

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 at the end the following:

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 in accordance with 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 301(4), as appro-
6 priate, for acquisitions authorized under subsection
7 (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 Committees on the Judiciary of
2 the Senate and the House of Representatives;
3 and

4 “(C) the Foreign Intelligence Surveillance
5 Court.

6 “(g) CERTIFICATION.—

7 “(1) IN GENERAL.—

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

16 “(B) EXCEPTION.—If the Attorney Gen-
17 eral and the Director of National Intelligence
18 make a determination under subsection (c)(2)
19 and time does not permit the submission of a
20 certification under this subsection prior to the
21 implementation of an authorization under sub-
22 section (a), the Attorney General and the Direc-
23 tor of National Intelligence shall submit to the
24 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 procedures in place that
7 have been approved, have been submitted
8 for approval, or will be submitted with the
9 certification for approval by the Foreign
10 Intelligence Surveillance Court that are
11 reasonably designed to—

12 “(I) ensure that an acquisition
13 authorized under subsection (a) is
14 limited to targeting persons reason-
15 ably believed to be located outside the
16 United 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 301(4), as appropriate; and

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

9 “(iii) guidelines have been adopted in
10 accordance with subsection (f) to ensure
11 compliance with the limitations in sub-
12 section (b) and to ensure that an applica-
13 tion for a court order is filed as required
14 by this Act;

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

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

23 “(vi) the acquisition involves obtaining
24 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 subsection
11 (i)(1)(C) 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 an
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 in accordance with a
2 directive issued pursuant to paragraph (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 file a petition to modify or set aside
13 such directive with the Foreign Intelligence
14 Surveillance Court, which shall have jurisdiction
15 to review such petition.

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

22 “(C) STANDARDS FOR REVIEW.—A judge
23 considering a petition filed under subparagraph
24 (A) may grant such petition only if the judge
25 finds that the directive does not meet the re-

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 such peti-
8 tion does not consist of claims, defenses, or
9 other legal contentions that are warranted by
10 existing law or by a nonfrivolous argument for
11 extending, modifying, or reversing existing law
12 or for establishing new law, the judge shall im-
13 mediately deny such petition and affirm the di-
14 rective or any part of the directive that is the
15 subject of such petition and order the recipient
16 to 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 filed under subparagraph (A) requires plenary
24 review, the judge shall affirm, modify, or set
25 aside the directive that is the subject of such

1 petition not later than 30 days after being as-
2 signed such petition. If the judge 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 issued under this paragraph may
15 be punished by the Court as contempt of court.

16 “(5) ENFORCEMENT OF DIRECTIVES.—

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

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

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

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

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

1 “(6) APPEAL.—

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

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

23 “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND
24 PROCEDURES.—

25 “(1) IN GENERAL.—

1 “(A) REVIEW BY THE FOREIGN INTEL-
2 LIGENCE SURVEILLANCE COURT.—The Foreign
3 Intelligence Surveillance Court shall have juris-
4 diction to review a certification submitted in ac-
5 cordance with subsection (g) and the targeting
6 and minimization procedures adopted in accord-
7 ance with subsections (d) and (e), and amend-
8 ments to such certification or such procedures.

9 “(B) TIME PERIOD FOR REVIEW.—The
10 Court shall review a certification submitted in
11 accordance with subsection (g) and the tar-
12 geting and minimization procedures adopted in
13 accordance with subsections (d) and (e) and
14 shall complete such review and issue an order
15 under paragraph (3) not later than 30 days
16 after the date on which such certification and
17 such procedures are submitted.

18 “(C) AMENDMENTS.—The Attorney Gen-
19 eral and the Director of National Intelligence
20 may amend a certification submitted in accord-
21 ance with subsection (g) or the targeting and
22 minimization procedures adopted in accordance
23 with subsections (d) and (e) as necessary at any
24 time, including if the Court is conducting or
25 has completed review of such certification or

1 such procedures, and shall submit the amended
2 certification or amended procedures to the
3 Court not later than 7 days after amending
4 such certification or such procedures. The
5 Court shall review any amendment under this
6 subparagraph under the procedures set forth in
7 this subsection. The Attorney General and the
8 Director of National Intelligence may authorize
9 the use of an amended certification or amended
10 procedures pending the Court's review of such
11 amended certification or amended procedures.

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

14 “(A) CERTIFICATION.—A certification sub-
15 mitted in accordance with subsection (g) to de-
16 termine whether the certification contains all
17 the required elements.

