

WITHHOLD

110TH CONGRESS
2D SESSION

S. _____

Exemption 5

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice
and referred to the Committee on

A BILL

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Foreign Intelligence Surveillance Act of 1978 Amend-
6 ments Act of 2008” or the “FISA Amendments Act of
7 2008”.

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

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

Sec. 101. Additional procedures regarding certain persons outside the United States.

- Sec. 102. Statement of exclusive means by which electronic surveillance and interception of *certain domestic* communications may be conducted.
- Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 104. Applications for court orders.
- Sec. 105. Issuance of an order.
- Sec. 106. Use of information.
- Sec. 107. Amendments for physical searches.
- Sec. 108. Amendments for emergency pen registers and trap and trace devices.
- Sec. 109. Foreign Intelligence Surveillance Court.
- Sec. 110. *Review of previous actions.*
- Sec. 111. ~~Weapons~~ Sec. 110. Weapons of mass destruction.
- ~~Sec. 111. Technical and conforming amendments.~~
- [Sec. 112. *Statute of limitations.*]**

**[TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION
SERVICE PROVIDERS**

- Sec. 201. *Definitions.*
- Sec. 202. *Limitations on civil actions for electronic communication service providers.*
- Sec. 203. *Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.*
- Sec. 204. *Preemption of State investigations.*
- Sec. 205. *Technical amendments.*

**[TITLE III—COMMISSION ON WARRANTLESS SURVEILLANCE
ACTIVITIES].**

TITLE III—OTHER PROVISIONS

- Sec. 301. *Severability.*
- Sec. 302. *Effective date.*
- Sec. 303. *Repeals.*
- Sec. 304. *Transition ; ~~repeal~~; ~~transition~~ procedures.*

- 1 **TITLE I—FOREIGN**
- 2 **INTELLIGENCE SURVEILLANCE**
- 3 **SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN**
- 4 **PERSONS OUTSIDE THE UNITED STATES.**
- 5 (a) IN GENERAL.—The Foreign Intelligence Surveil-
- 6 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—
- 7 (1) by striking title VII; and
- 8 (2) by adding after title VI the following new
- 9 title:

1 **“TITLE VII—ADDITIONAL PROCE-**
2 **DURES REGARDING CERTAIN**
3 **PERSONS OUTSIDE THE**
4 **UNITED STATES**

5 **“SEC. 701. /LIMITATION ON DEFINITION OF ELECTRONIC**
6 **SURVEILLANCE.**

7 “Nothing in the definition of electronic surveillance
8 under section 101(f) shall be construed to encompass sur-
9 veillance that is targeted in accordance with this title at
10 a person reasonably believed to be located outside the
11 United States.]

12 **“SEC. /702/. DEFINITIONS.**

13 “(a) IN GENERAL.—The terms ‘agent of a foreign
14 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
15 lance’, ‘foreign intelligence information’, ‘foreign power’,
16 ~~‘minimization procedures’~~, ‘person’, ‘United States’, and
17 ‘United States person’ shall have the meanings given such
18 terms in section 101, except as specifically provided in this
19 title.

20 “(b) ADDITIONAL DEFINITIONS.—

21 “(1) CONGRESSIONAL INTELLIGENCE COMMIT-
22 TEES.—The term ‘congressional intelligence commit-
23 tees’ means—

24 “(A) the Select Committee on Intelligence
25 of the Senate; and

1 “(B) the Permanent Select Committee on
2 Intelligence of the House of Representatives.

3 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
4 COURT; COURT.—The terms ‘Foreign Intelligence
5 Surveillance Court’ and ‘Court’ mean the court es-
6 tablished by section 103(a).

7 “(3) FOREIGN INTELLIGENCE SURVEILLANCE
8 COURT OF REVIEW; COURT OF REVIEW.—The terms
9 ‘Foreign Intelligence Surveillance Court of Review’
10 and ‘Court of Review’ mean the court established by
11 section 103(b).

12 “(4) ELECTRONIC COMMUNICATION SERVICE
13 PROVIDER.—The term ‘electronic communication
14 service provider’ means—

15 “(A) a telecommunications carrier, as that
16 term is defined in section 3 of the Communica-
17 tions Act of 1934 (47 U.S.C. 153);

18 “(B) a provider of electronic communica-
19 tion service, as that term is defined in section
20 2510 of title 18, United States Code;

21 “(C) a provider of a remote computing
22 service, as that term is defined in section 2711
23 of title 18, United States Code;

24 “(D) any other communication service pro-
25 vider who has access to wire or electronic com-

1 communications either as such communications are
2 transmitted or as such communications are
3 stored; or

4 “(E) an officer, employee, or agent of an
5 entity described in subparagraph (A), (B), (C),
6 or (D).

