107TH CONGRESS
*1st Session*

HOUSE OF REPRESENTATIVES

REPT. 107–236
Part 1

# PROVIDE APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (PATRIOT) ACT OF 2001

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R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 2975

together with

ADDITIONAL VIEWS

OCTOBER 11, 2001.—Ordered to be printed

PROVIDE APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (PATRIOT) ACT OF 2001

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Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

## R E P O R T

together with

## ADDITIONAL VIEWS

[To accompany H.R. 2975]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2975) to combat terrorism, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001".

**SEC. 2. TABLE OF CONTENTS.**

The following is the table of contents for this Act:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Construction; severability.

TITLE I—INTELLIGENCE GATHERING

Subtitle A—Electronic Surveillance

Sec. 101. Modification of authorities relating to use of pen registers and trap and trace devices.
Sec. 102. Seizure of voice-mail messages pursuant to warrants.
Sec. 103. Authorized disclosure.
Sec. 104. Savings provision.
Sec. 105. Interception of computer trespasser communications.
Sec. 106. Technical amendment.
Sec. 107. Scope of subpoenas for records of electronic communications.
Sec. 108. Nationwide service of search warrants for electronic evidence.
Sec. 109. Clarification of scope.
Sec. 110. Emergency disclosure of electronic communications to protect life and limb.
Sec. 111. Use as evidence.
Sec. 112. Reports concerning the disclosure of the contents of electronic communications.

Subtitle B—Foreign Intelligence Surveillance and Other Information

Sec. 151. Period of orders of electronic surveillance of non-United States persons under foreign intelligence surveillance.
Sec. 152. Multi-point authority.
Sec. 153. Foreign intelligence information.
Sec. 154. Foreign intelligence information sharing.
Sec. 155. Pen register and trap and trace authority.
Sec. 156. Business records.
Sec. 157. Miscellaneous national-security authorities.
Sec. 158. Proposed legislation.
Sec. 159. Presidential authority.
Sec. 160. Clarification of no technology mandates.
Sec. 161. Civil liability for certain unauthorized disclosures.
Sec. 162. Sunset.

TITLE II—ALIENS ENGAGING IN TERRORIST ACTIVITY

Subtitle A—Detention and Removal of Aliens Engaging in Terrorist Activity

Sec. 201. Changes in classes of aliens who are ineligible for admission and deportable due to terrorist activity.
Sec. 202. Changes in designation of foreign terrorist organizations.
Sec. 203. Mandatory detention of suspected terrorists; habeas corpus; judicial review.
Sec. 204. Changes in conditions for granting asylum.
Sec. 205. Multilateral cooperation against terrorists.
Sec. 206. Requiring sharing by the Federal bureau of investigation of certain criminal record extracts with other Federal agencies in order to enhance border security.
Sec. 207. Inadmissibility of aliens engaged in money laundering.
Sec. 208. Program to collect information relating to nonimmigrant foreign students and other exchange program participants.
Sec. 209. Protection of northern border.

Subtitle B—Preservation of Immigration Benefits for Victims of Terrorism

Sec. 211. Special immigrant status.
Sec. 212. Extension of filing or reentry deadlines.
Sec. 213. Humanitarian relief for certain surviving spouses and children.
Sec. 214. "Age-out" protection for children.
Sec. 215. Temporary administrative relief.
Sec. 216. Evidence of death, disability, or loss of employment.
Sec. 217. No benefits to terrorists or family members of terrorists.
Sec. 218. Definitions.

TITLE III—CRIMINAL JUSTICE

Subtitle A—Substantive Criminal Law

Sec. 301. Statute of limitation for prosecuting terrorism offenses.
Sec. 302. Alternative maximum penalties for terrorism crimes.
Sec. 303. Penalties for terrorist conspiracies.
Sec. 304. Terrorism crimes as rico predicates.
Sec. 305. Biological weapons.
Sec. 306. Support of terrorism through expert advice or assistance.
Sec. 307. Prohibition against harboring.
Sec. 308. Post-release supervision of terrorists.
Sec. 309. Definition.
Sec. 310. Civil damages.

Subtitle B—Criminal Procedure

Sec. 351. Single-jurisdiction search warrants for terrorism.

Sec. 352. DNA identification of terrorists.
Sec. 353. Grand jury matters.
Sec. 354. Extraterritoriality.
Sec. 355. Jurisdiction over crimes committed at United States facilities abroad.
Sec. 356. Special agent authorities.

TITLE IV—FINANCIAL INFRASTRUCTURE

Sec. 401. Laundering the proceeds of terrorism.
Sec. 402. Material support for terrorism.
Sec. 403. Assets of terrorist organizations.
Sec. 404. Technical clarification relating to provision of material support to terrorism.
Sec. 405. Disclosure of tax information in terrorism and national security investigations.
Sec. 406. Extraterritorial jurisdiction.

TITLE V—EMERGENCY AUTHORIZATIONS

Sec. 501. Office of Justice programs.
Sec. 502. Attorney General's authority to pay rewards.
Sec. 503. Limited authority to pay overtime.
Sec. 504. Department of State reward authority.
Sec. 505. Authorization of funds for DEA police training in South and Central Asia.
Sec. 506. Public safety officer benefits.

TITLE VI—DAM SECURITY

Sec. 601. Security of reclamation dams, facilities, and resources.

TITLE VII—MISCELLANEOUS

Sec. 701. Employment of translators by the Federal Bureau of Investigation.
Sec. 702. Review of the Department of Justice.
Sec. 703. Feasibility study on use of biometric identifier scanning system with access to the FBI integrated automated fingerprint identification system at overseas consular posts and points of entry to the United States.
Sec. 704. Study of access.
Sec. 705. Enforcement of certain anti-terrorism judgments.

TITLE VIII—PRIVATE SECURITY OFFICER QUALITY ASSURANCE

Sec. 801. Short title.
Sec. 802. Findings.
Sec. 803. Background checks.
Sec. 804. Sense of Congress.
Sec. 805. Definitions.

**SEC. 3. CONSTRUCTION; SEVERABILITY.**

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

# TITLE I—INTELLIGENCE GATHERING

## Subtitle A—Electronic Surveillance

**SEC. 101. MODIFICATION OF AUTHORITIES RELATING TO USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES.**

(a) GENERAL LIMITATION ON USE BY GOVERNMENTAL AGENCIES.—Section 3121(c) of title 18, United States Code, is amended—

(1) by inserting "or trap and trace device" after "pen register";

(2) by inserting ", routing, addressing," after "dialing"; and

(3) by striking "call processing" and inserting "the processing and transmitting of wire and electronic communications".

(b) ISSUANCE OF ORDERS.—

(1) IN GENERAL.—Subsection (a) of section 3123 of title 18, United States Code, is amended to read as follows:

"(a) IN GENERAL.—

"(1) Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order shall, upon service thereof, apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order. Whenever such an order is served on any person or entity not specifically named in

the order, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the assistance of the person or entity being served is related to the order.

"(2) Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law-enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.".

(2) CONTENTS OF ORDER.—Subsection (b)(1) of section 3123 of title 18, United States Code, is amended—

(A) in subparagraph (A)—

(i) by inserting "or other facility" after "telephone line"; and

(ii) by inserting before the semicolon at the end "or applied"; and

(B) by striking subparagraph (C) and inserting the following:

"(C) the attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic limits of the order; and".

(3) NONDISCLOSURE REQUIREMENTS.—Subsection (d)(2) of section 3123 of title 18, United States Code, is amended—

(A) by inserting "or other facility" after "the line"; and

(B) by striking ", or who has been ordered by the court" and inserting "or applied, or who is obligated by the order".

(c) DEFINITIONS.—

(1) COURT OF COMPETENT JURISDICTION.—Paragraph (2) of section 3127 of title 18, United States Code, is amended by striking subparagraph (A) and inserting the following:

"(A) any district court of the United States (including a magistrate judge of such a court), or any United States court of appeals, having jurisdiction over the offense being investigated; or".

(2) PEN REGISTER.—Paragraph (3) of section 3127 of title 18, United States Code, is amended—

(A) by striking "electronic or other impulses" and all that follows through "is attached" and inserting "dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted (but not including the contents of such communication)"; and

(B) by inserting "or process" after "device" each place it appears.

(3) TRAP AND TRACE DEVICE.—Paragraph (4) of section 3127 of title 18, United States Code, is amended—

(A) by inserting "or process" after "a device"; and

(B) by striking "of an instrument" and all that follows through the end and inserting "or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication (but not including the contents of such communication);".

(4) CONFORMING AMENDMENT.—Section 3127(1) of title 18, United States Code, is amended—

(A) by striking "and"; and

(B) by inserting ", and 'contents'" after "'electronic communication service'".

(d) NO LIABILITY FOR INTERNET SERVICE PROVIDERS.—Section 3124(d) of title 18, United States Code, is amended by striking "the terms of".

**SEC. 102. SEIZURE OF VOICE-MAIL MESSAGES PURSUANT TO WARRANTS.**

Title 18, United States Code, is amended—

(1) in section 2510—

(A) in paragraph (1), by striking all the words after "commerce"; and

(B) in paragraph (14), by inserting "wire or" after "transmission of"; and

(2) in section 2703—

(A) in the headings for subsections (a) and (b), by striking "CONTENTS OF ELECTRONIC" and inserting "CONTENTS OF WIRE OR ELECTRONIC";

(B) in subsection (a), by striking "contents of an electronic" and inserting "contents of a wire or electronic" each place it appears; and

(C) in subsection (b), by striking "any electronic" and inserting "any wire or electronic" each place it appears.

**SEC. 103. AUTHORIZED DISCLOSURE.**

Section 2510(7) of title 18, United States Code, is amended by inserting ", and (for purposes only of section 2517 as it relates to foreign intelligence information as that term is defined in section 101(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(e))) any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or the President or Vice President of the United States" after "such offenses".

**SEC. 104. SAVINGS PROVISION.**

Section 2511(2)(f) of title 18, United States Code, is amended—

(1) by striking "or chapter 121" and inserting ", chapter 121, or chapter 206"; and

(2) by striking "wire and oral" and inserting "wire, oral, and electronic".

**SEC. 105. INTERCEPTION OF COMPUTER TRESPASSER COMMUNICATIONS.**

Chapter 119 of title 18, United States Code, is amended—

(1) in section 2510—

(A) in paragraph (17), by striking "and" at the end;

(B) in paragraph (18), by striking the period and inserting a semi-colon; and

(C) by adding after paragraph (18) the following:

"(19) 'protected computer' has the meaning set forth in section 1030; and

"(20) 'computer trespasser' means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer.";

(2) in section 2511(2), by inserting after paragraph (h) the following:

"(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser, if—

"(i) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

"(ii) the person acting under color of law is lawfully engaged in an investigation;

"(iii) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and

"(iv) such interception does not acquire communications other than those transmitted to or from the computer trespasser."; and

(3) in section 2520(d)(3), by inserting "or 2511(2)(i)" after "2511(3)".

**SEC. 106. TECHNICAL AMENDMENT.**

Section 2518(3)(c) of title 18, United States Code, is amended by inserting "and" after the semicolon.

**SEC. 107. SCOPE OF SUBPOENAS FOR RECORDS OF ELECTRONIC COMMUNICATIONS.**

Section 2703(c)(1)(C) of title 18, United States Code, is amended—

(1) by striking "entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a" and inserting the following:

"entity the—

"(i) name;

"(ii) address;

"(iii) local and long distance telephone connection records, or records of session times and durations;

"(iv) length of service (including start date) and types of service utilized;

"(v) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

"(vi) means and source of payment (including any credit card or bank account number);

of a"; and

(2) by striking "and the types of services the subscriber or customer utilized," after "of a subscriber to or customer of such service".

