

WITHHELD

Exemption 5

(Original Signature of Member)

110TH CONGRESS
2D SESSION

H. R. _____

To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

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

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

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

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1 (b) TABLE OF CONTENTS.—The table of contents for
2 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.

3 **TITLE I—FOREIGN**
4 **INTELLIGENCE SURVEILLANCE**

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

7 (a) IN GENERAL.—The Foreign Intelligence Surveil-
8 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

9 (1) by striking title VII; and

10 (2) by adding at the end the following:

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

5 **“SEC. 701. DEFINITIONS.**

6 “(a) IN GENERAL.—The terms ‘agent of a foreign
7 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
8 lance’, ‘foreign intelligence information’, ‘foreign power’,
9 ‘person’, ‘United States’, and ‘United States person’ have
10 the meanings given such terms in section 101, except as
11 specifically provided in this title.

12 “(b) ADDITIONAL DEFINITIONS.—

13 “(1) CONGRESSIONAL INTELLIGENCE COMMIT-
14 TEES.—The term ‘congressional intelligence commit-
15 tees’ means—

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

18 “(B) the Permanent Select Committee on
19 Intelligence of the House of Representatives.

20 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
21 COURT; COURT.—The terms ‘Foreign Intelligence
22 Surveillance Court’ and ‘Court’ mean the court es-
23 tablished under section 103(a).

24 “(3) FOREIGN INTELLIGENCE SURVEILLANCE
25 COURT OF REVIEW; COURT OF REVIEW.—The terms

1 'Foreign Intelligence Surveillance Court of Review'
2 and 'Court of Review' mean the court established
3 under section 103(b).

4 "(4) ELECTRONIC COMMUNICATION SERVICE
5 PROVIDER.—The term 'electronic communication
6 service provider' means—

7 "(A) a telecommunications carrier, as that
8 term is defined in section 3 of the Communica-
9 tions Act of 1934 (47 U.S.C. 153);

10 "(B) a provider of electronic communica-
11 tion service, as that term is defined in section
12 2510 of title 18, United States Code;

13 "(C) a provider of a remote computing
14 service, as that term is defined in section 2711
15 of title 18, United States Code;

16 "(D) any other communication service pro-
17 vider who has access to wire or electronic com-
18 munications either as such communications are
19 transmitted or as such communications are
20 stored; or

21 "(E) an officer, employee, or agent of an
22 entity described in subparagraph (A), (B), (C),
23 or (D).

24 "(5) INTELLIGENCE COMMUNITY.—The term
25 'intelligence community' has the meaning given the

1 term in section 3(4) of the National Security Act of
2 1947 (50 U.S.C. 401a(4)).

3 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN PER-**
4 **SONS OUTSIDE THE UNITED STATES OTHER**
5 **THAN UNITED STATES PERSONS.**

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

15 “(b) LIMITATIONS.—An acquisition authorized under
16 subsection (a)—

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

20 “(2) may not intentionally target a person rea-
21 sonably believed to be located outside the United
22 States if the purpose of such acquisition is to target
23 a particular, known person reasonably believed to be
24 in the United States;

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

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

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

11 “(c) CONDUCT OF ACQUISITION.—

12 “(1) IN GENERAL.—An acquisition authorized
13 under subsection (a) shall be conducted only in ac-
14 cordance with—

15 “(A) the targeting and minimization proce-
16 dures adopted in accordance with subsections
17 (d) and (e); and

18 “(B) upon submission of a certification in
19 accordance with subsection (g), such certifi-
20 cation.

21 “(2) DETERMINATION.—A determination under
22 this paragraph and for purposes of subsection (a) is
23 a determination by the Attorney General and the Di-
24 rector of National Intelligence that exigent cir-
25 cumstances exist because, without immediate imple-

1 mentation of an authorization under subsection (a),
2 intelligence important to the national security of the
3 United States may be lost or not timely acquired
4 and time does not permit the issuance of an order
5 pursuant to subsection (i)(3) prior to the implemen-
6 tation of such authorization.

