

(109 PAGES)

**WITHHOLD**

**[STAFF WORKING DRAFT]**

**Exemption 5**

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.

**NSD/Withheld 309**

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 at the end:

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

13   **“SEC. 701. DEFINITIONS.**

14           “(a) IN GENERAL.—The terms ‘agent of a foreign  
15   power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-  
16   lance’, ‘foreign intelligence information’, ‘foreign power’,  
17   ‘person’, ‘United States’, and ‘United States person’ have  
18   the meanings given such terms in section 101, except as  
19   specifically provided in this 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 under 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  
11                  under 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           munications 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) INTELLIGENCE COMMUNITY.—The term  
8           ‘intelligence community’ has the meaning given the  
9           term in section 3(4) of the National Security Act of  
10          1947 (50 U.S.C. 401a(4)).

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

14          “(a) AUTHORIZATION.—Notwithstanding any other  
15 provision of law, upon the issuance of an order in accord-  
16 ance with subsection (i)(3) or a determination under sub-  
17 section (c)(2), the Attorney General and the Director of  
18 National Intelligence may authorize jointly, for a period  
19 of up to 1 year from the effective date of the authoriza-  
20 tion, the targeting of persons reasonably believed to be lo-  
21 cated outside the United States to acquire foreign intel-  
22 ligence information.

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

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

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

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

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

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

19           “(c) CONDUCT OF ACQUISITION.—

20           “(1) IN GENERAL.—An acquisition authorized  
21 under subsection (a) shall be conducted only in ac-  
22 cordance with—

23           “(A) the targeting and minimization proce-  
24 dures adopted in accordance with subsections  
25 (d) and (e); and

1                   “(B) upon submission of a certification in  
2                   accordance with subsection (g), such certifi-  
3                   cation.

4                   “(2) DETERMINATION.—A determination under  
5                   this paragraph and for purposes of subsection (a) is  
6                   a determination by the Attorney General and the Di-  
7                   rector of National Intelligence that exigent cir-  
8                   cumstances exist because, without immediate imple-  
9                   mentation of an authorization under subsection (a),  
10                  intelligence important to the national security of the  
11                  United States may be lost or not timely acquired  
12                  and time does not permit the issuance of an order  
13                  pursuant to subsection (i)(3) prior to the implemen-  
14                  tation of such authorization.

15                  “(3) TIMING OF DETERMINATION.—The Attor-  
16                  ney General and the Director of National Intel-  
17                  ligence may make the determination under para-  
18                  graph (2)—

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

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

1           “(4) CONSTRUCTION.—Nothing in title I shall  
2           be construed to require an application for a court  
3           order under such title for an acquisition that is tar-  
4           geted in accordance with this section at a person  
5           reasonably believed to be located outside the United  
6           States.

7           “(d) TARGETING PROCEDURES.—

8           “(1) REQUIREMENT TO ADOPT.—The Attorney  
9           General, in consultation with the Director of Na-  
10          tional Intelligence, shall adopt targeting procedures  
11          that are reasonably designed to—

12                 “(A) ensure that any acquisition author-  
13                 ized under subsection (a) is limited to targeting  
14                 persons reasonably believed to be located out-  
15                 side the United States; and

16                 “(B) prevent the intentional acquisition of  
17                 any communication as to which the sender and  
18                 all intended recipients are known at the time of  
19                 the acquisition to be located in the United  
20                 States.

21           “(2) JUDICIAL REVIEW.—The procedures  
22           adopted in accordance with paragraph (1) shall be  
23           subject to judicial review pursuant to subsection (i).

24           “(e) MINIMIZATION PROCEDURES.—

1           “(1) REQUIREMENT TO ADOPT.—The Attorney  
2           General, in consultation with the Director of Na-  
3           tional Intelligence, shall adopt minimization proce-  
4           dures that meet the definition of minimization proce-  
5           dures under section 101(h) or section 301(4), as ap-  
6           propriate, for acquisitions authorized under sub-  
7           section (a).

8           “(2) JUDICIAL REVIEW.—The minimization  
9           procedures adopted in accordance with paragraph  
10          (1) shall be subject to judicial review pursuant to  
11          subsection (i).

12          “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-  
13          TIONS.—

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

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

19                         “(B) that an application for a court order  
20                         is filed as required by this Act.

