

**(a) Authorization**

Notwithstanding any other provision of law, upon the issuance of an order in accordance with subsection (i)(3) or a determination under subsection (c)(2), the Attorney General and the Director of National Intelligence may authorize jointly, for a period of up to 1 year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

**(b) Limitations**

An acquisition authorized under subsection (a)—

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

(2) may not intentionally target a person reasonably believed to be located outside the United States if a purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;

(3) may not intentionally target a United States person reasonably believed to be located outside the United States;

(4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and

(5) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

**(c) Conduct of acquisition**

**(1) In general**

An acquisition authorized under subsection (a) shall be conducted only in accordance with—

(A) the targeting and minimization procedures adopted in accordance with subsections (d) and (e); and

(B) upon submission of a certification in accordance with subsection (g), such certification.

**(2) Determination**

A determination under this paragraph and for purposes of subsection (a) is a determination by the Attorney General and the Director of National Intelligence that exigent circumstances exist because, without immediate implementation of an authorization under subsection (a), intelligence important to the national security of the United States may be lost or not timely acquired and time does not permit the issuance of an order pursuant to subsection (i)(3) prior to the implementation of such authorization.

**(3) Timing of determination**

The Attorney General and the Director of National Intelligence may make the determination under paragraph (2)—

(A) before the submission of a certification in accordance with subsection (g); or

(B) by amending a certification pursuant to subsection (i)(1)(C) at any time during which judicial review under subsection (i) of such certification is pending.

**(4) Construction**

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**Comment [1]:** I view this change as cosmetic. Neither courts, Congress, nor the public has any way of knowing, or ever knowing, whether agents making a particular targeting decision have ulterior motives. That will never be documented, even if the documents received meaningful review.

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**Comment [2]:** Retains the language that lets NSA collection tens of thousands of wholly domestic "about" communications a year.

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**Comment [3]:** Given DOJ opinion that metadata is not protected by the 4<sup>th</sup> Am, and the use of the word "communication", acquisitions of metadata not limited by this subsection.

Nothing in subchapter I shall be construed to require an application for a court order under such subchapter for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.

(d) **Targeting procedures**

(1) **Requirement to adopt**

The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to—

- (A) ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and
- (B) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

(2) **Judicial review**

The procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (i).

(e) **Minimization procedures**

(1) **Requirement to adopt**

The Attorney General, in consultation with the Director of National Intelligence, shall adopt minimization procedures that

- (A) ~~meet~~ the definition of minimization procedures under section 1801(h) of this title or section 1821 (4) of this title, as appropriate, for acquisitions authorized under subsection (a); ~~and~~

- (B) consistent with such definition, minimize the acquisition, and prohibit the retention and dissemination, of any communication as to which the sender and all intended recipients are determined to be located in the United States and prohibit the use of any discrete, non-target communication that is determined to be to or from a United States person or a person who appears to be located in the United States, except to protect against an immediate threat to human life.

(2) **Judicial review**

The minimization procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (i).

(f) **Guidelines for compliance with limitations**

(1) **Requirement to adopt**

The Attorney General, in consultation with the Director of National Intelligence, shall adopt guidelines to ensure—

- (A) compliance with the limitations in subsection (b); and
- (B) that an application for a court order is filed as required by this chapter.

(2) **Submission of guidelines**

The Attorney General shall provide the guidelines adopted in accordance with paragraph (1) to—

- (A) the congressional intelligence committees;
- (B) the Committees on the Judiciary of the Senate and the House of Representatives; and
- (C) the Foreign Intelligence Surveillance Court.

(g) **Certification**

(1) **In general**

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**Comment [4]:** Retains the language that lets NSA collection tens of thousands of wholly domestic “about” communications a year.

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**Comment [5]:** Purports to require minimization procedures address the 56K domestic “about” msgs collection problem. But the language: “consistent with such definition” allows retention, use and dissemination of that information if “consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information (FII)” [50 USC 1801(h)]. Since Judge Bates found the SCTs by their very nature contain FII because they are “about” the FII selector. So, this appears to do NOTHING.

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**(A) Requirement**

Subject to subparagraph (B), prior to the implementation of an authorization under subsection (a), the Attorney General and the Director of National Intelligence shall provide to the Foreign Intelligence Surveillance Court a written certification and any supporting affidavit, under oath and under seal, in accordance with this subsection.

