

1 is amended by inserting after the item relating to
2 section 111, the following new item:

“Sec. 112. Statement of exclusive means by which electronic surveillance and
interception of certain communications may be conducted.”.

3 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
4 **ORDERS UNDER THE FOREIGN INTEL-**
5 **LIGENCE SURVEILLANCE ACT OF 1978.**

6 (a) INCLUSION OF CERTAIN ORDERS IN SEMIANNUAL
7 REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of
8 section 601 of the Foreign Intelligence Surveillance Act
9 of 1978 (50 U.S.C. 1871) is amended by striking “(not
10 including orders)” and inserting “, orders,”.

11 (b) REPORTS BY ATTORNEY GENERAL ON CERTAIN
12 OTHER ORDERS.—Such section 601 is further amended
13 by adding at the end the following:

14 “(c) SUBMISSIONS TO CONGRESS.—The Attorney
15 General shall submit to the committees of Congress re-
16 ferred to in subsection (a)—

17 “(1) a copy of any decision, order, or opinion
18 issued by the Foreign Intelligence Surveillance Court
19 or the Foreign Intelligence Surveillance Court of Re-
20 view that includes significant construction or inter-
21 pretation of any provision of this Act, and any
22 pleadings, applications, or memoranda of law associ-
23 ated with such decision, order, or opinion, not later

1 than 45 days after such decision, order, or opinion
2 is issued; and

3 “(2) a copy of any such decision, order, or opin-
4 ion, and any pleadings, applications, or memoranda
5 of law associated with such decision, order, or opin-
6 ion, that was issued during the 5-year period ending
7 on the date of the enactment of the FISA Amend-
8 ments Act of 2008 and not previously submitted in
9 a report under subsection (a).

10 “(d) PROTECTION OF NATIONAL SECURITY.—The
11 Attorney General, in consultation with the Director of Na-
12 tional Intelligence, may authorize redactions of materials
13 described in subsection (c) that are provided to the com-
14 mittees of Congress referred to in subsection (a), if such
15 redactions are necessary to protect the national security
16 of the United States and are limited to sensitive sources
17 and methods information or the identities of targets.”.

18 (c) DEFINITIONS.—Such section 601, as amended by
19 subsections (a) and (b), is further amended by adding at
20 the end the following:

21 “(e) DEFINITIONS.—In this section:

22 “(1) FOREIGN INTELLIGENCE SURVEILLANCE
23 COURT.—The term ‘Foreign Intelligence Surveillance
24 Court’ means the court established by section
25 103(a).

1 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
2 COURT OF REVIEW.—The term ‘Foreign Intelligence
3 Surveillance Court of Review’ means the court estab-
4 lished by section 103(b).”.

5 **SEC. 104. APPLICATIONS FOR COURT ORDERS.**

6 Section 104 of the Foreign Intelligence Surveillance
7 Act of 1978 (50 U.S.C. 1804) is amended—

8 (1) in subsection (a)—

9 (A) by striking paragraphs (2) and (11);

10 (B) by redesignating paragraphs (3)
11 through (10) as paragraphs (2) through (9), re-
12 spectively;

13 (C) in paragraph (5), as redesignated by
14 subparagraph (B) of this paragraph, by striking
15 “detailed”;

16 (D) in paragraph (6), as redesignated by
17 subparagraph (B) of this paragraph, in the
18 matter preceding subparagraph (A)—

19 (i) by striking “Affairs or” and insert-
20 ing “Affairs,”; and

21 (ii) by striking “Senate—” and insert-
22 ing “Senate, or the Deputy Director of the
23 Federal Bureau of Investigation, if des-
24 ignated by the President as a certifying of-
25 ficial—”;

1 (E) in paragraph (7), as redesignated by
2 subparagraph (B) of this paragraph, by striking
3 “statement of” and inserting “summary state-
4 ment of”;

5 (F) in paragraph (8), as redesignated by
6 subparagraph (B) of this paragraph, by adding
7 “and” at the end; and

8 (G) in paragraph (9), as redesignated by
9 subparagraph (B) of this paragraph, by striking
10 “; and” and inserting a period;

11 (2) by striking subsection (b);

12 (3) by redesignating subsections (c) through (e)
13 as subsections (b) through (d), respectively; and

14 (4) in paragraph (1)(A) of subsection (d), as re-
15 designated by paragraph (3) of this subsection, by
16 striking “or the Director of National Intelligence”
17 and inserting “the Director of National Intelligence,
18 or the Director of the Central Intelligence Agency”.

