or set it aside with the FISC. Within 24 hours, the presiding judge of the FISC would assign the petition to a judge of the FISC petition review pool established under section 103(e)(1) of FISA, 50 U.S.C. § 103(e)(1).</p>	<p>Similar to S. 2248 (SSCI version), new section 702(h)(4) of FISA.</p>
	<p>Standard of review: The judge considering the petition to modify or set aside a directive may grant it only if the judge finds that the directive does not meet the requirements of new section 703(h)(4)(C) of FISA or is otherwise unlawful. Otherwise, the judge shall immediately affirm such directive, and order the recipient to comply with it. The judge shall provide a written statement for the record of the reasons for his or her determination. Any directive not explicitly modified or set aside under this paragraph shall remain in full effect.</p>	<p>Similar to S. 2248 (SSCI version), new section 702(h)(4)(C).</p>
	<p>Enforcement of FISC order affirming, modifying, or setting aside a directive: The FISC may punish a failure to obey an FISC order issued under this paragraph as contempt of court.</p>	<p>Similar provision to S. 2248 (SSCI version), new section 702(h)(5)(D) of FISA.</p>
	<p>Service of process: Any process under this paragraph may be served in any judicial district in which the electronic communication service provider may be found. New section 703(c)(4)(E) of FISA.</p>	<p>Similar provision to S. 2248 (SSCI), new section 702(c)(4)(E) of FISA.</p>
	<p>Appeal to the FISC of an FISC order affirming, modifying, or setting aside a directive, or punishing failure to obey such an order: An appeal to the FISC may be filed within 7 days of the FISC</p>	<p>Similar provision to S. 2248 (SSCI version.) New section 702(c)(6).</p>

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	<p>order by the government or an electronic communication service provider receiving such a directive. The FISC shall have jurisdiction to consider such a petition and shall provide a written statement for the record of the reasons for a decision under this paragraph. New section 703(c)(6) of FISA.</p> <p>Certiorari to the U.S. Supreme Court: The government or an electronic communication service provider receiving a such a directive may petition the U.S. Supreme Court for review of an such an FISC decision The record for such review shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision. New section 703(c)(6)(i) of FISA.</p> <p>Enforcement of section 105B order: The AG may seek the aid of the FISC to enforce compliance with an order under section 105B, as amended. Failure to obey such a court order may be punished by contempt of court. In addition, service of process may be made in any judicial district in which the person may be found.</p>	<p>Similar provision to S. 2248 (SSCI version), new section 702(c)(6)(B) of FISA.</p> <p>Similar provision to S. 2248 (SSCI version), new section 702(h)(5) of FISA.</p>
Prospective Limitation on Liability for those Furnishing Aid to the Government under Directive or Section 105B Order		
<p>Limitation on liability for those furnishing aid to the government pursuant to an order under section 105B of FISA, as amended. 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 such an order.</p>	<p>Release from liability for electronic communication service providers who furnish aid to the government pursuant to such a directive: Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with such a directive.</p>	<p>Similar provision to S. 2248 (SSCI version), new section 702(h)(3) of FISA.</p>
<p>Retention of section 105B order: The DNI and the FISC shall retain an order issued under section 105B of FISA, as amended, for 10 years.</p>	<p>Maintenance of records under new section 703(k): A record of a proceeding under this section, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures adopted by the Chief Justice of the United States, in consultation with the AG and the DNI. All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the government, review ex parte and in</p>	<p>Similar provision, new section 703(k) of FISA, maintenance of records under new section 702(k).</p>

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<p>FISC assessment of compliance with a section 105B order: At least quarterly during the pendency of an order or an extension of a order, the FISC must assess compliance with its order and review the circumstances under which information concerning U.S. persons was acquired, retained, and disseminated.</p>	<p>camera any government submission, or portions of a submission, which may include classified information. Directives made or orders granted under new section 703 must be retained for at least 10 years.</p> <p>No similar provision, <i>but see</i>, new sections 703(l)(3)(A) and 703(l)(3)(C) of FISA. New section 703(l)(3)(A) requires the head of each element of the intelligence community conducting an acquisition under new section 703(a) to conduct an annual review of the acquisition to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition, and to provide that review to the FISC. This review shall provide, with respect to such acquisitions, the number of disseminated intelligence reports containing a reference to a U.S. person identity; the number of U.S. person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting; and the number of targets that were later determined to be located in the United States and the number of persons located in the United States whose communications were reviewed. Such review is to be used by the head of each such element of the intelligence community to evaluate the adequacy of the minimization procedures utilized by such element or the application of the minimization procedures to a particular acquisition authorized under new subsection 703(a) of FISA.</p> <p>New section 703(l)(3)(C) requires the head of each such element of the intelligence community to provide a copy of its annual report to the FISC.</p> <p>See <i>also</i>, new section 703(l)(1) of FISA, which provides that at least semiannually, the IGs of DOJ and any element of the intelligence community authorized to acquire foreign intelligence information under new section 703(a) must assess compliance with targeting and minimization procedures and submit each assessment to the FISC, HPSCI and SSCL.</p>	<p>No similar provision, <i>but see</i>, new sections 702(l)(3)(A) and 702(l)(3)(C).</p>

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Amendments to Section 104 of FISA		
No similar provision.	<p>Sec. 104 of the bill, amending section 104 of FISA, 50 U.S.C. § 1804, regarding applications for FISC orders authorizing electronic surveillance:</p> <p>This provision makes a series of amendments to the requirements for applications for FISC orders approving applications authorizing electronic surveillance under FISA. Paragraphs 104(a)(2) and (11), and subsection (b) are deleted, with the surrounding provisions redesignated to reflect the absence of these provisions. Redesignated section 104(a)(6) is amended to add the Deputy Director of the FBI, if the Director of the FBI is unavailable and if designated by the President as a certifying official, to the list of those permitted to make a certification required as part of the application. Redesignated section 104(d) of FISA is amended to add the Director of the CIA to the list of those who may request in writing that the AG personally review an application for electronic surveillance of a target described under section 101(b)(2) of the FISA.</p>	Similar provision to S. 2248 (SSCI version), Sec. 104 of the bill, amending section 104 of FISA, 50 U.S.C. § 1804.
Emergency Authorizations		
<p>Sec. 4 of the bill, amending section 105C of FISA: Emergency authorization of acquisitions of communications of persons outside the United States who may be communicating with persons inside the United States: Under section 105C of FISA, as amended by the bill, the AG and the DNI may jointly authorize an emergency acquisition of foreign intelligence information as defined in section 101(e)(1) and (2)(A) of FISA (see glossary) for up to 45 days if the DNI and the AG jointly determine that the statutory criteria have been met:</p>	No similar provision with respect to new section 703 authority, but see below regarding changes to emergency authority under redesignated section 105(e) of FISA, formerly section 105(f) of FISA.	<p>Sec. 101(a)(2) of the bill, new section 702(c)(2)(D) of FISA: Emergency procedures: Notwithstanding any other provision of this title, the AG may authorize the emergency employment of electronic surveillance for up to 72 hours while an FISC order authorizing the surveillance is sought, if statutory criteria are met:</p>