**SEC. 108. NATIONWIDE SERVICE OF SEARCH WARRANTS FOR ELECTRONIC EVIDENCE.**

Chapter 121 of title 18, United States Code, is amended—

(1) in section 2703, by striking "under the Federal Rules of Criminal Procedure" each place it appears and inserting "using the procedures described in the

Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation"; and

(2) in section 2711—

(A) in paragraph (1), by striking "and";

(B) in paragraph (2), by striking the period and inserting "; and"; and

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

"(3) the term 'court of competent jurisdiction' has the meaning given that term in section 3127, and includes any Federal court within that definition, without geographic limitation.".

**SEC. 109. CLARIFICATION OF SCOPE.**

Section 2511(2) of title 18, United States Code, as amended by section 105(2) of this Act, is further amended by adding at the end the following:

"(j) With respect to a voluntary or obligatory disclosure of information (other than information revealing customer cable viewing activity) under this chapter, chapter 121, or chapter 206, subsections (c)(2)(B) and (h) of section 631 of the Communications Act of 1934 do not apply.".

**SEC. 110. EMERGENCY DISCLOSURE OF ELECTRONIC COMMUNICATIONS TO PROTECT LIFE AND LIMB.**

(a) Section 2702 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows:

**"§ 2702. Voluntary disclosure of customer communications or records" ;**

(2) in subsection (a)(2)(B) by striking the period and inserting "; and";

(3) in subsection (a), by inserting after paragraph (2) the following:

"(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.";

(4) in subsection (b), by striking "EXCEPTIONS.—A person or entity" and inserting "EXCEPTIONS FOR DISCLOSURE OF COMMUNICATIONS.—A provider described in subsection (a)";

(5) in subsection (b)(6)—

(A) in subparagraph (A)(ii), by striking "or";

(B) in subparagraph (B), by striking the period and inserting "; or";

(C) by inserting after subparagraph (B) the following:

"(C) if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay."; and

(6) by inserting after subsection (b) the following:

"(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER RECORDS.—A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

"(1) as otherwise authorized in section 2703;

"(2) with the lawful consent of the customer or subscriber;

"(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

"(4) to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

"(5) to any person other than a governmental entity.".

(b) Section 2703 of title 18, United States Code, is amended—

(1) so that the section heading reads as follows:

**"§ 2703. Required disclosure of customer communications or records";**

(2) in subsection (c)(1)—

(A) in subparagraph (A), by striking "Except" and all that follows through "only when" in subparagraph (B) and inserting "A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when";

(B) by striking "or" at the end of clause (iii) of subparagraph (B);

(C) by striking the period at the end of clause (iv) of subparagraph (B) and inserting "; or";

(D) by inserting after clause (iv) of subparagraph (B) the following:

"(v) seeks information pursuant to subparagraph (B).";

(E) in subparagraph (C), by striking "(B)" and inserting "(A)"; and

(F) by redesignating subparagraph (C) as subparagraph (B); and

(3) in subsection (e), by striking "or certification" and inserting "certification, or statutory authorization".

(c) The table of sections at the beginning of chapter 121 of title 18, United States Code, is amended so that the items relating to sections 2702 through 2703 read as follows:

"2702. Voluntary disclosure of customer communications or records.
"2703. Required disclosure of customer communications or records.".

**SEC. 111. USE AS EVIDENCE.**

(a) IN GENERAL.—Section 2515 of title 18, United States Code, is amended—

(1) by striking "**wire or oral**" in the heading and inserting "**wire, oral, or electronic**";

(2) by striking "Whenever any wire or oral communication has been intercepted" and inserting "(a) Except as provided in subsection (b), whenever any wire, oral, or electronic communication has been intercepted, or any electronic communication in electronic storage has been disclosed";

(3) by inserting "or chapter 121" after "this chapter"; and

(4) by adding at the end the following:

"(b) Subsection (a) does not apply to the disclosure, before a grand jury or in a criminal trial, hearing, or other criminal proceeding, of the contents of a communication, or evidence derived therefrom, against a person alleged to have intercepted, used, or disclosed the communication in violation of this chapter, or chapter 121, or participated in such violation.".

(b) SECTION 2517.—Paragraphs (1) and (2) of section 2517 are each amended by inserting "or under the circumstances described in section 2515(b)" after "by this chapter".

(c) SECTION 2518.—Section 2518 of title 18, United States Code, is amended—

(1) in subsection (7), by striking "subsection (d)" and inserting "subsection (8)(d)"; and

(2) in subsection (10)—

(A) in paragraph (a)—

(i) by striking "or oral" each place it appears and inserting ", oral, or electronic";

(ii) by striking the period at the end of clause (iii) and inserting a semicolon; and

(iii) by inserting "except that no suppression may be ordered under the circumstances described in section 2515(b)." before "Such motion"; and

(B) by striking paragraph (c).

(d) CLERICAL AMENDMENT.—The item relating to section 2515 in the table of sections at the beginning of chapter 119 of title 18, United States Code, is amended to read as follows:

"2515. Prohibition of use as evidence of intercepted wire, oral, or electronic communications.".

**SEC. 112. REPORTS CONCERNING THE DISCLOSURE OF THE CONTENTS OF ELECTRONIC COMMUNICATIONS.**

Section 2703 of title 18, United States Code, is amended by adding at the end the following:

"(g) REPORTS CONCERNING THE DISCLOSURE OF THE CONTENTS OF ELECTRONIC COMMUNICATIONS.—

"(1) By January 31 of each calendar year, the judge issuing or denying an order, warrant, or subpoena, or the authority issuing or denying a subpoena, under subsection (a) or (b) of this section during the preceding calendar year shall report on each such order, warrant, or subpoena to the Administrative Office of the United States Courts—

"(A) the fact that the order, warrant, or subpoena was applied for;

"(B) the kind of order, warrant, or subpoena applied for;

"(C) the fact that the order, warrant, or subpoena was granted as applied for, was modified, or was denied;

"(D) the offense specified in the order, warrant, subpoena, or application;

"(E) the identity of the agency making the application; and

"(F) the nature of the facilities from which or the place where the contents of electronic communications were to be disclosed.

"(2) In January of each year the Attorney General or an Assistant Attorney General specially designated by the Attorney General shall report to the Administrative Office of the United States Courts—

"(A) the information required by subparagraphs (A) through (F) of paragraph (1) of this subsection with respect to each application for an order, warrant, or subpoena made during the preceding calendar year; and

"(B) a general description of the disclosures made under each such order, warrant, or subpoena, including—

"(i) the approximate number of all communications disclosed and, of those, the approximate number of incriminating communications disclosed;

"(ii) the approximate number of other communications disclosed; and

"(iii) the approximate number of persons whose communications were disclosed.

"(3) In June of each year, beginning in 2003, the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders, warrants, or subpoenas authorizing or requiring the disclosure of the contents of electronic communications pursuant to subsections (a) and (b) of this section and the number of orders, warrants, or subpoenas granted or denied pursuant to subsections (a) and (b) of this section during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by paragraphs (1) and (2) of this subsection. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by paragraphs (1) and (2) of this subsection.".

# Subtitle B—Foreign Intelligence Surveillance and Other Information

**SEC. 151. PERIOD OF ORDERS OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS UNDER FOREIGN INTELLIGENCE SURVEILLANCE.**

(a) INCLUDING AGENTS OF A FOREIGN POWER.—(1) Section 105(e)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(e)(1)) is amended by inserting "or an agent of a foreign power, as defined in section 101(b)(1)(A)," after "or (3),".

(2) Section 304(d)(1) of such Act (50 U.S.C. 1824(d)(1)) is amended by inserting "or an agent of a foreign power, as defined in section 101(b)(1)(A)," after "101(a),".

(b) PERIOD OF ORDER.—Such section 304(d)(1) is further amended by striking "forty-five" and inserting "90".

**SEC. 152. MULTI-POINT AUTHORITY.**

Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by inserting ", or, in circumstances where the Court finds that the actions of the target of the electronic surveillance may have the effect of thwarting the identification of a specified person, such other persons," after "specified person".

**SEC. 153. FOREIGN INTELLIGENCE INFORMATION.**

Sections 104(a)(7)(B) and 303(a)(7)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(7)(B), 1823(a)(7)(B)) are each amended by striking "that the" and inserting "that a significant".

**SEC. 154. FOREIGN INTELLIGENCE INFORMATION SHARING.**

It shall be lawful for foreign intelligence information (as that term is defined in section 101(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(e)) obtained as part of a criminal investigation (including information obtained pursuant to chapter 119 of title 18, United States Code) to be provided to any Federal law-enforcement-, intelligence-, protective-, national-defense, or immigration personnel, or the President or the Vice President of the United States, for the performance of official duties.

**SEC. 155. PEN REGISTER AND TRAP AND TRACE AUTHORITY.**

Section 402(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is amended—

(1) in paragraph (1), by adding "and" at the end;

(2) in paragraph (2)—

(A) by inserting "from the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device" after "obtained"; and

(B) by striking "; and" and inserting a period; and

(3) by striking paragraph (3).

**SEC. 156. BUSINESS RECORDS.**

(a) IN GENERAL.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended to read as follows:

"ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

"SEC. 501. (a) In any investigation to gather foreign intelligence information or an investigation concerning international terrorism, such investigation being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General may approve pursuant to Executive Order No. 12333 (or a successor order), the Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) that are relevant to the investigation.

"(b) Each application under this section—

"(1) shall be made to—

"(A) a judge of the court established by section 103(a) of this Act; or

"(B) a United States magistrate judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the release of records under this section on behalf of a judge of that court; and

"(2) shall specify that the records concerned are sought for an investigation described in subsection (a).

"(c)(1) Upon application made pursuant to this section, the judge shall enter an ex parte order as requested requiring the production the tangible things sought if the judge finds that the application satisfies the requirements of this section.

"(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

"(d) A person who, in good faith, produces tangible things under an order issued pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.".

(b) CONFORMING AMENDMENTS.—(1) Section 502 of such Act (50 U.S.C. 1862) is repealed.

(2) Section 503 of such Act (50 U.S.C. 1863) is redesignated as section 502.

(c) CLERICAL AMENDMENT.—The table of contents at the beginning of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to title V and inserting the following:

"TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

"Sec. 501. Access to certain business records for foreign intelligence and international terrorism investigations.
"Sec. 502. Congressional oversight.".

**SEC. 157. MISCELLANEOUS NATIONAL-SECURITY AUTHORITIES.**

(a) Section 2709(b) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ", or electronic communication transactional records" after "toll billing records"; and

(B) by striking "made that" and all that follows through the end of such paragraph and inserting "made that the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and"; and

(2) in paragraph (2), by striking "made that" and all that follows through the end of such paragraph and inserting "made that the information sought is relevant to an authorized foreign counterintelligence investigation.".

(b) Section 624 of the Fair Credit Reporting Act (Public Law 90–321; 15 U.S.C. 1681u), as added by section 601(a) of the Intelligence Authorization Act for Fiscal Year 1996 (P.L. 104–93; 110 Stat. 974), is amended—

(1) in subsection (a), by striking "writing that" and all that follows through the end and inserting "writing that such information is necessary for the conduct of an authorized foreign counterintelligence investigation.";

(2) in subsection (b), by striking "writing that" and all that follows through the end and inserting "writing that such information is necessary for the conduct of an authorized foreign counterintelligence investigation."; and

(3) in subsection (c), by striking "camera that" and all that follows through "States." and inserting "camera that the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation.".

**SEC. 158. PROPOSED LEGISLATION.**

Not later than August 31, 2003, the President shall propose legislation relating to the provisions set to expire by section 160 of this Act as the President may judge necessary and expedient.