**(B) Exception**

If the Attorney General and the Director of National Intelligence make a determination under subsection (c)(2) and time does not permit the submission of a certification under this subsection prior to the implementation of an authorization under subsection (a), the Attorney General and the Director of National Intelligence shall submit to the Court a certification for such authorization as soon as practicable but in no event later than 7 days after such determination is made.

**(2) Requirements**

A certification made under this subsection shall—

(A) attest that—

(i) there are procedures in place that have been approved, have been submitted for approval, or will be submitted with the certification for approval by the Foreign Intelligence Surveillance Court that are reasonably designed to—

(I) ensure that an acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

(II) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;

(ii) the minimization procedures to be used with respect to such acquisition—

(I) meet the definition of minimization procedures under section 1801 (h) or 1821 (4) of this title, as appropriate; and

(II) have been approved, have been submitted for approval, or will be submitted with the certification for approval by the Foreign Intelligence Surveillance Court;

(iii) guidelines have been adopted in accordance with subsection (f) to ensure compliance with the limitations in subsection (b) and to ensure that an application for a court order is filed as required by this chapter;

(iv) the procedures and guidelines referred to in clauses (i), (ii), and (iii) are consistent with the requirements of the fourth amendment to the Constitution of the United States;

(v) a significant purpose of the acquisition is to obtain foreign intelligence information;

(vi) the acquisition involves obtaining foreign intelligence information from or with the assistance of an electronic communication service provider; and

(vii) the acquisition complies with the limitations in subsection (b);

(B) include the procedures adopted in accordance with subsections (d) and (e);

(C) be supported, as appropriate, by the affidavit of any appropriate official in the area of national security who is—

(i) appointed by the President, by and with the advice and consent of the Senate; or

(ii) the head of an element of the intelligence community;

(D) include—

(i) an effective date for the authorization that is at least 30 days after the submission of the written certification to the court; or

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**Comment [6]:** Retains the limited FISC review of the procedures.

(ii) if the acquisition has begun or the effective date is less than 30 days after the submission of the written certification to the court, the date the acquisition began or the effective date for the acquisition; and

(E) if the Attorney General and the Director of National Intelligence make a determination under subsection (c)(2), include a statement that such determination has been made.

**(3) Change in effective date**

The Attorney General and the Director of National Intelligence may advance or delay the effective date referred to in paragraph (2)(D) by submitting an amended certification in accordance with subsection (i)(1)(C) to the Foreign Intelligence Surveillance Court for review pursuant to subsection (i).

**(4) Limitation**

A certification made under this subsection is not required to identify the specific facilities, places, premises, or property at which an acquisition authorized under subsection (a) will be directed or conducted.

**(5) Maintenance of certification**

The Attorney General or a designee of the Attorney General shall maintain a copy of a certification made under this subsection.

**(6) Review**

A certification submitted in accordance with this subsection shall be subject to judicial review pursuant to subsection (i).

**(h) Directives and judicial review of directives**

**(1) Authority**

With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

(A) 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 of the acquisition; and

(B) 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.

**(2) Compensation**

The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

**(3) Release from liability**

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 a directive issued pursuant to paragraph (1).

**(4) Challenging of directives**

**(A) Authority to challenge**

An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition to modify or set aside such directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such petition.

**(B) Assignment**

The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established under section [1803 \(e\)\(1\)](#) of this title not later than 24 hours after the filing of such petition.

**(C) Standards for review**

A judge considering a petition filed under subparagraph (A) may grant such petition only if the judge finds that the directive does not meet the requirements of this section, or is otherwise unlawful.

**(D) Procedures for initial review**

A judge shall conduct an initial review of a petition filed under subparagraph (A) not later than 5 days after being assigned such petition. If the judge determines that such petition does not consist of claims, defenses, or other legal contentions that are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, the judge shall immediately deny such petition and affirm the directive or any part of the directive that is the subject of such petition and order the recipient to comply with the directive or any part of it. Upon making a determination under this subparagraph or promptly thereafter, the judge shall provide a written statement for the record of the reasons for such determination.

**(E) Procedures for plenary review**

If a judge determines that a petition filed under subparagraph (A) requires plenary review, the judge shall affirm, modify, or set aside the directive that is the subject of such petition not later than 30 days after being assigned such petition. If the judge does not set aside the directive, the judge shall immediately affirm or affirm with modifications the directive, and order the recipient to comply with the directive in its entirety or as modified. The judge shall provide a written statement for the record of the reasons for a determination under this subparagraph.