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<p>—these include a requirement that the AG and DNI jointly determine that 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; and requirements similar to those required for an application for a section 105B authorization, and</p> <p>—the DNI and the AG, or their designees must inform an FISC 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.</p>		<p>—the AG must reasonably determine that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained</p> <p>—the AG must also reasonably determine that the factual basis for issuance of an order under new section 702(c)(2)(B) to approve such an acquisition exists</p> <p>—as soon as practicable within 72 hours after the AG authorizes an emergency acquisition, the AG must submit a request in accordance with new section 702(c)(2)(B) of FISA to the FISC judge who was notified at the time the decision to employ emergency acquisition was made</p> <p>—the AG must inform an FISC judge at the time of such authorization that the decision has been made to employ an emergency acquisition</p> <p>—the AG must require that minimization procedures meeting the definition of minimization procedures under section 101(h) be followed.</p>
<p>—AG directives to those furnishing aid pursuant to an emergency authorization under section 105C of FISA: The AG may direct a communications service provider or custodian, or an officer employee or agent thereof, who has lawful authority to access the information, facilities, or technical assistance needed to accomplish an emergency acquisition to: furnish the AG forthwith with such aid in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services they provide to the target of the acquisition; and to maintain any records concerning the acquisition or aid furnished under security procedures approved by the AG and DNI.</p>	<p>No similar provision.</p>	<p>No similar provision.</p>
<p>—Documentation and 2 certifications to be provided by the AG to those furnishing aid under emergency authorization: The AG shall provide to any person providing assistance under such a directive with:</p>	<p>No similar provision.</p>	<p>No similar provision.</p>

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<p>—a document setting forth the parameters of the directive;</p> <p>—a certification stating that an emergency authorization has been issued under section 105C of FISA as amended by the bill, all requirements of section 105C have been met, an FISC judge has been informed by the AG and the DNI or their designees of the emergency authorization in accordance with section 105C(b)(2), and an application for authorization of the acquisition will be submitted to the FISC under section 105C(a) of FISA; and</p> <p>—a certification that the recipient shall be compensated at the prevailing rate for aid furnished pursuant to such directive.</p>		<p>Effect of absence of judicial determination finding probable cause: In the absence of a judicial determination finding probable cause to believe that the U.S. person that is the subject of an emergency employment of an acquisition is a foreign power or an agent of a foreign power, the emergency employment of such an acquisition shall terminate when the information sought is obtained, when the request for a determination is denied, or after the expiration of 72 hours from the time of authorization by the Attorney General, whichever is earliest.</p> <p>Limitations on use of information from surveillance if the Court determines that there is not probable cause to believe that a U.S. person is a foreign power or an agent of a foreign power: If the Court determines that there is not probable cause to believe that a U.S. person is a foreign power or an agent of a foreign power in response to a request for a determination under clause 702(c)(2)(D)(i)(III), or in any other case where the emergency employment of an acquisition under this subparagraph is terminated and no determination finding probable cause is issued, no information obtained or evidence derived from such acquisition shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any other authority of the United States, a state,</p>

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No similar provision.		<p>or political subdivision thereof, and no information concerning any U.S. person acquired from such acquisition shall subsequently be used or disclosed in any other manner by federal officers or employees without the consent of such person, except with the approval of the AG if the information indicates a threat of death or serious bodily harm to any person.</p> <p>Judicial review of a denial of an application to approve an emergency authorized electronic surveillance: A denial may be reviewed by the FISC, and by the U.S. Supreme Court on a certiorari petition.</p>
No similar provisions.	<p>Sec. 105(6) of the bill, amending section 105(e)(1)-(6) of FISA, 50 U.S.C. § 1805(e)(1)-(6) (formerly section 105(f) as redesignated by Sec. 105(5) of the bill): Emergency authorization of electronic surveillance: Notwithstanding any other provision of this title, the AG may authorize the emergency employment of electronic surveillance for up to 168 hours while an FISC order authorizing the surveillance is sought, if statutory criteria are met:</p> <p>—these include a requirement that the AG determine that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;</p> <p>—the AG must also determine that the factual basis for issuance of an order under title I of FISA to approve such electronic surveillance exists;</p> <p>—the AG must make a section 104 application to an FISC judge as soon as practicable, but not later than 168 hours after the Attorney General authorizes such surveillance;</p> <p>—the AG must inform, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and</p>	<p>Similar provisions.</p> <p>Similar provision.</p> <p>Similar provision.</p> <p>Similar provision.</p>

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	<p>—if the AG authorizes such emergency employment of electronic surveillance under redesignated paragraph 105(e)(1), he shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.</p>	Similar provision.
	<p>Effect of absence of judicial order approving such electronic surveillance: In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.</p>	Similar provision.
	<p>Limitations on use of information from surveillance if application denied or surveillance terminated without issuance of a court order approving it: If such an application is denied or the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any authority of the United States, a State, or political subdivision thereof, and no information concerning any U.S. person acquired from such surveillance shall subsequently be used or disclosed in any other manner by federal officers or employees without the consent of such person, except with the approval of the AG if the information indicates a threat of death or serious bodily harm to any person. The AG shall assess compliance with these requirements.</p>	Similar provision.
	<p>Judicial review of a denial of an application to approve an emergency authorized electronic surveillance: A denial may be reviewed by the FISC, and by the U.S. Supreme Court on a certiorari petition.</p>	Similar provision.
	<p>See also, Sec. 104 of the bill, amending section 104 of FISA provisions for application for FISC orders approving electronic surveillance; and Sec. 107 of the bill, making similar changes to the physical search</p>	Similar provisions.