**SEC. 159. PRESIDENTIAL AUTHORITY.**

Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) is amended in subsection (a)(1)—

(1) in subparagraph (A)—

(A) in clause (ii), by adding "or" after "thereof,"; and

(B) by striking clause (iii) and inserting the following:

"(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;";

(2) by striking after subparagraph (B), "by any person, or with respect to any property, subject to the jurisdiction of the United States.";

(3) in subparagraph (B)—

(A) by inserting after "investigate" the following: ", block during the pendency of an investigation for a period of not more than 90 days (which may be extended by an additional 60 days if the President determines that such blocking is necessary to carry out the purposes of this Act)"; and

(B) by striking "interest;" and inserting "interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and"; and

(4) by adding at the end the following new subparagraph:

"(C) when a statute has been enacted authorizing the use of force by United States armed forces against a foreign country, foreign organization, or foreign national, or when the United States has been subject to an armed attack by a foreign country, foreign organization, or foreign national, confiscate any property, subject to the jurisdiction of the United States, of any foreign country, foreign organization, or foreign national against whom United States armed forces may be used pursuant to such statute or, in the case of an armed attack against the United States, that the President determines has planned, authorized, aided, or engaged in such attack; and

"(i) all right, title, and interest in any property so confiscated shall vest when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time,

"(ii) upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, except that the proceeds of any such liquidation or sale, or any cash assets, shall be segregated from other United States Government funds and shall be used only pursuant to a statute authorizing the expenditure of such proceeds or assets, and

"(iii) such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.".

**SEC. 160. CLARIFICATION OF NO TECHNOLOGY MANDATES.**

Nothing in this Act shall impose any additional technical obligation or requirement on a provider of wire or electronic communication service or other person to furnish facilities, services, or technical assistance.

**SEC. 161. CIVIL LIABILITY FOR CERTAIN UNAUTHORIZED DISCLOSURES.**

(a) CHAPTER 119.—Section 2520 of title 18, United States Code, is amended—

(1) by redesignating paragraph (2) of subsection (c) as paragraph (3);

(2) by inserting after paragraph (1) of subsection (c) the following:

"(2) In an action under this section by a citizen or legal permanent resident of the United States against the United States or any Federal investigative or law enforcement officer (or against any State investigative or law enforcement officer for disclosure or unlawful use of information obtained from Federal investigative or law enforcement officers), the court may assess as damages whichever is the greater of—

"(A) the sum of actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000."; and

(3) by adding at the end the following:

"(f) IMPROPER DISCLOSURE IS VIOLATION.—Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2520(a).

"(g) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

"(h) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.".

(b) CHAPTER 121.—Section 2707 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting "(1)" before "The court";

(2) by adding at the end of subsection (c) the following:

"(2) In an action under this section by a citizen or legal permanent resident of the United States against the United States or any Federal investigative or law enforcement officer (or against any State investigative or law enforcement officer for disclosure or unlawful use of information obtained from Federal investigative or law enforcement officers), the court may assess as damages whichever is the greater of—

"(A) the sum of actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of $10,000."; and

(3) by adding at the end the following:

"(f) IMPROPER DISCLOSURE IS VIOLATION.—Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2707(a).

"(g) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

"(h) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.".

(c) CHAPTER 206.—

(1) IN GENERAL.—Chapter 206 of title 18, United States Code, is amended by adding at the end the following:

**"§ 3128. Civil action**

"(a) CAUSE OF ACTION.—Except as provided in subsections (d) and (e) of section 3124, any person aggrieved by any violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In any action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—In any action under this section, the court may assess as damages whichever is the greater of—

"(1) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(2) statutory damages of $10,000.

"(d) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

"(e) IMPROPER DISCLOSURE IS VIOLATION.—Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 3128(a).

"(f) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

"(g) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 206 of title 18, United States Code, is amended by adding at the end the following new item:

"3128. Civil action.".

(d) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—(1) Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended—

(A) by inserting "(a)" before "CIVIL ACTION.—";

(B) by inserting "or entity" after "shall have a cause of action against any person";

(C) by striking "(a) actual" and inserting "(1) actual";

(D) by striking "(b) punitive" and inserting "(2) punitive";

(E) by striking "(c) reasonable" and inserting "(3) reasonable";

(F) by striking "$1,000" and inserting "$10,000"; and

(G) by adding at the end the following new subsections:

"(b) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

"(c) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, the head shall report conclusions for the determination and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

"(d) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.".

(2) Section 308 of the the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1828) is amended—

(A) by inserting "(a) CIVIL ACTION.—" before "An aggrieved person,";

(B) by inserting "or entity" after "shall have a cause of action against any person";

(C) by striking "$1,000" and inserting "$10,000"; and

(D) by adding at the end the following new subsections:

"(b) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

"(c) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or

employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, the head shall report the conclusions for the determination and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

"(d) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.".

(3)(A) Title IV of the the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841 et seq.) is amended by adding at the end the following new sections:

"PENALTIES

"SEC. 407. (a) PROHIBITED ACTIVITIES.—A person is guilty of an offense if the person intentionally—

"(1) installs or uses a pen register or trap and trace device under color of law except as authorized by statute; or

"(2) discloses or uses information obtained under color of law by using a pen register or trap and trace device, knowing or having reason to know that the information was obtained through using a pen register or trap and trace device not authorized by statute.

"(b) DEFENSE.—It is a defense to a prosecution under subsection (a) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the pen register or trap and trace device was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

"(c) PENALTIES.—An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

"(d) FEDERAL JURISDICTION .—There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

"CIVIL LIABILITY

"SEC. 408. (a) CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101(a) or (b)(1)(A), respectively, who has been subjected to a pen register or trap and trace device or about whom information obtained by a pen register or trap and trace device has been disclosed or used in violation of section 407 shall have a cause of action against any person or entity who committed such violation and shall be entitled to recover—

"(1) actual damages, but not less than liquidated damages of $10,000, whichever is greater;

"(2) punitive damages; and

"(3) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

"(b) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

"(c) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, the head shall report the conclusions for the determination and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.

"(d) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.".

(B) The table of contents at the beginning of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end of the items relating to title IV the following new items:

"Sec. 407. Penalties.
"Sec. 408. Civil liability.".

**SEC. 162. SUNSET.**

This title and the amendments made by this title (other than sections 106 (relating to technical amendment), 109 (relating to clarification of scope), and 159 (relating to presidential authority)) and the amendments made by those sections shall take effect on the date of enactment of this Act and shall cease to have any effect on December 31, 2003.

# TITLE II—ALIENS ENGAGING IN TERRORIST ACTIVITY

## Subtitle A—Detention and Removal of Aliens Engaging in Terrorist Activity

**SEC. 201. CHANGES IN CLASSES OF ALIENS WHO ARE INELIGIBLE FOR ADMISSION AND DEPORTABLE DUE TO TERRORIST ACTIVITY.**

(a) ALIENS INELIGIBLE FOR ADMISSION DUE TO TERRORIST ACTIVITIES.—Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) in clause (i)—

(A) in subclauses (I), (II), and (III), by striking the comma at the end and inserting a semicolon;

(B) by amending subclause (IV) to read as follows:

"(IV) is a representative of—

"(a) a foreign terrorist organization, as designated by the Secretary of State under section 219; or

"(b) a political, social, or other similar group whose public endorsement of terrorist activity the Secretary of State has determined undermines the efforts of the United States to reduce or eliminate terrorist activities;";

(C) in subclause (V), by striking any comma at the end, by striking any "or" at the end, and by adding "; or" at the end; and

(D) by inserting after subclause (V) the following:

"(VI) has used the alien's prominence within a foreign state or the United States to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines the efforts of the United States to reduce or eliminate terrorist activities;";

(2) in clause (ii)—

(A) in the matter preceding subclause (I), by striking "(or which, if committed in the United States," and inserting "(or which, if it had been or were to be committed in the United States,"; and

(B) in subclause (V)(b), by striking "explosive or firearm" and inserting "explosive, firearm, or other object";

(3) by amending clause (iii) to read as follows:

"(iii) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term 'engage in terrorist activity' means, in an individual capacity or as a member of an organization—

"(I) to commit a terrorist activity;

"(II) to plan or prepare to commit a terrorist activity;

"(III) to gather information on potential targets for a terrorist activity;

"(IV) to solicit funds or other things of value for—

"(a) a terrorist activity;

"(b) an organization designated as a foreign terrorist organization under section 219; or

"(c) a terrorist organization described in clause (v)(II), but only if the solicitor knows, or reasonably should know, that the solicitation would further a terrorist activity;

"(V) to solicit any individual—

"(a) to engage in conduct otherwise described in this clause;

"(b) for membership in a terrorist government;

"(c) for membership in an organization designated as a foreign terrorist organization under section 219; or

"(d) for membership in a terrorist organization described in clause (v)(II), but only if the solicitor knows, or reasonably should know, that the solicitation would further a terrorist activity; or

"(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, and radiological weapons), explosives, or training—

"(a) for the commission of a terrorist activity;

"(b) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

"(c) to an organization designated as a foreign terrorist organization under section 219; or

"(d) to a terrorist organization described in clause (v)(II), but only if the actor knows, or reasonably should know, that the act would further a terrorist activity."; and

(4) by adding at the end the following:

"(v) TERRORIST ORGANIZATION DEFINED.—As used in this subparagraph, the term 'terrorist organization' means—

"(I) an organization designated as a foreign terrorist organization under section 219; or

"(II) with regard to a group that is not an organization described in subclause (I), a group of 2 or more individuals, whether organized or not, which engages in, or which has a significant subgroup which engages in, the activities described in subclause (I), (II), or (III) of clause (iii).

"(vi) SPECIAL RULE FOR MATERIAL SUPPORT.—Clause (iii)(VI)(b) shall not be construed to include the affording of material support to an individual who committed or planned to commit a terrorist activity, if the alien establishes by clear and convincing evidence that such support was afforded only after such individual permanently and publicly renounced, rejected the use of, and had ceased to engage in, terrorist activity.".

(b) ALIENS INELIGIBLE FOR ADMISSION DUE TO ENDANGERMENT.—Section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)) is amended by adding at the end the following:

"(F) ENDANGERMENT.—Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.".

(c) ALIENS DEPORTABLE DUE TO TERRORIST ACTIVITIES.—Section 237(a)(4)(B) of the Immigration and Nationality (8 U.S.C. 1227(a)(4)(B)) is amended to read as follows:

"(B) TERRORIST ACTIVITIES.—Any alien is deportable who—

"(i) has engaged, is engaged, or at any time after admission engages in terrorist activity (as defined in section 212(a)(3)(B)(iii));

"(ii) is a representative (as defined in section 212(a)(3)(B)(iv)) of—

"(I) a foreign terrorist organization, as designated by the Secretary of State under section 219; or

"(II) a political, social, or other similar group whose public endorsement of terrorist activity—

"(a) is intended and likely to incite or produce imminent lawless action; and

"(b) has been determined by the Secretary of State to undermine the efforts of the United States to reduce or eliminate terrorist activities; or

"(iii) has used the alien's prominence within a foreign state or the United States—

"(I) to endorse, in a manner that is intended and likely to incite or produce imminent lawless action and that has been determined by the Secretary of State to undermine the efforts of the United States to reduce or eliminate terrorist activities, terrorist activity; or

"(II) to persuade others, in a manner that is intended and likely to incite or produce imminent lawless action and that has been determined by the Secretary of State to undermine the efforts of the United States to reduce or eliminate terrorist activities, to support terrorist activity or a terrorist organization (as defined in section 212(a)(3)(B)(v)).".

(d) RETROACTIVE APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to—

(A) actions taken by an alien before such date, as well as actions taken on or after such date; and

(B) all aliens, without regard to the date of entry or attempted entry into the United States—

(i) in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date); or

(ii) seeking admission to the United States on or after such date.

(2) SPECIAL RULE FOR ALIENS IN EXCLUSION OR DEPORTATION PROCEEDINGS.—Notwithstanding any other provision of law, the amendments made by this section shall apply to all aliens in exclusion or deportation proceedings on or after the date of the enactment of this Act (except for proceedings in which there has been a final administrative decision before such date) as if such proceedings were removal proceedings.