19 **SEC. 105. ISSUANCE OF AN ORDER.**

20 Section 105 of the Foreign Intelligence Surveillance
21 Act of 1978 (50 U.S.C. 1805) is amended—

22 (1) in subsection (a)—

23 (A) by striking paragraph (1); and

1 (B) by redesignating paragraphs (2)
2 through (5) as paragraphs (1) through (4), re-
3 spectively;
4 (2) in subsection (b), by striking “(a)(3)” and
5 inserting “(a)(2)”;
6 (3) in subsection (c)(1)—
7 (A) in subparagraph (D), by adding “and”
8 at the end;
9 (B) in subparagraph (E), by striking “;
10 and” and inserting a period; and
11 (C) by striking subparagraph (F);
12 (4) by striking subsection (d);
13 (5) by redesignating subsections (e) through (i)
14 as subsections (d) through (h), respectively;
15 (6) by amending subsection (e), as redesignated
16 by paragraph (5) of this section, to read as follows:
17 “(e)(1) Notwithstanding any other provision of this
18 title, the Attorney General may authorize the emergency
19 employment of electronic surveillance if the Attorney Gen-
20 eral—
21 “(A) reasonably determines that an emergency
22 situation exists with respect to the employment of
23 electronic surveillance to obtain foreign intelligence
24 information before an order authorizing such surveil-
25 lance can with due diligence be obtained;

1 “(B) reasonably determines that the factual
2 basis for the issuance of an order under this title to
3 approve such electronic surveillance exists;

4 “(C) informs, either personally or through a
5 designee, a judge having jurisdiction under section
6 103 at the time of such authorization that the deci-
7 sion has been made to employ emergency electronic
8 surveillance; and

9 “(D) makes an application in accordance with
10 this title to a judge having jurisdiction under section
11 103 as soon as practicable, but not later than 7 days
12 after the Attorney General authorizes such surveil-
13 lance.

14 “(2) If the Attorney General authorizes the emer-
15 gency employment of electronic surveillance under para-
16 graph (1), the Attorney General shall require that the
17 minimization procedures required by this title for the
18 issuance of a judicial order be followed.

19 “(3) In the absence of a judicial order approving such
20 electronic surveillance, the surveillance shall terminate
21 when the information sought is obtained, when the appli-
22 cation for the order is denied, or after the expiration of
23 7 days from the time of authorization by the Attorney
24 General, whichever is earliest.

1 “(4) A denial of the application made under this sub-
2 section may be reviewed as provided in section 103.

3 “(5) In the event that such application for approval
4 is denied, or in any other case where the electronic surveil-
5 lance is terminated and no order is issued approving the
6 surveillance, no information obtained or evidence derived
7 from such surveillance shall be received in evidence or oth-
8 erwise disclosed in any trial, hearing, or other proceeding
9 in or before any court, grand jury, department, office,
10 agency, regulatory body, legislative committee, or other
11 authority of the United States, a State, or political sub-
12 division thereof, and no information concerning any
13 United States person acquired from such surveillance shall
14 subsequently be used or disclosed in any other manner by
15 Federal officers or employees without the consent of such
16 person, except with the approval of the Attorney General
17 if the information indicates a threat of death or serious
18 bodily harm to any person.

19 “(6) The Attorney General shall assess compliance
20 with the requirements of paragraph (5).”; and

21 (7) by adding at the end the following:

22 “(i) In any case in which the Government makes an
23 application to a judge under this title to conduct electronic
24 surveillance involving communications and the judge
25 grants such application, upon the request of the applicant,

1 the judge shall also authorize the installation and use of
2 pen registers and trap and trace devices, and direct the
3 disclosure of the information set forth in section
4 402(d)(2).”.