18 “(B) TARGETING PROCEDURES.—The tar-
19 geting procedures adopted in accordance with
20 subsection (d) to assess whether the procedures
21 are reasonably designed to—

22 “(i) ensure that an acquisition author-
23 ized under subsection (a) is limited to tar-
24 geting persons reasonably believed to be lo-
25 cated outside the United States; and

1 “(ii) prevent the intentional acquisi-
2 tion of any communication as to which the
3 sender and all intended recipients are
4 known at the time of the acquisition to be
5 located in the United States.

6 “(C) MINIMIZATION PROCEDURES.—The
7 minimization procedures adopted in accordance
8 with subsection (e) to assess whether such pro-
9 cedures meet the definition of minimization pro-
10 cedures under section 101(h) or section 301(4),
11 as appropriate.

12 “(3) ORDERS.—

13 “(A) APPROVAL.—If the Court finds that
14 a certification submitted in accordance with
15 subsection (g) contains all the required ele-
16 ments and that the targeting and minimization
17 procedures adopted in accordance with sub-
18 sections (d) and (e) are consistent with the re-
19 quirements of those subsections and with the
20 fourth amendment to the Constitution of the
21 United States, the Court shall enter an order
22 approving the certification and the use, or con-
23 tinued use in the case of an acquisition author-
24 ized pursuant to a determination under sub-

1 section (c)(2), of the procedures for the acquisi-
2 tion.

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

15 “(i) correct any deficiency identified
16 by the Court’s order not later than 30 days
17 after the date on which the Court issues
18 the order; or

19 “(ii) cease, or not begin, the imple-
20 mentation of the authorization for which
21 such certification was submitted.

22 “(C) REQUIREMENT FOR WRITTEN STATE-
23 MENT.—In support of an order under this sub-
24 section, the Court shall provide, simultaneously

1 with the order, for the record a written state-
2 ment of the reasons for the order.

3 “(4) APPEAL.—

4 “(A) APPEAL TO THE COURT OF RE-
5 VIEW.—The Government may file a petition
6 with the Foreign Intelligence Surveillance Court
7 of Review for review of an order under this sub-
8 section. The Court of Review shall have juris-
9 diction to consider such petition. For any deci-
10 sion under this subparagraph affirming, revers-
11 ing, or modifying an order of the Foreign Intel-
12 ligence Surveillance Court, the Court of Review
13 shall provide for the record a written statement
14 of the reasons for the decision.

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

19 “(i) during the pendency of any re-
20 hearing of the order by the Court en banc;
21 and

22 “(ii) if the Government files a petition
23 for review of an order under this section,
24 until the Court of Review enters an order
25 under subparagraph (C).

1 “(C) IMPLEMENTATION PENDING AP-
2 PEAL.—Not later than 60 days after the filing
3 of a petition for review of an order under para-
4 graph (3)(B) directing the correction of a defi-
5 ciency, the Court of Review shall determine,
6 and enter a corresponding order regarding,
7 whether all or any part of the correction order,
8 as issued or modified, shall be implemented
9 during the pendency of the review.

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

18 “(5) SCHEDULE.—

19 “(A) REAUTHORIZATION OF AUTHORIZA-
20 TIONS IN EFFECT.—If the Attorney General
21 and the Director of National Intelligence seek
22 to reauthorize or replace an authorization
23 issued under subsection (a), the Attorney Gen-
24 eral and the Director of National Intelligence
25 shall, to the extent practicable, submit to the

1 Court the certification prepared in accordance
2 with subsection (g) and the procedures adopted
3 in accordance with subsections (d) and (e) at
4 least 30 days prior to the expiration of such au-
5 thorization.

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

20 “(j) JUDICIAL PROCEEDINGS.—

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

24 “(2) TIME LIMITS.—A time limit for a judicial
25 decision in this section shall apply unless the Court,

1 the Court of Review, or any judge of either the
2 Court or the Court of Review, by order for reasons
3 stated, extends that time as necessary for good
4 cause in a manner consistent with national security.

5 “(k) MAINTENANCE AND SECURITY OF RECORDS
6 AND PROCEEDINGS.—

7 “(1) STANDARDS.—The Foreign Intelligence
8 Surveillance Court shall maintain a record of a pro-
9 ceeding under this section, including petitions, ap-
10 peals, orders, and statements of reasons for a deci-
11 sion, under security measures adopted by the Chief
12 Justice of the United States, in consultation with
13 the Attorney General and the Director of National
14 Intelligence.

15 “(2) FILING AND REVIEW.—All petitions under
16 this section shall be filed under seal. In any pro-
17 ceedings under this section, the Court shall, upon re-
18 quest of the Government, review ex parte and in
19 camera any Government submission, or portions of
20 a submission, which may include classified informa-
21 tion.

22 “(3) RETENTION OF RECORDS.—The Attorney
23 General and the Director of National Intelligence
24 shall retain a directive or an order issued under this
25 section for a period of not less than 10 years from