

WITHHOLD

Exemption 5

[STAFF WORKING DRAFT]

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

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

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 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.
- 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. Weapons of mass destruction.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

- Sec. 201. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 202. Technical amendments.

TITLE III—REVIEW OF PREVIOUS ACTIONS

- Sec. 301. Review of previous actions.

TITLE IV—OTHER PROVISIONS

- Sec. 401. Severability.
- Sec. 402. Effective date.
- Sec. 403. Repeals.
- Sec. 404. Transition procedures.

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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:

10 **“TITLE VII—ADDITIONAL PROCE-**
11 **DURES REGARDING CERTAIN**
12 **PERSONS OUTSIDE THE**
13 **UNITED STATES**

14 **“SEC. 701. DEFINITIONS.**

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

21 “(b) ADDITIONAL DEFINITIONS.—

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

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

3 “(B) the Permanent Select Committee on
4 Intelligence of the House of Representatives.

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

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

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

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

20 “(B) a provider of electronic communica-
21 tion service, as that term is defined in section
22 2510 of title 18, United States Code;

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

1 “(D) any other communication service pro-
2 vider who has access to wire or electronic com-
3 munications either as such communications are
4 transmitted or as such communications are
5 stored; or

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

9 “(5) INTELLIGENCE COMMUNITY.—The term
10 ‘intelligence community’ has the meaning given the
11 term in section 3(4) of the National Security Act of
12 1947 (50 U.S.C. 401a(4)).

13 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN PER-**
14 **SONS OUTSIDE THE UNITED STATES OTHER**
15 **THAN UNITED STATES PERSONS.**

16 “(a) AUTHORIZATION.—Notwithstanding any other
17 provision of law, upon the issuance of an order in accord-
18 ance with subsection (i)(3) or a determination under sub-
19 section (c)(1)(C)(ii), the Attorney General and the Direc-
20 tor of National Intelligence may authorize jointly, for a
21 period of up to 1 year from the effective date of the au-
22 thorization, the targeting of persons reasonably believed
23 to be located outside the United States to acquire foreign
24 intelligence information.

1 “(b) LIMITATIONS.—An acquisition authorized under
2 subsection (a)—

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

6 “(2) may not intentionally target a person rea-
7 sonably believed to be located outside the United
8 States if the purpose of such acquisition is to target
9 a particular, known person reasonably believed to be
10 in the United States;

11 “(3) may not intentionally target a United
12 States person reasonably believed to be located out-
13 side the United States;

14 “(4) may not intentionally acquire any commu-
15 nication as to which the sender and all intended re-
16 cipients are known at the time of the acquisition to
17 be located in the United States; and

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

21 “(c) CONDUCT OF ACQUISITION.—

22 “(1) IN GENERAL.—An acquisition authorized
23 under subsection (a) may be conducted only in ac-
24 cordance with—

1 “(A)(i) a certification made by the Attor-
2 ney General and the Director of National Intel-
3 ligence pursuant to subsection (g); or
4 “(ii) a determination under subpara-
5 graph (C)(ii), until such time as a certifi-
6 cation for such authorization is submitted
7 pursuant to subsection (g) or amended
8 pursuant to subsection (i)(1)(C);
9 “(B) the targeting and minimization proce-
10 dures adopted in accordance with subsections
11 (d) and (e); and
12 “(C)(i) an order issued in accordance with
13 subsection (i)(3); or
14 “(ii) a determination by the Attorney
15 General and the Director of National Intel-
16 ligence that exigent circumstances exist be-
17 cause, without immediate implementation
18 of an authorization under subsection (a),
19 intelligence important to the national secu-
20 rity of the United States may be lost or
21 not timely acquired and time does not per-
22 mit the issuance of an order pursuant to
23 subsection (i)(3) prior to the implementa-
24 tion of such authorization.

1 “(2) TIMING OF DETERMINATION.—The Attor-
2 ney General and the Director of National Intel-
3 ligence may make the determination under para-
4 graph (1)(C)(ii)—

5 “(A) before the submission of a certifi-
6 cation under subsection (g); or

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

11 “(3) CONSTRUCTION.—Nothing in title I shall
12 be construed to require an application for a court
13 order under such title for an acquisition that is tar-
14 geted in accordance with this section at a person
15 reasonably believed to be located outside the United
16 States.

