To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. Conyers (for himself and Mr. Reyes) introduced the following bill; which was referred to the Committee on ____________________

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007" or "RESTORE Act of 2007".
(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Clarification of electronic surveillance of non-United States persons outside the United States.
Sec. 3. Procedure for authorizing acquisitions of communications of non-United States persons located outside the United States.
Sec. 4. Emergency authorization of acquisitions of communications of non-United States persons located outside the United States.
Sec. 5. Oversight of acquisitions of communications of non-United States persons located outside of the United States.
Sec. 6. Foreign Intelligence Surveillance Court en banc.
Sec. 7. Audit of warrantless surveillance programs.
Sec. 8. Record-keeping system on acquisition of communications of United States persons.
Sec. 9. Authorization for increased resources relating to foreign intelligence surveillance.
Sec. 10. Reiteration of FISA as the exclusive means by which electronic surveillance may be conducted for gathering foreign intelligence information.
Sec. 11. Technical and conforming amendments.
Sec. 12. Sunset; transition procedures.

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

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

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

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

“(b) COMMUNICATIONS OF NON-UNITED STATES PERSONS OUTSIDE OF THE UNITED STATES.—Notwithstanding any other provision of this Act other than subsection (a), electronic surveillance that is directed at the acquisition of the communications of a person that is reasonably believed to be located outside the United States and not a United States person for the purpose of collecting foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) by targeting that person shall be conducted pursuant to—

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

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

SEC. 3. PROCEDURE FOR AUTHORIZING ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES.

Section 105B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:
PROCEDURE FOR AUTHORIZING ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES

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

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

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

"(A) the targets of the acquisition of foreign intelligence information under this section are persons reasonably believed to be located outside the United States;

"(B) the targets of the acquisition are reasonably believed to be persons that are not United States persons;
“(C) the acquisition involves obtaining the foreign intelligence information from, or with the assistance of, a communications service provider or custodian, or an officer, employee, or agent of such service provider or custodian, who has authorized access to the communications to be acquired, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications; and

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

“(2) a description of—

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

“(B) the nature of the information sought, including the identity of any foreign power against whom the acquisition will be directed;
“(C) minimization procedures that meet the definition of minimization procedures under section 101(h) to be used with respect to such acquisition; and

“(D) the guidelines that will be used to ensure that an application is filed under section 104, if otherwise required by this Act, when the Federal Government seeks to conduct electronic surveillance of a person reasonably believed to be located in the United States.

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

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

“(1) the proposed procedures referred to in subsection (b)(2)(A) are reasonably designed to determine whether the targets of the acquisition are located outside the United States and not United States persons;
“(2) the proposed minimization procedures referred to in subsection (b)(2)(C) meet the definition of minimization procedures under section 101(h); and

“(3) the guidelines referred to in subsection (b)(2)(D) are reasonably designed to ensure that an application is filed under section 104, if otherwise required by this Act, when the Federal Government seeks to conduct electronic surveillance of a person reasonably believed to be located in the United States.

“(e) ORDER.—

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

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

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

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

“(D) directing the Federal Government
to—

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

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

“(E) directing the applicant to follow—

“(i) the procedures referred to in sub-
section (b)(2)(A) as proposed or as modi-
fi ed by the judge;
“(ii) the minimization procedures referred to in subsection (b)(2)(C) as proposed or as modified by the judge; and

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

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

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

“(4) RETENTION OF ORDER.—The Director of National Intelligence and the court established under subsection 103(a) shall retain an order issued under this section for a period of not less than 10 years from the date on which such order is issued.
“(5) ASSESSMENT OF COMPLIANCE WITH MINI-
MIZATION PROCEDURES.—At or before the end of
the period of time for which an acquisition is ap-
proved by an order or an extension under this sec-
tion, the judge may assess compliance with the mini-
mization procedures referred to in paragraph
(1)(E)(ii) and the guidelines referred to in para-
graph (1)(E)(iii) by reviewing the circumstances
under which information concerning United States
persons was acquired, retained, or disseminated.”.

SEC. 4. EMERGENCY AUTHORIZATION OF ACQUISITIONS OF
COMMUNICATIONS OF NON-UNITED STATES
PERSONS LOCATED OUTSIDE THE UNITED
STATES.