5 **SEC. 106. USE OF INFORMATION.**

6 Subsection (i) of section 106 of the Foreign Intel-
7 ligence Surveillance Act of 1978 (8 U.S.C. 1806) is
8 amended by striking “radio communication” and inserting
9 “communication”.

10 **SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.**

11 (a) APPLICATIONS.—Section 303 of the Foreign In-
12 telligence Surveillance Act of 1978 (50 U.S.C. 1823) is
13 amended—

14 (1) in subsection (a)—

15 (A) by striking paragraph (2);

16 (B) by redesignating paragraphs (3)
17 through (9) as paragraphs (2) through (8), re-
18 spectively;

19 (C) in paragraph (2), as redesignated by
20 subparagraph (B) of this paragraph, by striking
21 “detailed”;

22 (D) in paragraph (3)(C), as redesignated
23 by subparagraph (B) of this paragraph, by in-
24 serting “or is about to be” before “owned”; and

1 (E) in paragraph (6), as redesignated by
2 subparagraph (B) of this paragraph, in the
3 matter preceding subparagraph (A)—

4 (i) by striking “Affairs or” and insert-
5 ing “Affairs,”; and

6 (ii) by striking “Senate—” and insert-
7 ing “Senate, or the Deputy Director of the
8 Federal Bureau of Investigation, if des-
9 ignated by the President as a certifying of-
10 ficial—”; and

11 (2) in subsection (d)(1)(A), by striking “or the
12 Director of National Intelligence” and inserting “the
13 Director of National Intelligence, or the Director of
14 the Central Intelligence Agency”.

15 (b) ORDERS.—Section 304 of the Foreign Intel-
16 ligence Surveillance Act of 1978 (50 U.S.C. 1824) is
17 amended—

18 (1) in subsection (a)—

19 (A) by striking paragraph (1);

20 (B) by redesignating paragraphs (2)
21 through (5) as paragraphs (1) through (4), re-
22 spectively; and

23 (C) in paragraph (2)(B), as redesignated
24 by subparagraph (B) of this paragraph, by in-
25 serting “or is about to be” before “owned”; and

1 (2) by amending subsection (e) to read as fol-
2 lows:

3 “(e)(1) Notwithstanding any other provision of this
4 title, the Attorney General may authorize the emergency
5 employment of a physical search if the Attorney General—

6 “(A) reasonably determines that an emergency
7 situation exists with respect to the employment of a
8 physical search to obtain foreign intelligence infor-
9 mation before an order authorizing such physical
10 search can with due diligence be obtained;

11 “(B) reasonably determines that the factual
12 basis for issuance of an order under this title to ap-
13 prove such physical search exists;

14 “(C) informs, either personally or through a
15 designee, a judge of the Foreign Intelligence Surveil-
16 lance Court at the time of such authorization that
17 the decision has been made to employ an emergency
18 physical search; and

19 “(D) makes an application in accordance with
20 this title to a judge of the Foreign Intelligence Sur-
21 veillance Court as soon as practicable, but not more
22 than 7 days after the Attorney General authorizes
23 such physical search.

24 “(2) If the Attorney General authorizes the emer-
25 gency employment of a physical search under paragraph

1 (1), the Attorney General shall require that the minimiza-
2 tion procedures required by this title for the issuance of
3 a judicial order be followed.

4 “(3) In the absence of a judicial order approving such
5 physical search, the physical search shall terminate when
6 the information sought is obtained, when the application
7 for the order is denied, or after the expiration of 7 days
8 from the time of authorization by the Attorney General,
9 whichever is earliest.

10 “(4) A denial of the application made under this sub-
11 section may be reviewed as provided in section 103.

12 “(5)(A) In the event that such application for ap-
13 proval is denied, or in any other case where the physical
14 search is terminated and no order is issued approving the
15 physical search, no information obtained or evidence de-
16 rived from such physical search shall be received in evi-
17 dence or otherwise disclosed in any trial, hearing, or other
18 proceeding in or before any court, grand jury, department,
19 office, agency, regulatory body, legislative committee, or
20 other authority of the United States, a State, or political
21 subdivision thereof, and no information concerning any
22 United States person acquired from such physical search
23 shall subsequently be used or disclosed in any other man-
24 ner by Federal officers or employees without the consent
25 of such person, except with the approval of the Attorney

1 General if the information indicates a threat of death or
2 serious bodily harm to any person.

3 “(B) The Attorney General shall assess compliance
4 with the requirements of subparagraph (A).”.