(3) SPECIAL RULE FOR SECTION 219 ORGANIZATIONS.—

(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), no alien shall be considered inadmissible under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)), or deportable under section 237(a)(4)(B) of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendments made by subsection (a), on the ground that the alien engaged in a terrorist activity described in subclause (IV)(b), (V)(c), or (VI)(c) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to a group at any time when the group was not a foreign terrorist organization designated by the Secretary of State under section 219 of such Act (8 U.S.C. 1189).

(B) CONSTRUCTION.—Subparagraph (A) shall not be construed to prevent an alien from being considered inadmissible or deportable for having engaged in a terrorist activity—

(i) described in subclause (IV)(b), (V)(c), or (VI)(c) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to a foreign terrorist organization at any time when such organization was designated by the Secretary of State under section 219 of such Act; or

(ii) described in subclause (IV)(c), (V)(d), or (VI)(d) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to any group described in any of such subclauses.

**SEC. 202. CHANGES IN DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.**

(a) DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.—Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking "212(a)(3)(B));" and inserting "212(a)(3)(B)), engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)(2)), or retains the capability and intent to engage in terrorist activity or to engage in terrorism (as so defined);"; and

(B) in subparagraph (C), by inserting "or terrorism" after "activity";

(2) in paragraph (2)—

(A) by amending subparagraph (A) to read as follows:

"(A) NOTICE.—

"(i) IN GENERAL.—Seven days before a designation is made under this subsection, the Secretary of State shall, by classified communication, notify the Speaker and minority leader of the House of Representatives, the President pro tempore, majority leader, and minority leader of the Senate, the members of the relevant committees, and the Secretary of the Treasury, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

"(ii) PUBLICATION OF DESIGNATION.—The Secretary of State shall publish the designation in the Federal Register seven days after providing the notification under clause (i).";

(B) in subparagraph (B), by striking "(A)." and inserting "(A)(ii).": and

(C) in subparagraph (C), by striking "paragraph (2)," and inserting "subparagraph (A)(i),";

(3) in paragraph (3)(B), by striking "subsection (c)." and inserting "subsection (b).';

(4) in paragraph (4)(B), by inserting after the first sentence the following: "The Secretary may also redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.";

(5) in paragraph (6)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i), by inserting "or a redesignation made under paragraph (4)(B)" after "paragraph (1)";

(ii) in clause (i)—

(I) by inserting "or redesignation" after "designation" the first place it appears; and

(II) by striking "of the designation;" and inserting a semicolon; and

(iii) in clause (ii), by striking "of the designation." and inserting a period;

(B) in subparagraph (B), by striking "through (4)" and inserting "and (3)"; and

(C) by adding at the end the following:

"(C) EFFECTIVE DATE.—Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.";

(6) in paragraph (7), by inserting ", or the revocation of a redesignation under paragraph (6)," after "(5) or (6)"; and

(7) in paragraph (8)—

(A) by striking "(1)(B)," and inserting "(2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)";

(B) by inserting "or an alien in a removal proceeding" after "criminal action"; and

(C) by inserting "or redesignation" before "as a defense".

(b) AUTHORITY TO INITIATE DESIGNATIONS, REDESIGNATIONS, AND REVOCATIONS.—Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), as amended by subsection (a), is further amended—

(1) by striking "Secretary" each place such term appears, excluding subparagraphs (A) and (C) of subsection (a)(2), and inserting "official specified under subsection (d)";

(2) in subsection (c)—

(A) in paragraph (2), by adding "and" at the end;

(B) in paragraph (3), by striking "; and" at the end and inserting a period; and

(C) by striking paragraph (4); and

(3) by adding at the end the following:

"(d) IMPLEMENTATION OF DUTIES AND AUTHORITIES.—

"(1) BY SECRETARY OR ATTORNEY GENERAL.—Except as otherwise provided in this subsection, the duties under this section shall, and authorities under this section may, be exercised by—

"(A) the Secretary of State—

"(i) after consultation with the Secretary of the Treasury and with the concurrence of the Attorney General; or

"(ii) upon instruction by the President pursuant to paragraph (2); or

"(B) the Attorney General—

"(i) after consultation with the Secretary of the Treasury and with the concurrence of the Secretary of State; or

"(ii) upon instruction by the President pursuant to paragraph (2).

"(2) CONCURRENCE.—The Secretary of State and the Attorney General shall each seek the other's concurrence in accordance with paragraph (1). In any case in which such concurrence is denied or withheld, the official seeking the concurrence shall so notify the President and shall request the President to make a determination as to how the issue shall be resolved. Such notification and request of the President may not be made before the earlier of—

"(A) the date on which a denial of concurrence is received; or

"(B) the end of the 60-day period beginning on the date the concurrence was sought.

"(3) EXCEPTION.—It shall be the duty of the Secretary of State to carry out the procedural requirements of paragraphs (2)(A) and (6)(B) of subsection (a) in all cases, including cases in which a designation or revocation is initiated by the Attorney General.".

**SEC. 203. MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW.**

(a) IN GENERAL.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after section 236 the following:

"MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW

"SEC. 236A. (a) DETENTION OF TERRORIST ALIENS.—

"(1) CUSTODY.—The Attorney General shall take into custody any alien who is certified under paragraph (3).

"(2) RELEASE.—Except as provided in paragraphs (5) and (6), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States or found not to be inadmissible or deportable, as the case may be. Except as provided in paragraph (6), such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3).

"(3) CERTIFICATION.—The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien—

"(A) is described in section 212(a)(3)(A)(i), 212(a)(3)(A)(iii), 212(a)(3)(B), 237(a)(4)(A)(i), 237(a)(4)(A)(iii), or 237(a)(4)(B); or

"(B) is engaged in any other activity that endangers the national security of the United States.

"(4) NONDELEGATION.—The Attorney General may delegate the authority provided under paragraph (3) only to the Deputy Attorney General. The Deputy Attorney General may not delegate such authority.

"(5) COMMENCEMENT OF PROCEEDINGS.—The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.

"(6) LIMITATION ON INDEFINITE DETENTION.—An alien detained under paragraph (1) who has been ordered removed based on one or more of the grounds of inadmissibility or deportability referred to in paragraph (3)(A), who has not been removed within the removal period specified under section 241(a)(1)(A), and whose removal is unlikely in the reasonably foreseeable future, may be detained for additional periods of up to six months if the Attorney General demonstrates that the release of the alien will not protect the national security of the United States or adequately ensure the safety of the community or any person.

"(b) HABEAS CORPUS AND JUDICIAL REVIEW.—Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3) or (a)(6)) is available exclusively in habeas corpus proceedings initiated in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.".

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236 the following:

"Sec. 236A. Mandatory detention of suspected terrorists; habeas corpus; judicial review.".

(c) REPORTS.—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, with respect to the reporting period, on—

(1) the number of aliens certified under section 236A(a)(3) of the Immigration and Nationality Act, as added by subsection (a);

(2) the grounds for such certifications;

(3) the nationalities of the aliens so certified;

(4) the length of the detention for each alien so certified; and

(5) the number of aliens so certified who—

(A) were granted any form of relief from removal;

(B) were removed;

(C) the Attorney General has determined are no longer an alien who may be so certified; or

(D) were released from detention.

**SEC. 204. CHANGES IN CONDITIONS FOR GRANTING ASYLUM.**

(a) IN GENERAL.—Section 208(b)(2)(A)(v) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)(v)) is amended—

(1) by striking "inadmissible under" each place such term appears and inserting "described in"; and

(2) by striking "removable under" and inserting "described in".

(b) RETROACTIVE APPLICATION OF AMENDMENTS.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to—

(1) actions taken by an alien before such date, as well as actions taken on or after such date; and

(2) all aliens, without regard to the date of entry or attempted entry into the United States, whose application for asylum is pending on or after such date (except for applications with respect to which there has been a final administrative decision before such date).

**SEC. 205. MULTILATERAL COOPERATION AGAINST TERRORISTS.**

Section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)) is amended—

(1) by striking "The records" and inserting "(1) Subject to paragraphs (2) and (3), the records";

(2) by striking "United States," and all that follows through the period at the end and inserting "United States."; and

(3) by adding at the end the following:

"(2) In the discretion of the Secretary of State, certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

"(3)(A) Subject to the provisions of this paragraph, the Secretary of State may provide copies of records of the Department of State and of diplomatic and consular offices of the United States (including the Department of State's automated visa lookout database) pertaining to the issuance or refusal of visas or permits to enter the United States, or information contained in such records, to foreign governments if the Secretary determines that it is necessary and appropriate.

"(B) Such records and information may be provided on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism. General access to records and information may be provided under an agreement to limit the use of such records and information to the purposes described in the preceding sentence.

"(C) The Secretary of State shall make any determination under this paragraph in consultation with any Federal agency that compiled or provided such records or information.

"(D) To the extent possible, such records and information shall be made available to foreign governments on a reciprocal basis.".

**SEC. 206. REQUIRING SHARING BY THE FEDERAL BUREAU OF INVESTIGATION OF CERTAIN CRIMINAL RECORD EXTRACTS WITH OTHER FEDERAL AGENCIES IN ORDER TO ENHANCE BORDER SECURITY.**

(a) IN GENERAL.—Section 105 of the Immigration and Nationality Act (8 U.S.C. 1105), is amended—

(1) in the section heading, by adding "AND DATA EXCHANGE" at the end;

(2) by inserting "(a) LIAISON WITH INTERNAL SECURITY OFFICERS.—" after "105.";

(3) by striking "the internal security of" and inserting "the internal and border security of"; and

(4) by adding at the end the following:

"(b) CRIMINAL HISTORY RECORD INFORMATION.—The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Secretary of State and the Commissioner access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the official

to be provided access, for the purpose of determining whether a visa applicant or applicant for admission has a criminal history record indexed in any such file. Such access shall be provided by means of extracts of the records for placement in the Department of State's automated visa lookout database or other appropriate database, and shall be provided without any fee or charge. The Director of the Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon by the Attorney General and the official provided access. Upon receipt of such updated extracts, the receiving official shall make corresponding updates to the official's databases and destroy previously provided extracts. Such access to any extract shall not be construed to entitle the Secretary of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Secretary of State shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

"(c) RECONSIDERATION.—The provision of the extracts described in subsection (b) may be reconsidered by the Attorney General and the receiving official upon the development and deployment of a more cost-effective and efficient means of sharing the information.

"(d) REGULATIONS.—For purposes of administering this section, the Secretary of State shall, prior to receiving access to National Crime Information Center data, promulgate final regulations—

"(1) to implement procedures for the taking of fingerprints; and

"(2) to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order—

"(A) to limit the redissemination of such information;

"(B) to ensure that such information is used solely to determine whether to issue a visa to an individual;

"(C) to ensure the security, confidentiality, and destruction of such information; and

"(D) to protect any privacy rights of individuals who are subjects of such information.".

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by amending the item relating to section 105 to read as follows:

"Sec. 105. Liaison with internal security officers and data exchange.".

(c) EFFECTIVE DATE AND IMPLEMENTATION.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall be fully implemented not later than 18 months after such date.

(d) REPORTING REQUIREMENT.—Not later than 2 years after the date of the enactment of this Act, the Attorney General and the Secretary of State, jointly, shall report to the Congress on the implementation of the amendments made by this section.

(e) CONSTRUCTION.—Nothing in this section, or in any other law, shall be construed to limit the authority of the Attorney General or the Director of the Federal Bureau of Investigation to provide access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, or to any other information maintained by such center, to any Federal agency or officer authorized to enforce or administer the immigration laws of the United States, for the purpose of such enforcement or administration, upon terms that are consistent with sections 212 through 216 of the National Crime Prevention and Privacy Compact Act of 1998 (42 U.S.C. 14611 et seq.).

