

(A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following:

“(e) Definition.—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”.

(B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended by—

- (i) adding an “(a)” before “Civil Action”,
- (ii) redesignating subsections (a) through (c) as paragraphs (1) through (3), respectively; and
- (iii) adding at the end the following:

“(b) Definition.—For the purpose of this section, the term ‘electronic surveillance’ means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.”.

(C) SECTION 601.—Section

“(C) pen registers under section 402;

“(D) access to records under section 501;

(d) Termination of Authority.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 2013.

(2) CONTINUING APPLICABILITY.—Section 703(g)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 703(g) of that Act (as so amended) for information, facilities, or assistance provided during the period such directive was or is in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section. The use of information acquired by an acquisition conducted under section 703 of that Act (as so amended) shall continue to be governed by the provisions of section 707 of that Act (as so amended).

(as defined in section 101(f), regardless of the limitation of section 701)

provision of access to, information (including communication contents,

communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

(2) CONTENTS.—The term “contents” has the meaning given that term in section 101(n) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(n)).

(3) COVERED CIVIL ACTION.—The term “covered civil action” means a civil action filed in a Federal or State court that—

(A) alleges that an electronic communication service provider furnished assistance to an element of the intelligence community; and

(B) seeks monetary or other relief from the electronic communication service provider related to the provision of such assistance.

(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term “electronic communication service provider” means—

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

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

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

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

(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

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

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

## 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 the Attorney General certifies to the court that—

(A) 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) 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 service provider indicating that the activity was—

(I) authorized by the President; and

(II) determined to be lawful; or

(B) the electronic communication service provider did not provide the alleged assistance.

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

(b) Review of Certifications.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to

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(a) would harm the national security of the United States, the court shall—

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(1) review such certification in camera and ex parte; and

(2) limit any public disclosure concerning such certification, including any public order following such an ex parte review, to a statement that the conditions of

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have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.

(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.—A 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 section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

(f) Effective Date and Application.—This section

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# UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

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certifies to the court 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 sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA Amendments Act of 2008, or 703(h) directing such assistance; or

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

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

“(b) Limitations on Disclosure.—If

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files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a) would harm the national security of the United States, the court shall—

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“(1) review such certification in camera and ex parte; and

“(2) limit any public disclosure concerning such certification, 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 certification.

“(c) Removal.—A civil action against a person for providing assistance to an element of the intelligence community

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“(d) Relationship to Other Laws.—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

“(e)

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## SEC. 204. PREEMPTION OF STATE

## INVESTIGATIONS.

Title VIII of the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.), as added by section 203 of this Act, is amended by adding at the end the following new section:

### “SEC. 803. PREEMPTION.

“(a) In General.—No State shall have authority to—

“(1) conduct an investigation into an electronic communication service provider’s alleged assistance to an element of the intelligence community;

“(2) require through regulation or any other means the disclosure of information about an electronic communication service provider’s alleged assistance to an element of the intelligence community;

“(3) impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or

“(4) commence or maintain a civil action or other proceeding to enforce a requirement that an electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.

“(b) Suits by the United States.—The United States may bring suit to enforce the provisions of this section.

“(c) Jurisdiction.—The district courts of the United States shall have jurisdiction over any civil action brought by the United States to enforce the provisions of this section.

“(d) Application.—This section shall apply to any investigation, action, or proceeding that is pending on or filed after the date of enactment of the FISA Amendments Act of 2008.”.

### SEC. 205.

#### AUTHORIZATIONS AND DIRECTIVES IN EFFECT.—

(A) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DATE OF ENACTMENT.— Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978, any authorization or directive in effect on the date of the enactment of this Act issued pursuant to the Protect America Act of 2007, or any amendment made by that Act, shall remain in effect until the date of expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Protect America Act of 2007 (121 Stat. 552), and the amendment made by that Act, and, except as provided in paragraph (4) of this subsection, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)), as construed in accordance with section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.

1805a)).

(B) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DECEMBER 31, 2013.— Any authorization or directive issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013, shall continue in effect until the date of the expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended, and, except as provided in section 707 of the Foreign Intelligence Surveillance Act of 1978, as so amended, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, to the extent that such section 101(f) is limited by section 701 of the Foreign Intelligence Surveillance Act of 1978, as so amended).

(4)