

Farris, Bette

From: ?

(b)(3) [redacted]

Sent: Saturday, December 15, 2007 11:13 AM

To: Bradbury, Steve

Subject: a chance to talk?

[redacted] (b)(6)

If you can spare a minute to call me on my cell I'd be grateful. [ ]  
thanks

[ ] Cell no i have for you is out of date.

[redacted]

[redacted]

(b)(3), (b)(6)

] [redacted]

[redacted]

Berhanu, Tsedey

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**From:** Livingston, J (Intelligence) ] 56  
**Sent:** Wednesday, January 16, 2008 2:20 PM  
**To:** Demers, John; Eisenberg, John  
**Cc:** Rice, K (Intelligence)  
**Subject:** FW: Senator Feinstein's immunity amendment (SA 3858)  
**Attachments:** Revised immunity provision.doc

FYI. I told him that Senator Bond couldn't support his version because it still allows a court to second-guess the good faith determination made by the SSCI.

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**From:** Davidson, M (Intelligence)  
**Sent:** Wednesday, January 16, 2008 11:27 AM  
**To:** Livingston, J (Intelligence); Rice, K (Intelligence)  
**Cc:** Healey, C (Intelligence); Starzak, Alisha (Intelligence)  
**Subject:** Senator Feinstein's immunity amendment (SA 3858)

Jack and Kathleen:

I don't know whether you've had a chance to review Senator Feinstein's immunity amendment (SA 3858), but it's possible that it might gain traction.

I've described to David concerns about some of the procedures in the amendment (transfer to the FISC, en banc review there, possible involvement of the plaintiffs in proceedings that would involve classified information). However, the core idea that there ought to be a statutory good faith test that is applied by a court could gain adherents. Numbers of members who support immunity might nonetheless conclude that Feinstein's idea is aligned with the manner in which the Congress has legislated on immunity in other circumstances (e.g., good Samaritan statutes).

We've drafted an alternative way to get at the point that an immunity statute should have, in addition to the AG's certification, a provider submission that it acted in the reasonable belief that the directive was lawful, and a court determination, on the basis of the AG's certification and the provider's declaration, that the provider acted in good faith. The bottom line is that the statute should provide for immunity. The question is how to do it.

Let me know what you think and the suggestions that you might have, and then I'd like to invite Carl's observations, both technical and policy, so that we can advise Senator Rockefeller, in the next couple of days, what your thoughts and DOJ's thoughts might be.

Mike

Sec. 202. Limitations on civil actions for electronic communication service providers.

(a) Limitations

(1) In general. — Notwithstanding any other provision of law, a covered civil action shall not lie or be maintained in a Federal or State court, and shall be promptly dismissed if —

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(A) (i) the Attorney General certifies to the court that any assistance by the relevant electronic communication provider was —

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(I) in connection with an intelligence activity involving communications that was

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(aa) authorized by the President during the period between September 11, 2001, and ending on January 17, 2007; and

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(bb) designed to detect or prevent a terrorist attack or activities in preparation for a terrorist attack against the United States; and

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(II) described in a written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication provider indicating that the activity was—

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(aa) authorized by the President; and

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(bb) determined to be lawful;

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(ii) the electronic communications service provider submits a declaration to the Court under section 1746 of Title 28 of the U.S. Code that it provided the assistance

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(I) pursuant to the written request or directive referenced in paragraph (1)(A)(i)(II); and

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(II) with the reasonable belief that the written request or directive under paragraph (1)(A)(i)(II) was lawful; and

(iii) the court determines, on the basis of the certification provided in subparagraph (i) and the declaration provided in subparagraph (ii), that the provider undertook the assistance in good faith; or

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(B) The Attorney General certifies to the court that the electronic communication provider did not provide any of the alleged assistance.

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(2) Review — A certification made pursuant to paragraph (1) shall be subject to review by a court for abuse of discretion.