**SEC. 207. INADMISSIBILITY OF ALIENS ENGAGED IN MONEY LAUNDERING.**

(a) AMENDMENT TO IMMIGRATION AND NATIONALITY ACT.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:

"(I) MONEY LAUNDERING.—Any alien—

"(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments); or

"(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.".

(b) MONEY LAUNDERING WATCHLIST.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall develop, implement, and cer-

tify to the Congress that there has been established a money laundering watchlist, which identifies individuals worldwide who are known or suspected of money laundering, which is readily accessible to, and shall be checked by, a consular or other Federal official prior to the issuance of a visa or admission to the United States. The Secretary of State shall develop and continually update the watchlist in cooperation with the Attorney General, the Secretary of the Treasury, and the Director of Central Intelligence.

**SEC. 208. PROGRAM TO COLLECT INFORMATION RELATING TO NONIMMIGRANT FOREIGN STUDENTS AND OTHER EXCHANGE PROGRAM PARTICIPANTS.**

(a) CHANGES IN DEADLINES.—Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372) is amended—

(1) in subsection (f), by striking "Not later than 4 years after the commencement of the program established under subsection (a)," and inserting "Not later than 120 days after the date of the enactment of the PATRIOT Act of 2001,"; and

(2) in subsection (g)(1), by striking "12 months" and inserting "120 days".

(b) INCREASED FEE FOR CERTAIN STUDENTS.—Section 641(e)(4)(A) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(e)(4)(A)) is amended by adding at the end the following: "In the case of an alien who is a national of a country, the government of which the Secretary of State has determined, for purposes of section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), has repeatedly provided support for acts of international terrorism, the Attorney General may impose on, and collect from, the alien a fee that is greater than that imposed on other aliens described in paragraph (3).".

(c) DATA EXCHANGE.—Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following:

"(h) DATA EXCHANGE.—Notwithstanding any other provision of law, the Attorney General shall provide to the Secretary of State and the Director of the Federal Bureau of Investigation the information collected under subsection (a)(1).".

**SEC. 209. PROTECTION OF NORTHERN BORDER.**

There are authorized to be appropriated—

(1) such sums as may be necessary to triple the number of Border Patrol personnel (from the number authorized under current law) in each State along the northern border;

(2) such sums as may be necessary to triple the number of Immigration and Naturalization Service inspectors (from the number authorized under current law) at ports of entry in each State along the northern border; and

(3) an additional $50,000,000 to the Immigration and Naturalization Service for purposes of enhancing technology for security and enforcement at the northern border, such as infrared technology and technology that enhances coordination between the Governments of Canada and the United States generally and specifically between Canadian police and the Federal Bureau of Investigation.

# Subtitle B—Preservation of Immigration Benefits for Victims of Terrorism

**SEC. 211. SPECIAL IMMIGRANT STATUS.**

(a) IN GENERAL.—For purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Attorney General may provide an alien described in subsection (b) with the status of a special immigrant under section 101(a)(27) of such Act (8 U.S.C. 1101(a(27)), if the alien—

(1) files with the Attorney General a petition under section 204 of such Act (8 U.S.C. 1154) for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4)); and

(2) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility, the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.

(b) ALIENS DESCRIBED.—

(1) PRINCIPAL ALIENS.—An alien is described in this subsection if—

(A) the alien was the beneficiary of—

(i) a petition that was filed with the Attorney General on or before September 11, 2001—

(I) under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) to classify the alien as a family-sponsored immigrant under section 203(a) of such Act (8 U.S.C. 1153(a)) or as an employment-based immigrant under section 203(b) of such Act (8 U.S.C. 1153(b)); or

(II) under section 214(d) (8 U.S.C. 1184(d)) of such Act to authorize the issuance of a nonimmigrant visa to the alien under section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)); or

(ii) an application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)) that was filed under regulations of the Secretary of Labor on or before such date; and

(B) such petition or application was revoked or terminated (or otherwise rendered null), either before or after its approval, due to a specified terrorist activity that directly resulted in—

(i) the death or disability of the petitioner, applicant, or alien beneficiary; or

(ii) loss of employment due to physical damage to, or destruction of, the business of the petitioner or applicant.

(2) SPOUSES AND CHILDREN.—

(A) IN GENERAL.—An alien is described in this subsection if—

(i) the alien was, on September 10, 2001, the spouse or child of a principal alien described in paragraph (1); and

(ii) the alien—

(I) is accompanying such principal alien; or

(II) is following to join such principal alien not later than September 11, 2003.

(B) CONSTRUCTION.—For purposes of construing the terms "accompanying" and "following to join" in subparagraph (A)(ii), any death of a principal alien that is described in paragraph (1)(B)(i) shall be disregarded.

(3) GRANDPARENTS OF ORPHANS.—An alien is described in this subsection if the alien is a grandparent of a child, both of whose parents died as a direct result of a specified terrorist activity, if either of such deceased parents was, on September 10, 2001, a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States.

(c) PRIORITY DATE.—Immigrant visas made available under this section shall be issued to aliens in the order in which a petition on behalf of each such alien is filed with the Attorney General under subsection (a)(1), except that if an alien was assigned a priority date with respect to a petition described in subsection (b)(1)(A)(i), the alien may maintain that priority date.

(d) NUMERICAL LIMITATIONS.—For purposes of the application of sections 201 through 203 of the Immigration and Nationality Act (8 U.S.C. 1151–1153) in any fiscal year, aliens eligible to be provided status under this section shall be treated as special immigrants described in section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)) who are not described in subparagraph (A), (B), (C), or (K) of such section.

**SEC. 212. EXTENSION OF FILING OR REENTRY DEADLINES.**

(a) AUTOMATIC EXTENSION OF NONIMMIGRANT STATUS.—

(1) IN GENERAL.—Notwithstanding section 214 of the Immigration and Nationality Act (8 U.S.C. 1184), in the case of an alien described in paragraph (2) who was lawfully present in the United States as a nonimmigrant on September 10, 2001, the alien may remain lawfully in the United States in the same nonimmigrant status until the later of—

(A) the date such lawful nonimmigrant status otherwise would have terminated if this subsection had not been enacted; or

(B) 1 year after the death or onset of disability described in paragraph (2).

(2) ALIENS DESCRIBED.—

(A) PRINCIPAL ALIENS.—An alien is described in this paragraph if the alien was disabled as a direct result of a specified terrorist activity.

(B) SPOUSES AND CHILDREN.—An alien is described in this paragraph if the alien was, on September 10, 2001, the spouse or child of—

(i) a principal alien described in subparagraph (A); or

(ii) an alien who died as a direct result of a specified terrorist activity.

(3) AUTHORIZED EMPLOYMENT.—During the period in which a principal alien or alien spouse is in lawful nonimmigrant status under paragraph (1), the alien shall be provided an "employment authorized" endorsement or other appro-

priate document signifying authorization of employment not later than 30 days after the alien requests such authorization.

(b) NEW DEADLINES FOR EXTENSION OR CHANGE OF NONIMMIGRANT STATUS.—

(1) FILING DELAYS.—In the case of an alien who was lawfully present in the United States as a nonimmigrant on September 10, 2001, if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due.

(2) DEPARTURE DELAYS.—In the case of an alien who was lawfully present in the United States as a nonimmigrant on September 10, 2001, if the alien is unable timely to depart the United States as a direct result of a specified terrorist activity, the alien shall not be considered to have been unlawfully present in the United States during the period beginning on September 11, 2001, and ending on the date of the alien's departure, if such departure occurs on or before November 11, 2001.

(3) SPECIAL RULE FOR ALIENS UNABLE TO RETURN FROM ABROAD.—

(A) PRINCIPAL ALIENS.—In the case of an alien who was in a lawful nonimmigrant status on September 10, 2001, but who was not present in the United States on such date, if the alien was prevented from returning to the United States in order to file a timely application for an extension of nonimmigrant status as a direct result of a specified terrorist activity—

(i) the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due; and

(ii) the alien's lawful nonimmigrant status shall be considered to continue until the later of—

(I) the date such status otherwise would have terminated if this subparagraph had not been enacted; or

(II) the date that is 60 days after the date on which the application described in clause (i) otherwise would have been due.

(B) SPOUSES AND CHILDREN.—In the case of an alien who is the spouse or child of a principal alien described in subparagraph (A), if the spouse or child was in a lawful nonimmigrant status on September 10, 2001, the spouse or child may remain lawfully in the United States in the same nonimmigrant status until the later of—

(i) the date such lawful nonimmigrant status otherwise would have terminated if this subparagraph had not been enacted; or

(ii) the date that is 60 days after the date on which the application described in subparagraph (A) otherwise would have been due.

(c) DIVERSITY IMMIGRANTS.—

(1) WAIVER OF FISCAL YEAR LIMITATION.—Notwithstanding section 203(e)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(e)(2)), an immigrant visa number issued to an alien under section 203(c) of such Act for fiscal year 2001 may be used by the alien during the period beginning on October 1, 2001, and ending on April 1, 2002, if the alien establishes that the alien was prevented from using it during fiscal year 2001 as a direct result of a specified terrorist activity.

(2) WORLDWIDE LEVEL.—In the case of an alien entering the United States as a lawful permanent resident, or adjusting to that status, under paragraph (1), the alien shall be counted as a diversity immigrant for fiscal year 2001 for purposes of section 201(e) of the Immigration and Nationality Act (8 U.S.C. 1151(e)), unless the worldwide level under such section for such year has been exceeded, in which case the alien shall be counted as a diversity immigrant for fiscal year 2002.

(3) TREATMENT OF FAMILY MEMBERS OF CERTAIN ALIENS.—In the case of a principal alien issued an immigrant visa number under section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c)) for fiscal year 2001, if such principal alien died as a direct result of a specified terrorist activity, the aliens who were, on September 10, 2001, the spouse and children of such principal alien shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) of section 203 of such Act, be entitled to the same status, and the same order of consideration, that would have been provided to such alien spouse or child under section 203(d) of such Act if the principal alien were not deceased.

(d) EXTENSION OF EXPIRATION OF IMMIGRANT VISAS.—Notwithstanding the limitations under section 221(c) of the Immigration and Nationality Act (8 U.S.C. 1201(c)), in the case of any immigrant visa issued to an alien that expires or expired before December 31, 2001, if the alien was unable to effect entry to the United States as a direct result of a specified terrorist activity, then the period of validity

of the visa is extended until December 31, 2001, unless a longer period of validity is otherwise provided under this subtitle.

(e) GRANTS OF PAROLE EXTENDED.—In the case of any parole granted by the Attorney General under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) that expires on a date on or after September 11, 2001, if the alien beneficiary of the parole was unable to return to the United States prior to the expiration date as a direct result of a specified terrorist activity, the parole is deemed extended for an additional 90 days.

(f) VOLUNTARY DEPARTURE.—Notwithstanding section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c), if a period for voluntary departure under such section expired during the period beginning on September 11, 2001, and ending on October 11, 2001, such voluntary departure period is deemed extended for an additional 30 days.

**SEC. 213. HUMANITARIAN RELIEF FOR CERTAIN SURVIVING SPOUSES AND CHILDREN.**

(a) TREATMENT AS IMMEDIATE RELATIVES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, if the citizen died as a direct result of a specified terrorist activity, the alien (and each child of the alien) shall be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death, but only if the alien files a petition under section 204(a)(1)(A)(ii) of such Act within 2 years after such date and only until the date the alien remarries.

(b) SPOUSES, CHILDREN, UNMARRIED SONS AND DAUGHTERS OF LAWFUL PERMANENT RESIDENT ALIENS.—

(1) IN GENERAL.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien before September 11, 2001, shall be considered (if the spouse, child, son, or daughter has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for preference status under such section with the same priority date as that assigned prior to the death described in paragraph (3)(A). No new petition shall be required to be filed. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(2) SELF-PETITIONS.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act may file a petition for such classification with the Attorney General, if the spouse, child, son, or daughter was present in the United States on September 11, 2001. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(3) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified terrorist activity; and

(B) on the day of such death, was lawfully admitted for permanent residence in the United States.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES AND CHILDREN OF EMPLOYMENT-BASED IMMIGRANTS.—

(1) IN GENERAL.—Any alien who was, on September 10, 2001, the spouse or child of an alien described in paragraph (2), and who applied for adjustment of status prior to the death described in paragraph (2)(A), may have such application adjudicated as if such death had not occurred.