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	application and order provisions of FISA, section 303 and 304 of FISA, 50 U.S.C. §§ 1823 and 1824 of FISA; cf. Sec. 108 of the bill, amending section 403 of FISA, 50 U.S.C. § 1843, regarding the installation and use of pen registers or trap and trace devices.	
Amendments to Section 105 of FISA Other Than Those Dealing with Emergency Authorizations		
No similar provision.	Sec. 105 of the bill, amending section 105 of FISA to add a new subsection (i), 50 U.S.C. 1805(i) (former section 105(i) of FISA was redesignated section 105(h) by Sec. 105(5) of the bill): Adding pen registers and trap and trace devices, at applicant's request, to orders approving electronic surveillance: When an order approving electronic surveillance under FISA is approved, the FISC judge, upon request of the applicant, shall also authorize installation and use of pen registers and trap and trace devices and direct disclosure of information set forth in section 402(d)(2) of FISA, including the identity, if known, of the target of the investigation; the identity, if known, of the person to whom the phone line or other facility to which the pen register or trap and trace device is to be attached or applied is leased or in whose name it is listed; the attributes of the communications to which the order applies.	Sec. 105(7) of FISA, adding new subsection 105(i), 50 U.S.C. § 1805(i): Similar provision to section 105(i) in S. 2248 (SSCI version).
Amendments to Section 106 of FISA		
No similar provision.	<p>Sec. 106 of the bill, amending section 106(i) of FISA, 50 U.S.C. § 1806(i), expands from “radio communications” to “communications” the application of this provision dealing with destruction upon recognition of the unintentionally acquired contents of <i>communications</i> acquired by a surveillance device, unless the AG determines that the contents indicate a threat of death or serious bodily harm to any person.</p> <p>Under new section 704 of FISA, information acquired from an acquisition conducted under new section 703 of FISA shall be deemed to be information acquired from an electronic surveillance under title I of FISA for purposes of section 106 of FISA, except for the</p>	<p>Sec. 106 of the bill, amending section 106(i) of FISA, 50 U.S.C. § 1806(i): similar provision to S. 2248 (SSCI version).</p> <p>Similar provision, new section 703 of FISA.</p>

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	<p>purposes of section 106(j) of FISA. Section 106 of FISA deals with use of information obtained or derived from electronic surveillance under FISA. Section 106(j) deals with notification of emergency employment of electronic surveillance, contents, postponement.</p>	
Amendments to Physical Search Provisions of FISA		
<p>No similar provision.</p>	<p>Sec. 107 of the bill, amending section 303 of FISA, 50 U.S.C. § 1823, regarding applications for FISC orders authorizing physical searches to gather foreign intelligence information under FISA, and section 304 of FISA, 50 U.S.C. § 1824, dealing with FISC orders approving physical searches: This provision makes a series of amendments to the requirements for applications for FISC orders approving applications authorizing physical searches under FISA and for FISC orders approving such physical searches. Paragraphs 303(a)(2), and section 304(a)(1) are deleted, with the surrounding provisions redesignated to reflect the absence of these provisions. Redesignated section 303(a)(6) is amended to add the Deputy Director of the FBI, if designated by the President as a certifying official, to the list of those permitted to make a certification required as part of the application. Redesignated section 303(d)(1)(A) of FISA is amended to add the Director of the CIA to the list of those who may request in writing that the AG personally review an application for physical search of a target described under section 101(b)(2) of the FISA.</p> <p>Sec. 107(b)(2) amends section 304(e) of FISA, dealing with emergency employment of a physical search pursuant to AG authorization while an FISC order is sought approving the search, similarly to the way section 105 of the bill amends section 105(e) of FISA. It extends from 72 hours to 168 hours the period within which an application for an FISC order must be filed after the AG's authorization of emergency employment of a physical search. It also provides that, in the absence of a court order approving the search, such search shall terminate at the earlier of the date on which the</p>	<p>Sec. 107 of the bill, amending section 303 of FISA, 50 U.S.C. § 1823, regarding applications for FISC orders authorizing physical searches to gather foreign intelligence information under FISA, and section 304 of FISA, 50 U.S.C. § 1824, dealing with FISC orders approving physical searches: Similar provision to Sec. 107 in S. 2248 (SSCI version).</p>

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	information sought was obtained, the date when the application for a court order was denied, or the expiration of 168 hours from the time of the AG authorization.	
Emergency Installation and Use of Pen Registers and Trap and Trace Devices		
No similar provision.	Sec. 108 of the bill amends section 403 of FISA, 50 U.S.C. § 1843, dealing with emergency installation and use of pen registers or trap and trace devices under FISA. Sec. 108 of the bill amends section 403 of FISA, 50 U.S.C. § 1843, to extend from 48 to 168 hours the period after an emergency authorization by the AG of installation and use of a pen register or trap and trace device is permitted while an application is filed pursuant to section 402 of FISA, 50 U.S.C. § 1842, seeking court authorization of the pen register or trap and trace device. In the absence of an order approving the installation and use of the pen register or trap and trace device, that installation and use must terminate at the earlier of when the information sought is obtained; when the application for the order is denied; or 168 (formerly 48) hours after the time of the emergency authorization by the AG.	Sec. 108 of the bill, amendments to section 403 of FISA regarding emergency installation and use of pen registers or trap and trace devices under FISA: similar to Sec. 108 of the S. 2248 (SSCI version).
Oversight		
<p>Sec. 5 of the bill, new section 105D of FISA: Congressional oversight of acquisitions of non-U.S. persons located outside the United States who may be communicating with persons inside the United States:</p> <p>(a) Applications, procedures, orders: Within 7 days after submission of a section 105B(a) application or issuance of an FISC order under section 105B(e) approving such application, the DNI and the AG must submit to the House Permanent Select Committee on Intelligence (HPSCI), the Senate Select Committee on Intelligence (SSCI), and the House and Senate Judiciary Committees:</p> <p>—in the case of an application, a copy of the application, including certification made under section 105B(e)(1),</p>	<p>New section 703(l) of FISA deals with oversight, including congressional oversight, of procedures for acquisition of communications of persons reasonably believed to be located outside the United States to acquire foreign intelligence information, while Sec. 103 of the bill addresses submittal to Congress of certain FISC orders: At least semiannually under new section 703(l)(4) of FISA, the AG is required to fully inform, in a manner consistent with national security, the congressional intelligence committees, and the House and Senate Judiciary Committees, concerning implementation of S. 2248. Each report is to include any certifications made under new section 703(g) of FISA during the reporting period; any directives made under new section 703(h) of FISA during the reporting period; judicial review of such</p>	<p>Similar provision, new section 703(l) of FISA, dealing with oversight, including congressional oversight, of procedures for acquisition of communications of persons reasonably believed to be located outside the United States to acquire foreign intelligence information, while Sec. 103 of the bill addresses submittal to Congress of certain FISC orders.</p>