7 ~~“(5) ELEMENT OF THE INTELLIGENCE COMMU-~~
8 ~~NITY.—The term ‘element of the intelligence com-~~
9 ~~munity’ means an element of the intelligence com-~~
10 ~~munity specified in or designated under section 3(4)~~
11 ~~of the National Security Act of 1947 (50 U.S.C.~~
12 ~~401a(4)).~~

13 “(5) *INTELLIGENCE COMMUNITY.*—*The term ‘in-*
14 *telligence community’ has the meaning given the term*
15 *in section 3(4) of the National Security Act of 1947*
16 *(50 U.S.C. 401a(4)).*

17 **“SEC. [703.702]. PROCEDURES FOR TARGETING CERTAIN**
18 **PERSONS OUTSIDE THE UNITED STATES**
19 **OTHER THAN UNITED STATES PERSONS.**

20 “(a) *AUTHORIZATION.*—*Notwithstanding any other*
21 *provision of law, [pursuant to an order issued in accord-*
22 *ance with subsection (i)(3) or a determination under sub-*
23 *section (g)(1)(B)(ii)], law, the Attorney General and the*
24 *Director of National Intelligence may authorize jointly, for*
25 *a period periods of up to 1 year [from the effective date*

1 *of the authorization,]* ; the targeting of persons reasonably
2 believed to be located outside the United States to acquire
3 foreign intelligence information.

4 “(b) LIMITATIONS.—An acquisition authorized under
5 subsection (a)—

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

9 “(2) may not intentionally target a person rea-
10 sonably believed to be located outside the United
11 States [if the purpose of such acquisition is] [*in*
12 *order*] to target a particular, known person reason-
13 ably believed to be in the United *States*; ~~States~~, ex-
14 cept in accordance with title I or title III;

15 “(3) may not intentionally target a United
16 States person reasonably believed to be located out-
17 side the United *States*; ~~States~~, except in accordance
18 with sections 704, 705, or 706;

19 “(4) ~~may shall~~ not intentionally acquire any
20 communication as to which the sender and all in-
21 tended recipients are known at the time of the ac-
22 quisition to be located in the United States; and

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

1 “(c) CONDUCT OF ACQUISITION.—An acquisition au-
2 thORIZED under subsection (a) may be conducted only in
3 accordance with—

4 “(1) **[IN GENERAL]**.—An acquisition author-
5 ized under subsection (a) may be conducted only in
6 accordance with—

7 “(A) the certification made by the Attorney
8 General and the Director of National Intel-
9 ligence submitted in accordance with subsection
10 (g) [or a determination under paragraph (1)(B)
11 of such subsection] ; ~~pursuant to subsection (f)~~;
12 and

13 “(B) ~~(2)~~ the targeting and minimization
14 procedures submitted in accordance with re-
15 quired ~~pursuant to~~ subsections (d) and (e) [and
16 the guidelines adopted in accordance with sub-
17 section (f)].

18 “[(2) CONSTRUCTION.—Nothing in [this Act]
19 [the definition of electronic surveillance] shall be con-
20 strued to require an application under section 104 for
21 an acquisition that is targeted in accordance with
22 this section at a person reasonably believed to be lo-
23 cated outside the United States.]

24 “(d) TARGETING PROCEDURES.—

1 “(1) REQUIREMENT TO ADOPT.—The Attorney
2 General, in consultation with the Director of Na-
3 tional Intelligence, shall adopt targeting procedures
4 that are reasonably designed to ensure that any ac-
5 quisition authorized under subsection (a) is limited
6 to targeting persons reasonably believed to be lo-
7 cated outside the United States and does not result
8 in the intentional acquisition of any communication
9 as to which the sender and all intended recipients
10 are known at the time of the acquisition to be lo-
11 cated in the United States.

12 “(2) JUDICIAL REVIEW.—The procedures *re-*
13 *quired by referred to in* paragraph (1) shall be sub-
14 ject to judicial review pursuant to subsection (i). ~~(h)~~.

