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House Amendment to the Senate Amendment to H.R. 3773

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In lieu of the matter proposed to be inserted by the Senate, insert the following:

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SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

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6

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

7

(b) Table of Contents.—The table of contents for this Act is as follows:

8

Sec.1.Short title; table of contents.

9

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

10

Sec.101.Additional procedures regarding certain persons outside the United States.

11

Sec.102.Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted.

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12

Sec.103.Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.

13

Sec.104.Applications for court orders.

14

Sec.105.Issuance of an order.

15

Sec.106.Use of information.

16

Sec.107.Amendments for physical searches.

17

Sec.108.Amendments for emergency pen registers and trap and trace devices.

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Sec.109.Foreign intelligence surveillance court.

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Sec.110.Review of previous actions.

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Sec.111.Weapons of mass destruction.

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Sec.112.Statute of limitations.

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TITLE II—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

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Sec.201.Statutory defenses.

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Sec.202.Technical amendments.

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Sec.202.Limitations

25

TITLE III—COMMISSION ON WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES

Deleted: civil actions for electronic communication service providers.¶
Sec.203.Procedures for implementing statutory defenses under the Foreign Intelligence

26

Sec.301.Commission on Warrantless Electronic Surveillance Activities.

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1 **TITLE IV—OTHER PROVISIONS**

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Sec.205.Technical amendments.¶

2 Sec.401.Severability.

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3 Sec.402.Effective date.

Deleted: Sec.301.Severability.¶
Sec.302.Effective

4 Sec.403.Repeals.

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5 Sec.404.Transition procedures.

6 Sec.405.No rights under the FISA Amendments Act of 2008 for undocumented aliens.

7 Sec.406.Surveillance to protect the United States.

8 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

9 **SEC. 101. ADDITIONAL PROCEDURES REGARDING**
10 **CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

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

13 (1) by striking title VII; and

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

15 **“TITLE VII—ADDITIONAL PROCEDURES REGARDING**
16 **CERTAIN PERSONS OUTSIDE THE UNITED STATES**

17 **“SEC. 701. DEFINITIONS.**

Deleted: LIMITATION ON DEFINITION OF ELECTRONIC SURVEILLANCE.¶
“Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance that is targeted in accordance with this title at a person reasonably believed to be located outside the United States.¶
“SEC. 702.

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

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22 “(b) Additional Definitions.—

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

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

26 “(B) the Permanent Select Committee on Intelligence of the House of
27 Representatives.

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

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

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

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

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

5 “(C) a provider of a remote computing service, as that term is defined in section
6 2711 of title 18, United States Code;

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

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

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

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14 **“SEC. 702. PROCEDURES FOR TARGETING CERTAIN**
15 **PERSONS OUTSIDE THE UNITED STATES OTHER THAN**
16 **UNITED STATES PERSONS.**

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

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

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

25 “(2) may not intentionally target a person reasonably believed to be located outside the
26 United States in order to target a particular, known person reasonably believed to be in the
27 United States;

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

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

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

35 “(c) Conduct of Acquisition.—An acquisition authorized under subsection (a) may be
36 conducted only in accordance with—

37 “(1) a certification made by the Attorney General and the Director of National
38 Intelligence pursuant to subsection (g) or a determination under paragraph (1)(B) of such

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1 subsection, and

Deleted: (f);

2 "(2) the procedures and guidelines required pursuant to subsections (d), (e), and (f),

Deleted: targeting and minimization

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3 "(d) Targeting Procedures.—

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

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10 "(2) JUDICIAL REVIEW.—The procedures required by paragraph (1) shall be subject to
11 judicial review pursuant to subsection (i).

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12 "(e) Minimization Procedures.—

13 "(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director
14 of National Intelligence, shall adopt minimization procedures for acquisitions authorized
15 under subsection (a) that—

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minimization procedures under section
101(h) or section 301(4)

16 "(A) in the case of electronic surveillance, meet the definition of minimization
17 procedures under section 101(h); and

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18 "(B) in the case of a physical search, meet the definition of minimization procedures
19 under section 301(4).

