a statute that was silent as to judicial review with a statute that contemplates judicial review that is constitutionally inadequate at best and, in many cases, wholly illusory.[2]

A. The amended gag scheme imposes a prior restraint and is therefore presumptively invalid.

[redacted]

"burden of going to court" rests on the speaker rather than the censor. Although the Act requires that the government, prior to the imposition of a gag, certify the need for a gag according to specified criteria, *see* 18 U.S.C. § 2709(c)(1) (as amended by Act § 116(a)), no court reviews that initial certification to determine if a gag is in fact warranted and, if so, what the scope of the gag should be and how long the gag should endure.[3] Instead, the executive imposes the gag unilaterally,

[redacted]

that, where any of a set of specified government officials certifies that lifting a gag

[redacted]

"may" endanger national security or interfere with diplomatic relations, the reviewing court must take such a certification as *conclusive* absent bad faith. 18 U.S.C. § 3511(b)(2), (b)(3) (as inserted by Act § 115(2)). This near-complete deference is a

[redacted]

see Gov't Ltr., at 5, is tantamount to abandonment of its appeal in that case: the

[redacted]

31 ("The defendants are hereby enjoined from enforcing 18 U.S.C. § 2709(c)

[redacted]

against the plaintiffs with regard to Doe's identity."). The Court should therefore dismiss the appeal in No. 05-4896.

The government's argument that it is entitled to vacatur is foreclosed by *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18 (1994). Here, as in *Bancorp*, the judgment at issue "is not unreviewable, but simply unreviewed by