

SUBCHAPTER VII—PROTECTION OF
PERSONS ASSISTING THE GOVERNMENT

§ 1885. Definitions

In this subchapter:

(1) **Assistance**

The term “assistance” means the provision of, or the 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) **Civil action**

The term “civil action” includes a covered civil action.

(3) **Congressional intelligence committees**

The term “congressional intelligence committees” means—

- (A) the Select Committee on Intelligence of the Senate; and
- (B) the Permanent Select Committee on Intelligence of the House of Representatives.

(4) **Contents**

The term “contents” has the meaning given that term in section 1801(n) of this title.

(5) **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.

(6) **Electronic communication service provider**

The term “electronic communication service provider” means—

- (A) a telecommunications carrier, as that term is defined in section 153 of title 47;
- (B) a provider of electronic communication service, as that term is defined in section 2510 of title 18;
- (C) a provider of a remote computing service, as that term is defined in section 2711 of title 18;
- (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) any other service provider who has access to equipment that is being or may be used to transmit or store wire or electronic communications, but not including any entity that serves primarily as—
 - (i) a public accommodation facility, as that term is defined in section 1861(4) of this title;
 - (ii) a dwelling, as that term is defined in section 3602 of title 42;
 - (iii) a community facility, as that term is defined in section 1592n of title 42; or
 - (iv) a food service establishment, as that term is defined in section 1638 of title 7;

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

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

(7) **Intelligence community**

The term “intelligence community” has the meaning given the term in section 3003(4) of this title.

(8) **Person**

The term “person” means—

- (A) an electronic communication service provider; or
- (B) a landlord, custodian, or other person who may be authorized or required to furnish assistance pursuant to—
 - (i) an order of the court established under section 1803(a) of this title directing such assistance;
 - (ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18; or
 - (iii) a directive under section 1802(a)(4), 1805b(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), or 1881a(i) of this title.

(9) **State**

The term “State” means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.

(Pub. L. 95-511, title VIII, §801, as added Pub. L. 110-261, title II, §201, July 10, 2008, 122 Stat. 2467; amended Pub. L. 115-118, title I, §101(b)(2)(A), title II, §205(a)(7), Jan. 19, 2018, 132 Stat. 8, 21; Pub. L. 118-49, §25(b), Apr. 20, 2024, 138 Stat. 893.)

Editorial Notes

REFERENCES IN TEXT

Section 1805b of this title, referred to in par. (8)(B)(iii), was repealed by Pub. L. 110-261, title IV, §403(a)(1)(A), July 10, 2008, 122 Stat. 2473.

AMENDMENTS

2024—Par. (6)(E). Pub. L. 118-49, §25(b)(3), added subpar. (E). Former subpar. (E) redesignated (F).

Par. (6)(F). Pub. L. 118-49, §25(b)(1), (2), redesignated subpar. (E) as (F) and struck out “or” at end. Former subpar. (F) redesignated (G).

Par. (6)(G). Pub. L. 118-49, §25(b)(1), (4), redesignated subpar. (F) as (G), inserted “custodian,” after “employee,” and substituted “(D), (E), or (F)” for “(D), or (E)”.

2018—Par. (7). Pub. L. 115-118, §205(a)(7), made technical amendment to reference in original act which appears in text as reference to section 3003(4) of this title.

Par. (8)(B)(iii). Pub. L. 115-118, §101(b)(2)(A), which directed substitution of “section 1881a(i) of this title” for “section 1881a(h) of this title”, was executed by substituting “1881a(i) of this title” for “1881a(h) of this title” to reflect the probable intent of Congress.

§ 1885a. Procedures for implementing statutory defenses

(a) **Requirement for certification**

Notwithstanding any other provision of law, a civil action may not lie or be maintained in a

Federal or State court against any person for providing assistance 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—

(1) any assistance by that person was provided pursuant to an order of the court established under section 1803(a) of this title directing such assistance;

(2) 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;

(3) any assistance by that person was provided pursuant to a directive under section 1802(a)(4), 1805b(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), or 1881a(i) of this title directing such assistance;

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

(A) 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

(B) 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

(5) the person did not provide the alleged assistance.

(b) Judicial review

(1) Review of certifications

A certification under subsection (a) shall be given effect unless the court finds that such certification is not supported by substantial evidence provided to the court pursuant to this section.

(2) Supplemental materials

In its review of a certification under subsection (a), the court may examine the court order, certification, written request, or directive described in subsection (a) and any relevant court order, certification, written request, or directive submitted pursuant to subsection (d).