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(b) Review of Certifications. - If the Attorney General files a declaration under section 1746 of title 28 that disclosure of the certification and declaration pursuant to subsection 102(a) would harm the national security of the United States, the court shall

(1) review such certification and declaration in camera and ex parte, and

(2) limit any public disclosure concerning any such certification or declaration, including any public order following such an ex parte review, to a statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the dismissal.

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(c) Nondelegation. - The authority and duties of the Attorney General under this section shall be performed by the Attorney General (or Acting Attorney General) or a designee in a position not lower than the Deputy Attorney General.

(d) Civil Actions in State Court. - Any covered civil action that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28, United States Code.

(e) Rule of Construction - Nothing in this Act may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

(f) Effective Date and Application. - This title shall apply to any and all covered civil actions pending on or after the date of enactment of this Act.

**Berhanu, Tsedey**

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**From:** Livingston, J (Intelligence) [ - - - - - ] **DL6**  
**Sent:** Wednesday, January 16, 2008 6:00 PM  
**To:** Demers, John; Eisenberg, John  
**Subject:** Will the world end if...  
**Attachments:** ManagersAmendmentTweaks.doc

we add this limited certification language to Section 705. It may help undercut complaints by Senator Wyden's staff. No rush on this. I'm out tomorrow, but I'm going to meet with Mike early Friday to start working through our final tweaks to the managers' amendment. Thanks.

EAS07D87

Page 14, line 14, strike "(2)" and insert "(b)"

Page 22, after line 23 insert the following new paragraph as follows: "(4) a certification made by the Attorney General or an official specified in section 104(a)(6) that the certifying official deems the information sought to be foreign intelligence information and a significant purpose of the acquisition is to obtain foreign intelligence information;"

Page 22, line 24, strike "(4)" and insert "(5)"

Page 23, line 5, strike "(5)" and insert "(6)"

Page 24, after line 16, insert "(D) REVIEW OF CERTIFICATION.—If the judge determines that an application required by subsection (b) does not contain all of the required elements, or that the certification is clearly erroneous on the basis of the information furnished under subsection (b)(1), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e)."

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**Berhanu, Tsedey**

**From:** Starzak, Alissa (Intelligence) J 66  
**Sent:** Thursday, January 17, 2008 6:55 PM b 2  
**To:** Eisenberg, John; Demers, John; Livingston, J  
(Intelligence); Rice, K (Intelligence) b 6  
**Cc:** Healey, C (Intelligence); Davidson, M. (Intelligence)  
**Attachments:** EAS07D88\_XML redline changes.doc

Hi all -

Attached is a draft of the managers' amendment in substitute form with some proposed Rockefeller edits in redline. (Some of the edits are just corrections that we missed the last time around.) Although we haven't had the opportunity to speak with Jack or Kathleen about any of these changes yet, we thought it made a lot of sense to send them out to everyone at once to give everyone as much time as possible to review. If everyone is available, it might make sense to meet on Tuesday morning as well, to have some last discussions in person.

A few comments and questions about this draft:

- We added language on the section 703 authorization (p. 4 of this redline) to try to be upfront as possible about what this provision actually does. Given how clear we are in section 704 that we are talking about collection inside the US, it seemed to make sense to do the same thing here.
- Although we have a reference to stored electronic "data" in section 704 (p. 11), there is no similar mention in 703. Does that difference cause any problems?
- Should the agency assessment be prepared on a particular timetable? I added in a blank on page 10 line 5 with a bracketed question mark on this one.
- To address some of our colleagues' concerns that there could be collection under 705 on an employee of a foreign power that doesn't involve foreign intelligence, we added in a certification by the AG that the information is FI and a significant purpose of the acquisition is to obtain FI. Review on this certification is limited to whether the certification contains all required elements.