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

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

“(b) EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, the Director of National Intelligence and the Attorney General may jointly authorize the emergency acquisition of foreign intelligence information for a period of not more than 45 days if—

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

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

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

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

“(D) there are reasonable procedures in place for determining that the acquisition of
foreign intelligence information under this sec-
section will be acquired by targeting only persons
that are reasonably believed to be located out-
side the United States and not United States
persons;

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

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

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

“(H) there are guidelines that will be used
to ensure that an application is filed under sec-
tion 104, if otherwise required by this Act, when the Federal Government seeks to conduct electronic surveillance of a person reasonably believed to be located in the United States; and

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

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

“(1) furnish the Attorney General forthwith with such information, facilities, or technical assistance in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition; and
“(2) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished.”

SEC. 5. OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES.

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

“OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES

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

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

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

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

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

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

“(C) the number and nature of reports disseminated containing information on a United States person that was collected under such order; and
“(D) the number of applications submitted for approval of electronic surveillance under section 104 for targets whose communications were acquired under such order.

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

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

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

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

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

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

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

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

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

“(3) the Committees on the Judiciary of the House of Representatives and the Senate.”.
SEC. 6. FOREIGN INTELLIGENCE SURVEILLANCE COURT EN BANC.

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

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

SEC. 7. AUDIT OF WARRANTLESS SURVEILLANCE PROGRAMS.

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

(b) Report.—
(1) IN GENERAL.—Not later than 30 days after the completion of the audit under subsection (a), the Inspector General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report containing the results of such audit, including all documents acquired pursuant to conducting such audit.

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

(e) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall ensure that the process for the investigation and adjudication of an application by the Inspector General or the appropriate staff of the Office of the Inspector General of the Department of Justice for a security clearance necessary for the conduct of the audit under subsection (a) is conducted as expeditiously as possible.
SEC. 8. RECORD-KEEPING SYSTEM ON ACQUISITION OF COMMUNICATIONS OF UNITED STATES PERSONS.

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

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

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

(b) REPORT.—The Director of National Intelligence and the Attorney General shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on the record-keeping system created under subsection (a), including the number of instances referred to in paragraph (1).
SEC. 9. AUTHORIZATION FOR INCREASED RESOURCES RELATING TO FOREIGN INTELLIGENCE SURVEILLANCE.

There are authorized to be appropriated the Department of Justice, for the activities of the Office of the Inspector General, the Office of Intelligence Policy and Review, and other appropriate elements of the National Security Division, and the National Security Agency such sums as may be necessary to meet the personnel and information technology demands to ensure the timely and efficient processing of—

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

(2) the audit and reporting requirements under—

(A) section 105D of such Act; and

(B) section 7; and

(3) the record-keeping system and reporting requirements under section 8.
SEC. 10. REITERATION OF FISA AS THE EXCLUSIVE MEANS
BY WHICH ELECTRONIC SURVEILLANCE MAY
BE CONDUCTED FOR GATHERING FOREIGN
INTELLIGENCE INFORMATION.

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

(b) Specific Authorization Required for Ex-
ception.—Subsection (a) shall apply until specific statu-
tory authorization for electronic surveillance, other than
as an amendment to the Foreign Intelligence Surveillance
Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such
specific statutory authorization shall be the only exception
to subsection (a).

SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.

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

"Sec. 105A. Clarification of electronic surveillance of non-United States persons
outside the United States.

"Sec. 105B. Procedure for authorizing acquisitions of communications of non-
United States persons located outside the United States."
“Sec. 105C. Emergency authorization of acquisitions of communications of non-
United States persons located outside the United States.
“Sec. 105D. Oversight of acquisitions of communications of persons located out-
side of the United States.”.

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

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

(2) in paragraph (2), by striking “105B(h) or”.

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

SEC. 12. SUNSET; TRANSITION PROCEDURES.

(a) SUNSET OF NEW PROVISIONS.—

(1) IN GENERAL.—Except as provided in para-
graph (2), effective on December 31, 2009—

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

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

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

(b) Acquisitions Authorized Prior to Enactment.—

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

(2) REPORT.—Not later than 30 days after the
date of the expiration of all authorizations of acqui-
sition of foreign intelligence information under sec-
tion 105B of the Foreign Intelligence Surveillance
Act of 1978 (as added by Public Law 110-55) made
before the date of the enactment of this Act in ac-
cordance with paragraph (1), the Director of Na-
tional Intelligence and the Attorney General shall
submit to the Permanent Select Committee on Intel-
ligence and the Committee on the Judiciary of the
House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on such authorizations, including—

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

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

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

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

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

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

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

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

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