(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified terrorist activity; and

(B) on the day before such death, was—

(i) an alien lawfully admitted for permanent residence in the United States by reason of having been allotted a visa under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)); or

(ii) an applicant for adjustment of status to that of an alien described in clause (i), and admissible to the United States for permanent residence.

(d) WAIVER OF PUBLIC CHARGE GROUNDS.—In determining the admissibility of any alien accorded an immigration benefit under this section, the grounds for inadmissibility specified in section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) shall not apply.

**SEC. 214. "AGE-OUT" PROTECTION FOR CHILDREN.**

For purposes of the administration of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), in the case of an alien—

(1) whose 21st birthday occurs in September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 90 days after the alien's 21st birthday for purposes of adjudicating such petition or application; and

(2) whose 21st birthday occurs after September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 45 days after the alien's 21st birthday for purposes of adjudicating such petition or application.

**SEC. 215. TEMPORARY ADMINISTRATIVE RELIEF.**

The Attorney General, for humanitarian purposes or to ensure family unity, may provide temporary administrative relief to any alien who—

(1) was lawfully present in the United States on September 10, 2001;

(2) was on such date the spouse, parent, or child of an individual who died or was disabled as a direct result of a specified terrorist activity; and

(3) is not otherwise entitled to relief under any other provision of this subtitle.

**SEC. 216. EVIDENCE OF DEATH, DISABILITY, OR LOSS OF EMPLOYMENT.**

(a) IN GENERAL.—The Attorney General shall establish appropriate standards for evidence demonstrating, for purposes of this subtitle, that any of the following occurred as a direct result of a specified terrorist activity:

(1) Death.

(2) Disability.

(3) Loss of employment due to physical damage to, or destruction of, a business.

(b) WAIVER OF REGULATIONS.—The Attorney General shall carry out subsection (a) as expeditiously as possible. The Attorney General is not required to promulgate regulations prior to implementing this subtitle.

**SEC. 217. NO BENEFITS TO TERRORISTS OR FAMILY MEMBERS OF TERRORISTS.**

Notwithstanding any other provision of this subtitle, nothing in this subtitle shall be construed to provide any benefit or relief to—

(1) any individual culpable for a specified terrorist activity; or

(2) any family member of any individual described in paragraph (1).

**SEC. 218. DEFINITIONS.**

(a) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this subtitle, the definitions used in the Immigration and Nationality Act (excluding the definitions applicable exclusively to title III of such Act) shall apply in the administration of this subtitle.

(b) SPECIFIED TERRORIST ACTIVITY.—For purposes of this subtitle, the term "specified terrorist activity" means any terrorist activity conducted against the Government or the people of the United States on September 11, 2001.

# TITLE III—CRIMINAL JUSTICE

## Subtitle A—Substantive Criminal Law

**SEC. 301. STATUTE OF LIMITATION FOR PROSECUTING TERRORISM OFFENSES.**

(a) IN GENERAL.—Section 3286 of title 18, United States Code, is amended to read as follows:

**"§ 3286. Terrorism offenses**

"(a) An indictment may be found or an information instituted at any time without limitation for any Federal terrorism offense or any of the following offenses:

"(1) A violation of, or an attempt or conspiracy to violate, section 32 (relating to destruction of aircraft or aircraft facilities), 37(a)(1) (relating to violence at international airports), 175 (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 791 (relating to harboring terrorists), 831 (relating to nuclear materials), 844(f) or (i) when it relates to bombing (relating to arson and bombing of certain property), 1114(1) (relating to protection of officers and employees of the United States), 1116, if the offense involves murder (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1751(a)–(d) (re-

lating to Presidential and Presidential staff assassination and kidnaping), 2332(a)(1) (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries) of this title.

"(2) Section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284);

"(3) Section 601 (relating to disclosure of identities of covert agents) of the National Security Act of 1947 (50 U.S.C. 421).

"(4) Section 46502 (relating to aircraft piracy) of title 49.

"(b) An indictment may be found or an information instituted within 15 years after the offense was committed for any of the following offenses:

"(1) Section 175b (relating to biological weapons), 842(m) or (n) (relating to plastic explosives), 930(c) if it involves murder (relating to possessing a dangerous weapon in a Federal facility), 956 (relating to conspiracy to injure property of a foreign government), 1030(a)(1), 1030(a)(5)(A), or 1030(a)(7) (relating to protection of computers), 1362 (relating to destruction of communication lines, stations, or systems), 1366 (relating to destruction of an energy facility), 1992 (relating to trainwrecking), 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture).

"(2) Any of the following provisions of title 49: the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3), (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved, or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 213 of title 18, United States Code, is amended by amending the item relating to section 3286 to read as follows:

"3286. Terrorism offenses.".

(c) APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of enactment of this section.

**SEC. 302. ALTERNATIVE MAXIMUM PENALTIES FOR TERRORISM CRIMES.**

Section 3559 of title 18, United States Code, is amended by adding after subsection (d) the following:

"(e) AUTHORIZED TERMS OF IMPRISONMENT FOR TERRORISM CRIMES.—A person convicted of any Federal terrorism offense may be sentenced to imprisonment for any term of years or for life, notwithstanding any maximum term of imprisonment specified in the law describing the offense. The authorization of imprisonment under this subsection is supplementary to, and does not limit, the availability of any other penalty authorized by the law describing the offense, including the death penalty, and does not limit the applicability of any mandatory minimum term of imprisonment, including any mandatory life term, provided by the law describing the offense.".

**SEC. 303. PENALTIES FOR TERRORIST CONSPIRACIES.**

Chapter 113B of title 18, United States Code, is amended—

(1) by inserting after section 2332b the following:

**"§ 2332c. Attempts and conspiracies**

"(a) Except as provided in subsection (c), any person who attempts or conspires to commit any Federal terrorism offense shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

"(b) Except as provided in subsection (c), any person who attempts or conspires to commit any offense described in section 25(2) shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

"(c) A death penalty may not be imposed by operation of this section."; and

(2) in the table of sections at the beginning of the chapter, by inserting after the item relating to section 2332b the following new item:

"2332c. Attempts and conspiracies.".

**SEC. 304. TERRORISM CRIMES AS RICO PREDICATES.**

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or (F)" and inserting "(F)"; and

(2) by striking "financial gain." and inserting "financial gain, or (G) any act that is a Federal terrorism offense or is indictable under any of the following provisions of law: section 32 (relating to destruction of aircraft or aircraft facilities), 37(a)(1) (relating to violence at international airports), 175 (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f) or (i) when it involves a bombing (relating to arson and bombing of certain property), 930(c) when it involves an attack on a Federal facility, 1114 when it involves murder (relating to protection of officers and employees of the United States), 1116 when it involves murder (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1362 (relating to destruction of communication lines, stations, or systems), 1366 (relating to destruction of an energy facility), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992 (relating to trainwrecking), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture) of this title; section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284); or section 46502 (relating to aircraft piracy) or 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49;".

**SEC. 305. BIOLOGICAL WEAPONS.**

Chapter 10 of title 18, United States Code, is amended—

(1) in section 175—

(A) in subsection (b)—

(i) by striking, "section, the" and inserting "section—

"(1) the";

(ii) by striking "does not include" and inserting "includes";

(iii) by inserting "other than" after "system for"; and

(iv) by striking "purposes." and inserting "purposes, and

"(2) the terms biological agent and toxin do not encompass any biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.";

(B) by redesignating subsection (b) as subsection (c); and

(C) by inserting after subsection (a) the following:

"(b) ADDITIONAL OFFENSE.—Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both.";

(2) by inserting after section 175a the following:

**"§ 175b. Possession by restricted persons**

"(a) No restricted person described in subsection (b) shall ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), and is not exempted under subsection (h) of such section 72.6, or Appendix A of part 72 of such title; except that the term select agent does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

"(b) As used in this section, the term 'restricted person' means an individual who—

"(1) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;

"(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

"(3) is a fugitive from justice;

"(4) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(5) is an alien illegally or unlawfully in the United States;

"(6) has been adjudicated as a mental defective or has been committed to any mental institution; or

"(7) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination that remains in effect that such country has repeatedly provided support for acts of international terrorism.

"(c) As used in this section, the term 'alien' has the same meaning as that term is given in section 1010(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), and the term 'lawfully' admitted for permanent residence has the same meaning as that term is given in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

"(d) Whoever knowingly violates this section shall be fined under this title or imprisoned not more than ten years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized governmental activity under title V of the National Security Act of 1947."; and

(3) in the table of sections in the beginning of such chapter, by inserting after the item relating to section 175a the following:

"175b. Possession by restricted persons.".

**SEC. 306. SUPPORT OF TERRORISM THROUGH EXPERT ADVICE OR ASSISTANCE.**

Section 2339A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "a violation" and all that follows through "49" and inserting "any Federal terrorism offense or any offense described in section 25(2)"; and

(B) by striking "violation," and inserting "offense,"; and

(2) in subsection (b), by inserting "expert advice or assistance," after "training,".

**SEC. 307. PROHIBITION AGAINST HARBORING.**

(a) Title 18, United States Code, is amended by inserting before section 792 the following:

**"§ 791. Prohibition against harboring**

"Whoever harbors or conceals any person who he knows has committed, or is about to commit, an offense described in section 25(2) or this title shall be fined under this title or imprisoned not more than ten years or both. There is extraterritorial Federal jurisdiction over any violation of this section or any conspiracy or attempt to violate this section. A violation of this section or of such a conspiracy or attempt may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.".

(b) The table of sections at the beginning of chapter 37 of title 18, United States Code, is amended by inserting before the item relating to section 792 the following:

"791. Prohibition against harboring.".

**SEC. 308. POST-RELEASE SUPERVISION OF TERRORISTS.**

Section 3583 of title 18, United States Code, is amended by adding at the end the following:

"(j) SUPERVISED RELEASE TERMS FOR TERRORISM OFFENSES.—Notwithstanding subsection (b), the authorized terms of supervised release for any Federal terrorism offense are any term of years or life.".

**SEC. 309. DEFINITION.**

(a) Chapter 1 of title 18, United States Code, is amended—

(1) by adding after section 24 a new section as follows:

**"§ 25. Federal terrorism offense defined**

"As used in this title, the term 'Federal terrorism offense' means an offense that is—

"(1) is calculated to influence or affect the conduct of government by intimidation or coercion; or to retaliate against government conduct; and

"(2) is a violation of, or an attempt or conspiracy to violate- section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at

international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175, 175b (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 791 (relating to harboring terrorists), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f) or (i) (relating to arson and bombing of certain property), 930(c), 956 (relating to conspiracy to injure property of a foreign government), 1030(a)(1), 1030(a)(5)(A), or 1030(a)(7) (relating to protection of computers), 1114 (relating to protection of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to injury of Government property or contracts), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366 (relating to destruction of an energy facility), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992, 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture);

"(3) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284);

"(4) section 601 (relating to disclosure of identities of covert agents) of the National Security Act of 1947 (50 U.S.C. 421); or

"(5) any of the following provisions of title 49: section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3), (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved, or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49."; and

(2) in the table of sections in the beginning of such chapter, by inserting after the item relating to section 24 the following:

"25. Federal terrorism offense defined.".

(b) Section 2332b(g)(5)(B) of title 18, United States Code, is amended by striking "is a violation" and all that follows through "title 49" and inserting "is a Federal terrorism offense".