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<p>and a description of the primary purpose of the acquisition for which the application was submitted; and—in the case of an order, a copy of the order, including the procedures and guidelines referred to in section 105B(e)(1)(E) (procedures to be used by the AG and DNI to determine that there is reasonable belief that the targets of the acquisition are outside the United States and not U.S. persons; minimization procedures; and guidelines to be used to ensure that a section 104 application will be filed, if otherwise required by FISA, when a significant purpose of an acquisition is to acquire the communications of a specific U.S. person reasonably believed to be located outside the United States).</p> <p>(b) Regular audits by the Inspector General (IG) of U.S. Department of Justice (DOJ): Within 120 days of enactment of new section 105D, the IG of DOJ must complete an audit on implementation and compliance with the procedures and guidelines referred to in section 105B(e)(1)(E) and submit to the HPSCI, SSCL, and House and Senate Judiciary Committees, the AG, the DNI, and the FISC, the audit results, including, for each order authorizing acquisition of foreign intelligence information under section 105B:—the number of targets of an acquisition later determined to be located in the United States;—the number of persons located in the United States</p>	<p>certifications and targeting and minimization procedures utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains significant legal interpretation of the provisions of FISA; any actions taken to challenge or enforce a directive under paragraphs (4) or (5) of subsection (h); any compliance reviews conducted by the Department of Justice or the Office of the Director of National Intelligence of acquisitions authorized under subsection (a); a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection (h), including incidents of noncompliance by an element of the intelligence community with targeting or minimization procedures; and incidents of noncompliance by a specified person to whom the AG and DNI issued a directive under subsection (h); any procedures implementing this section; and any annual review conducted pursuant to paragraph 703(l)(3).</p> <p>Sec. 103 of the bill, amending section 601(a)(5) of FISA, 50 U.S.C. § 1871(a)(5), requires the semiannual reports of the AG submitted to HPSCI, SSCL, and the House and Senate Judiciary Committees under this section to include, in part, all FISC or FISCR orders, as well as decisions or opinions of such courts, that include significant construction or interpretation of the provisions of FISA.</p> <p>Assessments under new section 703(l)(2) of FISA by the IGs of DOJ and of any element of the intelligence community authorized to acquire foreign intelligence information under new section 703(a) of FISA: These IGs are to review compliance of their agency or element with targeting and minimization procedures; with respect to new section 703(a) acquisitions, the number of U.S. person identities disseminated in intelligence reports or in response to subsequent requests for identities that were not referred to by name or title in the original reporting; and, with respect to such acquisitions, the number of targets later determined to be located in the United</p>	<p></p> <p>Similar provision, Sec. 103 of the bill, amending section 601(a)(5) of FISA, 50 U.S.C. § 1871(a)(5).</p> <p>Similar provision to S. 2248 (SSCL version), new section 702(l)(2) of FISA.</p>

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<p>whose communications have been acquired under such order;</p> <p>—the number of reports disseminated containing information on a U.S. person that was collected under such order;</p> <p>—the number of applications submitted for approval of electronic surveillance under section 104 for targets whose communications were acquired under the order.</p> <p>The report to these congressional committees and to the FISC must be submitted by the AG within 30 days after completion of the audit.</p>	<p>States and the number of persons located in the United States whose communications were reviewed. These assessments are to be disseminated to the AG, the DNI, and the congressional intelligence committees.</p> <p>New section 703(l)(3) of FISA requires similar information to be included in annual reviews conducted by the head of an element of the intelligence community conducting an acquisition authorized under new section 703(a) of FISA. These are used by the elements to evaluate adequacy of minimization procedures used by the element or application of such procedures to a particular authorized acquisition. These annual reviews are to be provided to the FISC, but are also included in the AG's semiannual reports to the congressional intelligence committees and the House and Senate Judiciary Committees under new section 703(l)(4), discussed above.</p>	<p>Similar provision to S. 2248 (SSCI version), new section 702(l)(3) of FISA.</p>

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(c) Compliance reports: Within 60 days of enactment of new section 105D, and every 120 days thereafter, the DNI and the AG must submit to the HPSCI, SSCI, and House and Senate Judiciary Committees and the FISC a report concerning incidents of non-compliance by an element of the intelligence community or by a person furnishing aid to the government with an order issued under section 105B(e) approving an application authorizing acquisition of the contents of communications of non-U.S. persons outside the United States who may be communicating with persons inside the United States Report covers non-compliance by an element of the intelligence community with procedures or guidelines referred to in section 105B(e)(1)(E), or non-compliance with a directive by a person furnishing aid to the government under such an order.	Incidents of non-compliance in connection with acquisitions under new section 703 of FISA by elements of the intelligence community or by those receiving directives to furnish aid to the government with respect to such acquisitions are included in the AG's semiannual reports to the HPSCI, the SSCI, and the House and Senate Judiciary Committees under new section 703(l)(4) of FISA.	Similar provision to S. 2248 (SSCI version), new section 702(l)(4) of FISA.
(d) Annual report on emergency authority: The DNI and the AG must submit annual reports to the HPSCI, SSCI, and House and Senate Judiciary Committees containing the number of section 105C emergency authorizations and descriptions of any incidents of non-compliance with such emergency authorizations.	No similar provision.	No similar provision.
Sec. 6 of the bill, new section 105E of FISA: Dissemination of communications of non-U.S. persons located outside the United States who may be communicating with persons in the United States: Disclosure or dissemination of the contents of communications collected under an acquisition under section 105B of FISA or an emergency authorization under section 105C of FISA, and intelligence reports based on such contents, with information that identifies any U.S. person, <i>is prohibited unless</i> a federal officer or employee whose basic pay rate is not less than the minimum rate payable under 5 U.S.C. § 5382 (relating to rates of pay for the Senior Executive Service) determines that the identity of the U.S. person is necessary to understand the foreign intelligence collected under section 105B or section 105C or assess the importance of such information; <i>and</i> to protect U.S.	No similar provision, but the frequency of dissemination of U.S. person identity information is tracked in the agency assessments required under new section 703(l)(2); in the annual review by the heads of elements of the intelligence community conducting an acquisition authorized under section 703(l)(3); and, by virtue of the inclusion of such annual reviews in the semiannual reports to Congress under new section 703(l)(4). <i>Cf.</i> , minimization procedures adopted by the AG, in consultation with the DNI, under new section 703(f) of FISA, which must be consistent with the requirements of section 101(h) of FISA (see glossary).	Similar provisions in new sections 702(l)(2), 702(l)(3), 703(l)(4), and 702(f) to those referred to in S. 2248 (SSCI version).