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

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22 "(f) Guidelines for Compliance With Limitations.—

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

25 "(A) compliance with the limitations in subsection (b); and

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

27 "(2) CRITERIA.—With respect to subsection (b)(2), the guidelines adopted pursuant to
28 paragraph (1) shall contain specific criteria for determining whether a significant purpose of
29 an acquisition is to acquire the communications of a specific United States person
30 reasonably believed to be located in the United States. Such criteria shall include
31 consideration of whether—

32 "(A) the department or agency of the Federal Government conducting the
33 acquisition has made an inquiry to another department or agency of the Federal
34 Government to gather information on the specific United States person;

35 "(B) the department or agency of the Federal Government conducting the
36 acquisition has provided information that identifies the specific United States person to
37 another department or agency of the Federal Government;

38 "(C) the department or agency of the Federal Government conducting the
39 acquisition determines that the specific United States person has been the subject of

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1 ongoing interest or repeated investigation by a department or agency of the Federal
2 Government; and

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

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

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

9 “(A) the congressional intelligence committees;

10 “(B) the Committees on the Judiciary of the House of Representatives and the
11 Senate; and

12 “(C) the Foreign Intelligence Surveillance Court.

13 “(g) Certification.—

14 “(1) IN GENERAL.—

15 “(A) REQUIREMENT.—Subject to subparagraph (B), if the Attorney General and the
16 Director of National Intelligence seek to authorize an acquisition under this section, the
17 Attorney General and the Director of National Intelligence shall provide, under oath, a
18 written certification, as described in this subsection.

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

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

28 “(A) attest that—

29 “(i) there are reasonable procedures in place for determining that the
30 acquisition authorized under subsection (a)—

31 “(I) is targeted at persons reasonably believed to be located outside the
32 United States and such procedures have been submitted to the Foreign
33 Intelligence Surveillance Court; and

34 “(II) does not result in the intentional acquisition of any communication
35 as to which the sender and all intended recipients are known at the time of
36 the acquisition to be located in the United States, and such procedures have
37 been submitted to the Foreign Intelligence Surveillance Court;

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

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

3 “(I) meet the definition of minimization procedures under section 101(h)
4 or section 301(4) in accordance with subsection (e); and

5 “(II) have been submitted to the Foreign Intelligence Surveillance Court;

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

9 ** I “(v) a significant purpose of the acquisition is to obtain foreign
10 intelligence information;

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

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

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

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

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

18 “(C) include—

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

21 “(ii) if the acquisition has begun or will begin in less than 30 days from the
22 submission of the written certification to the court—

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

24 “(II) a description of why implementation was required in less than 30
25 days from the submission of the written certification to the court; and

26 “(III) if the acquisition is authorized under paragraph (1)(B), the basis for
27 the determination that an emergency situation exists, immediate action by the
28 government is required, and time does not permit the completion of judicial
29 review prior to the initiation of the acquisition.

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

33 “(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a
34 certification made under this subsection, and any supporting affidavit, under seal to the
35 Foreign Intelligence Surveillance Court before the initiation of an acquisition under this
36 section, except in accordance with paragraph (1)(B). The Attorney General shall maintain
37 such certification under security measures adopted by the Chief Justice of the United States
38 and the Attorney General, in consultation with the Director of National Intelligence.

39 “(5) REVIEW.—A certification submitted pursuant to this subsection shall be subject to

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1 judicial review pursuant to subsection (i).

2 ~~“(h) Directives and Judicial Review of Directives.—~~

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“(g)

3 ~~“(1) AUTHORITY.—Pursuant to an order issued in accordance with subsection (i)(3) or a~~
4 ~~determination under subsection (g)(1)(B), the Attorney General and the Director of National~~
5 ~~Intelligence may direct, in writing, an electronic communication service provider to—~~

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

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

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

17 ~~“(3) RELEASE FROM LIABILITY.—Notwithstanding any other provision of law, no cause of~~
18 ~~action shall lie in any court against any electronic communication service provider for~~
19 ~~providing any information, facilities, or assistance in accordance with a directive issued~~
20 ~~pursuant to paragraph (1).~~