21                 “(2) SUBMISSION OF GUIDELINES.—The Attor-  
22                 ney General shall provide the guidelines adopted in  
23                 accordance with paragraph (1) to—

24                         “(A) the congressional intelligence commit-  
25                         tees;



1           “(B) the Committee on the Judiciary of  
2           the Senate;

3           “(C) the Committee on the Judiciary of  
4           the House of Representatives; and

5           “(D) the Foreign Intelligence Surveillance  
6           Court.

7           “(g) CERTIFICATION.—

8           “(1) IN GENERAL.—

9           “(A) REQUIREMENT.—Subject to subpara-  
10          graph (B), prior to the implementation of an  
11          authorization under subsection (a), the Attor-  
12          ney General and the Director of National Intel-  
13          ligence shall provide to the Foreign Intelligence  
14          Surveillance Court a written certification and  
15          any supporting affidavit, under oath and under  
16          seal, in accordance with this subsection.

17          “(B) EXCEPTION.—If the Attorney Gen-  
18          eral and the Director of National Intelligence  
19          make a determination under subsection (c)(2)  
20          and time does not permit the submission of a  
21          certification under this subsection prior to the  
22          implementation of an authorization under sub-  
23          section (a), the Attorney General and the Direc-  
24          tor of National Intelligence shall submit to the  
25          Court a certification for such authorization as

1           soon as practicable but in no event later than  
2           7 days after such determination is made.

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

5                   “(A) attest that—

6                           “(i) there are reasonable procedures  
7                           in place that have been approved, have  
8                           been submitted for approval, or will be  
9                           submitted with the certification for ap-  
10                          proval by the Foreign Intelligence Surveil-  
11                          lance Court to—

12                                   “(I) ensure that an acquisition  
13                                   authorized under subsection (a) is tar-  
14                                   geted at persons reasonably believed  
15                                   to be located outside the United  
16                                   States; and

17   “(II) prevent the intentional ac-  
18   quisition of any communication as to  
19   which the sender and all intended re-  
20   cipients are known at the time of the  
21   acquisition to be located in the United  
22   States;

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

1                   “(I) meet the definition of mini-  
2                   mization procedures under section  
3                   101(h) or section 301(4), as appro-  
4                   priate; and

5                   “(II) have been approved, have  
6                   been submitted for approval, or will be  
7                   submitted with the certification for  
8                   approval by the Foreign Intelligence  
9                   Surveillance Court;

10                   “(iii) guidelines have been adopted in  
11                   accordance with subsection (f) to ensure  
12                   compliance with the limitations in sub-  
13                   section (b) and to ensure that applications  
14                   for court orders are filed as required by  
15                   this Act;

16                   “(iv) the procedures and guidelines re-  
17                   ferred to in clauses (i), (ii), and (iii) are  
18                   consistent with the requirements of the  
19                   fourth amendment to the Constitution of  
20                   the United States;

21                   “(v) a significant purpose of the ac-  
22                   quisition is to obtain foreign intelligence  
23                   information;

24                   “(vi) the acquisition involves obtaining  
25                   the foreign intelligence information from or

1 with the assistance of an electronic com-  
2 munication service provider; and

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

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

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

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

13 “(ii) the head of an element of the in-  
14 telligence community;

15 “(D) include—

16 “(i) an effective date for the author-  
17 ization that is at least 30 days after the  
18 submission of the written certification to  
19 the court; or

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

1           “(E) if the Attorney General and the Di-  
2           rector of National Intelligence make a deter-  
3           mination under subsection (c)(2), include a  
4           statement that such determination has been  
5           made.

6           “(3) CHANGE IN EFFECTIVE DATE.—The At-  
7           torney General and the Director of National Intel-  
8           ligence may advance or delay the effective date re-  
9           ferred to in paragraph (2)(D) by submitting an  
10          amended certification in accordance with this sub-  
11          section to the Foreign Intelligence Surveillance  
12          Court for review pursuant to subsection (i).

13          “(4) LIMITATION.—A certification made under  
14          this subsection is not required to identify the specific  
15          facilities, places, premises, or property at which the  
16          acquisition authorized under subsection (a) will be  
17          directed or conducted.

18          “(5) MAINTENANCE OF CERTIFICATION.—The  
19          Attorney General or a designee of the Attorney Gen-  
20          eral shall maintain a copy of a certification made  
21          under this subsection.

22          “(6) REVIEW.—A certification submitted in ac-  
23          cordance with this subsection shall be subject to ju-  
24          dicial review pursuant to subsection (i).