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national security, U.S. citizens, employees or officers; or members of the U.S. Armed Forces.		
FISC En Banc Authority and Other FISC Matters		
<p>Sec. 7 of the bill, new subsection 103(g) of FISA: FISC en banc: In any case where the FISC or an FISC judge is required to review a matter under FISA, the FISC may, at the discretion of the court, sit en banc to review the matter and issue any orders related thereto.</p> <p>Sec. 8 of the bill, other FISC matters: This section increases the size of the FISC from 11 judges to 15, and permits such judges to be drawn from “at least” seven of the U.S. judicial circuits. It also makes certain non-substantive changes to section 103(a) of FISA, 50 U.S.C. § 1803(a).</p> <p>It also adds a new sentence to that subsection requiring an FISC judge, within 24 hours of receipt of an application by the FISC, to make a determination to approve, deny, or modify an application submitted under sections 105(f), 304(e) or 403, 50 U.S.C. §§ 1805(f), 1824(e), and 1843, with respect to an electronic surveillance, physical search, or installation and use of a pen register or trap and trace device commenced under an emergency authorization.</p> <p>No similar provision.</p>	<p>Sec. 109 of the bill, amending section 103(a) of FISA: FISC en banc: As amended, section 103(a) of FISA provides that the FISC may, on its own initiative, or upon the request of the government in any proceeding or a party under section 501(f) or section 703(h)(4) or (5), hold a hearing or rehearing en banc, when ordered by a majority of the FISC judges upon a determination that en banc consideration is necessary to secure or maintain uniformity of the court’s decisions; or the proceeding involves a question of exceptional importance. The court en banc may exercise any authority granted by FISA to an FISC judge.</p> <p>Sec. 109(b)(2) of the bill makes conforming amendments to section 103(a) of FISA, 50 U.S.C. § 1803(a), and section 302(c) of FISA, 50 U.S.C. § 1833(c).</p> <p>Sec. 109(a) and (c) and Sec. 110 of the bill, other FISC matters: Sec. 109(a) of the bill amends section 103(a) of FISA, 50 U.S.C. § 1803(a) to permit FISC judges to be drawn from “at least” seven of the U.S. judicial circuits.</p> <p>No similar provision.</p> <p>Sec. 109(c) of the bill amends section 103 of FISA to redesignate subsection (f) as subsection (g) and to insert a new subsection (f) permitting a judge of the FISC, the FISC or a judge of that court, or the U.S. Supreme Court or a justice of that court, to, in accordance with</p>	<p>Sec. 109(b) of the bill, amending section 103(a) of FISA: FISC en banc: Similar provision to that in S. 2248 (SSCI version).</p> <p>Sec. 109(a) of the bill, FISC: Sec. 109(a) of the bill amends section 103(a) of FISA, 50 U.S.C. § 1803(a) to permit FISC judges to be drawn from “at least” seven of the U.S. judicial circuits.</p> <p>Similar provision to S. 2248 (SSCI version), Sec. 109(c) of the bill, amending section 103(f)(1) and (2) of FISA.</p>

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	<p>the rules of their respective courts, enter a stay of an order or an order modifying an order of the FISC or the FISCER entered under any title of FISA, while the FISC conducts a rehearing, while an appeal is pending before the FISCER, or while a petition of certiorari is pending in the U.S. Supreme Court, or during the pendency of any review by that court. This authority is to apply to an order entered under any FISA provision.</p> <p>Sec. 110 of the bill makes technical and conforming amendments to section 103(e) of FISA. As amended, the section would address the jurisdiction of the FISC petition review pool over petitions filed pursuant to “sections 501(f)(1) or 703” of FISA, and publication of rules of procedure to govern its review of such petitions. This replaces language reflecting the enactment of P.L. 110-55 on August 5, 2007, which referred to petitions filed under “sections 105B(h) and 501(f)(1)” of FISA. Section 105B is among the sections to be repealed by Sec. 302(b) of S. 2248.</p>	<p>Similar provision to S. 2248 (SSCI version), Sec. 111 of the bill.</p>
Exclusivity		
<p>Sec. 9 of the bill, reiteration of FISA as exclusive means by which electronic surveillance may be conducted for gathering foreign intelligence information, with one exception: Provides that, notwithstanding any other provision of law, FISA shall be the exclusive means by which electronic surveillance may be conducted for the purpose of gathering foreign intelligence information, until specific statutory authorization for electronic surveillance, other than an amendment to FISA, is enacted. Such specific authorization shall be the only exception.</p>	<p>Sec. 102 of the bill, adding new section 112 to FISA: Statement of exclusive means by which electronic surveillance and interception of domestic communications may be conducted:</p> <p>New section 112 of FISA provides that “Chapters 119 and 121 of title 18, United States Code, and [FISA] shall be the exclusive means by which electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) and the interception of domestic wire, oral, or electronic communications may be conducted.”</p>	<p>Sec. 102 of the bill, adding new section 112 to FISA: Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted: New section 112(a) of FISA provides that FISA shall be the exclusive means for targeting U.S. persons for the purpose of acquiring their communications or communications information for foreign intelligence purposes, whether such persons are inside the United States or outside the United States, except in cases where specific statutory authorization exists to obtain communications information without an order under FISA.</p> <p>New section 112(b) of FISA, provides that chapters 119 and 121 of title 18, United States Code, and FISA shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.</p>

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		<p>Under new subsection 112(c) of FISA, subsections 112(a) and (b) shall apply unless specific statutory authorization for electronic surveillance, other than as an amendment to FISA, is enacted. Such specific statutory authorization shall be the only exception to subsections 112 (a) and (b) of FISA.</p> <p>(b) Conforming Amendments-</p> <p>18 U.S.C. § 2511(2)(a) is amended by adding at the end a requirement that a certification under 18 U.S.C. § 2511(2)(a)(ii)(B) for assistance to obtain foreign intelligence information shall identify the specific provision of the FISA that provides an exception from providing a court order, and shall certify that the statutory requirements of such provision have been met.</p> <p>Conforming amendments are made to the FISA table of contents.</p>
Enhancement of Wartime Authority		
<p>Section 10 of the bill, enhancement of wartime authority: FISA currently provides for the use of electronic surveillance, physical search, and installation and use of pen registers and trap and trace devices without a court order under FISA to gather foreign intelligence information for 15 calendar days after a declaration of war by Congress under sections 111, 309 and 404 of FISA, 50 U.S.C. § 1811, 1829, and 1844. Section 10 would amend each of these sections to permit the use of each of these investigative techniques without a court order under FISA to collect foreign intelligence information for 15 calendar days after a declaration of war by 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.”</p>	No similar provision.	No similar provision.

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Audit of Warrantless Surveillance Programs Conducted on or after September 11, 2001, including Terrorist Surveillance Program		
<p>Sec. 11 of the bill, audit of warrantless surveillance programs conducted on or after September 11, 2001, including the Terrorist Surveillance Program: Within 180 days of enactment of the RESTORE Act, the IG of DOJ must complete an audit of all federal programs involving acquisition of communications conducted without a court order on or after September 11, 2001, including the Terrorist Surveillance Program. This audit is to include acquiring all relevant documents, including memoranda concerning a program's legal authority, authorizations of a program, certifications to telecommunications carriers, and court orders.</p> <p>Report to Congress: Within 30 days of completion of the audit, the IG of DOJ is directed to submit to HPSCI, SSCL, and the House and Senate Judiciary Committees a report containing the results of the audit, including all documents acquired pursuant to the audit. The report is to be submitted in an unclassified form, but may have a classified annex.</p> <p>Expedited security clearances: The DNI is to ensure that the process for investigation and adjudication of an application by the IG of DOJ or the appropriate staff of the Office of the IG of DOJ for a security clearance needed for conduct of this audit is conducted as expeditiously as possible.</p>	No similar provision.	Sec. 110 of the amendment in the nature of a substitute to S. 2248 is similar to Sec. 11 of H.R. 3773.
Record-Keeping System on Acquisition of Communications of U.S. Persons		
<p>Sec. 12 of the bill, record-keeping system on acquisition of communications of U.S. persons: Requires the DNI and AG to jointly develop and maintain a record-keeping system to keep track of instances where the identity of a U.S. person whose communications were acquired was disclosed by an element of the intelligence community that collected the communications to other federal departments or agencies; and the federal department or agency to whom the identity was disclosed.</p>	No similar provision.	No similar provision.