7 “(3) TIMING OF DETERMINATION.—The Attor-
8 ney General and the Director of National Intel-
9 ligence may make the determination under para-
10 graph (2)—

11 “(A) before the submission of a certifi-
12 cation in accordance with subsection (g); or

13 “(B) by amending a certification pursuant
14 to subsection (i)(1)(C) at any time during
15 which judicial review under subsection (i) of
16 such certification is pending.

17 “(4) CONSTRUCTION.—Nothing in title I shall
18 be construed to require an application for a court
19 order under such title for an acquisition that is tar-
20 geted in accordance with this section at a person
21 reasonably believed to be located outside the United
22 States.

23 “(d) TARGETING PROCEDURES.—

24 “(1) REQUIREMENT TO ADOPT.—The Attorney
25 General, in consultation with the Director of Na-

1 tional Intelligence, shall adopt targeting procedures
2 that are reasonably designed to—

3 “(A) ensure that any acquisition author-
4 ized under subsection (a) is limited to targeting
5 persons reasonably believed to be located out-
6 side the United States; and

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

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

15 “(e) MINIMIZATION PROCEDURES.—

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

23 “(2) JUDICIAL REVIEW.—The minimization
24 procedures adopted in accordance with paragraph

1 (1) shall be ~~subject to~~ judicial review pursuant to
2 subsection (i).

3 “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-
4 TIONS.—

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

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

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

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

15 “(A) the congressional intelligence commit-
16 tees;

17 “(B) the Committees on the Judiciary of
18 the Senate and the House of Representatives;
19 and

20 “(C) the Foreign Intelligence Surveillance
21 Court.

22 “(g) CERTIFICATION.—

23 “(1) IN GENERAL.—

24 “(A) REQUIREMENT.—Subject to subpara-
25 graph (B), prior to the implementation of an

1 authorization under subsection (a), the Attor-
2 ney General and the Director of National Intel-
3 ligence shall provide to the Foreign Intelligence
4 Surveillance Court a written certification and
5 any supporting affidavit, under oath and under
6 seal, in accordance with this subsection.

7 “(B) EXCEPTION.—If the Attorney Gen-
8 eral and the Director of National Intelligence
9 make a determination under subsection (c)(2)
10 and time does not permit the submission of a
11 certification under this subsection prior to the
12 implementation of an authorization under sub-
13 section (a), the Attorney General and the Direc-
14 tor of National Intelligence shall submit to the
15 Court a certification for such authorization as
16 soon as practicable but in no event later than
17 7 days after such determination is made.

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

20 “(A) attest that—

21 “(i) there are procedures in place that
22 have been approved, have been submitted
23 for approval, or will be submitted with the
24 certification for approval by the Foreign

1 Intelligence Surveillance Court that are
2 reasonably designed to—

3 “(I) ensure that an acquisition
4 authorized under subsection (a) is
5 limited to targeting persons reason-
6 ably believed to be located outside the
7 United States; and

8 “(II) prevent the intentional ac-
9 quisition of any communication as to
10 which the sender and all intended re-
11 cipients are known at the time of the
12 acquisition to be located in the United
13 States;

14 “(ii) the minimization procedures to
15 be used with respect to such acquisition—

16 “(I) meet the definition of mini-
17 mization procedures under section
18 101(h) or 301(4), as appropriate; and

19 “(II) have been approved, have
20 been submitted for approval, or will be
21 submitted with the certification for
22 approval by the Foreign Intelligence
23 Surveillance Court;

24 “(iii) guidelines have been adopted in
25 accordance with subsection (f) to ensure

1 compliance with the limitations in sub-
2 section (b) and to ensure that an applica-
3 tion for a court order is filed as required
4 by this Act;

5 “(iv) the procedures and guidelines re-
6 ferred to in clauses (i), (ii), and (iii) are
7 consistent with the requirements of the
8 fourth amendment to the Constitution of
9 the United States;

10 “(v) a significant purpose of the ac-
11 quisition is to obtain foreign intelligence
12 information;

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

17 “(vii) the acquisition complies with
18 the limitations in subsection (b);

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

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

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

4 “(ii) the head of an element of the in-
5 telligence community;

6 “(D) include—

7 “(i) an effective date for the author-
8 ization that is at least 30 days after the
9 submission of the written certification to
10 the court; or

11 “(ii) if the acquisition has begun or
12 the effective date is less than 30 days after
13 the submission of the written certification
14 to the court, the date the acquisition began
15 or the effective date for the acquisition;
16 and

17 “(E) if the Attorney General and the Di-
18 rector of National Intelligence make a deter-
19 mination under subsection (c)(2), include a
20 statement that such determination has been
21 made.