Given the limited review on this certification, this provision also might present an opportunity to address one of Mike's longstanding concerns. He has noted in the past that courts will want to know that 705 acquisitions are being conducted in accordance with EO 12333, even if we expressly give them have no ability to review that determination. Because this FI piece is just a certification, which involves no substantive court review, this topic could potentially be added here without granting the court any review over the issue. In other words, on p. 17 line 40, we could potentially add "(C) the acquisition will be conducted under guidelines approved by the Attorney General pursuant to Executive Order 12333 or any successor order."

- We added in the proposed section of 2511 from Senator Feinstein's exclusivity amendment that notes that the certification "shall identify the specific statutory provision." (p. 23, lines 8-12) Although there will obviously be more discussion about exclusivity, it seemed like this one might be able to stand on its own. We would be interested to hear your thoughts on this.
- It's probably worth doing a careful scrub of the transition procedures in Title III to make sure that they

fit with the changes in the managers' amendment.

- We're also interested to hear thoughts on a number of other proposals that seek to address various Senators' concerns:
  - Given the amount of judiciary committee concern on the stay pending appeal provision, we had proposed a compromise position that would strike lines 14-15 on p. 9 and insert the following:  
“(ii) if the Government appeals an order under this section, until the Court of Review enters an order under subsection (C).  
(C) IMPLEMENTATION PENDING APPEAL.—No later than 30 days after an appeal to it of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.”
  - Senator Feingold had proposed a bulk collection amendment in judiciary that had some operational problems. To address some of those concerns about bulk collection, however, would it be possible to change the targeting procedures requirement (p. 4 lines 25-29) to read:  
“The Attorney General, in consultation with the DNI, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States, and that at least one party to a communication acquired is a specific individual target reasonably believed to be outside the United States.”
  - Senator Kennedy has proposed a 2.5 related amendment, part of which includes the destruction of any collection obtained when all parties to the communication are known to be located in the United States. This idea seems to be generally consistent with NSA's practices in other kinds of collection, and requiring destruction of communications collected when targets were later determined to be in the US might help address some of the judiciary committee's concern about ensuring that there are consequences when collection is not conducted appropriately. What are your thoughts on adding this type of clause? To give you a sense of the language (and without considering exactly where in the bill it would go), the Kennedy provision reads as follows:  
“Persons in the United States. — The minimization procedures required by this subsection shall require the destruction, upon recognition, of any communication as to which the sender and all intended recipients are known to be located in the United States, a person has a reasonable expectation of privacy, and a warrant would be required for law enforcement purposes, unless the Attorney General determines that the communication indicates a threat of death or serious bodily harm to any person.”

We look forward to your comments.

Thanks –  
Alissa



1 Purpose: To provide a complete substitute.

2

3

4 S. 2248

5

6 To amend the Foreign Intelligence Surveillance Act of  
7 1978, to modernize and streamline the provisions of that  
8 Act, and for other purposes.

9

10 Referred to the Committee on \_\_\_\_\_ and ordered to  
11 be printed

12 Ordered to lie on the table and to be printed

13 AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED  
14 TO BE PROPOSED BY MR. ROCKEFELLER (for himself and  
15 Mr. BOND)

16 Viz:

17 Strike all after the enacting clause and insert the following:

18 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

22 Sec. 1. Short title; table of contents.

23 TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

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

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

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

29 Sec. 104. Applications for court orders.

30 Sec. 105. Issuance of an order.

31 Sec. 106. Use of information.

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- 1 Sec.107.Amendments for physical searches.
- 2 Sec.108.Amendments for emergency pen registers and trap and trace devices.
- 3 Sec.109.Foreign Intelligence Surveillance Court.
- 4 Sec.110.Technical and conforming amendments.

5 **TITLE II—PROTECTIONS FOR ELECTRONIC**  
6 **COMMUNICATION SERVICE PROVIDERS**

- 7 Sec.201.Definitions.
- 8 Sec.202.Limitations on civil actions for electronic communication service providers.
- 9 Sec.203.Procedures for implementing statutory defenses under the Foreign Intelligence
- 10 Surveillance Act of 1978.
- 11 Sec.204.Preemption of State investigations.
- 12 Sec.205.Technical amendments.