15 “(e) MINIMIZATION PROCEDURES.—

16 “(1) REQUIREMENT TO ADOPT.—The Attorney
17 General, in consultation with the Director of Na-
18 tional Intelligence, shall adopt minimization proce-
19 dures that meet the definition of minimization proce-
20 dures under section 101(h) or section 301(4), *as ap-*
21 *propriate*, for acquisitions authorized under sub-
22 section (a).

23 “(2) JUDICIAL REVIEW.—The minimization
24 procedures required by *paragraph (1)* ~~this subsection~~

1 shall be subject to judicial review pursuant to sub-
2 section (i) . ~~(h)~~.

3 “[~~(f)~~] *GUIDELINES FOR COMPLIANCE WITH LIMITA-*
4 *TIONS.—*

5 “(1) *REQUIREMENT TO ADOPT.—The Attorney*
6 *General, in consultation with the Director of National*
7 *Intelligence, shall adopt guidelines to ensure—*

8 “(A) *compliance with the limitations in*
9 *subsection (b); and*

10 “(B) *that an application is filed under sec-*
11 *tion 104 or section 303, as appropriate, if re-*
12 *quired by [any other section of] this Act.*

13 “(2) *TRAINING.—The Director of National Intel-*
14 *ligence shall establish a training program for appro-*
15 *priate intelligence community personnel to ensure*
16 *that the guidelines adopted pursuant to paragraph*
17 *(1) are properly implemented.*

18 “(3) *SUBMISSION TO CONGRESS.—The Attorney*
19 *General shall provide the guidelines adopted pursuant*
20 *to paragraph (1) to—*

21 “(A) *the congressional intelligence commit-*
22 *tees; and*

23 “(B) *the Committees on the Judiciary of the*
24 *House of Representatives and the Senate.]*

1 “(f) *GUIDELINES FOR COMPLIANCE WITH LIMITA-*
2 *TIONS.—*

3 “(1) *REQUIREMENT TO ADOPT.—The Attorney*
4 *General, in consultation with the Director of National*
5 *Intelligence, shall adopt guidelines to ensure—*

6 “(A) *compliance with the limitations in*
7 *subsection (b); and*

8 “(B) *that an application is filed under sec-*
9 *tion 104 or 303, if required by this Act.*

10 “(2) *CRITERIA.—With respect to subsection*
11 *(b)(2), the guidelines adopted pursuant to paragraph*
12 *(1) shall contain specific criteria for determining*
13 *whether a significant purpose of an acquisition is to*
14 *acquire the communications of a specific United*
15 *States person reasonably believed to be located in the*
16 *United States. Such criteria shall include consider-*
17 *ation of whether—*

18 “(A) *the department or agency of the Fed-*
19 *eral Government conducting the acquisition has*
20 *made an inquiry to another department or agen-*
21 *cy of the Federal Government to gather informa-*
22 *tion on the specific United States person;*

23 “(B) *the department or agency of the Fed-*
24 *eral Government conducting the acquisition has*
25 *provided information that identifies the specific*

1 *United States person to another department or*
2 *agency of the Federal Government;*

3 “(C) *the department or agency of the Fed-*
4 *eral Government conducting the acquisition de-*
5 *termines that the specific United States person*
6 *has been the subject of ongoing interest or re-*
7 *peated investigation by a department or agency*
8 *of the Federal Government; and*

9 “(D) *the specific United States person is a*
10 *natural person.*

11 “(3) *TRAINING.—The Director of National Intel-*
12 *ligence shall establish a training program for appro-*
13 *priate personnel of the intelligence community to en-*
14 *sure that the guidelines adopted pursuant to para-*
15 *graph (1) are properly implemented.*

16 “(4) *SUBMISSION TO CONGRESS AND FOREIGN*
17 *INTELLIGENCE SURVEILLANCE COURT.—The Attorney*
18 *General shall submit the guidelines adopted pursuant*
19 *to paragraph (1) to—*

20 “(A) *the congressional intelligence commit-*
21 *tees;*

22 “(B) *the Committees on the Judiciary of the*
23 *House of Representatives and the Senate; and*