22 “(3) CHANGE IN EFFECTIVE DATE.—The At-
23 torney General and the Director of National Intel-
24 ligence may advance or delay the effective date re-
25 ferred to in paragraph (2)(D) by submitting an

1 amended certification in accordance with subsection
2 (i)(1)(C) to the Foreign Intelligence Surveillance
3 Court for review pursuant to subsection (i).

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

9 “(5) MAINTENANCE OF CERTIFICATION.—The
10 Attorney General or a designee of the Attorney Gen-
11 eral shall maintain a copy of a certification made
12 under this subsection.

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

16 “(h) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-
17 TIVES.—

18 “(1) AUTHORITY.—With respect to an acquisi-
19 tion authorized under subsection (a), the Attorney
20 General and the Director of National Intelligence
21 may direct, in writing, an electronic communication
22 service provider to—

23 “(A) immediately provide the Government
24 with all information, facilities, or assistance
25 necessary to accomplish the acquisition in a

1 manner that will protect the secrecy of the ac-
2 quisition and produce a minimum of inter-
3 ference with the services that such electronic
4 communication service provider is providing to
5 the target of the acquisition; and

6 “(B) maintain under security procedures
7 approved by the Attorney General and the Di-
8 rector of National Intelligence any records con-
9 cerning the acquisition or the aid furnished that
10 such electronic communication service provider
11 wishes to maintain.

12 “(2) COMPENSATION.—The Government shall
13 compensate, at the prevailing rate, an electronic
14 communication service provider for providing infor-
15 mation, facilities, or assistance in accordance with a
16 directive issued pursuant to paragraph (1).

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

22 “(4) CHALLENGING OF DIRECTIVES.—

23 “(A) AUTHORITY TO CHALLENGE.—An
24 electronic communication service provider re-
25 ceiving a directive issued pursuant to paragraph

1 (1) may file a petition to modify or set aside
2 such directive with the Foreign Intelligence
3 Surveillance Court, which shall have jurisdiction
4 to review such petition.

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

11 “(C) STANDARDS FOR REVIEW.—A judge
12 considering a petition filed under subparagraph
13 (A) may grant such petition only if the judge
14 finds that the directive does not meet the re-
15 quirements of this section, or is otherwise un-
16 lawful.

17 “(D) PROCEDURES FOR INITIAL RE-
18 VIEW.—A judge shall conduct an initial review
19 of a petition filed under subparagraph (A) not
20 later than 5 days after being assigned such pe-
21 tition. If the judge determines that such peti-
22 tion does not consist of claims, defenses, or
23 other legal contentions that are warranted by
24 existing law or by a nonfrivolous argument for
25 extending, modifying, or reversing existing law

1 or for establishing new law, the judge shall im-
2 mediately deny such petition and affirm the di-
3 rective or any part of the directive that is the
4 subject of such petition and order the recipient
5 to comply with the directive or any part of it.
6 Upon making a determination under this sub-
7 paragraph or promptly thereafter, the judge
8 shall provide a written statement for the record
9 of the reasons for such determination.

10 “(E) PROCEDURES FOR PLENARY RE-
11 VIEW.—If a judge determines that a petition
12 filed under subparagraph (A) requires plenary
13 review, the judge shall affirm, modify, or set
14 aside the directive that is the subject of such
15 petition not later than 30 days after being as-
16 signed such petition. If the judge does not set
17 aside the directive, the judge shall immediately
18 affirm or affirm with modifications the direc-
19 tive, and order the recipient to comply with the
20 directive in its entirety or as modified. The
21 judge shall provide a written statement for the
22 record of the reasons for a determination under
23 this subparagraph.