5 (c) CONFORMING AMENDMENTS.—The Foreign Intel-
6 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
7 is amended—

8 (1) in section 304(a)(4), as redesignated by
9 subsection (b) of this section, by striking
10 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

11 (2) in section 305(k)(2), by striking
12 “303(a)(7)” and inserting “303(a)(6)”.

13 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS**
14 **AND TRAP AND TRACE DEVICES.**

15 Section 403 of the Foreign Intelligence Surveillance
16 Act of 1978 (50 U.S.C. 1843) is amended—

17 (1) in subsection (a)(2), by striking “48 hours”
18 and inserting “7 days”; and

19 (2) in subsection (c)(1)(C), by striking “48
20 hours” and inserting “7 days”.

21 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.**

22 (a) DESIGNATION OF JUDGES.—Subsection (a) of
23 section 103 of the Foreign Intelligence Surveillance Act
24 of 1978 (50 U.S.C. 1803) is amended by inserting “at

1 least” before “seven of the United States judicial cir-
2 cuits”.

3 (b) EN BANC AUTHORITY.—

4 (1) IN GENERAL.—Subsection (a) of section
5 103 of the Foreign Intelligence Surveillance Act of
6 1978, as amended by subsection (a) of this section,
7 is further amended—

8 (A) by inserting “(1)” after “(a)”; and

9 (B) by adding at the end the following new
10 paragraph:

11 “(2)(A) The court established under this subsection
12 may, on its own initiative, or upon the request of the Gov-
13 ernment in any proceeding or a party under section 501(f)
14 or paragraph (4) or (5) of section 702(h), hold a hearing
15 or rehearing, en banc, when ordered by a majority of the
16 judges that constitute such court upon a determination
17 that—

18 “(i) en banc consideration is necessary to se-
19 cure or maintain uniformity of the court’s decisions;

20 or

21 “(ii) the proceeding involves a question of ex-
22 ceptional importance.

23 “(B) Any authority granted by this Act to a judge
24 of the court established under this subsection may be exer-
25 cised by the court en banc. When exercising such author-

1 ity, the court en banc shall comply with any requirements
2 of this Act on the exercise of such authority.

3 “(C) For purposes of this paragraph, the court en
4 banc shall consist of all judges who constitute the court
5 established under this subsection.”.

6 (2) CONFORMING AMENDMENTS.—The Foreign
7 Intelligence Surveillance Act of 1978 is further
8 amended—

9 (A) in subsection (a) of section 103, as
10 amended by this subsection, by inserting “(ex-
11 cept when sitting en banc under paragraph
12 (2))” after “no judge designated under this
13 subsection”; and

14 (B) in section 302(c) (50 U.S.C. 1822(c)),
15 by inserting “(except when sitting en banc)”
16 after “except that no judge”.

17 (c) STAY OR MODIFICATION DURING AN APPEAL.—
18 Section 103 of the Foreign Intelligence Surveillance Act
19 of 1978 (50 U.S.C. 1803) is amended—

20 (1) by redesignating subsection (f) as sub-
21 section (g); and

22 (2) by inserting after subsection (e) the fol-
23 lowing new subsection:

24 “(f)(1) A judge of the court established under sub-
25 section (a), the court established under subsection (b) or

1 a judge of that court, or the Supreme Court of the United
2 States or a justice of that court, may, in accordance with
3 the rules of their respective courts, enter a stay of an order
4 or an order modifying an order of the court established
5 under subsection (a) or the court established under sub-
6 section (b) entered under any title of this Act, while the
7 court established under subsection (a) conducts a rehear-
8 ing, while an appeal is pending to the court established
9 under subsection (b), or while a petition of certiorari is
10 pending in the Supreme Court of the United States, or
11 during the pendency of any review by that court.