(c) Section 2331 of title 18, United States Code, is amended—

(1) in paragraph (1)(B)—

(A) by inserting "(or to have the effect)" after "intended"; and

(B) in clause (iii), by striking "by assassination or kidnapping" and inserting "(or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof)";

(2) in paragraph (3), by striking "and";

(3) in paragraph (4), by striking the period and inserting "; and"; and

(4) by inserting the following paragraph (4):

"(5) the term 'domestic terrorism' means activities that—

"(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; and

"(B) appear to be intended (or to have the effect)—

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government (or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof).".

**SEC. 310. CIVIL DAMAGES.**

Section 2707(c) of title 18, United States Code, is amended by striking "$1,000" and inserting "$10,000".

# Subtitle B—Criminal Procedure

**SEC. 351. SINGLE-JURISDICTION SEARCH WARRANTS FOR TERRORISM.**

Rule 41(a) of the Federal Rules of Criminal Procedure is amended by inserting after "executed" the following: "and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of title 18, United States Code), by a Federal magistrate judge in any district court of the United States (including a magistrate judge of such court), or any United States Court of Appeals, having jurisdiction over the offense being investigated, for a search of property or for a person within or outside the district".

**SEC. 352. DNA IDENTIFICATION OF TERRORISTS.**

Section 3(d)(1) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)(1)) is amended—

(1) by redesignating subparagraph (G) as subparagraph (H); and

(2) by inserting after subparagraph (F) the a new subparagraph as follows:

"(G) Any Federal terrorism offense (as defined in section 25 of title 18, United States Code).".

**SEC. 353. GRAND JURY MATTERS.**

Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure is amended—

(1) by adding after clause (iv) the following:

"(v) when permitted by a court at the request of an attorney for the government, upon a showing that the matters pertain to international or domestic terrorism (as defined in section 2331 of title 18, United States Code) or national security, to any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or to the President or Vice President of the United States, for the performance of official duties.";

(2) by striking "or" at the end of clause (iii); and

(3) by striking the period at the end of clause (iv) and inserting "; or".

**SEC. 354. EXTRATERRITORIALITY.**

Chapter 113B of title 18, United States Code, is amended—

(1) in the heading for section 2338, by striking "**Exclusive**";

(2) in section 2338, by inserting "There is extraterritorial Federal jurisdiction over any Federal terrorism offense and any offense under this chapter, in addition to any extraterritorial jurisdiction that may exist under the law defining the offense, if the person committing the offense or the victim of the offense is a national of the United States (as defined in section 101 of the Immigration and Nationality Act) or if the offense is directed at the security or interests of the United States." before "The district courts"; and

(3) in the table of sections at the beginning of such chapter, by striking "Exclusive" in the item relating to section 2338.

**SEC. 355. JURISDICTION OVER CRIMES COMMITTED AT UNITED STATES FACILITIES ABROAD.**

Section 7 of title 18, United States Code, is amended by adding at the end the following:

"(9)(A) With respect to offenses committed by or against a United States national, as defined in section 1203(c) of this title—

"(i) the premises of United States diplomatic, consular, military, or other United States Government missions or entities in foreign states, including the buildings, parts of buildings, and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities; and

"(ii) residences in foreign states and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities, except that this paragraph does not supercede any treaty or international agreement in force on the date of the enactment of this paragraph.

"(B) This paragraph does not apply with respect to an offense committed by a person described in section 3261(a).".

**SEC. 356. SPECIAL AGENT AUTHORITIES.**

(a) GENERAL AUTHORITY OF SPECIAL AGENTS.—Section 37(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709(a)) is amended—

(1) by striking paragraph (2) and inserting the following:

"(2) in the course of performing the functions set forth in paragraphs (1) and (3), obtain and execute search and arrest warrants, as well as obtain and

serve subpoenas and summonses, issued under the authority of the United States;";

(2) in paragraph (3)(F) by inserting "or President-elect" after "President"; and

(3) by striking paragraph (5) and inserting the following:

"(5) in the course of performing the functions set forth in paragraphs (1) and (3), make arrests without warrant for any offense against the United States committed in the presence of the special agent, or for any felony cognizable under the laws of the United States if the special agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.".

(b) CRIMES.—Section 37 of such Act (22 U.S.C. 2709) is amended by inserting after subsection (c) the following new subsections:

"(d) INTERFERENCE WITH AGENTS.—Whoever knowingly and willfully obstructs, resists, or interferes with a Federal law enforcement agent engaged in the performance of the protective functions authorized by this section shall be fined under title 18 or imprisoned not more than one year, or both.

"(e) PERSONS UNDER PROTECTION OF SPECIAL AGENTS.—Whoever engages in any conduct—

"(1) directed against an individual entitled to protection under this section, and

"(2) which would constitute a violation of section 112 or 878 of title 18, United States Code, if such individual were a foreign official, an official guest, or an internationally protected person, shall be subject to the same penalties as are provided for such conduct directed against an individual subject to protection under such section of title 18.".

# TITLE IV—FINANCIAL INFRASTRUCTURE

**SEC. 401. LAUNDERING THE PROCEEDS OF TERRORISM.**

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "or 2339B" after "2339A".

**SEC. 402. MATERIAL SUPPORT FOR TERRORISM.**

Section 2339A of title 18, United States Code, is amended—

(1) in subsection (a), by adding at the end the following "A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law."; and

(2) in subsection (b), by striking "or other financial securities" and inserting "or monetary instruments or financial securities".

**SEC. 403. ASSETS OF TERRORIST ORGANIZATIONS.**

Section 981(a)(1) of title 18, United States Code, is amended by inserting after subparagraph (F) the following:

"(G) All assets, foreign or domestic—

"(i) of any person, entity, or organization engaged in planning or perpetrating any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

"(ii) acquired or maintained by any person for the purpose of supporting, planning, conducting, or concealing an act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property; or

"(iii) derived from, involved in, or used or intended to be used to commit any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property.".

**SEC. 404. TECHNICAL CLARIFICATION RELATING TO PROVISION OF MATERIAL SUPPORT TO TERRORISM.**

No provision of title IX of Public Law 106–387 shall be understood to limit or otherwise affect section 2339A or 2339B of title 18, United States Code.

**SEC. 405. DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS.**

(a) DISCLOSURE WITHOUT A REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Paragraph (3) of section 6103(i) of the Internal Revenue Code of

1986 (relating to disclosure of return information to apprise appropriate officials of criminal activities or emergency circumstances) is amended by adding at the end the following new subparagraph:

"(C) TERRORIST ACTIVITIES, ETC.—

"(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The head of the agency may disclose such return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

"(ii) DISCLOSURE TO THE DEPARTMENT OF JUSTICE.—Returns and taxpayer return information may also be disclosed to the Attorney General under clause (i) to the extent necessary for, and solely for use in preparing, an application under paragraph (7)(D).

"(iii) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

"(iv) TERMINATION.—No disclosure may be made under this subparagraph after December 31, 2003.".

(b) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Subsection (i) of section 6103 of such Code (relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—

"(A) DISCLOSURE TO LAW ENFORCEMENT AGENCIES.—

"(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (iii), the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal law enforcement agency who are personally and directly engaged in the response to or investigation of terrorist incidents, threats, or activities.

"(ii) DISCLOSURE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.—The head of any Federal law enforcement agency may disclose return information obtained under clause (i) to officers and employees of any State or local law enforcement agency but only if such agency is part of a team with the Federal law enforcement agency in such response or investigation and such information is disclosed only to officers and employees who are personally and directly engaged in such response or investigation.

"(iii) REQUIREMENTS.—A request meets the requirements of this clause if—

"(I) the request is made by the head of any Federal law enforcement agency (or his delegate) involved in the response to or investigation of terrorist incidents, threats, or activities, and

"(II) the request sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

"(iv) LIMITATION ON USE OF INFORMATION.—Information disclosed under this subparagraph shall be solely for the use of the officers and employees to whom such information is disclosed in such response or investigation.

"(B) DISCLOSURE TO INTELLIGENCE AGENCIES.—

"(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (ii), the Secretary may disclose return information (other than taxpayer return information) to those officers and employees of the Department of Justice, the Department of the Treasury, and other Federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning terrorists and terrorist organizations and activities. For purposes of the preceding sentence, the information disclosed under the preceding sentence shall be solely for the use of such officers and employees in such investigation, collection, or analysis.

"(ii) REQUIREMENTS.—A request meets the requirements of this subparagraph if the request—

"(I) is made by an individual described in clause (iii), and

"(II) sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

"(iii) REQUESTING INDIVIDUALS.—An individual described in this subparagraph is an individual—

"(I) who is an officer or employee of the Department of Justice or the Department of the Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the United States Secret Service, and

"(II) who is responsible for the collection and analysis of intelligence and counterintelligence information concerning terrorists and terrorist organizations and activities.

"(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

"(C) DISCLOSURE UNDER EX PARTE ORDERS.—

"(i) IN GENERAL.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under clause (ii), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal law enforcement agency or Federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and counterintelligence information concerning any terrorist activity or threats. Return or return information opened pursuant to the preceding sentence shall be solely for the use of such officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to any such terrorist activity or threat.

"(ii) APPLICATION FOR ORDER.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, or any United States attorney may authorize an application to a Federal district court judge or magistrate for the order referred to in clause (i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

"(I) there is reasonable cause to believe, based upon information believed to be reliable, that the taxpayer whose return or return information is to be disclosed may be connected to a terrorist activity or threat,

"(II) there is reasonable cause to believe that the return or return information may be relevant to a matter relating to such terrorist activity or threat, and

"(III) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning terrorist activity, terrorist threats, or terrorist organizations.

"(D) SPECIAL RULE FOR EX PARTE DISCLOSURE BY THE IRS.—

"(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (C)(i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that the requirements of subclauses (I) and (II) of subparagraph (C)(ii) are met.

"(ii) LIMITATION ON USE OF INFORMATION.—Information disclosed under clause (i)—

"(I) may be disclosed only to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity, and

"(II) shall be solely for use in a Federal investigation, analysis, or proceeding concerning terrorist activity, terrorist threats, or terrorist organizations.

The head of such Federal agency may disclose such information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

"(E) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2003.".

(c) CONFORMING AMENDMENTS.—

(1) Section 6103(a)(2) of such Code is amended by inserting "any local law enforcement agency receiving information under subsection (i)(7)(A)," after "State,".

(2) The heading of section 6103(i)(3) of such Code is amended by inserting "OR TERRORIST" after "CRIMINAL".

(3) Paragraph (4) of section 6103(i) of such Code is amended—

(A) in subparagraph (A) by inserting "or (7)(C)" after "paragraph (1)", and

(B) in subparagraph (B) by striking "or (3)(A)" and inserting "(3)(A) or (C), or (7)".

(4) Paragraph (6) of section 6103(i) of such Code is amended—

(A) by striking "(3)(A)" and inserting "(3)(A) or (C)", and

(B) by striking "or (7)" and inserting "(7), or (8)".

(5) Section 6103(p)(3) of such Code is amended—

(A) in subparagraph (A) by striking "(7)(A)(ii)" and inserting "(8)(A)(ii)", and

(B) in subparagraph (C) by striking "(i)(3)(B)(i)" and inserting "(i)(3)(B)(i) or (7)(A)(ii)".

(6) Section 6103(p)(4) of such Code is amended—

(A) in the matter preceding subparagraph (A)—

(i) by striking "or (5)," the first place it appears and inserting "(5), or (7),", and

(ii) by striking "(i)(3)(B)(i)" and inserting "(i)(3)(B)(i) or (7)(A)(ii)", and

(B) in subparagraph (F)(ii) by striking "or (5)," the first place it appears and inserting "(5) or (7),".

(7) Section 6103(p)(6)(B)(i) of such Code is amended by striking "(i)(7)(A)(ii)" and inserting "(i)(8)(A)(ii)".