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

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

7 “(5) ENFORCEMENT OF DIRECTIVES.—

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

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

23 “(C) PROCEDURES FOR REVIEW.—A judge
24 considering a petition filed under subparagraph
25 (A) shall, not later than 30 days after being as-

1 signed such petition, issue an order requiring
2 the electronic communication service provider to
3 comply with the directive or any part of it, as
4 issued or as modified, if the judge finds that
5 the directive meets the requirements of this sec-
6 tion and is otherwise lawful. The judge shall
7 provide a written statement for the record of
8 the reasons for a determination under this
9 paragraph.

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

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

17 “(6) APPEAL.—

18 “(A) APPEAL TO THE COURT OF RE-
19 VIEW.—The Government or an electronic com-
20 munication service provider receiving a directive
21 issued pursuant to paragraph (1) may file a pe-
22 tition with the Foreign Intelligence Surveillance
23 Court of Review for review of a decision issued
24 pursuant to paragraph (4) or (5). The Court of
25 Review shall have jurisdiction to consider such

1 petition and shall provide a written statement
2 for the record of the reasons for a decision
3 under this subparagraph.

4 “(B) CERTIORARI TO THE SUPREME
5 COURT.—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 for a writ of certiorari for review of a de-
9 cision of the Court of Review issued under sub-
10 paragraph (A). The record for such review shall
11 be transmitted under seal to the Supreme Court
12 of the United States, which shall have jurisdic-
13 tion to review such decision.

14 “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND
15 PROCEDURES.—

16 “(1) IN GENERAL.—

17 “(A) REVIEW BY THE FOREIGN INTEL-
18 LIGENCE SURVEILLANCE COURT.—The Foreign
19 Intelligence Surveillance Court shall have juris-
20 diction to review a certification submitted in ac-
21 cordance with subsection (g) and the targeting
22 and minimization procedures adopted in accord-
23 ance with subsections (d) and (e), and amend-
24 ments to such certification or such procedures.

1 “(B) TIME PERIOD FOR REVIEW.—The
2 Court shall review a certification submitted in
3 accordance with subsection (g) and the tar-
4 geting and minimization procedures adopted in
5 accordance with subsections (d) and (e) and
6 shall complete such review and issue an order
7 under paragraph (3) not later than 30 days
8 after the date on which such certification and
9 such procedures are submitted.

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

1 the use of an amended certification or amended
2 procedures pending the Court's review of such
3 amended certification or amended procedures.

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

6 “(A) CERTIFICATION.—A certification sub-
7 mitted in accordance with subsection (g) to de-
8 termine whether the certification contains all
9 the required elements.

10 “(B) TARGETING PROCEDURES.—The tar-
11 geting procedures adopted in accordance with
12 subsection (d) to assess whether the procedures
13 are reasonably designed to—

14 “(i) ensure that an acquisition author-
15 ized under subsection (a) is limited to tar-
16 geting persons reasonably believed to be lo-
17 cated outside the United States; and

18 “(ii) prevent the intentional acquisi-
19 tion of any communication as to which the
20 sender and all intended recipients are
21 known at the time of the acquisition to be
22 located in the United States.

23 “(C) MINIMIZATION PROCEDURES.—The
24 minimization procedures adopted in accordance
25 with subsection (e) to assess whether such pro-

1 cedures meet the definition of minimization pro-
2 cedures under section 101(h) or section 301(4),
3 as appropriate.

4 “(3) ORDERS.--

5 “(A) APPROVAL.—If the Court finds that
6 a certification submitted in accordance with
7 subsection (g) contains all the required ele-
8 ments and that the targeting and minimization
9 procedures adopted in accordance with sub-
10 sections (d) and (e) are consistent with the re-
11 quirements of those subsections and with the
12 fourth amendment to the Constitution of the
13 United States, the Court shall enter an order
14 approving the certification and the use, or con-
15 tinued use in the case of an acquisition author-
16 ized pursuant to a determination under sub-
17 section (c)(2), of the procedures for the acquisi-
18 tion.