24 “(C) *the Foreign Intelligence Surveillance*
25 *Court.]*

1 “(g) CERTIFICATION.—

2 “(1) IN GENERAL.—

3 “(A) REQUIREMENT.—Subject to subpara-
4 graph (B), *In order to conduct an acquisition*
5 *under subsection (a), prior to the initiation of*
6 *an acquisition authorized under subsection (a),*
7 *the Attorney General and the Director of Na-*
8 *tional Intelligence shall provide to the Foreign*
9 *Intelligence Surveillance Court, ; under oath, a*
10 *written certification and any supporting affi-*
11 *davit, under seal, as described in this sub-*
12 *section.*

13 “(B) TIMING OF SUBMISSION TO THE
14 COURT.—

15 “(i) IN GENERAL.—*Except as provided*
16 *in clause (ii), the Attorney General and Di-*
17 *rector of National Intelligence shall provide*
18 *a copy of a certification made under this*
19 *subsection to the Foreign Intelligence Sur-*
20 *veillance Court prior to the initiation of an*
21 *acquisition under subsection (a).*

22 “[ii) EXCEPTION.—If the Attorney
23 General and the Director of National Intel-
24 ligence determine that immediate action by
25 the Government is required and time does

1 not permit the preparation of a certifi-
2 cation under this subsection prior to the
3 initiation of an acquisition, the Attorney
4 General and the Director of National Intel-
5 ligence shall prepare *and submit* such cer-
6 tification to the *Foreign Intelligence Sur-*
7 *veillance Court*, including ~~such~~ *the* deter-
8 mination, as soon as possible but in no
9 event more than 7 days after such deter-
10 mination is made.]

11 “[(i) *EXCEPTION.—If the Attorney*
12 *General and the Director of National Intel-*
13 *ligence determine that immediate action by*
14 *the Government is required and time does*
15 *not permit the issuance of an order pursu-*
16 *ant to subsection (i)(3) prior to the initi-*
17 *ation of an acquisition, the Attorney Gen-*
18 *eral and the Director of National Intel-*
19 *ligence may authorize the acquisition and*
20 *shall submit to the Foreign Intelligence Sur-*
21 *veillance Court a certification [including]*
22 *[and] the determination under this sub-*
23 *section as soon as possible but in no event*
24 *more than 7 days after such determination*
25 *is made.]*

1 【“(i) *EMERGENCY AUTHORIZATION*.—
2 *If the Attorney General and the Director of*
3 *National Intelligence determine that an*
4 *emergency situation exists, immediate ac-*
5 *tion by the Government is required, and*
6 *time does not permit the completion of judi-*
7 *cial review pursuant to subsection (i) prior*
8 *to the initiation of an acquisition, the At-*
9 *torney General and the Director of National*
10 *Intelligence may authorize the acquisition*
11 *and shall submit to the Foreign Intelligence*
12 *Surveillance Court certification under this*
13 *subsection [including][and] the determina-*
14 *tion as soon as possible but in no event*
15 *more than 7 days after such determination*
16 *is made.*】

17 “(2) *REQUIREMENTS*.—A certification made
18 under this subsection shall—

19 “(A) attest that—

20 “(i) there are reasonable procedures
21 in place *that have been approved or sub-*
22 *mitted for approval to the Foreign Intel-*
23 *ligence Surveillance Court, for determining*
24 *that the acquisition authorized under sub-*
25 *section (a)—*

1 “(I) is targeted at persons rea-
2 sonably believed to be located outside
3 the United States; and that such pro-
4 cedures have been approved by, or will
5 be submitted in not more than 5 days
6 for approval by, the Foreign Intel-
7 ligence Surveillance Court pursuant to
8 subsection (h);

9 “(II)(ii) there are reasonable pro-
10 cedures in place for determining that
11 the acquisition authorized under sub-
12 section (a) does not result in the in-
13 tentional acquisition of any commu-
14 nication as to which the sender and
15 all intended recipients are known at
16 the time of the acquisition to be lo-
17 cated in the United States; States;
18 and that such procedures have been
19 approved by, or will be submitted in
20 not more than 5 days for approval by,
21 the Foreign Intelligence Surveillance
22 Court pursuant to subsection (h);

23 [“(ii) guidelines have been adopted in
24 accordance with subsection (f) to ensure
25 compliance with the limitations in sub-

1 *section (b) and to ensure that applications*
2 *are filed under section 104 or section 303,*
3 *if required by this Act;】*

4 *“(iii) the minimization procedures to*
5 *be used with respect to such acquisition—*