21 ~~“(4) CHALLENGING OF DIRECTIVES.—~~

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

26 ~~“(B) ASSIGNMENT.—The presiding judge of the Court shall assign the petition filed~~
27 ~~under subparagraph (A) to 1 of the judges serving in the pool established by section~~
28 ~~103(e)(1) not later than 24 hours after the filing of the petition.~~

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

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

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1 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition filed
2 under subparagraph (A) requires plenary review, the judge shall affirm, modify, or set
3 aside the directive that is the subject of that petition not later than 30 days after being
4 assigned the petition. If the judge does not set aside the directive, the judge shall
5 immediately affirm or modify the directive and order the recipient to comply with the
6 directive in its entirety or as modified. The judge shall provide a written statement for
7 the records of the reasons for a determination under this subparagraph.

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

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

12 “(5) ENFORCEMENT OF DIRECTIVES.—

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

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

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

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

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

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

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32 “(6) APPEAL.—

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

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39 “(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic
40 communication service provider receiving a directive issued pursuant to paragraph (1)
41 may file a petition for a writ of certiorari for review of the decision of the Court of
42 Review issued under subparagraph (A). The record for such review shall be

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1 transmitted under seal to the Supreme Court of the United States, which shall have
2 jurisdiction to review such decision.

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3 "(i) Judicial Review of Certifications and Procedures.—

4 "(1) IN GENERAL.—

5 "(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign
6 Intelligence Surveillance Court shall have jurisdiction to review any certification
7 submitted pursuant to subsection (g) and the targeting and minimization procedures
8 required by subsections (d) and (e).

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The Attorney General shall submit to the
Court any such

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procedures.

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(a).

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9 "(B) TIME PERIOD FOR REVIEW.—The Court shall review the certification submitted
10 pursuant to subsection (g) and the targeting and minimization procedures required by
11 subsections (d) and (e) and approve or deny an order under this subsection not later
12 than 30 days after the date on which a certification is submitted.

13 "(2) REVIEW.—The Court shall review the following:

14 "(A) CERTIFICATIONS.—A certification submitted pursuant to subsection (g) to
15 determine whether the certification contains all the required elements.

16 "(B) TARGETING PROCEDURES.—The targeting procedures required by subsection
17 (d) to assess whether the procedures are reasonably designed to ensure that the
18 acquisition authorized under subsection (a) is limited to the targeting of persons
19 reasonably believed to be located outside the United States and does not result in the
20 intentional acquisition of any communication as to which the sender and all intended
21 recipients are known at the time of the acquisition to be located in the United States.

22 "(C) MINIMIZATION PROCEDURES.—The minimization procedures required by
23 subsection (e) to assess whether such procedures meet the definition of minimization
24 procedures under section 101(h) or section 301(4) in accordance with subsection (e).

25 "(3) ORDERS.—

26 "(A) APPROVAL.—If the Court finds that a certification submitted pursuant to
27 subsection (g) contains all of the required elements and that the procedures required by
28 subsections (d) and (e) are consistent with the requirements of those subsections and
29 with the fourth amendment to the Constitution of the United States, the Court shall
30 enter an order approving the certification and the use of the procedures for the
31 acquisition.

32 "(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification submitted
33 pursuant to subsection (g) does not contain all of the required elements or that the
34 procedures required by subsections (d) and (e) are not consistent with the requirements
35 of those subsections or the fourth amendment to the Constitution of the United
36 States—

37 "(i) in the case of a certification submitted in accordance with subsection
38 (g)(1)(A), the Court shall deny the order, identify any deficiency in the
39 certification or procedures, and provide the Government with an opportunity to
40 correct such deficiency; and

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41 "(ii) in the case of a certification submitted in accordance with subsection

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1 | (g)(1)(B), the Court shall issue an order directing the Government to, at the
2 | Government's election and to the extent required by the Court's order—

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

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5 | (II) cease the acquisition authorized under subsection (g)(1)(B),

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6 | (C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this
7 | subsection, the Court shall provide, simultaneously with the orders, for the record a
8 | written statement of its reasons.