**(F) Continued effect**

Any directive not explicitly modified or set aside under this paragraph shall remain in full effect.

**(G) Contempt of Court**

Failure to obey an order issued under this paragraph may be punished by the Court as contempt of court.

**(5) Enforcement of directives**

**(A) Order to compel**

If an electronic communication service provider fails to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel the electronic communication service provider to comply with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such petition.

**(B) Assignment**

The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established under section [1803 \(e\)\(1\)](#) of this title not later than 24 hours after the filing of such petition.

**(C) Procedures for review**

A judge considering a petition filed under subparagraph (A) shall, not later than 30 days after being assigned such petition, issue an order requiring the electronic communication

service provider to comply with the directive or any part of it, as issued or as modified, if the judge finds that the directive meets the requirements of this section and is otherwise lawful. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

**(D) Contempt of Court**

Failure to obey an order issued under this paragraph may be punished by the Court as contempt of court.

**(E) Process**

Any process under this paragraph may be served in any judicial district in which the electronic communication service provider may be found.

**(6) Appeal**

**(A) Appeal to the Court of Review**

The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of a decision issued pursuant to paragraph (4) or (5). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this subparagraph.

**(B) Certiorari to the Supreme Court**

The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

**(i) Judicial review of certifications and procedures**

**(1) In general**

**(A) Review by the Foreign Intelligence Surveillance Court**

The Foreign Intelligence Surveillance Court shall have jurisdiction to review a certification submitted in accordance with subsection (g) and the targeting and minimization procedures adopted in accordance with subsections (d) and (e), and amendments to such certification or such procedures.

**(B) Time period for review**

The Court shall review a certification submitted in accordance with subsection (g) and the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and shall complete such review and issue an order under paragraph (3) not later than 30 days after the date on which such certification and such procedures are submitted.

**(C) Amendments**

The Attorney General and the Director of National Intelligence may amend a certification submitted in accordance with subsection (g) or the targeting and minimization procedures adopted in accordance with subsections (d) and (e) as necessary at any time, including if the Court is conducting or has completed review of such certification or such procedures, and shall submit the amended certification or amended procedures to the Court not later than 7 days after amending such certification or such procedures. The Court shall review any amendment under this subparagraph under the procedures set forth in this subsection. The Attorney General and the Director of National Intelligence may authorize the use of

an amended certification or amended procedures pending the Court's review of such amended certification or amended procedures.

**(2) Review**

The Court shall review the following:

**(A) Certification**

A certification submitted in accordance with subsection (g) to determine whether the certification contains all the required elements.

**(B) Targeting procedures**

The targeting procedures adopted in accordance with subsection (d) to assess whether the procedures are reasonably designed to—

- (i) ensure that an acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and
- (ii) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

**(C) Minimization procedures**

The minimization procedures adopted in accordance with subsection (e) to assess whether such procedures meet the definition of minimization procedures under section [1801 \(h\)](#) of this title or section [1821 \(4\)](#) of this title, as appropriate.

**(3) Orders**

**(A) Approval**

If the Court finds that a certification submitted in accordance with subsection (g) contains all the required elements and that the targeting and minimization procedures adopted in accordance with subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the certification and the use, or continued use in the case of an acquisition authorized pursuant to a determination under subsection (c)(2), of the procedures for the acquisition.

**(B) Correction of deficiencies**

If the Court finds that a certification submitted in accordance with subsection (g) does not contain all the required elements, or that the procedures adopted in accordance with subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

- (i) correct any deficiency identified by the Court's order not later than 30 days after the date on which the Court issues the order; or
- (ii) cease, or not begin, the implementation of the authorization for which such certification was submitted.

**(C) Requirement for written statement**

In support of an order under this subsection, the Court shall provide, simultaneously with the order, for the record a written statement of the reasons for the order.

**(D) LIMITATION ON USE OF INFORMATION.—**

(i) IN GENERAL.—Except as provided in clause (ii), no information obtained or evidence derived from an acquisition pursuant to a certification or targeting or minimization procedures subject to an order under subparagraph (B) concerning

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**Comment [7]:** Nothing the FISC finds to be illegally obtained can be used unless the government corrects the problem.

any United States person shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from the acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of the United States person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(ii) EXCEPTION.—If the Government corrects any deficiency identified by the order of the Court under subparagraph (B), the Court may permit the use or disclosure of information acquired before the date of the correction under such minimization procedures as the Court shall establish for purposes of this clause.