17 “(d) TARGETING PROCEDURES.—

18 “(1) REQUIREMENT TO ADOPT.—The Attorney
19 General, in consultation with the Director of Na-
20 tional Intelligence, shall adopt targeting procedures
21 that are reasonably designed to ensure that any ac-
22 quisition authorized under subsection (a) is limited
23 to targeting persons reasonably believed to be lo-
24 cated outside the United States and does not inten-
25 tionally acquire any communication as to which the

1 sender and all intended recipients are known at the
2 time of the acquisition to be located in the United
3 States.

4 “(2) JUDICIAL REVIEW.—The procedures re-
5 quired by paragraph (1) shall be subject to judicial
6 review pursuant to subsection (i).

7 “(e) MINIMIZATION PROCEDURES.—

8 “(1) REQUIREMENT TO ADOPT.—The Attorney
9 General, in consultation with the Director of Na-
10 tional Intelligence, shall adopt minimization proce-
11 dures that meet the definition of minimization proce-
12 dures under section 101(h) or section 301(4), as ap-
13 propriate, for acquisitions authorized under sub-
14 section (a).

15 “(2) JUDICIAL REVIEW.—The minimization
16 procedures required by paragraph (1) shall be sub-
17 ject to judicial review pursuant to subsection (i).

18 “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-
19 TIONS.—

20 “(1) REQUIREMENT TO ADOPT.—The Attorney
21 General, in consultation with the Director of Na-
22 tional Intelligence, shall adopt guidelines to ensure—

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

1 “(B) that an application for a court order
2 is filed if required by any other section of this
3 Act.

4 “(2) SUBMISSION OF GUIDELINES.—The Attor-
5 ney General shall provide the guidelines adopted
6 pursuant to paragraph (1) to—

7 “(A) the congressional intelligence commit-
8 tees;

9 “(B) the Committee on the Judiciary of
10 the Senate;

11 “(C) the Committee on the Judiciary of
12 the House of Representatives; and

13 “(D) the Foreign Intelligence Surveillance
14 Court.

15 “(g) CERTIFICATION.—

16 “(1) IN GENERAL.—

17 “(A) REQUIREMENT.—Subject to subpara-
18 graph (B), prior to the initiation of an acquisi-
19 tion authorized under subsection (a), the Attor-
20 ney General and the Director of National Intel-
21 ligence shall provide to the Foreign Intelligence
22 Surveillance Court, under oath, a written cer-
23 tification and any supporting affidavit, under
24 seal, in accordance with this subsection.

1 “(B) EXCEPTION.—If the Attorney Gen-
2 eral and the Director of National Intelligence
3 make a determination under subsection
4 (c)(1)(C)(ii) and time does not permit the sub-
5 mission of a certification under this subsection
6 prior to the authorization referred to in such
7 subsection, the Attorney General and the Direc-
8 tor of National Intelligence shall submit to the
9 Court a certification for such authorization as
10 soon as practicable but in no event later than
11 7 days after such determination is made.

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

14 “(A) attest that—

15 “(i) there are reasonable procedures
16 in place that have been approved, have
17 been submitted for approval, or will be
18 submitted with the certification for ap-
19 proval by the Foreign Intelligence Surveil-
20 lance Court for ensuring that the acquisi-
21 tion authorized under subsection (a)—

22 “(I) is targeted at persons rea-
23 sonably believed to be located outside
24 the United States; and

1 “(II) does not intentionally ac-
2 quire any communication as to which
3 the sender and all intended recipients
4 are known at the time of the acquisi-
5 tion to be located in the United
6 States;

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

9 “(I) meet the definition of mini-
10 mization procedures under section
11 101(h) or section 301(4), as appro-
12 priate; and

13 “(II) have been approved, have
14 been submitted for approval, or will be
15 submitted with the certification for
16 approval by the Foreign Intelligence
17 Surveillance Court;

18 “(iii) guidelines have been adopted in
19 accordance with subsection (f) to ensure
20 compliance with the limitations in sub-
21 section (b) and to ensure that applications
22 for court orders are filed if required by
23 this Act;

24 “(iv) the procedures and guidelines re-
25 ferred to in clauses (i), (ii), and (iii) are

1 consistent with the requirements of the
2 fourth amendment to the Constitution of
3 the United States;

4 “(v) a significant purpose of the ac-
5 quisition is to obtain foreign intelligence
6 information;

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

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

13 “(B) include the procedures adopted in ac-
14 cordance with subsections (d) and (e);

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

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

20 “(ii) the head of an element of the in-
21 telligence community;

22 “(D) include—

23 “(i) an effective date for the author-
24 ization that is at least 30 days after the

1 submission of the written certification to
2 the court; or

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

9 “(E) if the Attorney General and the Di-
10 rector of National Intelligence make a deter-
11 mination under subsection (c)(1)(A)(ii), include
12 a statement that such determination has been
13 made.

