Purpose: To provide that the procedures for the implementation of certain statutory defenses under the Foreign Intelligence Surveillance Act of 1978 may not be carried out until 90 days after the date the final report on the President’s Surveillance Program is submitted to Congress.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

H. R. 6304

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

Referred to the Committee on ________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by ________

Viz:

1. Beginning on page 88, strike line 23 and all that follows through page 90, line 15, and insert the following:

   “(a) REQUIREMENT FOR CERTIFICATION.—

   “(1) IN GENERAL.—Notwithstanding any other provision of law other than paragraph (2), a civil action may not lie or be maintained in a Federal or State court against any person for providing assist-
ance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the district court of the United States in which such action is pending that—

“(A) any assistance by that person was provided pursuant to an order of the court established under section 103(a) directing such assistance;

“(B) any assistance by that person was provided pursuant to a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code;

“(C) any assistance by that person was provided pursuant to a directive under section 102(a)(4), 105B(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 553), or 702(h) directing such assistance;

“(D) in the case of a covered civil action, the assistance alleged to have been provided by the electronic communication service provider was—

“(i) in connection with an intelligence activity involving communications that was—
“(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

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

“(ii) the subject of a written request or directive, or a series of written requests or directives, from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

“(I) authorized by the President; and

“(II) determined to be lawful; or

“(E) the person did not provide the alleged assistance.

“(2) LIMITATION ON IMPLEMENTATION.—

“(A) IN GENERAL.—The Attorney General may not make a certification for any civil action described in paragraph (1)(D) until after the date described in subparagraph (C).
“(B) Stay of civil actions.—During the period beginning on the date of the enactment of the FISA Amendments Act of 2008 and ending on the date described in subparagraph (C), a civil action described in paragraph (1)(D) shall be stayed by the court in which the civil action is pending.

“(C) Date described.—The date described in this subparagraph is the date that is 90 days after the final report described in section 301(c)(2) of the FISA Amendments Act of 2008 is submitted to the appropriate committees of Congress, as required by such section.”.