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<p>Annual report to Congress: Requires the DNI and AG to submit an annual report on this record-keeping system to the HPSCI, SSCI, and the House and Senate Judiciary Committees. These reports are to include the number of instances where such disclosures were made.</p>		
<p>Authorization for Increased Resources Relating to Foreign Intelligence Surveillance</p>		
<p>Sec. 13 of the bill, authorization for increased resources relating to foreign intelligence surveillance:</p>	No similar provision.	No similar provision.
<p>Authorization of appropriations: Authorizes appropriations for activities of the Office of the IG and appropriate elements of the National Security Division (NSD), and to the National Security Agency (NSA) such sums as may be necessary to meet personnel and information technology demands to ensure timely and efficient processing of applications and other submissions to the FISC, audit and reporting requirements under new section 105D of FISA, Sec. 10 of the bill (dealing with warrantless electronic surveillance, physical searches, or pen registers and trap and trace devices in times of war, or when an attack on the United States has prevented the Congress from convening), and the record-keeping system and reporting requirements under section 11 of the bill.</p> <p>Authorization of additional personnel for NSD, DNI, and FISC:</p> <p>Authorizes additional personnel for the NSD of DOJ for preparation, modification and renewal of applications under FISA for orders under FISA for foreign intelligence purposes. Such personnel are to be assigned by the AG to appropriate office of the intelligence community to directly assist personnel in preparing such applications and in prompt and effective oversight of the activities of such agencies under FISC orders.</p> <p>Authorizes additional legal and other personnel as needed to carry out prompt and timely preparation of applications for orders under FISA approving electronic surveillance for foreign intelligence purposes. Such</p>		

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<p>additional personnel are to be assigned to and among the intelligence community, including FBI field offices, so that they may directly assist personnel in preparation of such applications.</p>		
<p>Authorizes additional staff personnel for the FISC as may be needed to facilitate prompt and timely consideration by the FISC of applications for orders approving electronic surveillance under FISA for intelligence purposes.</p>		
<p>Sec. 14 of the bill, document management system for applications for orders approving electronic surveillance: Requires the AG, in consultation with the DNI and the FISC, to develop and implement a secure classified document management system permitting prompt preparation, modification, and review of FISA applications by appropriate personnel of DOJ, FBI, NSA, and other elements of the federal government before their submission to the FISC. The system is to permit and facilitate prompt submittal of applications to the FISC and prompt transmittal of FISC rulings to personnel submitting such applications, and to provide for secure electronic storage and retrieval of all applications and related matters with the FISC and for their secure transmission to the National Archives and Records Administration (NARA).</p>	<p>No similar provision.</p>	<p>No similar provision.</p>
<p>Sec. 15 of the bill, training of intelligence community personnel in foreign intelligence collection matters: The DNI, in consultation with the AG, is directed to develop regulations to establish procedures for conducting and seeking approval of electronic surveillance, physical searches, and installation and use of pen registers and trap and trace devices on an emergency basis, and for preparation and properly submitting and receiving applications and orders under FISA. The DNI, in consultation with the AG, is also directed to prescribe related training on FISA and related legal matters for applicable agencies of the intelligence community.</p>	<p>No similar provision.</p>	<p>No similar provision.</p>
<p>Provision of Information on Terrorist Surveillance Program and Similar Programs to Each Member of HPSCI and SSCI</p>		

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<p>Sec. 16 of the bill, information for Congress on the Terrorist Surveillance Program and similar programs: Within 7 days of enactment of the bill, the President is directed to fully inform each member of the HPSCI and SSCI on the Terrorist Surveillance Program and any program in existence from September 11, 2001 until the bill's effective date, that involves, in whole or in part, electronic surveillance of U.S. persons in the United States for foreign intelligence or other purposes, which is conducted by any federal department, agency, or element or any entity at the direction of a federal department, agency or element, without fully complying with the procedures of FISA or chapter 119, 121, or 206 of title 18, U.S.C.</p>	No similar provision.	No similar provision.
Technical and Conforming Amendments		
<p>Sec. 17 of the bill, technical and conforming amendments: This section:</p> <p>—amends the table of contents of FISA to reflect the changes made by the bill.</p> <p>—strikes “105B(h) or” from the first and second paragraphs of section 103(e) of FISA, 50 U.S.C. § 1803(e). As amended by the bill, there is no subsection (h) in section 105B of FISA. As amended by the Protect America Act, P.L. 110-55, section 105B(h) of FISA provides authority for a person receiving a directive to furnish aid to the government in connection with an acquisition under section 105B to challenge the legality of the directive by filing a petition before the FISC petition review pool established under section 103(e) of FISA, 50 U.S.C. § 1803(e).</p> <p>—repeals Secs. 4 and 6 of the Protect America Act, P.L. 110-55, dealing with reports to Congress, and effective date and transitional procedures, respectively.</p>	<p>Similar provisions in that Secs. 101(b), 102(b), 205, and 302 of the bill amend the table of contents of FISA to reflect changes made by the bill.</p> <p>Similar provision, Sec. 110 of the bill.</p> <p>No similar provision.</p>	<p>Similar provisions in that Secs. 101(b) and 102(b)(2) of the bill amend the table of contents of FISA to reflect changes made by the bill.</p> <p>Similar provision, Sec. 111 of the bill.</p> <p>No similar provision.</p>
Sunset Provisions and Transition Provisions		
<p>Sec. 18 of the bill, December 31, 2009, sunset; transition procedures: Except with respect to</p>	<p>Sec. 101(c) of the bill, December 31, 2013, sunset of Secs. 101(a)(2) and (b) of the bill; Sec. 302</p>	<p>Sec. 101(c) of the bill, December 31, 2011, sunset of Secs. 101(a)(2) and (b) of the bill: Under Sec.</p>

