

AMENDMENT NO.

Calendar No.

Purpose: To provide for the review of certifications by the  
Foreign Intelligence Surveillance Court.

**IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.**

**S. 2402**

To provide for the substitution of the United States in  
certain civil actions.

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 Mrs. FEINSTEIN

Viz:

1 On page 3, between lines 20 and 21, insert the fol-  
2 lowing:

3 (6) FOREIGN INTELLIGENCE SURVEILLANCE  
4 COURT.—The term “Foreign Intelligence Surveil-  
5 lance Court” means the court established under sec-  
6 tion 103(a) of the Foreign Intelligence Surveillance  
7 Act of 1978 (50 U.S.C. 1803(a)).

8 On page 3, line 25, after “law,” insert “and subject  
9 to paragraph (2),”.

1       On page 5, strike lines 4 through 6 and insert the  
2 following:

3           (2) DETERMINATION.—

4           (A) IN GENERAL.—The dismissal of a cov-  
5 ered civil action under paragraph (1) shall pro-  
6 ceed only after a determination by the Foreign  
7 Intelligence Surveillance Court that—

8           (i) the written request or directive  
9 from the Attorney General or the head of  
10 an element of the intelligence community  
11 (or the deputy of such person) to the elec-  
12 tronic communication service provider  
13 under paragraph (1)(A)(ii) complied with  
14 section 2511(2)(a)(ii)(B) of title 18,  
15 United States Code;

16           (ii) the assistance alleged to have been  
17 provided was undertaken by the electronic  
18 communication service provider acting in  
19 good faith and pursuant to an objectively  
20 reasonable belief that the written request  
21 or directive under paragraph (1)(A)(ii) was  
22 permitted by law; or

23           (iii) the electronic communication  
24 service provider did not provide the alleged  
25 assistance.

1           (B) CERTIFICATION.—If the Attorney Gen-  
2           eral submits a certification under paragraph  
3           (1), the court to which that the certification is  
4           submitted shall—

5                   (i) immediately certify the questions  
6                   described in subparagraph (A) to the For-  
7                   eign Intelligence Surveillance Court; and

8                   (ii) stay further proceedings in the  
9                   relevant litigation, pending the determina-  
10                  tion of the Foreign Intelligence Surveil-  
11                  lance Court.