#### **(4) Appeal**

##### **(A) Appeal to the Court of Review**

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order under this subsection. The Court of Review shall have jurisdiction to consider such petition. For any decision under this subparagraph affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of the reasons for the decision.

##### **(B) Continuation of acquisition pending rehearing or appeal**

Any acquisition affected by an order under paragraph (3)(B) may continue—

- (i) during the pendency of any rehearing of the order by the Court en banc; and
- (ii) if the Government files a petition for review of an order under this section, until the Court of Review enters an order under subparagraph (C).

##### **(C) Implementation pending appeal**

Not later than 60 days after the filing of a petition for review of an order under paragraph (3)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order regarding, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the review.

##### **(D) Certiorari to the Supreme Court**

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

#### **(5) Schedule**

##### **(A) Reauthorization of authorizations in effect**

If the Attorney General and the Director of National Intelligence seek to reauthorize or replace an authorization issued under subsection (a), the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Court the certification prepared in accordance with subsection (g) and the procedures adopted in accordance with subsections (d) and (e) at least 30 days prior to the expiration of such authorization.

##### **(B) Reauthorization of orders, authorizations, and directives**



If the Attorney General and the Director of National Intelligence seek to reauthorize or replace an authorization issued under subsection (a) by filing a certification pursuant to subparagraph (A), that authorization, and any directives issued thereunder and any order related thereto, shall remain in effect, notwithstanding the expiration provided for in subsection (a), until the Court issues an order with respect to such certification under paragraph (3) at which time the provisions of that paragraph and paragraph (4) shall apply with respect to such certification.

**(j) Judicial proceedings**

**(1) Expedited judicial proceedings**

Judicial proceedings under this section shall be conducted as expeditiously as possible.

**(2) Time limits**

A time limit for a judicial decision in this section shall apply unless the Court, the Court of Review, or any judge of either the Court or the Court of Review, by order for reasons stated, extends that time as necessary for good cause in a manner consistent with national security.

**(k) Maintenance and security of records and proceedings**

**(1) Standards**

The Foreign Intelligence Surveillance Court shall maintain a record of a proceeding under this section, including petitions, appeals, orders, and statements of reasons for a decision, under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

**(2) Filing and review**

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 camera any Government submission, or portions of a submission, which may include classified information.

**(3) Retention of records**

The Attorney General and the Director of National Intelligence shall retain a directive or an order issued under this section for a period of not less than 10 years from the date on which such directive or such order is issued.

**(l) Assessments and reviews**

**(1) Semiannual assessment**

Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f) and shall submit each assessment to—

(A) the Foreign Intelligence Surveillance Court; and

(B) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(i) the congressional intelligence committees; and

(ii) the Committees on the Judiciary of the House of Representatives and the Senate.

**(2) Agency assessment**

The Inspector General of the Department of Justice and the Inspector General of each element of the intelligence community authorized to acquire foreign intelligence

information under subsection (a), with respect to the department or element of such Inspector General—

(A) are authorized to review compliance with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f);

(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States-person identity and the number of United States-person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed; and

(D) shall provide each such review to—

(i) the Attorney General;

(ii) the Director of National Intelligence; and

(iii) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(I) the congressional intelligence committees; and

(II) the Committees on the Judiciary of the House of Representatives and the Senate.

**(3) Annual review**

**(A) Requirement to conduct**

The head of each element of the intelligence community conducting an acquisition authorized under subsection (a) shall conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to acquisitions authorized under subsection (a)—

(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States-person identity;

(ii) an accounting of the number of United States-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;

(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed; and

(iv) a description of any procedures developed by the head of such element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, and the results of any such assessment.

**(B) Use of review**

The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element and, as appropriate, the application of the minimization procedures to a particular acquisition authorized under subsection (a).

**(C) Provision of review**

The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to—

- (i) the Foreign Intelligence Surveillance Court;
- (ii) the Attorney General;
- (iii) the Director of National Intelligence; and
- (iv) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—
  - (I) the congressional intelligence committees; and
  - (II) the Committees on the Judiciary of the House of Representatives and the Senate.