14 “(3) CHANGE IN EFFECTIVE DATE.—The At-
15 torney General and the Director of National Intel-
16 ligence may advance or delay the effective date re-
17 ferred to in paragraph (2)(D) by submitting an
18 amended certification in accordance with this sub-
19 section to the Foreign Intelligence Surveillance
20 Court for review pursuant to subsection (i).

21 “(4) LIMITATION.—A certification made under
22 this subsection is not required to identify the specific
23 facilities, places, premises, or property at which the
24 acquisition authorized under subsection (a) will be
25 directed or conducted.

1 “(5) MAINTENANCE OF CERTIFICATION.—The
2 Attorney General or a designee of the Attorney Gen-
3 eral shall maintain a copy of a certification made
4 under this subsection.

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

8 “(h) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-
9 TIVES.—

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

15 “(A) immediately provide the Government
16 with all information, facilities, or assistance
17 necessary to accomplish the acquisition in a
18 manner that will protect the secrecy of the ac-
19 quisition and produce a minimum of inter-
20 ference with the services that such electronic
21 communication service provider is providing to
22 the target of the acquisition; and

23 “(B) maintain under security procedures
24 approved by the Attorney General and the Di-
25 rector of National Intelligence any records con-

1 cerning the acquisition or the aid furnished that
2 such electronic communication service provider
3 wishes to maintain.

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

9 “(3) RELEASE FROM LIABILITY.—No cause of
10 action shall lie in any court against any electronic
11 communication service provider for providing any in-
12 formation, facilities, or assistance in accordance with
13 a directive issued pursuant to paragraph (1).

14 “(4) CHALLENGING OF DIRECTIVES.—

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

22 “(B) ASSIGNMENT.—The presiding judge
23 of the Court shall assign the petition filed
24 under subparagraph (A) to 1 of the judges serv-
25 ing in the pool established by section 103(e)(1)

1 not later than 24 hours after the filing of the
2 petition.

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

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

1 statement for the record of the reasons for a
2 determination under this subparagraph.

3 “(E) PROCEDURES FOR PLENARY RE-
4 VIEW.—If a judge determines that a petition
5 described in subparagraph (A) requires plenary
6 review, the judge shall affirm, modify, or set
7 aside the directive that is the subject of that pe-
8 tition not later than 30 days after being as-
9 signed the petition. If the Court does not set
10 aside the directive, the judge shall immediately
11 affirm or affirm with modifications the direc-
12 tive, and order the recipient to comply with the
13 directive in its entirety or as modified. The
14 judge shall provide a written statement for the
15 record of the reasons for a determination under
16 this subparagraph.

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

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

24 “(5) ENFORCEMENT OF DIRECTIVES.—

1 “(A) ORDER TO COMPEL.—If an electronic
2 communication service provider fails to comply
3 with a directive issued pursuant to paragraph
4 (1), the Attorney General may file a petition for
5 an order to compel the electronic communica-
6 tion service provider to comply with the direc-
7 tive with the Foreign Intelligence Surveillance
8 Court, which shall have jurisdiction to review
9 such a petition.

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

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

1 a written statement for the record of the rea-
2 sons for a determination under this paragraph.

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

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

11 “(6) APPEAL.—

12 “(A) APPEAL TO THE COURT OF RE-
13 VIEW.—The Government or an electronic com-
14 munication service provider receiving a directive
15 issued pursuant to paragraph (1) may file a pe-
16 tition with the Foreign Intelligence Surveillance
17 Court of Review for review of a decision issued
18 pursuant to paragraph (4) or (5). The Court of
19 Review shall have jurisdiction to consider such
20 a petition and shall provide a written statement
21 for the record of the reasons for a decision
22 under this paragraph.