12 “(2) The authority described in paragraph (1) shall
13 apply to an order entered under any provision of this
14 Act.”.

15 (d) AUTHORITY OF FOREIGN INTELLIGENCE SUR-
16 VEILLANCE COURT.—Section 103 of the Foreign Intel-
17 ligence Surveillance Act of 1978 (50 U.S.C. 1803), as
18 amended by this Act, is amended by adding at the end
19 the following:

20 “(i) Nothing in this Act shall be construed to reduce
21 or contravene the inherent authority of the court estab-
22 lished by subsection (a) to determine, or enforce, compli-
23 ance with an order or a rule of such court or with a proce-
24 dure approved by such court.”.

1 **SEC. 110. WEAPONS OF MASS DESTRUCTION.**

2 (a) **DEFINITIONS.—**

3 (1) **FOREIGN POWER.**—Subsection (a) of sec-
4 tion 101 of the Foreign Intelligence Surveillance Act
5 of 1978 (50 U.S.C. 1801(a)) is amended—

6 (A) in paragraph (5), by striking “persons;
7 or” and inserting “persons;”;

8 (B) in paragraph (6) by striking the period
9 and inserting “; or”; and

10 (C) by adding at the end the following new
11 paragraph:

12 “(7) an entity not substantially composed of
13 United States persons that is engaged in the inter-
14 national proliferation of weapons of mass destruc-
15 tion.”.

16 (2) **AGENT OF A FOREIGN POWER.**—Subsection
17 (b)(1) of such section 101 is amended—

18 (A) in subparagraph (B), by striking “or”
19 at the end;

20 (B) in subparagraph (C), by striking “or”
21 at the end; and

22 (C) by adding at the end the following new
23 subparagraphs:

24 “(D) engages in the international prolifera-
25 tion of weapons of mass destruction, or activi-
26 ties in preparation therefor; or

1 “(E) engages in the international prolifera-
2 tion of weapons of mass destruction, or activi-
3 ties in preparation therefor for or on behalf of
4 a foreign power; or”.

5 (3) FOREIGN INTELLIGENCE INFORMATION.—
6 Subsection (e)(1)(B) of such section 101 is amended
7 by striking “sabotage or international terrorism”
8 and inserting “sabotage, international terrorism, or
9 the international proliferation of weapons of mass
10 destruction”.

11 (4) WEAPON OF MASS DESTRUCTION.—Such
12 section 101 is amended by adding at the end the fol-
13 lowing new subsection:

14 “(p) ‘Weapon of mass destruction’ means—

15 “(1) any explosive, incendiary, or poison gas de-
16 vice that is designed, intended, or has the capability
17 to cause a mass casualty incident;

18 “(2) any weapon that is designed, intended, or
19 has the capability to cause death or serious bodily
20 injury to a significant number of persons through
21 the release, dissemination, or impact of toxic or poi-
22 sonous chemicals or their precursors;

23 “(3) any weapon involving a biological agent,
24 toxin, or vector (as such terms are defined in section
25 178 of title 18, United States Code) that is de-

1 signed, intended, or has the capability of causing
2 death, illness, or serious bodily injury to a signifi-
3 cant number of persons; or

4 “(4) any weapon that is designed, intended, or
5 has the capability of releasing radiation or radioac-
6 tivity causing death, illness, or serious bodily injury
7 to a significant number of persons.”.

8 (b) USE OF INFORMATION.—

9 (1) IN GENERAL.—Section 106(k)(1)(B) of the
10 Foreign Intelligence Surveillance Act of 1978 (50
11 U.S.C. 1806(k)(1)(B)) is amended by striking “sab-
12 otage or international terrorism” and inserting “sab-
13 otage, international terrorism, or the international
14 proliferation of weapons of mass destruction”.

15 (2) PHYSICAL SEARCHES.—Section
16 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))
17 is amended by striking “sabotage or international
18 terrorism” and inserting “sabotage, international
19 terrorism, or the international proliferation of weap-
20 ons of mass destruction”.

21 (c) TECHNICAL AND CONFORMING AMENDMENT.—
22 Section 301(1) of the Foreign Intelligence Surveillance
23 Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting
24 “weapon of mass destruction,” after “person,”.