(c) Limitations on disclosure

If the Attorney General files a declaration under section 1746 of title 28 that disclosure of a certification made pursuant to subsection (a) or the supplemental materials provided pursuant to subsection (b) or (d) would harm the national security of the United States, the court shall—

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

(2) limit any public disclosure concerning such certification and the supplemental materials, including any public order following such in camera and ex parte review, to a statement as to whether the case is dismissed and a description of the legal standards that govern the order, without disclosing the paragraph of subsection (a) that is the basis for the certification.

(d) Role of the parties

Any plaintiff or defendant in a civil action may submit any relevant court order, certification, written request, or directive to the district court referred to in subsection (a) for review and shall be permitted to participate in the briefing or argument of any legal issue in a judicial proceeding conducted pursuant to this section, but only to the extent that such participation does not require the disclosure of classified information to such party. To the extent that classified information is relevant to the proceeding or would be revealed in the determination of an issue, the court shall review such information in camera and ex parte, and shall issue any part of the court's written order that would reveal classified information in camera and ex parte and maintain such part under seal.

(e) Nondelegation

The authority and duties of the Attorney General under this section shall be performed by the Attorney General (or Acting Attorney General) or the Deputy Attorney General.

(f) Appeal

The courts of appeals shall have jurisdiction of appeals from interlocutory orders of the district courts of the United States granting or denying a motion to dismiss or for summary judgment under this section.

(g) Removal

A civil action against a person for providing assistance to an element of the intelligence community 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.

(h) Relationship to other laws

Nothing in this section shall be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

(i) Applicability

This section shall apply to a civil action pending on or filed after July 10, 2008.

(Pub. L. 95-511, title VIII, §802, as added Pub. L. 110-261, title II, §201, July 10, 2008, 122 Stat. 2468; amended Pub. L. 115-118, title I, §101(b)(2)(A), Jan. 19, 2018, 132 Stat. 8.)

Editorial Notes

REFERENCES IN TEXT

Section 1805b of this title, referred to in subsec. (a)(3), was repealed by Pub. L. 110-261, title IV, §403(a)(1)(A), July 10, 2008, 122 Stat. 2473.

AMENDMENTS

2018—Subsec. (a)(3). Pub. L. 115-118, which directed substitution of “section 1881a(i) of this title” for “sec-

tion 1881a(h) of this title”, was executed by substituting “1881a(i) of this title” for “1881a(h) of this title” to reflect the probable intent of Congress.

§ 1885b. 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 commenced after July 10, 2008.

(Pub. L. 95–511, title VIII, §803, as added Pub. L. 110–261, title II, §201, July 10, 2008, 122 Stat. 2470.)

§ 1885c. Reporting

(a) Semiannual report

Not less frequently than once every 6 months, the Attorney General shall, in a manner consistent with national security, the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution, fully inform the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives concerning the implementation of this subchapter.

(b) Content

Each report made under subsection (a) shall include—

(1) any certifications made under section 1885a of this title;

(2) a description of the judicial review of the certifications made under section 1885a of this title; and

(3) any actions taken to enforce the provisions of section 1885b of this title.

(Pub. L. 95–511, title VIII, §804, as added Pub. L. 110–261, title II, §201, July 10, 2008, 122 Stat. 2470.)

CHAPTER 37—NATIONAL SECURITY SCHOLARSHIPS, FELLOWSHIPS, AND GRANTS

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§ 1901. Short title, findings, and purposes

(a) Short title

This chapter may be cited as the “David L. Boren National Security Education Act of 1991”.

(b) Findings

The Congress makes the following findings:

(1) The security of the United States is and will continue to depend on the ability of the United States to exercise international leadership.

(2) The ability of the United States to exercise international leadership is, and will increasingly continue to be, based on the political and economic strength of the United States, as well as on United States military strength around the world.

(3) Recent changes in the world pose threats of a new kind to international stability as Cold War tensions continue to decline while economic competition, regional conflicts, terrorist activities, and weapon proliferations have dramatically increased.

(4) The future national security and economic well-being of the United States will depend substantially on the ability of its citizens to communicate and compete by knowing the languages and cultures of other countries.

(5) The Federal Government has an interest in ensuring that the employees of its departments and agencies with national security responsibilities are prepared to meet the challenges of this changing international environment.

(6) The Federal Government also has an interest in taking actions to alleviate the problem of American undergraduate and graduate students being inadequately prepared to meet the challenges posed by increasing global interaction among nations.

(7) American colleges and universities must place a new emphasis on improving the teaching of foreign languages, area studies, counterproliferation studies, and other international fields to help meet those challenges.

(c) Purposes

The purposes of this chapter are as follows:

(1) To provide the necessary resources, accountability, and flexibility to meet the na-