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<p>acquisitions authorized before the sunset, sections 105A, 105B, 105C, and 105D of FISA would be repealed on December 31, 2009. Those acquisitions authorized under section 105B of FISA before the sunset would continue in effect until the date of expiration of the authorization or order.</p>	<p>effective date; transition procedures: Under Sec. 101(c) of the bill, Secs. 101(a)(2) and (b) of the bill would sunset on December 31, 2013, except that section 703(h)(3) of FISA would remain in effect with respect to any directive issued pursuant to section 703(h) of FISA during the period such directive was in effect. The use of information acquired by an acquisition conducted under section 703 of FISA shall continue to be governed by the provisions of section 704 of FISA.</p> <p>Section 302(b) of the bill repeals sections 105A, 105B, and 105C of FISA, except as provided in section 302(c) of the bill.</p>	<p>101(c) of the bill, the amendments made by Sec. 101(a)(2) and (b) shall cease to have effect on December 31, 2011, except that section 702(h)(3) of FISA would remain in effect with respect to any directive issued pursuant to section 702(h) of FISA during the period such directive was in effect. The use of information acquired by an acquisition conducted under section 702 of FISA shall continue to be governed by the provisions of section 703 of that act. Cf., transition procedures addressed in new section 702(c)(4) of FISA, discussed above.</p>
<p>Acquisitions authorized under section 105B of FISA before enactment of H.R. 3773 would remain in effect until the expiration of the authorization or until 180 days after enactment, whichever is earlier. Within 30 days after expiration of all section 105B authorizations of acquisitions of foreign intelligence information made before the date of enactment of H.R. 3773, the DNI and AG are directed to submit to the HPSCI, SSCI, and the House and Senate Judiciary Committees a report on such authorizations, including the number of persons in the United States whose communications have been acquired under that section; the number of reports disseminated containing information on a U.S. person collected under that section; the number of section 104 applications submitted based upon information collected pursuant to an acquisition authorized under section 105B of FISA in effect the day before enactment of H.R. 3773; descriptions of any incidents of non-compliance with an acquisition under that section by an element of the intelligence community or a person receiving a directive.</p>	<p>Somewhat similar, but not identical, provision for transitional procedures under Sec. 302 of S. 2248 applicable to orders, authorizations, and directives under the Protect America Act, P.L. 110-55; and under S. 2248. Under the new procedures, any orders issued under FISA or Sec. 6(b) of P.L. 110-55 in effect on the date of enactment of S. 2248 shall remain in effect until the date of expiration, and shall be reauthorized by the FISC at the request of the applicant if the circumstances continue to justify issuance of the order under the provisions of FISA as in effect on the day before P.L. 110-55 was enacted, except as amended by sections 102-109 of S. 2248. Authorizations and directives in effect on the date of enactment of S. 2248 shall remain in effect until expiration of the authorization or directive. Those authorized under P.L. 110-55 shall continue to be governed by its provisions, except that they shall be deemed electronic surveillance. Information acquired from acquisitions under P.L. 110-55 shall be deemed acquired from electronic surveillance, except for purposes of subsection 106(j) of FISA, 50 U.S.C. § 1806(j) (dealing with notification of emergency employment of electronic surveillance, contents, postponement).</p> <p>Orders under new title VII of FISA in effect on December 31, 2013, shall continue in effect until the expiration date of the order, and be governed by the applicable provisions of FISA as amended by Sec. 101 of</p>	<p>No similar provision.</p>

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	<p>S. 2248. Sec. 302 of S. 2248 also provides transitional procedures with respect to authorizations and directives in effect on December 31, 2013.</p> <p>Section 302 permits the FISC, at the request of the applicant, to extinguish extant authorizations to conduct electronic surveillance under FISA.</p> <p>Protection from liability: Sec. 302(c) provides that section 105B(1) of FISA shall remain in effect with respect to any directives issued pursuant to section 105B for information, facilities, or assistance provided during the period such directive was or is in effect.</p> <p>S. 2248 does not have a reporting requirement parallel to that included in H.R. 3773.</p>	
AG Certifications for Electronic Communications Service Providers Furnishing Aid to the Government Regarding Lawfulness of Electronic Surveillance under Section 102 of FISA		
<p>Sec. 19 of the bill, certification to communications service providers that acquisitions are authorized under FISA:</p> <p>—Section 102(a) of FISA: This section requires that the AG provide a carrier furnishing aid to the government in connection with an electronic surveillance under section 102 of FISA, 50 U.S.C. § 1802, with a certification stating that the electronic surveillance is authorized under this section and that all requirements of the section have been met.</p> <p>—Section 105(c)(2) of FISA: This section requires an order approving electronic surveillance under section 105 of FISA to direct an applicant for the order to provide a [specified communication carrier or other common] carrier, landlord, custodian or other person furnishing aid to the government with a certification stating that the electronic surveillance is authorized under this section and that all requirements of the section have been met.</p>	No similar provision.	No similar provision.

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
Statute of Limitations Applicable to Violations of Section 109 of FISA		
Sec. 20 of the bill, statute of limitations: This section of the bill adds a 10 year statute of limitations provision to section 109 of FISA, 50 U.S.C. § 1809, to be applicable to any offense committed before the enactment of H.R. 3773, if the statute of limitations applicable to that offense has not run as of the date of enactment.	No similar provision.	No similar provision.
Sec. 21 of the bill, “No rights under the RESTORE Act for undocumented aliens”: This section states that the RESTORE Act and amendments made by it are not to be construed to prohibit surveillance of, or grant any rights to, an alien not permitted to be in or remain in the United States	No similar provision.	No similar provision.
Sec. 22 of the bill, surveillance to protect the United States: This section provides that the RESTORE Act and any amendments made by it are not to be construed to prohibit the intelligence community from conducting lawful surveillance necessary to: —prevent Osama Bin Laden, al Qaeda, or any other terrorist or terrorist organization from attacking the United States, any U.S. person, or any ally of the United States; —ensure the safety and security of members of the U.S. Armed Forces or any other federal officer or employee involved in protecting the U.S. national security; or —protect the United States, any U.S. person, or any ally of the United States from threats posed by weapons of mass destruction (WMD) or other threats to national security.	No similar provision.	No similar provision.
Retroactive Immunity for Electronic Communications Service Providers Furnishing Aid to the Government		
No similar provision.	Title II of the bill deals with both retrospective and prospective protections for electronic communication service providers furnishing aid to the government. Sec. 201 of the bill provides pertinent definitions. In one	No similar provision.

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
<p>No similar provision.</p>	<p>such definition, the term “covered civil action” is defined to mean a civil action filed in federal or state court that alleges that an electronic communication service provider furnished assistance to an element of the intelligence community; and seeks monetary or other relief from the electronic communication service provider related to the provision of such assistance.</p> <p>Sec. 202 of the bill, limitations on civil actions against electronic service providers: Notwithstanding any other provision of law, Sec. 202(a) of the bill bars a covered civil action in a federal or state court, and requires that such an action must be promptly dismissed, if the AG certifies to the court that the assistance alleged to have been provided by the electronic communication service provider was:</p> <p>—in connection with an intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and</p> <p>—described in a written request or directive from the A.G. or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was authorized by the President and determined to be lawful.</p> <p>A covered civil action in federal or state court would also be barred and should be promptly dismissed if the AG certifies to the court that the electronic communication service provider did not provide the alleged assistance.</p> <p>Judicial review of such certifications:</p> <p>Standard of review: Such a certification is to be subject to review by a court for abuse of discretion.</p>	<p>No similar provision.</p> <p>No similar provision.</p> <p>No similar provision.</p>