6 *“(I) meet the definition of mini-*
7 *mization procedures under section*
8 *101(h) or section 301(4), as appro-*
9 *priate; and*

10 *“(II) have been approved by, or*
11 *submitted for approval by, the Foreign*
12 *Intelligence Surveillance Court;*

13 *“(iv) the procedures [and guidelines]*
14 *referred to in clauses (i), (ii) [and (iii)]*
15 *(ii) are consistent with the requirements of*
16 *the fourth amendment to the Constitution*
17 *of the United States; and do not permit*
18 *the intentional targeting of any person who*
19 *is known at the time of acquisition to be*
20 *located in the United States or the inten-*
21 *tional acquisition of any communication as*
22 *to which the sender and all intended recipi-*
23 *ents are known at the time of acquisition*
24 *to be located in the United States;*

1 “(v)(iv) a significant purpose of the
2 acquisition is to obtain foreign intelligence
3 information;

4 “~~(v)~~ the minimization procedures to
5 be used with respect to such acquisition—

6 “(I) meet the definition of mini-
7 mization procedures under section
8 101(h) or section 301(4); and

9 “(II) have been approved by, or
10 will be submitted in not more than 5
11 days for approval by, the Foreign In-
12 telligence Surveillance Court pursuant
13 to subsection (h);

14 “(vi) the acquisition involves obtaining
15 the foreign intelligence information from or
16 with the assistance of an electronic com-
17 munication service provider; and

18 “(vii) the acquisition *[complies with*
19 *the limitations in subsection (b);]* [does
20 not constitute electronic surveillance, as
21 limited by section 701; and/

22 “(B) be supported, as appropriate, by the
23 affidavit of any appropriate official in the area
24 of national security who is—

1 “(i) appointed by the President, by
2 and with the consent of the Senate; or

3 “(ii) the head of any element of the
4 intelligence *community*; and ~~community~~.

5 **【“(C) include—】**

6 **【“(i) an effective date for the author-**
7 **ization that is between 30 and 60 days from**
8 **the submission of the written certification to**
9 **the court; or】**

10 **【“(ii) if the acquisition has begun or**
11 **the effective date is less than 30 days from**
12 **the submission of the written certification to**
13 **the court—】**

14 **【“(I) the date the acquisition**
15 **began or the effective date for the ac-**
16 **quisition;】**

17 **【“(II) a description of why initi-**
18 **ation of the acquisition is required in**
19 **less than 30 days from the submission**
20 **of the written certification to the court;**
21 **and】**

22 **【“(III) if the acquisition is au-**
23 **thorized under paragraph (1)(B)(ii), a**
24 **description of [the basis for the deter-**
25 **mination that an emergency situation**

1 *exists, and] why immediate action by*
2 *the Government is required and time*
3 *does not permit the issuance of an*
4 *order pursuant to subsection (i)(3)*
5 *prior to the initiation of the acquisi-*
6 *tion.]*

7 “(3) LIMITATION.—A certification made under
8 this subsection is not required to identify the specific
9 facilities, places, premises, or property at which the
10 acquisition authorized under subsection (a) will be
11 directed or conducted.

12 “(4) ~~SUBMISSION TO THE COURT MAINTENANCE~~
13 ~~OF CERTIFICATION.~~—The Attorney General shall
14 transmit a copy of a certification made under this
15 subsection, and any supporting affidavit, under seal
16 to the Foreign Intelligence Surveillance Court as
17 soon as possible, but in no event more than 5 days
18 after such certification is made. *The Attorney Gen-*
19 *eral shall maintain s S* uch certification shall be
20 maintained under security measures adopted by the
21 Chief Justice of the United States and the Attorney
22 General, in consultation with the Director of Na-
23 tional Intelligence.

1 “(5) REVIEW.—The certification required by
2 this subsection shall be subject to judicial review
3 pursuant to subsection (i) ~~(h)~~.