1       “(h) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-  
2 TIVES.—

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

8           “(A) immediately provide the Government  
9 with all information, facilities, or assistance  
10 necessary to accomplish the acquisition in a  
11 manner that will protect the secrecy of the ac-  
12 quisition and produce a minimum of inter-  
13 ference with the services that such electronic  
14 communication service provider is providing to  
15 the target of the acquisition; and

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

22           “(2) COMPENSATION.—The Government shall  
23 compensate, at the prevailing rate, an electronic  
24 communication service provider for providing infor-

1 mation, facilities, or assistance pursuant to para-  
2 graph (1).

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

8 “(4) CHALLENGING OF DIRECTIVES.—

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

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

22 “(C) STANDARDS FOR REVIEW.—A judge  
23 considering a petition to modify or set aside a  
24 directive may grant such petition only if the  
25 judge finds that the directive does not meet the

1 requirements of this section, or is otherwise un-  
2 lawful.

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

21 “(E) PROCEDURES FOR PLENARY RE-  
22 VIEW.—If a judge determines that a petition  
23 described in subparagraph (A) requires plenary  
24 review, the judge shall affirm, modify, or set  
25 aside the directive that is the subject of that pe-



1           tition not later than 30 days after being as-  
2           signed the petition. If the Court does not set  
3           aside the directive, the judge shall immediately  
4           affirm or affirm with modifications the direc-  
5           tive, and order the recipient to comply with the  
6           directive in its entirety or as modified. The  
7           judge shall provide a written statement for the  
8           record of the reasons for a determination under  
9           this subparagraph.

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

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

17           “(5) ENFORCEMENT OF DIRECTIVES.—

18           “(A) ORDER TO COMPEL.—If an electronic  
19           communication service provider fails to comply  
20           with a directive issued pursuant to paragraph  
21           (1), the Attorney General may file a petition for  
22           an order to compel the electronic communica-  
23           tion service provider to comply with the direc-  
24           tive with the Foreign Intelligence Surveillance

1 Court, which shall have jurisdiction to review  
2 such a petition.

3 “(B) ASSIGNMENT.—The presiding judge  
4 of the Court shall assign a petition filed under  
5 subparagraph (A) to 1 of the judges serving in  
6 the pool established under section 103(e)(1) not  
7 later than 24 hours after the filing of the peti-  
8 tion.

9 “(C) PROCEDURES FOR REVIEW.—A judge  
10 considering a petition filed under subparagraph  
11 (A) shall issue an order requiring the electronic  
12 communication service provider to comply with  
13 the directive or any part of it, as issued or as  
14 modified, not later than 30 days after being as-  
15 signed such petition if the judge finds that the  
16 directive meets the requirements of this section  
17 and is otherwise lawful. The judge shall provide  
18 a written statement for the record of the rea-  
19 sons for a determination under this paragraph.

20 “(D) 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 “(E) PROCESS.—Any process under this  
25 paragraph may be served in any judicial district

1 in which the electronic communication service  
2 provider may be found.

3 “(6) APPEAL.—

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

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

1       “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND  
2 PROCEDURES.—

3           “(1) IN GENERAL.—

4               “(A) REVIEW BY THE FOREIGN INTEL-  
5 LIGENCE SURVEILLANCE COURT.—The Foreign  
6 Intelligence Surveillance Court shall have juris-  
7 diction to review any certification submitted in  
8 accordance with subsection (g) and the tar-  
9 geting and minimization procedures adopted in  
10 accordance with subsections (d) and (e), and  
11 any amendments to such certification or proce-  
12 dures.

13               “(B) TIME PERIOD FOR REVIEW.—The  
14 Court shall review a 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 shall complete such review and issue an order  
19 under paragraph (3) not later than 30 days  
20 after the date on which such certification and  
21 procedures are submitted.

22               “(C) AMENDMENTS.—The Attorney Gen-  
23 eral and the Director of National Intelligence  
24 may amend a certification submitted in accord-  
25 ance with subsection (g) or the targeting and

1 minimization procedures adopted in accordance  
2 with subsections (d) and (e) as necessary at any  
3 time, including if the Court is conducting or  
4 has completed review of such certification or  
5 such procedures, and shall submit such amend-  
6 ed certification or amended procedures to the  
7 Court not later than 7 days after amending  
8 such certification or such procedures. The  
9 Court shall review any amendment under this  
10 subparagraph under the procedures set forth in  
11 this subsection. The Attorney General and the  
12 Director of National Intelligence may authorize  
13 the use of an amended certification or amended  
14 procedures pending the Court's review of such  
15 amended certification or amended procedures.

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

18 “(A) CERTIFICATION.—A certification sub-  
19 mitted in accordance with subsection (g) to de-  
20 termine whether the certification contains all  
21 the required elements.

