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

Exemption 5

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008” or the “FISA Amendments Act of 2008”.

(b) Table of Contents.—The table of contents for 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 communications may be conducted.

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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 of mass destruction.

Deleted: Sec.110.Weapons

[Sec. 112. Statute of Limitations]

Deleted: Sec.111.Technical and conforming amendments.†

[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

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1 Sec.301.Severability.

2 Sec.302.Effective date

3 Sec. 303. Repeals.

4 Sec. 304. Transition procedures.

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5 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

6 SEC. 101. ADDITIONAL PROCEDURES REGARDING
7 CERTAIN PERSONS OUTSIDE THE UNITED STATES.

8 (a) In General.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is
9 amended—

10 (1) by striking title VII; and

11 (2) by adding after title VI the following new title:

12 “TITLE VII—ADDITIONAL PROCEDURES REGARDING
13 CERTAIN PERSONS OUTSIDE THE UNITED STATES

14 “SEC. 701. [LIMITATION ON DEFINITION OF
15 ELECTRONIC SURVEILLANCE.

16 “Nothing in the definition of electronic surveillance under section 101(f) shall be construed to
17 encompass surveillance that is targeted in accordance with this title at a person reasonably
18 believed to be located outside the United States.]

19 “SEC. [702.] DEFINITIONS.

20 “(a) In General.—The terms ‘agent of a foreign power’, ‘Attorney General’, ‘contents’,
21 ‘electronic surveillance’, ‘foreign intelligence information’, ‘foreign power’, ‘person’, ‘United
22 States’, and ‘United States person’ have the meanings given such terms in section 101, except as
23 specifically provided in this title.

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24 “(b) Additional Definitions.—

25 “(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence
26 committees’ means—

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

28 “(B) the Permanent Select Committee on Intelligence of the House of
29 Representatives.

30 “(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms ‘Foreign
31 Intelligence Surveillance Court’ and ‘Court’ mean the court established by section 103(a).

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

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1 “(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic
2 communication service provider’ means—

3 “(A) a telecommunications carrier, as that term is defined in section 3 of the
4 Communications Act of 1934 (47 U.S.C. 153);

5 “(B) a provider of electronic communication service, as that term is defined in
6 section 2510 of title 18, United States Code;

7 “(C) a provider of a remote computing service, as that term is defined in section
8 2711 of title 18, United States Code;

9 “(D) any other communication service provider who has access to wire or electronic
10 communications either as such communications are transmitted or as such
11 communications are stored; or

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

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

16 “SEC. [702.] PROCEDURES FOR TARGETING CERTAIN
17 PERSONS OUTSIDE THE UNITED STATES OTHER THAN
18 UNITED STATES PERSONS.

19 “(a) Authorization.—Notwithstanding any other provision of law, [pursuant to an order issued
20 in accordance with subsection (i)(3) or a determination under subsection (g)(1)(B)(ii)], the
21 Attorney General and the Director of National Intelligence may authorize jointly, for a period of
22 up to 1 year [from the effective date of the authorization,] the targeting of persons reasonably
23 believed to be located outside the United States to acquire foreign intelligence information.

24 “(b) Limitations.—An acquisition authorized under subsection (a)—

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

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

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

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

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

37 “(c) Conduct of Acquisition.—

38 “(1) [IN GENERAL.]—An acquisition authorized under subsection (a) may be conducted

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1 only in accordance with—

2 “(A) the certification made by the Attorney General and the Director of National
3 Intelligence submitted in accordance with subsection (g) [or a determination under
4 paragraph (1)(B) of such subsection]; and

5 “(B) the targeting and minimization procedures submitted in accordance with
6 subsections (d) and (e) [and the guidelines adopted in accordance with subsection
7 (f)].

8 [“(2) CONSTRUCTION.—Nothing in [this Act][the definition of electronic surveillance]
9 shall be construed to require an application under section 104 for an acquisition that is
10 targeted in accordance with this section at a person reasonably believed to be located outside
11 the United States.]

12 “(d) Targeting Procedures.—

13 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
14 of National Intelligence, shall adopt targeting procedures that are reasonably designed to
15 ensure that any acquisition authorized under subsection (a) is limited to targeting persons
16 reasonably believed to be located outside the United States and does not result in the
17 intentional acquisition of any communication as to which the sender and all intended
18 recipients are known at the time of the acquisition to be located in the United States.