13 **TITLE III—OTHER PROVISIONS**

- 14 Sec.301.Severability.
- 15 Sec.302.Effective date; repeal; transition procedures.

16 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

17 **SEC. 101. ADDITIONAL PROCEDURES REGARDING**  
18 **CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

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

- 21 (1) by striking title VII; and
- 22 (2) by adding after title VI the following new title:

23 **“TITLE VII—ADDITIONAL PROCEDURES**  
24 **REGARDING CERTAIN PERSONS OUTSIDE THE**  
25 **UNITED STATES**

26 **“SEC. 701. LIMITATION ON DEFINITION OF**  
27 **ELECTRONIC SURVEILLANCE.**

28 “Nothing in the definition of electronic surveillance under section 101(f) shall be  
29 construed to encompass surveillance that is targeted in accordance with this title at a  
30 person reasonably believed to be located outside the United States.

31 **“SEC. 702. DEFINITIONS.**

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

6 “(b) Additional Definitions.—

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

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

10 “(B) the Permanent Select Committee on Intelligence of the House of  
11 Representatives.

12 “(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms ‘Foreign  
13 Intelligence Surveillance Court’ and ‘Court’ mean the court established by section  
14 103(a).

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

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

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

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

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

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

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

31 “(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ‘element of the  
32 intelligence community’ means an element of the intelligence community specified  
33 in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C.  
34 401a(4)).

35 “SEC. 703. PROCEDURES FOR TARGETING  
36 CERTAIN PERSONS OUTSIDE THE UNITED STATES  
37 OTHER THAN UNITED STATES PERSONS.

38 “(a) Authorization.—Notwithstanding any other provision of law, the Attorney

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1 General and the Director of National Intelligence may authorize jointly, for periods of up  
2 to 1 year, the targeting of persons reasonably believed to be located outside the United  
3 States to acquire foreign intelligence information when the acquisition is conducted  
4 within the United States with the assistance of an electronic communication service  
5 provider.

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

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

9 “(2) may not intentionally target a person reasonably believed to be located  
10 outside the United States if the purpose of such acquisition is to target a particular,  
11 known person reasonably believed to be in the United States, except in accordance  
12 with title I or title III;

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13 “(3) may not intentionally target a United States person reasonably believed to be  
14 located outside the United States, except in accordance with sections 704 or 705;  
15 and

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

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

20 “(1) a certification made by the Attorney General and the Director of National  
21 Intelligence pursuant to subsection (f); and

22 “(2) the targeting and minimization procedures required pursuant to subsections  
23 (d) and (e).

24 “(d) Targeting Procedures.—

25 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the  
26 Director of National Intelligence, shall adopt targeting procedures that are  
27 reasonably designed to ensure that any acquisition authorized under subsection (a) is  
28 limited to targeting persons reasonably believed to be located outside the United  
29 States.

30 “(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be  
31 subject to judicial review pursuant to subsection (h).

32 “(e) Minimization Procedures.—

33 “(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the  
34 Director of National Intelligence, shall adopt, consistent with the requirements of  
35 section 101(h) or section 301(4), minimization procedures for acquisitions  
36 authorized under subsection (a).

37 “(2) JUDICIAL REVIEW.—The minimization procedures required by this subsection  
38 shall be subject to judicial review pursuant to subsection (h).

39 “(f) Certification.—

40 “(1) IN GENERAL.—

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1           “(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of  
2 an acquisition authorized under subsection (a), the Attorney General and the  
3 Director of National Intelligence shall provide, under oath, a written  
4 certification, as described in this subsection.