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
	<p>Procedure for review, limitations on disclosure: If the AG files a declaration under 28 U.S.C. § 1746 that disclosure of a certification made under Sec. 202(a) of the bill would harm United States national security, the court shall review the certification in camera and ex parte, and limit public disclosure concerning such certification, including any public order following such ex parte review, to a statement that the conditions of Sec. 202(a) of the bill have been met, without disclosing the subparagraph of Sec. 202(a)(1) that is the basis for the certification.</p> <p>The authorities of the AG under Sec. 202 are to be performed by the AG or the Acting AG, or a designee in a position not lower than the Deputy AG.</p> <p>Nothing in this section shall be construed to limit any otherwise available immunity, privilege, or defense under any other provision.</p>	<p>No similar provision.</p>
No similar provision.	<p>Civil action in State court removal: A civil action brought in State court against a person for providing assistance to an element of the intelligence community is to be deemed to arise under the Constitution and laws of the United States and shall be removable under 28 U.S.C. § 1441.</p>	<p>No similar provision.</p>
	<p>Effective date and application of Sec. 202 of bill: This section applies to any covered civil action pending on or filed after the date of enactment of S. 2248, the FISA Amendments Act of 2007.</p>	<p>No similar provision.</p>
	<p>Sec. 203 of the bill, new title VIII of FISA: protection of persons assisting the government:</p> <p>New section 801 of FISA, pertinent definitions. Among the definitions in new section 801 of FISA, “assistance” means provision of, or provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or other form of assistance.</p>	<p>No similar provision.</p>

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
Procedures for Implementing Statutory Defenses for Persons Providing Assistance to an Element of the Intelligence Community		
<p>No similar provision.</p>	<p>New section 802 of FISA: procedures for implementing statutory defenses:</p> <p>Limitation on civil actions, required AG certification: Notwithstanding any other provision of law, this section bars any civil action in federal or state court against any person for providing assistance to an element of the intelligence community if the AG certifies:</p> <ul style="list-style-type: none"> —that any assistance provided by that person was provided pursuant to an FISC order; —that any assistance by that person was provided pursuant to a certification in writing under 18 U.S.C. §§ 2511(2)(a)(ii)(B) or 2709(a); —that any assistance by that person was provided pursuant to a directive under sections 102(a)(4), 105B(e) as in effect the day before enactment of S. 2248, or 703(h) of FISA directing such assistance; or—the person did not provide the alleged assistance. <p>Judicial review of such certifications:</p> <p>Standard of review: Such a certification is to be subject to review by a court for abuse of discretion.</p> <p>Procedure for review, limitation on disclosure: If the AG files a declaration under 28 U.S.C. § 1746 that disclosure of a certification made under Sec. 203(a) of the bill would harm United States national security, the court shall review the certification in camera and ex parte, and limit public disclosure concerning such certification, including any public order following such ex parte review, to a statement that the conditions of Sec. 203(a) of the bill have been met, without disclosing the subparagraph of Sec. 203(a)(1) that is the basis for the certification.</p> <p>Nothing in this section shall be construed to limit any otherwise available immunity, privilege, or defense under any other provision.</p>	<p>No similar provision.</p> <p>No similar provision, <i>but</i> see new section 702(h)(3) of FISA; conforming amendment to 18 U.S.C. § 2511(2)(a) in Sec. 102(b) of the bill.</p> <p>No similar provision.</p> <p>No similar provision.</p> <p>No similar provision.</p>

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
	<p>Civil action in state court, removal: A civil action brought in state court against a person for providing assistance to an element of the intelligence community is to be deemed to arise under the Constitution and laws of the United States and shall be removable under 28 U.S.C. § 1441.</p> <p>Effective date and application of Sec. 203 of bill: This section applies to any civil action pending on or filed after the date of enactment of S. 2248, the FISA Amendments Act of 2007.</p>	<p>No similar provision.</p> <p>No similar provision.</p>
Preemption of State Investigations		
No similar provision.	<p>Sec. 204 of the bill, new section 803 of FISA, preemption of state investigations: This section provides that no state shall have authority to conduct an investigation into an electronic communication service provider's alleged assistance to an element of the intelligence community; require through regulation or any other means the disclosure of information about an electronic communication service provider's alleged assistance to an element of the intelligence community; impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or commence or maintain a civil action or other proceeding to enforce a requirement that an electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.</p> <p>The United States may bring suit to enforce the provisions of new section 803 of FISA.</p> <p>District Court Jurisdiction: United States district courts shall have jurisdiction over any civil action brought by the United States to enforce the provisions of new section 803 of FISA.</p> <p>Application: This section shall apply to any investigation, action, or proceeding that is pending on or filed after the date of enactment of S. 2248, the FISA Amendments Act of 2007.</p>	<p>No similar provision.</p> <p>No similar provision.</p> <p>No similar provision.</p>

H.R. 3773 as passed by the House	S. 2248 as reported by the Senate Select Committee on Intelligence	S. 2248, amendment in the nature of a substitute reported by the Senate Judiciary Committee
No similar provision.	<p>Title III of the bill, other provisions: Sec. 301 of the bill is a severability provision.</p> <p>Sec. 302 of the bill, effective date; repeal; transition procedures: The date of enactment of S. 2248 is to be the effective date, except as provided in subsection 302(c), dealing with transitional procedures and authorizations and directives in effect on the date of enactment of the bill and on the date the bill sunsets.</p>	No similar provision.

Glossary of FISA Terms from 50 U.S.C. § 1801

As used in title I of FISA, 50 U.S.C. § 1801 *et seq.*:

(a) “Foreign power” means—

- (1) a foreign government or any component thereof, whether or not recognized by the United States;
- (2) a faction of a foreign nation or nations, not substantially composed of United States persons;
- (3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;
- (4) a group engaged in international terrorism or activities in preparation therefor;
- (5) a foreign-based political organization, not substantially composed of United States persons; or
- (6) an entity that is directed and controlled by a foreign government or governments.

(b) “Agent of a foreign power” means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person’s presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(C) engages in international terrorism or activities in preparation therefore; or

(2) any person who—

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;

(D) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or

(E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) “International terrorism” means activities that—

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) “Sabotage” means activities that involve a violation of chapter 105 of title 18, or that would involve such a violation if committed against the United States.

(e) “Foreign intelligence information” means—

(1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) “Electronic surveillance” means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) “Attorney General” means the Attorney General of the United States (or Acting Attorney General), the Deputy Attorney General, or, upon the designation of the Attorney General, the Assistant Attorney General designated as the Assistant Attorney General for National Security under section 507A of title 28, United States Code.

(h) “Minimization procedures,” with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1) of this section, shall not be disseminated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 1802(a) of this title, procedures 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 72 hours unless a court order under section 1805

of this title is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(i) “United States person” means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of title 8), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3) of this section.

(j) “United States,” when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) “Aggrieved person” means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) “Wire communication” means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) “Person” means any individual, including any officer or employee of the federal government, or any group, entity, association, corporation, or foreign power.

(n) “Contents,” when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(o) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

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