23 “(B) CERTIORARI TO THE SUPREME
24 COURT.—The Government or an electronic com-
25 munication service provider receiving a directive

1 issued pursuant to paragraph (1) may file a pe-
2 tition for a writ of certiorari for review of the
3 decision of the Court of Review issued under
4 subparagraph (A). The record for such review
5 shall be transmitted under seal to the Supreme
6 Court of the United States, which shall have ju-
7 risdiction to review such decision.

8 “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND
9 PROCEDURES.—

10 “(1) IN GENERAL.—

11 “(A) REVIEW BY THE FOREIGN INTEL-
12 LIGENCE SURVEILLANCE COURT.—The Foreign
13 Intelligence Surveillance Court shall have juris-
14 diction to review any certification submitted in
15 accordance with subsection (g) and the tar-
16 geting and minimization procedures adopted in
17 accordance with subsections (d) and (e), and
18 any amendments to such certification or proce-

19 dures.

20 “(B) TIME PERIOD FOR REVIEW.—The
21 Court shall review the certification submitted in
22 accordance with subsection (g) and the tar-
23 geting and minimization procedures adopted in
24 accordance with subsections (d) and (e) and
25 shall complete such review and issue an order

1 under paragraph (3) not later than 30 days
2 after the date on which such certification and
3 procedures are submitted.

4 “(C) AMENDMENTS.—The Attorney Gen-
5 eral and the Director of National Intelligence
6 may amend a certification submitted in accord-
7 ance with subsection (g) or the targeting and
8 minimization procedures adopted in accordance
9 with subsections (d) and (e) as necessary at any
10 time, including if the Court is conducting or
11 has completed review of such certification or
12 such procedures, and shall submit such amend-
13 ed certification or amended procedures to the
14 Court not later than 7 days after amending
15 such certification or such procedures. The
16 Court shall review any amendment under this
17 subparagraph under the procedures set forth in
18 this subsection. The Attorney General and the
19 Director of National Intelligence may authorize
20 the use of an amended certification or amended
21 procedures pending the Court’s review of such
22 amended certification or amended procedures.

23 “(2) REVIEW.—The Court shall review the fol-
24 lowing:

1 “(A) CERTIFICATION.—A certification sub-
2 mitted in accordance with subsection (g) to de-
3 termine whether the certification contains all
4 the required elements.

5 “(B) TARGETING PROCEDURES.—The tar-
6 geting procedures adopted in accordance with
7 subsection (d) to assess whether the procedures
8 are reasonably designed to ensure that the ac-
9 quisition authorized under subsection (a) is lim-
10 ited to the targeting of persons reasonably be-
11 lieved to be located outside the United States
12 and does not intentionally acquire of any com-
13 munication as to which the sender and all in-
14 tended recipients are known at the time of the
15 acquisition to be located in the United States.

16 “(C) MINIMIZATION PROCEDURES.—The
17 minimization procedures submitted in accord-
18 ance with subsection (e) to assess whether such
19 procedures meet the definition of minimization
20 procedures under section 101(h) or section
21 301(4), as appropriate.

22 “(3) ORDERS.—

23 “(A) APPROVAL.—If the Court finds that
24 a certification submitted in accordance with
25 subsection (g) contains all of the required ele-

1 ments and that the targeting and minimization
2 procedures adopted in accordance with sub-
3 sections (d) and (e) are consistent with the re-
4 quirements of those subsections and with the
5 fourth amendment to the Constitution of the
6 United States, the Court shall enter an order
7 approving the certification and the use, or con-
8 tinued use in the case of an acquisition author-
9 ized pursuant to a determination under sub-
10 section (c)(1)(C)(ii), of the procedures for the
11 acquisition.

12 “(B) CORRECTION OF DEFICIENCIES.—If
13 the Court finds that a certification submitted in
14 accordance with subsection (g) does not contain
15 all of the required elements, or that the proce-
16 dures adopted in accordance with subsections
17 (d) and (e) are not consistent with the require-
18 ments of those subsections or the fourth
19 amendment to the Constitution of the United
20 States, the Court shall issue an order directing
21 the Government to, at the Government’s elec-
22 tion and to the extent required by the Court’s
23 order—

24 “(i) correct any deficiency identified
25 by the Court’s order not later than 30 days

1 after the date the Court issues the order;

2 or

3 “(ii) cease, or not begin, the acqui-
4 sition authorized under subsection (a).