1 **TITLE II—PROTECTIONS FOR**
2 **ELECTRONIC COMMUNICA-**
3 **TION SERVICE PROVIDERS**

4 **SEC. 201. PROCEDURES FOR IMPLEMENTING STATUTORY**
5 **DEFENSES UNDER THE FOREIGN INTEL-**
6 **LIGENCE SURVEILLANCE ACT OF 1978.**

7 The Foreign Intelligence Surveillance Act of 1978
8 (50 U.S.C. 1801 et seq.), as amended by section 101, is
9 further amended by adding at the end the following new
10 title:

11 **“TITLE VIII—PROTECTION OF**
12 **PERSONS ASSISTING THE**
13 **GOVERNMENT**

14 **“SEC. 801. DEFINITIONS.**

15 “In this title:

16 “(1) ASSISTANCE.—The term ‘assistance’
17 means the provision of, or the provision of access to,
18 information (including communication contents,
19 communications records, or other information relat-
20 ing to a customer or communication), facilities, or
21 another form of assistance.

22 “(2) CONGRESSIONAL INTELLIGENCE COMMIT-
23 TEES.—The term ‘congressional intelligence commit-
24 tees’ means—

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

3 “(B) the Permanent Select Committee on
4 Intelligence of the House of Representatives.

5 “(3) CONTENTS.—The term ‘contents’ has the
6 meaning given that term in section 101(n).

7 “(4) COVERED CIVIL ACTION.—The term ‘cov-
8 ered civil action’ means a civil action filed in a Fed-
9 eral or State court that—

10 “(A) alleges that an electronic communica-
11 tion service provider furnished assistance to an
12 element of the intelligence community; and

13 “(B) seeks monetary or other relief from
14 the electronic surveillance communication serv-
15 ice provider related to the provision of such as-
16 sistance.

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

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

23 “(B) a provider of electronic communica-
24 tion service, as that term is defined in section
25 2510 of title 18, United States Code;

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

4 “(D) any other communication service pro-
5 vider who has access to wire or electronic com-
6 munications either as such communications are
7 transmitted or as such communications are
8 stored;

9 “(E) a parent, subsidiary, affiliate, suc-
10 cessor, or assignee of an entity described in
11 subparagraph (A), (B), (C), or (D); or

12 “(F) an officer, employee, or agent of an
13 entity described in subparagraph (A), (B), (C),
14 (D), or (E).

15 “(6) INTELLIGENCE COMMUNITY.—The term
16 ‘intelligence community’ has the meaning given the
17 term in section 3(4) of the National Security Act of
18 1947 (50 U.S.C. 401a(4)).

19 “(7) PERSON.—The term ‘person’ means—

20 “(A) an electronic communication service
21 provider; or

22 “(B) a landlord, custodian, or other person
23 who may be authorized or required to furnish
24 assistance pursuant to—

1 “(i) an order of the court established
2 under section 103(a) directing such assist-
3 ance;

4 “(ii) a certification in writing under
5 section 2511(2)(a)(ii)(B) or 2709(b) of
6 title 18, United States Code; or

7 “(iii) a directive under section
8 102(a)(4), 105B(e), as added by section 2
9 of the Protect America Act of 2007 (Public
10 Law 110-55), or 702(h).

11 “(8) STATE.—The term ‘State’ means any
12 State, political subdivision of a State, the Common-
13 wealth of Puerto Rico, the District of Columbia, and
14 any territory or possession of the United States, and
15 includes any officer, public utility commission, or
16 other body authorized to regulate an electronic com-
17 munication service provider.