5           “(B) EXCEPTION.—If the Attorney General and the Director of National  
6 Intelligence determine that immediate action by the Government is required  
7 and time does not permit the preparation of a certification under this subsection  
8 prior to the initiation of an acquisition, the Attorney General and the Director of  
9 National Intelligence shall prepare such certification, including such  
10 determination, as soon as possible but in no event more than 168 hours after  
11 such determination is made.

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

13           “(A) attest that—

14           “(i) there are reasonable procedures in place for determining that the  
15 acquisition authorized under subsection (a) is targeted at persons  
16 reasonably believed to be located outside the United States and that such  
17 procedures have been approved by, or will be submitted in no more than  
18 five days for approval by, the Foreign Intelligence Surveillance Court  
19 pursuant to subsection (h);

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20           “(ii) the procedures referred to in clause (i) are consistent with the  
21 requirements of the fourth amendment to the Constitution of the United  
22 States and do not permit the intentional targeting of any person who is  
23 known at the time of acquisition to be located in the United States;

24           “(iii) a significant purpose of the acquisition is to obtain foreign  
25 intelligence information;

26           “(iv) the minimization procedures to be used with respect to such  
27 acquisition—

28           “(I) meet the definition of minimization procedures under section  
29 101(h) or section 301(4); and

30           “(II) have been approved by, or will be submitted in no more than  
31 five days for approval by, the Foreign Intelligence Surveillance Court  
32 pursuant to subsection (h);

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33           “(v) the acquisition involves obtaining the foreign intelligence  
34 information from or with the assistance of an electronic communication  
35 service provider; and

36           “(vi) the acquisition does not constitute electronic surveillance, as  
37 limited by section 701; and

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

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

41           or

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1           “(ii) the head of any element of the intelligence community.

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

5           “(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a  
6 certification made under this subsection, and any supporting affidavit, under seal to  
7 the Foreign Intelligence Surveillance Court as soon as possible, but in no event more  
8 than 5 days after such certification is made. Such certification shall be maintained  
9 under security measures adopted by the Chief Justice of the United States and the  
10 Attorney General, in consultation with the Director of National Intelligence.

11           “(5) REVIEW.—The certification required by this subsection shall be subject to  
12 judicial review pursuant to subsection (h).

13           “(g) Directives and judicial review of directives.—

14           “(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a),  
15 the Attorney General and the Director of National Intelligence may direct, in  
16 writing, an electronic communication service provider to—

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

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

26           “(2) COMPENSATION.—The Government shall compensate, at the prevailing rate,  
27 an electronic communication service provider for providing information, facilities,  
28 or assistance pursuant to paragraph (1).

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

33           “(4) CHALLENGING OF DIRECTIVES.—

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

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

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1           “(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or  
2 set aside a directive may grant such petition only if the judge finds that the  
3 directive does not meet the requirements of this section or is otherwise  
4 unlawful. If the judge does not modify or set aside the directive, the judge shall  
5 immediately affirm such directive, and order the recipient to comply with the  
6 directive. The judge shall provide a written statement for the record of the  
7 reasons for a determination under this paragraph.

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

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

12           “(5) ENFORCEMENT OF DIRECTIVES.—

13           “(A) ORDER TO COMPEL.—In the case of a failure to comply with a directive  
14 issued pursuant to paragraph (1), the Attorney General may file a petition for an  
15 order to compel compliance with the directive with the Foreign Intelligence  
16 Surveillance Court, which shall have jurisdiction to review such a petition.

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

20           “(C) STANDARDS FOR REVIEW.—A judge considering a petition shall issue an  
21 order requiring the electronic communication service provider to comply with  
22 the directive if the judge finds that the directive was issued in accordance with  
23 paragraph (1), meets the requirements of this section, and is otherwise lawful.  
24 The judge shall provide a written statement for the record of the reasons for a  
25 determination under this paragraph.