19 “(2) JUDICIAL REVIEW.—The procedures required by paragraph (1) shall be subject to
20 judicial review pursuant to subsection (i).

21 “(e) Minimization Procedures.—

22 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
23 of National Intelligence, shall adopt minimization procedures that meet the definition of
24 minimization procedures under section 101(h) or section 301(4), as appropriate, for
25 acquisitions authorized under subsection (a).

26 “(2) JUDICIAL REVIEW.—The minimization procedures required by paragraph (1) shall be
27 subject to judicial review pursuant to subsection (i).

28 [“(f) Guidelines for Compliance with Limitations. —

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

31 “(A) compliance with the limitations in subsection (b); and

32 “(B) that an application is filed under section 104 or section 303, as appropriate, if
33 required by [any other section of] this Act.

34 (2) TRAINING. -- The Director of National Intelligence shall establish a training program
35 for appropriate intelligence community personnel to ensure that the guidelines adopted pursuant
36 to paragraph (1) are properly implemented.

37 (3) SUBMISSION TO CONGRESS. – The Attorney General shall provide the guidelines adopted
38 pursuant to paragraph (1) to —

39 (A) the congressional intelligence committees; and

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1 (B) the Committees on the Judiciary of the House of Representatives and the
2 Senate.]

3 [(f) Guidelines for Compliance With Limitations.—

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

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

7 “(B) that an application is filed under section 104 or 303, if required by this Act.

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

13 “(A) the department or agency of the Federal Government conducting the
14 acquisition has made an inquiry to another department or agency of the Federal
15 Government to gather information on the specific United States person;

16 “(B) the department or agency of the Federal Government conducting the
17 acquisition has provided information that identifies the specific United States person to
18 another department or agency of the Federal Government;

19 “(C) the department or agency of the Federal Government conducting the
20 acquisition determines that the specific United States person has been the subject of
21 ongoing interest or repeated investigation by a department or agency of the Federal
22 Government; and

23 “(D) the specific United States person is a natural person.

24 “(3) TRAINING.—The Director of National Intelligence shall establish a training program
25 for appropriate personnel of the intelligence community to ensure that the guidelines
26 adopted pursuant to paragraph (1) are properly implemented.

27 “(4) SUBMISSION TO CONGRESS AND FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The
28 Attorney General shall submit the guidelines adopted pursuant to paragraph (1) to—

29 “(A) the congressional intelligence committees;

30 “(B) the Committees on the Judiciary of the House of Representatives and the
31 Senate; and

32 “(C) the Foreign Intelligence Surveillance Court.]

33 “(g) Certification.—

34 “(1) IN GENERAL.—

35 “(A) REQUIREMENT.—In order to conduct an acquisition under subsection (a), the
36 Attorney General and the Director of National Intelligence shall provide to the Foreign
37 Intelligence Surveillance Court, under oath, a written certification and any supporting
38 affidavit, under seal, as described in this subsection.

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

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1 “(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General and
2 Director of National Intelligence shall provide a copy of a certification made
3 under this subsection to the Foreign Intelligence Surveillance Court prior to the
4 initiation of an acquisition under subsection (a).

5 “(ii) EXCEPTION.—If the Attorney General and the Director of National
6 Intelligence determine that immediate action by the Government is required and
7 time does not permit the preparation of a certification under this subsection prior
8 to the initiation of an acquisition, the Attorney General and the Director of
9 National Intelligence shall prepare and submit such certification to the Foreign
10 Intelligence Surveillance Court, including the determination, as soon as possible
11 but in no event more than 7 days after such determination is made.]

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12 “(ii) EXCEPTION.—If the Attorney General and the Director of National
13 Intelligence determine that immediate action by the Government is required and
14 time does not permit the issuance of an order pursuant to subsection (i)(3) prior to
15 the initiation of an acquisition, the Attorney General and the Director of National
16 Intelligence may authorize the acquisition and shall submit to the Foreign
17 Intelligence Surveillance Court a certification [including][and] the determination
18 under this subsection as soon as possible but in no event more than 7 days after
19 such determination is made.]