18 **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**
19 **DEFENSES.**

20 “(a) REQUIREMENT FOR CERTIFICATION.—Notwith-
21 standing any other provision of law, a civil action may not
22 lie or be maintained in a Federal or State court against
23 any person for providing assistance to an element of the
24 intelligence community, and shall be promptly dismissed,

1 if the Attorney General certifies to the district court of
2 the United States that—

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

6 “(2) any assistance by that person was provided
7 pursuant to a certification in writing under section
8 2511(2)(a)(ii)(B) or 2709(b) of title 18, United
9 States Code;

10 “(3) any assistance by that person was provided
11 pursuant to a directive under sections 102(a)(4),
12 105B(e), as added by section 2 of the Protect Amer-
13 ica Act of 2007 (Public Law 110-55), or 702(h) di-
14 recting such assistance;

15 “(4) in the case of a covered civil action, the as-
16 sistance alleged to have been provided by the elec-
17 tronic communication service provider was—

18 “(A) in connection with an intelligence ac-
19 tivity involving communications that was—

20 “(i) authorized by the President dur-
21 ing the period beginning on September 11,
22 2001, and ending on January 17, 2007;
23 and

24 “(ii) designed to detect or prevent a
25 terrorist attack, or activities in preparation

1 for a terrorist attack, against the United
2 States; and

3 “(B) the subject of a written request or di-
4 rective, or a series of such requests or direc-
5 tives, from the Attorney General or the head of
6 an element of the intelligence community (or
7 the deputy of such person) to the electronic
8 communication service provider indicating that
9 the activity was—

10 “(i) authorized by the President; and

11 “(ii) determined to be lawful; or

12 “(5) the person did not provide the alleged as-
13 sistance.

14 “(b) JUDICIAL REVIEW.—

15 “(1) REVIEW OF CERTIFICATIONS.—A certifi-
16 cation made pursuant to subsection (a) shall be
17 given effect unless the court finds that such certifi-
18 cation is not supported by substantial evidence pro-
19 vided to the court pursuant to this section.

20 “(2) SUPPLEMENTAL MATERIALS.—In its re-
21 view of a certification made pursuant to subsection
22 (a), the court may examine the court order, certifi-
23 cation, written request, or directive described in sub-
24 section (a) and any relevant court order, certifi-

1 cation, written request, or directive submitted pursu-
2 ant to subsection (d).

3 “(c) LIMITATIONS ON DISCLOSURE.—If the Attorney
4 General files a declaration under section 1746 of title 28,
5 United States Code, that disclosure of a certification made
6 pursuant to subsection (a) or the supplemental materials
7 provided pursuant to subsection (b) or (d) would harm the
8 national security of the United States, the court shall—

9 “(1) review such certification and the supple-
10 mental materials in camera and ex parte; and

11 “(2) limit any public disclosure concerning such
12 certification and the supplemental materials, includ-
13 ing any public order following such in camera and
14 ex parte review, to a statement as to whether the
15 case is dismissed and a description of the legal
16 standards that govern the order, without disclosing
17 the paragraph of subsection (a) that is the basis for
18 the certification.

19 “(d) ROLE OF THE PARTIES.—Any plaintiff or de-
20 fendant in a civil action may submit any relevant court
21 order, certification, written request, or directive to the dis-
22 trict court referred to in subsection (a) for review and
23 shall be permitted to participate in the briefing or argu-
24 ment of any legal issue in a judicial proceeding conducted
25 pursuant to this section, but only to the extent that such

1 participation does not require the disclosure of classified
2 information to such party. To the extent that classified
3 information is relevant to the proceeding or would be re-
4 vealed in the determination of an issue, the court shall
5 review such information in camera and ex parte, and issue
6 any part of the court's written order that would reveal
7 classified information in camera and ex parte and main-
8 tain such part under seal.

9 “(e) NONDELEGATION.—The authority and duties of
10 the Attorney General under this section shall be performed
11 by the Attorney General or a designee in a position not
12 lower than Deputy Attorney General.

13 “(f) APPEAL.—The courts of appeals shall have juris-
14 diction of appeals from interlocutory orders of the district
15 courts of the United States granting or denying a motion
16 to dismiss or for summary judgment under this section.

17 “(g) REMOVAL.—A civil action against a person for
18 providing assistance to an element of the intelligence com-
19 munity that is brought in a State court shall be deemed
20 to arise under the Constitution and laws of the United
21 States and shall be removable under section 1441 of title
22 28, United States Code.

23 “(h) RELATIONSHIP TO OTHER LAWS.—Nothing in
24 this section may be construed to limit any otherwise avail-