5 “(C) REQUIREMENT FOR WRITTEN STATE-
6 MENT.—In support of its orders under this sub-
7 section, the Court shall provide, simultaneously
8 with the orders, for the record a written state-
9 ment of its reasons.

10 “(4) APPEAL.—

11 “(A) APPEAL TO THE COURT OF RE-
12 VIEW.—The Government may appeal any order
13 under this section to the Foreign Intelligence
14 Surveillance Court of Review, which shall have
15 jurisdiction to review such order. For any deci-
16 sion affirming, reversing, or modifying an order
17 of the Foreign Intelligence Surveillance Court,
18 the Court of Review shall provide for the record
19 a written statement of its reasons.

20 “(B) CONTINUATION OF ACQUISITION
21 PENDING REHEARING OR APPEAL.—Any acqui-
22 sition affected by an order under paragraph
23 (3)(B) may continue—

1 “(i) during the pendency of any re-
2 hearing of the order by the Court en banc;
3 and

4 “(ii) if the Government appeals an
5 order under this section, until the Court of
6 Review enters an order under subpara-
7 graph (C).

8 “(C) IMPLEMENTATION PENDING AP-
9 PEAL.—Not later than 60 days after the filing
10 of an appeal of an order under paragraph
11 (3)(B) directing the correction of a deficiency,
12 the Court of Review shall determine, and enter
13 a corresponding order regarding, whether all or
14 any part of the correction order, as issued or
15 modified, shall be implemented during the pend-
16 ency of the appeal.

17 “(D) CERTIORARI TO THE SUPREME
18 COURT.—The Government may file a petition
19 for a writ of certiorari for review of a decision
20 of the Court of Review issued under subpara-
21 graph (A). The record for such review shall be
22 transmitted under seal to the Supreme Court of
23 the United States, which shall have jurisdiction
24 to review such decision.

25 “(5) SCHEDULE.—

1 “(A) REPLACEMENT OF AUTHORIZATIONS
2 IN EFFECT.—If the Attorney General and the
3 Director of National Intelligence seek to replace
4 an authorization issued pursuant to section
5 105B of the Foreign Intelligence Surveillance
6 Act of 1978, as added by section 2 of the Pro-
7 tect America Act of 2007 (Public Law 110-55)
8 with an authorization under this section, the
9 Attorney General and the Director of National
10 Intelligence shall, to the extent practicable, sub-
11 mit to the Court the certification prepared in
12 accordance with subsection (g) and the proce-
13 dures adopted in accordance with subsections
14 (d) and (e) at least 30 days before the expira-
15 tion of such authorization.

16 “(B) REAUTHORIZATION OF AUTHORIZA-
17 TIONS IN EFFECT.—If the Attorney General
18 and the Director of National Intelligence seek
19 to reauthorize or replace an authorization
20 issued pursuant to this section, the Attorney
21 General and the Director of National Intel-
22 ligence shall, to the extent practicable, submit
23 to the Court the certification prepared in ac-
24 cordance with subsection (g) and the procedures
25 adopted in accordance with subsections (d) and

1 (e) at least 30 days prior to the expiration of
2 such authorization.

3 “(j) JUDICIAL PROCEEDINGS.—

4 “(1) EXPEDITED JUDICIAL PROCEEDINGS.—Ju-
5 dicial proceedings under this section shall be con-
6 ducted as expeditiously as possible.

7 “(2) TIME LIMITS.—A time limit for a judicial
8 decision in this section shall apply unless the Court,
9 the Court of Review, or any judge of either the
10 Court or the Court of Review, by order for reasons
11 stated, extends that time as necessary for good
12 cause in a manner consistent with national security.

13 “(k) MAINTENANCE AND SECURITY OF RECORDS
14 AND PROCEEDINGS.—

15 “(1) STANDARDS.—The Foreign Intelligence
16 Surveillance Court shall maintain a record of a pro-
17 ceeding under this section, including petitions filed,
18 appeals, orders granted, and statements of reasons
19 for decision, under security measures adopted by the
20 Chief Justice of the United States, in consultation
21 with the Attorney General and the Director of Na-
22 tional Intelligence.

23 “(2) FILING AND REVIEW.—All petitions under
24 this section shall be filed under seal. In any pro-
25 ceedings under this section, the court shall, upon re-