20 “(ii) EMERGENCY AUTHORIZATION.—If the Attorney General and the Director
21 of National Intelligence determine that an emergency situation exists, immediate
22 action by the Government is required, and time does not permit the completion of
23 judicial review pursuant to subsection (i) prior to the initiation of an acquisition,
24 the Attorney General and the Director of National Intelligence may authorize the
25 acquisition and shall submit to the Foreign Intelligence Surveillance Court
26 certification under this subsection [including][and] the determination as soon as
27 possible but in no event more than 7 days after such determination is made.]

28 “(2) REQUIREMENTS.—A certification made under this subsection shall—

29 “(A) attest that—

30 “(i) there are reasonable procedures in place that have been approved or
31 submitted for approval to the Foreign Intelligence Surveillance Court, for
32 determining that the acquisition authorized under subsection (a)—

33 “(I) is targeted at persons reasonably believed to be located outside the
34 United States; and,

35 “(II) does not result in the intentional acquisition of any communication as to
36 which the sender and all intended recipients are known at the time of the
37 acquisition to be located in the United States;

38 “(iii) guidelines have been adopted in accordance with subsection (f) to ensure
39 compliance with the limitations in subsection (b) and to ensure that applications
40 are filed under section 104 or section 303, if required by this Act;]

41 “(iii) the minimization procedures to be used with respect to such acquisition—

42 “(I) meet the definition of minimization procedures under section 101(h)

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1 or section 301(4), as appropriate; and

2 “(II) have been approved by, or submitted for approval by, the Foreign
3 Intelligence Surveillance Court;

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

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

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

11 “(vii) the acquisition [complies with the limitations in subsection (b);] [does not
12 constitute electronic surveillance, as limited by section 701; and]

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

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

16 “(ii) the head of an element of the intelligence community; and,

17 “(C) include —

18 “(i) an effective date for the authorization that is between 30 and 60 days from
19 the submission of the written certification to the court; or

20 “(ii) if the acquisition has begun or the effective date is less than 30 days from
21 the submission of the written certification to the court—

22 “(I) the date the acquisition began or the effective date for the acquisition;

23 “(II) a description of why initiation of the acquisition is required in less
24 than 30 days from the submission of the written certification to the court; and

25 “(III) if the acquisition is authorized under paragraph (1)(B)(ii), a
26 description of [the basis for the determination that an emergency situation
27 exists, and] why immediate action by the Government is required and time
28 does not permit the issuance of an order pursuant to subsection (i)(3) prior to
29 the initiation of the acquisition.]

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

33 “(4) MAINTENANCE OF CERTIFICATION.—The Attorney General shall maintain such
34 certification, under security measures adopted by the Chief Justice of the United States and
35 the Attorney General, in consultation with the Director of National Intelligence.

36 “(5) REVIEW.—The certification required by this subsection shall be subject to judicial
37 review pursuant to subsection (i).

38 “(h) Directives and Judicial Review of Directives.—

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Deleted: 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 or the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of acquisition to be located in the United States;

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“(I) meet the definition of minimization procedures under section 101(h) or section 301(4); and
“(II) have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

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

4 “(A) immediately provide the Government with all information, facilities, or
5 assistance necessary to accomplish the acquisition authorized in accordance with this
6 section in a manner that will protect the secrecy of the acquisition and produce a
7 minimum of interference with the services that such electronic communication service
8 provider is providing to the target of the acquisition; and

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9 “(B) maintain under security procedures approved by the Attorney General and the
10 Director of National Intelligence any records concerning the acquisition or the aid
11 furnished that such electronic communication service provider wishes to maintain.

12 “(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an
13 electronic communication service provider for providing information, facilities, or
14 assistance pursuant to paragraph (1).

15 “(3) RELEASE FROM LIABILITY.—No cause of action shall lie in any court against any
16 electronic communication service provider for providing any information, facilities, or
17 assistance in accordance with a directive issued pursuant to paragraph (1).

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no

18 “(4) CHALLENGING OF DIRECTIVES.—

19 “(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider
20 receiving a directive issued pursuant to paragraph (1) may challenge the directive by
21 filing a petition with the Foreign Intelligence Surveillance Court, which shall have
22 jurisdiction to review such a petition.