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9 | (4) APPEAL.—

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

15 | (B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any
16 | acquisition affected by an order under paragraph (3)(B)(i) may continue—

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17 | (i) during the pendency of any rehearing of the order by the Court en banc;
18 | and

19 | (ii) if the Government appeals an order under this section, subject to
20 | subparagraph (C), until the Court of Review enters an order under subparagraph
21 | (A),

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22 | (C) IMPLEMENTATION OF EMERGENCY AUTHORITY PENDING APPEAL.—Not later than
23 | 60 days after the filing of an appeal of an order issued under paragraph (3)(B)(i),
24 | directing the correction of a deficiency, the Court of Review shall determine, and enter
25 | a corresponding order regarding whether all or any part of the correction order, as
26 | issued or modified, shall be implemented during the pendency of the appeal. The
27 | Government shall conduct an acquisition affected by such order issued under
28 | paragraph (3)(B)(i) in accordance with an order issued under this subparagraph or
29 | shall cease such acquisition.

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30 | (D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for
31 | a writ of certiorari for review of a decision of the Court of Review issued under
32 | subparagraph (A). The record for such review shall be transmitted under seal to the
33 | Supreme Court of the United States, which shall have jurisdiction to review such
34 | decision.

35 | (5) SCHEDULE.—

36 | (A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.—If the Attorney General and
37 | the Director of National Intelligence seek to replace an authorization issued pursuant to
38 | section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section
39 | 2 of the Protect America Act of 2007 (Public Law 110-55), the Attorney General and
40 | the Director of National Intelligence shall, to the extent practicable, submit to the
41 | Court a certification under subsection (g) and the procedures required by subsections

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(d), (e), and (f) at least 30 days before the expiration of such authorization.

“(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General and the Director of National Intelligence seek to replace an authorization issued pursuant to this section, the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Court a certification under subsection (g) and the procedures required by subsections (d), (e), and (f) at least 30 days prior to the expiration of such authorization.

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

“(i) certifications under subsection (g) for reauthorization of authorizations in effect;

“(ii) the procedures required by subsections (d), (e), and (f); and

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

“(D) TIMING OF REVIEWS.—The Attorney General and the Director of National Intelligence shall, to the extent practicable, schedule the completion of the annual review under subsection (l)(3) and a semiannual assessment under subsection (l)(1) so that they may be submitted to the Court at the time of the consolidated submission under subparagraph (C).

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

“(6) COMPLIANCE.—At or before the end of the period of time for which a certification submitted pursuant to subsection (g) and procedures required by subsection (d) and (e) are approved by an order under this section, the Foreign Intelligence Surveillance Court may assess compliance with the minimization procedures required by subsection (e) by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

“(j) Judicial Proceedings.—

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

“(2) TIME LIMITS.—A time limit for a judicial decision in this section shall apply unless the Court, the Court of Review, or any judge of either the Court or the Court of Review, by order for reasons stated, extends that time for good cause.

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

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

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

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

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8 “(1) Assessments and Reviews.—

9 “(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the
10 Attorney General and Director of National Intelligence shall assess compliance with the
11 procedures and guidelines required by subsections (d), (e), and (f) and shall submit each
12 assessment to—

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13 “(A) the congressional intelligence committees;

14 “(B) the Committees on the Judiciary of the House of Representatives and the
15 Senate; and

16 “(C) the Foreign Intelligence Surveillance Court;

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17 “(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of
18 each element of the intelligence community authorized to acquire foreign intelligence
19 information under subsection (a), with respect to such Department or such element—

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20 “(A) are authorized to review compliance with the procedures and guidelines
21 required by subsections (d), (e), and (f);

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

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27 “(C) with respect to acquisitions authorized under subsection (a), shall review the
28 targets that were later determined to be located in the United States and, to the extent
29 possible, whether their communications were reviewed; and

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30 “(D) shall provide each such review to—

31 “(i) the Attorney General;

32 “(ii) the Director of National Intelligence;

33 “(iii) the congressional intelligence committees;

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34 “(iv) the Committees on the Judiciary of the House of Representatives and the
35 Senate; and

36 “(v) the Foreign Intelligence Surveillance Court.

37 “(3) ANNUAL REVIEW.—

38 “(A) REQUIREMENT TO CONDUCT.—The head of each element of the intelligence
39 community conducting an acquisition authorized under subsection (a) shall conduct an

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