19 “(B) CORRECTION OF DEFICIENCIES.—If
20 the Court finds that a certification submitted in
21 accordance with subsection (g) does not contain
22 all the required elements, or that the proce-
23 dures adopted in accordance with subsections
24 (d) and (e) are not consistent with the require-
25 ments of those subsections or the fourth

1 amendment to the Constitution of the United
2 States, the Court shall issue an order directing
3 the Government to, at the Government's elec-
4 tion and to the extent required by the Court's
5 order—

6 “(i) correct any deficiency identified
7 by the Court's order not later than 30 days
8 after the date on which the Court issues
9 the order; or

10 “(ii) cease, or not begin, the imple-
11 mentation of the authorization for which
12 such certification was submitted.

13 “(C) REQUIREMENT FOR WRITTEN STATE-
14 MENT.—In support of an order under this sub-
15 section, the Court shall provide, simultaneously
16 with the order, for the record a written state-
17 ment of the reasons for the order.

18 “(4) APPEAL.—

19 “(A) APPEAL TO THE COURT OF RE-
20 VIEW.—The Government may file a petition
21 with the Foreign Intelligence Surveillance Court
22 of Review for review of an order under this sub-
23 section. The Court of Review shall have juris-
24 diction to consider such petition. For any deci-
25 sion under this subparagraph affirming, revers-

1 ing, or modifying an order of the Foreign Intel-
2 ligence Surveillance Court, the Court of Review
3 shall provide for the record a written statement
4 of the reasons for the decision.

5 “(B) CONTINUATION OF ACQUISITION
6 PENDING REHEARING OR APPEAL.—Any acqui-
7 sition affected by an order under paragraph
8 (3)(B) may continue—

9 “(i) during the pendency of any re-
10 hearing of the order by the Court en banc;
11 and

12 “(ii) if the Government files a petition
13 for review of an order under this section,
14 until the Court of Review enters an order
15 under subparagraph (C).

16 “(C) IMPLEMENTATION PENDING AP-
17 PEAL.—Not later than 60 days after the filing
18 of a petition for review of an order under para-
19 graph (3)(B) directing the correction of a defi-
20 ciency, the Court of Review shall determine,
21 and enter a corresponding order regarding,
22 whether all or any part of the correction order,
23 as issued or modified, shall be implemented
24 during the pendency of the review.

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

9 “(5) SCHEDULE.—

10 “(A) REAUTHORIZATION OF AUTHORIZA-
11 TIONS IN EFFECT.—If the Attorney General
12 and the Director of National Intelligence seek
13 to reauthorize or replace an authorization
14 issued under subsection (a), the Attorney Gen-
15 eral and the Director of National Intelligence
16 shall, to the extent practicable, submit to the
17 Court the certification prepared in accordance
18 with subsection (g) and the procedures adopted
19 in accordance with subsections (d) and (e) at
20 least 30 days prior to the expiration of such au-
21 thorization.

22 “(B) REAUTHORIZATION OF ORDERS, AU-
23 THORIZATIONS, AND DIRECTIVES.—If the At-
24 torney General and the Director of National In-
25 telligence seek to reauthorize or replace an au-

1 thorization issued under subsection (a) by filing
2 a certification pursuant to subparagraph (A),
3 that authorization, and any directives issued
4 thereunder and any order related thereto, shall
5 remain in effect, notwithstanding the expiration
6 provided for in subsection (a), until the Court
7 issues an order with respect to such certifi-
8 cation under paragraph (3) at which time the
9 provisions of that paragraph and paragraph (4)
10 shall apply with respect to such certification.

11 “(j) JUDICIAL PROCEEDINGS.—

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

15 “(2) TIME LIMITS.—A time limit for a judicial
16 decision in this section shall apply unless the Court,
17 the Court of Review, or any judge of either the
18 Court or the Court of Review, by order for reasons
19 stated, extends that time as necessary for good
20 cause in a manner consistent with national security.

21 “(k) MAINTENANCE AND SECURITY OF RECORDS
22 AND PROCEEDINGS.—

23 “(1) STANDARDS.—The Foreign Intelligence
24 Surveillance Court shall maintain a record of a pro-
25 ceeding under this section, including petitions, ap-