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

26 “(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set
27 aside a directive may grant such petition only if the judge finds that the directive does
28 not meet the requirements of this section, or is otherwise unlawful.

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

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extends that time as necessary to comport
with the due process clause of the fifth
amendment to the Constitution of the
United States. Unless the judge sets

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39 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition filed
40 under subparagraph (A) requires plenary review, the judge shall affirm, modify, or set
41 aside the directive that is the subject of that petition not later than 30 days after being
42 assigned the petition. If the judge does not set aside the directive, the judge shall

1 immediately affirm ~~the directive or order that the directive be modified~~, and order the
2 recipient to comply with the directive in its entirety or as modified. The judge shall
3 provide a written statement for the records of the reasons for a determination under this
4 subparagraph.

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

7 “(G) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under this
8 paragraph may be punished by the Court as contempt of court.

9 “(5) ENFORCEMENT OF DIRECTIVES.—

10 “(A) ORDER TO COMPEL.—If an electronic communication service provider fails to
11 comply with a directive issued pursuant to paragraph (1), the Attorney General may
12 file a petition for an order to compel the electronic communication service provider to
13 comply with the directive with the Foreign Intelligence Surveillance Court, which shall
14 have jurisdiction to review such a petition.

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

18 “(C) PROCEDURES FOR REVIEW.—A judge considering a petition filed under
19 subparagraph (A) shall issue an order requiring the electronic communication service
20 provider to comply with the directive or any part of it, as issued or as modified, not
21 later than 30 days after being assigned the petition if the judge finds that the directive
22 meets the requirements of this section, and is otherwise lawful. The judge shall
23 provide a written statement for the record of the reasons for a determination under this
24 paragraph.

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

27 “(E) PROCESS.—Any process under this paragraph may be served in any judicial
28 district in which the electronic communication service provider may be found.

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“(D) PROCEDURES FOR REVIEW.—The judge shall render a determination not later than 30 days after being assigned a petition filed under subparagraph (A), unless the judge, by order for reasons stated, extends that time if necessary to comport with the due process clause of the fifth amendment to the Constitution of the United States.

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29 “(6) APPEAL.—

30 “(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic
31 communication service provider receiving a directive issued pursuant to paragraph (1)
32 may file a petition with the Foreign Intelligence Surveillance Court of Review for
33 review of a decision issued pursuant to paragraph (4) or (5). The Court of Review shall
34 have jurisdiction to consider such a petition and shall provide a written statement for
35 the record of the reasons for a decision under this paragraph.

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36 “(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic
37 communication service provider receiving a directive issued pursuant to paragraph (1)
38 may file a petition for a writ of certiorari for review of the decision of the Court of
39 Review issued under subparagraph (A). The record for such review shall be
40 transmitted under seal to the Supreme Court of the United States, which shall have
41 jurisdiction to review such decision.

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1 “(i) Judicial Review of Certifications and Procedures.—

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2 “(1) IN GENERAL.—

3 “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign
4 Intelligence Surveillance Court shall have jurisdiction to review any certification
5 submitted in accordance with subsection (g) and the targeting and minimization
6 procedures submitted in accordance with subsections (d) and (e), [and any amendments
7 to such certification or procedures].

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8 [“(B) TIME PERIOD FOR REVIEW.—The Court shall review the certification
9 submitted in accordance with subsection (g) and the targeting and minimization
10 procedures submitted in accordance with subsections (d) and (e) and approve or deny
11 an order under this subsection not later than 30 days after the date on which a
12 certification is submitted.]

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The Attorney General shall submit to the
Court any such

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13 [“(C) AMENDMENTS.—The Attorney General and the Director of National
14 Intelligence may amend a certification submitted in accordance with subsection (g) or
15 the targeting and minimization procedures submitted in accordance with subsections
16 (d) and (e) as necessary after such certification or procedures have been submitted for
17 review to the Foreign Intelligence Surveillance Court.]

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18 “(2) REVIEW.—The Court shall review the following:

19 “(A) CERTIFICATION.—A certification submitted in accordance with subsection (g)
20 to determine whether the certification contains all the required elements.