22 “(B) TARGETING PROCEDURES.—The tar-  
23 geting procedures adopted in accordance with  
24 subsection (d) to assess whether the procedures  
25 are reasonably designed to—

1                   “(i) ensure that the acquisition au-  
2                   thorized under subsection (a) is limited to  
3                   the targeting of persons reasonably be-  
4                   lieved to be located outside the United  
5                   States; and

6                   “(ii) prevent the intentional acquisi-  
7                   tion of any communication as to which the  
8                   sender and all intended recipients are  
9                   known at the time of the acquisition to be  
10                  located in the United States.

11                  “(C) MINIMIZATION PROCEDURES.—The  
12                  minimization procedures adopted in accordance  
13                  with subsection (e) to assess whether such pro-  
14                  cedures meet the definition of minimization pro-  
15                  cedures under section 101(h) or section 301(4),  
16                  as appropriate.

17                  “(3) ORDERS.—

18                  “(A) APPROVAL.—If the Court finds that  
19                  a certification submitted in accordance with  
20                  subsection (g) contains all of the required ele-  
21                  ments and that the targeting and minimization  
22                  procedures adopted in accordance with sub-  
23                  sections (d) and (e) are consistent with the re-  
24                  quirements of those subsections and with the  
25                  fourth amendment to the Constitution of the

1 United States, the Court shall enter an order  
2 approving the certification and the use, or con-  
3 tinued use in the case of an acquisition author-  
4 ized pursuant to a determination under sub-  
5 section (c)(2), of the procedures for the acquisi-  
6 tion.

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

19 “(i) correct any deficiency identified  
20 by the Court’s order not later than 30 days  
21 after the date the Court issues the order;  
22 or

23 “(ii) cease, or not begin, the acquisi-  
24 tion authorized under subsection (a).

1           “(C) REQUIREMENT FOR WRITTEN STATE-  
2           MENT.—In support of an order under this sub-  
3           section, the Court shall provide, simultaneously  
4           with the order, for the record a written state-  
5           ment of the reasons for the order.

6           “(4) APPEAL.—

7           “(A) APPEAL TO THE COURT OF RE-  
8           VIEW.—The Government may file a petition  
9           with the Foreign Intelligence Surveillance Court  
10          of Review for review of an order under this sub-  
11          section. The Court of Review shall have juris-  
12          diction to consider such a petition. For any de-  
13          cision affirming, reversing, or modifying an  
14          order of the Foreign Intelligence Surveillance  
15          Court, the Court of Review shall provide for the  
16          record a written statement of the reasons for  
17          the decision.

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

22                 “(i) during the pendency of any re-  
23                 hearing of the order by the Court en banc;  
24                 and



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

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

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

22                  “(5) SCHEDULE.—

23                  “(A) REAUTHORIZATION OF AUTHORIZA-  
24                  TIONS IN EFFECT.—If the Attorney General  
25                  and the Director of National Intelligence seek

1 to reauthorize or replace an authorization  
2 issued pursuant to this section, the Attorney  
3 General and the Director of National Intel-  
4 ligence shall, to the extent practicable, submit  
5 to the Court the certification prepared in ac-  
6 cordance with subsection (g) and the procedures  
7 adopted in accordance with subsections (d) and  
8 (e) at least 30 days prior to the expiration of  
9 such authorization.

10 “(B) REAUTHORIZATION OF ORDERS, AU-  
11 THORIZATIONS, AND DIRECTIVES.—If the At-  
12 torney General and the Director of National In-  
13 telligence seek to reauthorize or replace an au-  
14 thorization made pursuant to this section by fil-  
15 ing a certification pursuant to subparagraph  
16 (A), that authorization, and any directives  
17 issued thereunder and any order related there-  
18 to, shall remain in effect, notwithstanding the  
19 expiration provided for in subsection (a), until  
20 the Court issues an order with respect to such  
21 certification under paragraph (3) at which time  
22 the provisions of that paragraph and paragraph  
23 (4) shall apply with respect to such certifi-  
24 cation.

25 “(j) JUDICIAL PROCEEDINGS.—

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

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

10          “(k) MAINTENANCE AND SECURITY OF RECORDS  
11          AND PROCEEDINGS.—

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

20           “(2) FILING AND REVIEW.—All petitions under  
21           this section shall be filed under seal. In any pro-  
22           ceedings under this section, the court shall, upon re-  
23           quest of the Government, review ex parte and in  
24           camera any Government submission, or portions of