4 “~~(h)~~(g) DIRECTIVES AND JUDICIAL REVIEW OF DI-
5 RECTIVES.—

6 “(1) AUTHORITY.—With respect to an acquisi-
7 tion authorized under subsection (a), the Attorney
8 General and the Director of National Intelligence
9 may direct, in writing, an electronic communication
10 service provider to—

11 “(A) immediately provide the Government
12 with all information, facilities, or assistance
13 necessary to accomplish the acquisition *author-*
14 *ized in accordance with this section* in a manner
15 that will protect the secrecy of the acquisition
16 and produce a minimum of interference with
17 the services that such electronic communication
18 service provider is providing to the *target of the*
19 *acquisition*; and

20 “(B) maintain under security procedures
21 approved by the Attorney General and the Di-
22 rector of National Intelligence any records con-
23 cerning the acquisition or the aid furnished that
24 such electronic communication service provider
25 wishes to maintain.

1 “(2) COMPENSATION.—The Government shall
2 compensate, at the prevailing rate, an electronic
3 communication service provider for providing infor-
4 mation, facilities, or assistance pursuant to para-
5 graph (1).

6 “(3) RELEASE FROM LIABILITY.—
7 ~~Notwithstanding any other law, no~~ cause of action
8 shall lie in any court against any electronic commu-
9 nication service provider for providing any informa-
10 tion, facilities, or assistance in accordance with a di-
11 rective issued pursuant to paragraph (1).

12 “(4) CHALLENGING OF DIRECTIVES.—

13 “(A) AUTHORITY TO CHALLENGE.—An
14 electronic communication service provider re-
15 ceiving a directive issued pursuant to paragraph
16 (1) may challenge the directive by filing a peti-
17 tion with the Foreign Intelligence Surveillance
18 Court, which shall have jurisdiction to review
19 such a petition.

20 “(B) ASSIGNMENT.—The presiding judge
21 of the Court shall assign the petition filed
22 under subparagraph (A) to 1 of the judges serv-
23 ing in the pool established by section 103(e)(1)
24 not later than 24 hours after the filing of the
25 petition.

1 “(C) STANDARDS FOR REVIEW.—A judge
2 considering a petition to modify or set aside a
3 directive may grant such petition only if the
4 judge finds that the directive does not meet the
5 requirements of this section, or is otherwise un-
6 lawful.

7 “(D) PROCEDURES FOR INITIAL RE-
8 VIEW.—A judge shall conduct an initial review
9 of a petition filed under subparagraph (A) not
10 later than 5 days after being assigned such a
11 petition. described in subparagraph (C). If the
12 judge determines that the petition *does not con-*
13 sist ~~consists~~ of claims, defenses, or other legal
14 contentions that are ~~not~~ warranted by existing
15 law or by a nonfrivolous argument for extend-
16 ing, modifying, or reversing existing law or for
17 establishing new law, the judge shall imme-
18 diately deny the petition and affirm the direc-
19 tive or any part of the directive that is the sub-
20 ject of the petition and order the recipient to
21 comply with the directive or any part of it.
22 Upon making such a determination or promptly
23 thereafter, the judge shall provide a written
24 statement for the record of the reasons for a
25 determination under this subparagraph.

1 “(E) PROCEDURES FOR PLENARY RE-
2 VIEW.—If a judge determines that a petition
3 *filed under described in* subparagraph (A) ~~(C)~~
4 requires plenary review, the judge shall affirm,
5 modify, or set aside the directive that is the
6 subject of that petition not later than 30 days
7 after being assigned the *petition* . ~~If petition,~~
8 ~~unless the judge does not set, by order for rea-~~
9 ~~sons stated, extends that time as necessary to~~
10 ~~comport with the due process clause of the fifth~~
11 ~~amendment to the Constitution of the United~~
12 ~~States. Unless the judge sets aside the direc-~~
13 ~~tive, the judge shall immediately affirm or af-~~
14 ~~firm with modifications the directive or order~~
15 ~~that the directive be modified, ; and order the~~
16 recipient to comply with the directive in its en-
17 tirety or as modified. The judge shall provide a
18 written statement for the records of the reasons
19 for a determination under this subparagraph.

20 “(F) CONTINUED EFFECT.—Any directive
21 not explicitly modified or set aside under this
22 paragraph shall remain in full effect.

23 “(G) CONTEMPT OF COURT.—Failure to
24 obey an order of the Court issued under this

1 paragraph may be punished by the Court as
2 contempt of court.