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21 “(B) TARGETING PROCEDURES.—The targeting procedures submitted in accordance
22 with subsection (d) to assess whether the procedures are reasonably designed to ensure
23 that the acquisition authorized under subsection (a) is limited to the targeting of
24 persons reasonably believed to be located outside the United States and does not result
25 in the intentional acquisition of any communication as to which the sender and all
26 intended recipients are known at the time of the acquisition to be located in the United
27 States.

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28 “(C) MINIMIZATION PROCEDURES.—The minimization procedures submitted in
29 accordance with subsection (e) to assess whether such procedures meet the definition
30 of minimization procedures under section 101(h) or section 301(4), as appropriate.

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31 “(3) ORDERS.—

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32 “(A) APPROVAL.—If the Court finds that a certification submitted in accordance
33 with subsection (g) contains all of the required elements and that the targeting and
34 minimization procedures submitted in accordance with subsections (d) and (e) are
35 consistent with the requirements of those subsections and with the fourth amendment
36 to the Constitution of the United States, the Court shall enter an order approving the
37 certification and the use of the procedures for the acquisition.

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(a).

38 [“(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required
39 submitted in accordance with subsection (g) does not contain all of the required
40 elements, or that the procedures submitted in accordance with subsections (d) and (e)
41 are not consistent with the requirements of those subsections or the fourth amendment
42 to the Constitution of the United States, the Court shall issue an order directing the

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1 Government to, at the Government's election and to the extent required by the Court's
2 order—

3 “(i) correct any deficiency identified by the Court not later than 30 days after
4 the date the Court issues the order; or

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5 “(ii) cease [or not begin] the acquisition authorized under subsection (a).]

6 [(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification
7 submitted pursuant to subsection (g) does not contain all of the required elements or
8 that the procedures submitted in accordance with subsections (d) and (e) are not
9 consistent with the requirements of those subsections or the fourth amendment to the
10 Constitution of the United States—

11 “(i) in the case of a certification submitted in accordance with subsection
12 (g)(1)(A), the Court shall deny the order, identify any deficiency in the
13 certification or procedures, and provide the Government with an opportunity to
14 correct such deficiency; and

15 “(ii) in the case of a certification submitted in accordance with subsection
16 (g)(1)(B), the Court shall issue an order directing the Government to, at the
17 Government's election and to the extent required by the Court's order—

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18 “(I) correct any deficiency identified by the Court not later than 30 days
19 after the date the Court issues the order; or

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20 “(II) cease the acquisition authorized under subsection (g)(1)(B).]

21 “(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this
22 subsection, the Court shall provide, simultaneously with the orders, for the record a
23 written statement of its reasons.

24 “(4) APPEAL.—

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25 “(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order
26 under this section to the Foreign Intelligence Surveillance Court of Review, which
27 shall have jurisdiction to review such order. For any decision affirming, reversing, or
28 modifying an order of the Foreign Intelligence Surveillance Court, the Court of
29 Review shall provide for the record a written statement of its reasons.

30 “(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any
31 acquisition affected by an order under paragraph (3)(B), may continue—

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32 “(i) during the pendency of any rehearing of the order by the Court en banc;
33 and

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34 “(ii) if the Government appeals an order under this section, subject to the entry
35 of an order under subparagraph (C).

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36 “(C) IMPLEMENTATION PENDING APPEAL.—Not later than 60 days after the filing of
37 an appeal of an order issued under paragraph (3)(B), directing the correction of a
38 deficiency, the Court of Review shall determine, and enter a corresponding order
39 regarding, whether all or any part of the correction order, as issued or modified, shall
40 be implemented during the pendency of the appeal.

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1 “(D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for
2 a writ of certiorari for review of a decision of the Court of Review issued under
3 subparagraph (A). The record for such review shall be transmitted under seal to the
4 Supreme Court of the United States, which shall have jurisdiction to review such
5 decision.

6 “(5) SCHEDULE.—

7 “(A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.—In order to replace an
8 authorization issued pursuant to section 105B of the Foreign Intelligence Surveillance
9 Act of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law
10 110-55) with an authorization under this section, the Attorney General and the Director
11 of National Intelligence shall, to the extent practicable, submit to the Court the
12 certification prepared in accordance with subsection (g) and the procedures adopted in
13 accordance with subsections (d) and (e) [and the guidelines adopted pursuant to
14 subsection (f)] at least 30 days before the expiration of such authorization.