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

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

31           “(6) APPEAL.—

32           “(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic  
33 communication service provider receiving a directive issued pursuant to  
34 paragraph (1) may file a petition with the Foreign Intelligence Surveillance  
35 Court of Review for review of the decision issued pursuant to paragraph (4) or  
36 (5) not later than 7 days after the issuance of such decision. The Court of  
37 Review shall have jurisdiction to consider such a petition and shall provide a  
38 written statement for the record of the reasons for a decision under this  
39 paragraph.

40           “(B) CERTIORARI TO THE SUPREME COURT.—The Government or an  
41 electronic communication service provider receiving a directive issued pursuant  
42 to paragraph (1) may file a petition for a writ of certiorari for review of the

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1 decision of the Court of Review issued under subparagraph (A). The record for  
2 such review shall be transmitted under seal to the Supreme Court of the United  
3 States, which shall have jurisdiction to review such decision.

4 “(h) Judicial Review of certifications and procedures.—

5 “(1) IN GENERAL.—

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

10 “(B) SUBMISSION TO THE COURT.—The Attorney General shall submit to the  
11 Court any such certification or procedure, or amendment thereto, not later than  
12 5 days after making or amending the certification or adopting or amending the  
13 procedures.

14 “(2) CERTIFICATIONS.—The Court shall review a certification provided under  
15 subsection (f) to determine whether the certification contains all the required  
16 elements.

17 “(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures  
18 required by subsection (d) to assess whether the procedures are reasonably designed  
19 to ensure that the acquisition authorized under subsection (a) is limited to the  
20 targeting of persons reasonably believed to be located outside the United States.

21 “(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization  
22 procedures required by subsection (e) to assess whether such procedures meet the  
23 definition of minimization procedures under section 101(h) or section 301(4).

24 “(5) ORDERS.—

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

32 “(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification  
33 required by subsection (f) does not contain all of the required elements, or that  
34 the procedures required by subsections (d) and (e) are not consistent with the  
35 requirements of those subsections or the fourth amendment to the Constitution  
36 of the United States, the Court shall issue an order directing the Government to,  
37 at the Government’s election and to the extent required by the Court’s order—

38 “(i) correct any deficiency identified by the Court’s order not later than  
39 30 days after the date the Court issues the order; or

40 “(ii) cease the acquisition authorized under subsection (a).

41 “(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders

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1. under this subsection, the Court shall provide, simultaneously with the orders,  
2. for the record a written statement of its reasons.

3. “(6) APPEAL.—

4. “(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any  
5. order under this section to the Foreign Intelligence Surveillance Court of  
6. Review, which shall have jurisdiction to review such order. For any decision  
7. affirming, reversing, or modifying an order of the Foreign Intelligence  
8. Surveillance Court, the Court of Review shall provide for the record a written  
9. statement of its reasons.

10. “(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any  
11. acquisitions affected by an order under paragraph (5)(B) may continue—

12. “(i) during the pending of any rehearing of the order by the Court en  
13. banc; and

14. “(ii) during the pendency of any appeal of the order to the Foreign  
15. Intelligence Surveillance Court of Review.

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

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21. “(i) Expedited Judicial Proceedings.—Judicial proceedings under this section shall be  
22. conducted as expeditiously as possible.

23. “(j) Maintenance and Security of Records and Proceedings.—

24. “(1) STANDARDS.—A record of a proceeding under this section, including  
25. petitions filed, orders granted, and statements of reasons for decision, shall be  
26. maintained under security measures adopted by the Chief Justice of the United  
27. States, in consultation with the Attorney General and the Director of National  
28. Intelligence.

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

33. “(3) RETENTION OF RECORDS.—A directive made or an order granted under this  
34. section shall be retained for a period of not less than 10 years from the date on  
35. which such directive or such order is made.

36. “(k) Assessments and Reviews.—

37. “(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months,  
38. the Attorney General and Director of National Intelligence shall assess compliance  
39. with the targeting and minimization procedures required by subsections (e) and (f)  
40. and shall submit each such assessment to—

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