3 “(5) ENFORCEMENT OF DIRECTIVES.—

4 “(A) ORDER TO COMPEL.—*If an electronic*
5 *communication service provider fails to*~~COMPEL~~*In*
6 *the case of a failure to comply with a directive*
7 *issued pursuant to paragraph (1), the Attorney*
8 *General may file a petition for an order to com-*
9 *pel the electronic communication service provider*
10 *to comply* ~~compliance~~ *with the directive with the*
11 *Foreign Intelligence Surveillance Court, which*
12 *shall have jurisdiction to review such a petition.*

13 “(B) ASSIGNMENT.—The presiding judge
14 of the Court shall assign a petition filed under
15 subparagraph (A) to 1 of the judges serving in
16 the pool established by section 103(e)(1) not
17 later than 24 hours after the filing of the peti-
18 tion.

19 “(C) ~~PROCEDURES STANDARDS FOR RE-~~
20 ~~VIEW.~~—A judge considering a petition filed
21 under subparagraph (A) shall issue an order re-
22 quiring the electronic communication service
23 provider to comply with the directive or any
24 part of it, as issued or as modified, *not later*
25 *than 30 days after being assigned the petition if*

1 the judge finds that the directive meets the re-
2 quirements of this section, and is otherwise law-
3 ful.

4 “(D) PROCEDURES FOR REVIEW.—The
5 judge shall render a determination not later
6 than 30 days after being assigned a petition
7 filed under subparagraph (A); unless the judge,
8 by order for reasons stated, extends that time
9 if necessary to comport with the due process
10 clause of the fifth amendment to the Constitu-
11 tion of the United States. The judge shall pro-
12 vide a written statement for the record of the
13 reasons for a determination under this para-
14 graph.

15 “(D)(E) CONTEMPT OF COURT.—Failure
16 to obey an order of the Court issued under this
17 paragraph may be punished by the Court as
18 contempt of court.

19 “(E)(F) PROCESS.—Any process under
20 this paragraph may be served in any judicial
21 district in which the electronic communication
22 service provider may be found.

23 “(6) APPEAL.—

24 “(A) APPEAL TO THE COURT OF RE-
25 VIEW.—The Government or an electronic com-

1 munication service provider receiving a directive
2 issued pursuant to paragraph (1) may file a pe-
3 tition with the Foreign Intelligence Surveillance
4 Court of Review for review of *a the* decision
5 issued pursuant to paragraph (4) or (5). The
6 Court of Review shall have jurisdiction to con-
7 sider such a petition and shall provide a written
8 statement for the record of the reasons for a
9 decision under this paragraph.

10 “(B) CERTIORARI TO THE SUPREME
11 COURT.—The Government or an electronic com-
12 munication service provider receiving a directive
13 issued pursuant to paragraph (1) may file a pe-
14 tition for a writ of certiorari for review of the
15 decision of the Court of Review issued under
16 subparagraph (A). The record for such review
17 shall be transmitted under seal to the Supreme
18 Court of the United States, which shall have ju-
19 risdiction to review such decision.

20 “(i)(h) JUDICIAL REVIEW OF CERTIFICATIONS AND
21 PROCEDURES.—

22 “(1) IN GENERAL.—

23 “(A) REVIEW BY THE FOREIGN INTEL-
24 LIGENCE SURVEILLANCE COURT.—The Foreign
25 Intelligence Surveillance Court shall have juris-

1 diction to review any certification ~~required by~~
2 *submitted in accordance with* subsection (e g)
3 and the targeting and minimization procedures
4 *submitted in accordance with* ~~adopted pursuant~~
5 to subsections (d) and (e), **[and any amend-**
6 *ments to such certification or procedures]*. ~~(e).~~

7 “[(B) *TIME PERIOD FOR REVIEW* .—SUB-
8 MISSION TO THE COURT.—The Attorney Gen-
9 eral shall submit to the Court any such *The*
10 Court shall review the certification submitted in
11 accordance with subsection (g) and the targeting
12 and minimization procedures submitted in ac-
13 cordance with subsections (d) and (e) and ap-
14 prove or deny an order under this subsection
15 procedure, or amendment thereto, not later
16 than 30 ~~5~~ days after ~~making or amending~~ the
17 date on which a certification is submitted. ~~or~~
18 adopting or amending the procedures.]

19 **[“(C) AMENDMENTS.**—The Attorney Gen-
20 eral and the Director of National Intelligence
21 may amend a certification submitted in accord-
22 ance with subsection (g) or the targeting and
23 minimization procedures submitted in accord-
24 ance with subsections (d) and (e) as necessary
25 after such certification or procedures have been