15 “(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.— In order to replace an
16 authorization issued pursuant to this section, the Attorney General and the Director of
17 National Intelligence shall, to the extent practicable, submit to the Court the
18 certification prepared in accordance with section (g) and the procedures adopted in
19 accordance with subsections (d) and (e) [and the guidelines adopted pursuant to
20 subsection (f)] at least 30 days prior to the expiration of such authorization.

21 “(C) CONSOLIDATED SUBMISSIONS.—The Attorney General and Director of National
22 Intelligence shall, to the extent practicable, annually submit to the Court a
23 consolidation of—

24 “(i) certifications prepared in accordance with subsection (g) for
25 reauthorization of authorizations in effect;

26 “(ii) the procedures adopted in accordance with subsections (d) and (e); and

27 “(iii) the annual review required by subsection (I)(3) for the preceding year.

28 “(D) TIMING OF REVIEWS.—The Attorney General and the Director of National
29 Intelligence shall schedule the completion of the annual review required by subsection
30 (I)(3) and a semiannual assessment required by subsection (I)(1) so that they may be
31 submitted to the Court at the time of the consolidated submission under subparagraph
32 (C).

33 “(E) CONSTRUCTION.—The requirements of subparagraph (C) shall not be construed
34 to preclude the Attorney General and the Director of National Intelligence from
35 submitting certifications for additional authorizations at other times during the year as
36 necessary.]

37 “(6) COMPLIANCE.—At or before the end of the period of time for which an
38 authorization under subsection (a) expires, the Foreign Intelligence Surveillance Court may
39 assess compliance with the minimization procedures required under subsection (e) by reviewing
40 the circumstances under which information concerning United States persons was acquired,
41 retained, or disseminated.]

42 “(j) Judicial Proceedings.—

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1 “(1) EXPEDITED PROCEEDINGS.—Judicial proceedings under this section shall be
2 conducted as expeditiously as possible.

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3 “(2) TIME LIMITS.—A time limit for a judicial decision in this section shall apply unless
4 the Court, the Court of Review, or any judge of either the Court or the Court of Review, by
5 order for reasons stated, extends that time [for good cause] [as necessary to comport with the
6 due process clause of the fifth amendment to the Constitution of the United States].

7 “(k) Maintenance and Security of Records and Proceedings.—

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8 “(1) STANDARDS.—[The Foreign Intelligence Surveillance Court][Administrative Office
9 of the Courts of the United States] shall maintain a record of a proceeding under this
10 section, including petitions filed, orders granted, and statements of reasons for decision,
11 under security measures adopted by the Chief Justice of the United States, in consultation
12 with the Attorney General and the Director of National Intelligence.

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13 “(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In
14 any proceedings under this section, the court shall, upon request of the Government, review
15 ex parte and in camera any Government submission, or portions of a submission, which
16 may include classified information.

17 “(3) RETENTION OF RECORDS.—The Director of National Intelligence and the Attorney
18 General shall retain a directive made or an order granted under this section for a period of
19 not less than 10 years from the date on which such directive or such order is made.

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20 “(l) Assessments and Reviews.—

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21 “(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the
22 Attorney General and Director of National Intelligence shall assess compliance with the
23 targeting and minimization procedures submitted in accordance with subsections (d) and (e)
24 [and the guidelines adopted in accordance with subsection (f)] and shall submit each such
25 assessment to—

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26 “(A) the Foreign Intelligence Surveillance Court;

27 “(B) the congressional intelligence committees; and

28 “[(C) the Committees on the Judiciary of the House of Representatives and the
29 Senate.]

30 “(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of
31 each element of the intelligence community authorized to acquire foreign intelligence
32 information under subsection (a) with respect to the department or element of such
33 Inspector General—

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34 “(A) are authorized to review the compliance with the targeting and minimization
35 procedures submitted in accordance with subsections (d) and (e) [and the guidelines
36 submitted in accordance with subsection (f)];

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

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