

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

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 fol-
- 2 lows through page 90, line 15, and insert the following:
- 3 “(a) REQUIREMENT FOR CERTIFICATION.—
- 4 “(1) IN GENERAL.—Notwithstanding any other
- 5 provision of law other than paragraph (2), a civil ac-
- 6 tion may not lie or be maintained in a Federal or
- 7 State court against any person for providing assist-

1           ance to an element of the intelligence community,  
2           and shall be promptly dismissed, if the Attorney  
3           General certifies to the district court of the United  
4           States in which such action is pending that—

5                   “(A) any assistance by that person was  
6                   provided pursuant to an order of the court es-  
7                   tablished under section 103(a) directing such  
8                   assistance;

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

13                  “(C) any assistance by that person was  
14                  provided pursuant to a directive under section  
15                  102(a)(4), 105B(e), as added by section 2 of  
16                  the Protect America Act of 2007 (Public Law  
17                  110–55; 121 Stat. 553), or 702(h) directing  
18                  such assistance;

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

23                           “(i) in connection with an intelligence  
24                           activity involving communications that  
25                           was—

1                   “(I) authorized by the President  
2                   during the period beginning on Sep-  
3                   tember 11, 2001, and ending on Jan-  
4                   uary 17, 2007; and

5                   “(II) designed to detect or pre-  
6                   vent a terrorist attack, or activities in  
7                   preparation for a terrorist attack,  
8                   against the United States; and

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

16                  “(I) authorized by the President;  
17                  and

18                  “(II) determined to be lawful; or  
19                  “(E) the person did not provide the alleged  
20                  assistance.

21                  “(2) LIMITATION ON IMPLEMENTATION.—

22                  “(A) IN GENERAL.—The Attorney General  
23                  may not make a certification for any civil action  
24                  described in paragraph (1)(D) until after the  
25                  date described in subparagraph (C).

1           “(B) STAY OF CIVIL ACTIONS.—During the  
2           period beginning on the date of the enactment  
3           of the FISA Amendments Act of 2008 and end-  
4           ing on the date described in subparagraph (C),  
5           a civil action described in paragraph (1)(D)  
6           shall be stayed by the court in which the civil  
7           action is pending.

8           “(C) DATE DESCRIBED.—The date de-  
9           scribed in this subparagraph is the date that is  
10          90 days after the final report described in sec-  
11          tion 301(e)(2) of the FISA Amendments Act of  
12          2008 is submitted to the appropriate commit-  
13          tees of Congress, as required by such section.”.