(8) Section 7213(a)(2) of such Code is amended by striking "(i)(3)(B)(i)," and inserting "(i)(3)(B)(i) or (7)(A)(ii),".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures made on or after the date of the enactment of this Act.

**SEC. 406. EXTRATERRITORIAL JURISDICTION.**

Section 1029 of title 18, United States Code, is amended by adding at the end the following:

"(h) Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsection (a) or (b) of this section, shall be subject to the fines, penalties, imprisonment, and forfeiture provided in this title if—

"(1) the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and

"(2) the person transports, delivers, conveys, transfers to or through, or otherwise stores, secrets, or holds within the jurisdiction of the United States, any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom.".

# TITLE V—EMERGENCY AUTHORIZATIONS

**SEC. 501. OFFICE OF JUSTICE PROGRAMS.**

(a) In connection with the airplane hijackings and terrorist acts (including, without limitation, any related search, rescue, relief, assistance, or other similar activities) that occurred on September 11, 2001, in the United States, amounts transferred to the Crime Victims Fund from the Executive Office of the President or funds appropriated to the President shall not be subject to any limitation on obligations from amounts deposited or available in the Fund.

(b) Section 112 of title I of section 101(b) of division A of Public Law 105–277 and section 108(a) of the Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 2000 (H.R. 3421 of the 106th Congress, as enacted into law by section 1000(a)(1) of Public Law 106–113; Appendix A; 113 Stat. 1501A–20) are amended—

(1) after "that Office", each place it occurs, by inserting "(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title I of Public Law 90–351)"; and

(2) by inserting "functions, including any" after "all".

(c) Section 1404B(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b) is amended by inserting ", to victim service organizations, to public agencies (including Federal, State, or local governments), and to non-governmental organizations that provide assistance to victims of crime," after "programs".

(d) Section 1 of Public Law 107–37 is amended—

(1) by inserting "(containing identification of all eligible payees of benefits under section 1201)" before "by a";

(2) by inserting "producing permanent and total disability" after "suffered a catastrophic injury"; and

(3) by striking "1201(a)" and inserting "1201".

**SEC. 502. ATTORNEY GENERAL'S AUTHORITY TO PAY REWARDS.**

(a) IN GENERAL.—(1) Title 18, United States Code, is amended by striking sections 3059 through 3059B and inserting the following:

**"§ 3059. Rewards and appropriations therefor**

"(a) IN GENERAL.—Subject to subsection (b), the Attorney General may pay rewards in accordance with procedures and regulations established or issued by the Attorney General.

"(b) LIMITATIONS.— The following limitations apply with respect to awards under subsection (a):

"(1) No such reward, other than in connection with a terrorism offense or as otherwise specifically provided by law, shall exceed $2,000,000.

"(2) No such reward of $250,000 or more may be made or offered without the personal approval of either the Attorney General or the President.

"(3) The Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and the House of Representatives not later than 30 days after the approval of a reward under paragraph (2);

"(4) Any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5) may provide the Attorney General with funds for the payment of rewards.

"(5) Neither the failure to make or authorize such a reward nor the amount of any such reward made or authorized shall be subject to judicial review.

"(c) DEFINITION.—In this section, the term 'reward' means a payment pursuant to public advertisements for assistance to the Department of Justice.".

(2) The items relating to sections 3059A through 3059B in the table of sections at the beginning of chapter 203 of title 18, United States Code, are repealed.

(b) CONFORMING AMENDMENTS.——

(1) Section 3075 of title 18, United States Code, and that portion of section 3072 of title 18, United States Code, that follows the first sentence, are repealed.

(2) Public Law 101–647 is amended—

(A) in section 2565 (12 U.S.C. 4205)—

(i) by striking all the matter after "section 2561," in subsection (c)(1) and inserting "the Attorney General may, in the Attorney General's discretion, pay a reward to the declaring."; and

(ii) by striking subsection (e); and

(B) by striking section 2569 (12 U.S.C. 4209).

**SEC. 503. LIMITED AUTHORITY TO PAY OVERTIME.**

The matter under the headings "Immigration And Naturalization Service: Salaries and Expenses, Enforcement And Border Affairs" and "Immigration And Naturalization Service: Salaries and Expenses, Citizenship And Benefits, Immigration Support And Program Direction" in the Department of Justice Appropriations Act, 2001 (as enacted into law by Appendix B (H.R. 5548) of Public Law 106–553 (114 Stat. 2762A–58 to 2762A–59)) is amended by striking each place it occurs: "*Provided*" and all that follows through "That none of the funds available to the Immigration and Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of $30,000 during the calendar year beginning January 1, 2001:".

**SEC. 504. DEPARTMENT OF STATE REWARD AUTHORITY.**

(a) CHANGES IN REWARD AUTHORITY.—Section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708) is amended—

(1) in subsection (b)—

(A) by striking "or" at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting ", including by dismantling an organization in whole or significant part; or"; and

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

"(6) the identification or location of an individual who holds a leadership position in a terrorist organization.";

(2) in subsection (d), by striking paragraphs (2) and (3) and redesignating paragraph (4) as paragraph (2); and

(3) by amending subsection (e)(1) to read as follows:

"(1) AMOUNT OF AWARD.—

"(A) Except as provided in subparagraph (B), no reward paid under this section may exceed $10,000,000.

"(B) The Secretary of State may authorize the payment of an award not to exceed $25,000,000 if the Secretary determines that payment of an award exceeding the amount under subparagraph (A) is important to the national interest of the United States.".

(b) SENSE OF CONGRESS REGARDING REWARDS RELATING TO THE SEPTEMBER 11, 2001 ATTACK.—It is the sense of the Congress that the Secretary of State should use the authority of section 36 of the State Department Basic Authorities Act of 1956, as amended by subsection (a), to offer a reward of $25,000,000 for Osama bin Laden and other leaders of the September 11, 2001 attack on the United States.

**SEC. 505. AUTHORIZATION OF FUNDS FOR DEA POLICE TRAINING IN SOUTH AND CENTRAL ASIA.**

In addition to amounts otherwise available to carry out section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291), there is authorized to be appropriated to the President not less than $5,000,000 for fiscal year 2002 for regional antidrug training in the Republic of Turkey by the Drug Enforcement Administration for police, as well as increased precursor chemical control efforts in the South and Central Asia region.

**SEC. 506. PUBLIC SAFETY OFFICER BENEFITS.**

(a) IN GENERAL.—Section 1201(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by striking "$100,000" and inserting "$250,000".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any death or disability occurring on or after January 1, 2001.

# TITLE VI—DAM SECURITY

**SEC. 601. SECURITY OF RECLAMATION DAMS, FACILITIES, AND RESOURCES.**

Section 2805(a) of the Reclamation Recreation Management Act of 1992 (16 U.S.C. 460l–33(a)) is amended by adding at the end the following:

"(3) Any person who violates any such regulation which is issued pursuant to this Act shall be fined under title 18, United States Code, imprisoned not more than 6 months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate judge designated for that purpose by the court by which such judge was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18, United States Code.

"(4) The Secretary may—

"(A) authorize law enforcement personnel from the Department of the Interior to act as law enforcement officers to maintain law and order and protect persons and property within a Reclamation project or on Reclamation lands;

"(B) authorize law enforcement personnel of any other Federal agency that has law enforcement authority, with the exception of the Department of Defense, or law enforcement personnel of any State or local government, including Indian tribes, when deemed economical and in the public interest, and with the concurrence of that agency or that State or local government, to act as law enforcement officers within a Reclamation project or on Reclamation lands with such enforcement powers as may be so assigned them by the Secretary to carry out the regulations promulgated under paragraph (2);

"(C) cooperate with any State or local government, including Indian tribes, in the enforcement of the laws or ordinances of that State or local government; and

"(D) provide reimbursement to a State or local government, including Indian tribes, for expenditures incurred in connection with activities under subparagraph (B).

"(5) Officers or employees designated or authorized by the Secretary under paragraph (4) are authorized to—

"(A) carry firearms within a Reclamation project or on Reclamation lands and make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony, and if such arrests occur within a Reclamation project or on Reclamation lands or the person to be arrested is fleeing therefrom to avoid arrest;

"(B) execute within a Reclamation project or on Reclamation lands any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation issued pursuant to law for an offense committed within a Reclamation project or on Reclamation lands; and

"(C) conduct investigations within a Reclamation project or on Reclamation lands of offenses against the United States committed within a Reclamation project or on Reclamation lands, if the Federal law enforcement agency having investigative jurisdiction over the offense committed declines to investigate the offense or concurs with such investigation.

"(6)(A) Except as otherwise provided in this paragraph, a law enforcement officer of any State or local government, including Indian tribes, designated to act as a law enforcement officer under paragraph (4) shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, employment discrimination, leave, unemployment compensation, and Federal benefits.

"(B) For purposes of chapter 171 of title 28, United States Code, popularly known as the Federal Tort Claims Act, a law enforcement officer of any State or local government, including Indian tribes, shall, when acting as a designated law enforcement officer under paragraph (4) and while under Federal supervision and control, and only when carrying out Federal law enforcement responsibilities, be considered a Federal employee.

"(C) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to compensation to Federal employees for work injuries, a law enforcement officer of any State or local government, including Indian tribes, shall, when acting as a designated law enforcement officer under paragraph (4) and while under Federal supervision and control, and only when carrying out Federal law enforcement responsibilities, be deemed a civil service employee of the United States within the meaning of the term 'employee' as defined in section 8101 of title 5, and the provisions of that subchapter shall apply. Benefits under this subchapter shall be reduced by the amount of any entitlement to State or local workers' compensation benefits arising out of the same injury or death.

"(7) Nothing in paragraphs (3) through (9) shall be construed or applied to limit or restrict the investigative jurisdiction of any Federal law enforcement agency, or to affect any existing right of a State or local government, including Indian tribes, to exercise civil and criminal jurisdiction within a Reclamation project or on Reclamation lands.

"(8) For the purposes of this subsection, the term 'law enforcement personnel' means employees of a Federal, State, or local government agency, including an Indian tribal agency, who have successfully completed law enforcement training approved by the Secretary and are authorized to carry firearms, make arrests, and execute service of process to enforce criminal laws of their employing jurisdiction.

"(9) The law enforcement authorities provided for in this subsection may be exercised only pursuant to rules and regulations promulgated by the Secretary and approved by the Attorney General.".

# TITLE VII—MISCELLANEOUS

**SEC. 701. EMPLOYMENT OF TRANSLATORS BY THE FEDERAL BUREAU OF INVESTIGATION.**

(a) AUTHORITY.—The Director of the Federal Bureau of Investigation is authorized to expedite the employment of personnel as translators to support counterterrorism investigations and operations without regard to applicable Federal personnel requirements and limitations.

(b) SECURITY REQUIREMENTS.—The Director of the Federal Bureau of Investigation shall establish such security requirements as are necessary for the personnel employed as translators.

(c) REPORT.—The Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate on—

(1) the number of translators employed by the FBI and other components of the Department of Justice;

(2) any legal or practical impediments to using translators employed by other Federal State, or local agencies, on a full, part-time, or shared basis; and

(3) the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.

**SEC. 702. REVIEW OF THE DEPARTMENT OF JUSTICE.**

(a) APPOINTMENT OF DEPUTY INSPECTOR GENERAL FOR CIVIL RIGHTS, CIVIL LIBERTIES, AND THE FEDERAL BUREAU OF INVESTIGATION.—The Inspector General of the Department of Justice shall appoint a Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation (hereinafter in this section referred to as the "Deputy").

(b) CIVIL RIGHTS AND CIVIL LIBERTIES REVIEW.—The Deputy shall—

(1) review information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by government employees and officials including employees and officials of the Department of Justice;

(2) make public through the Internet, radio, television, and newspaper advertisements information on the responsibilities and functions of, and how to contact, the Deputy; and

(3) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on a semi-annual basis a report on the implementation of this subsection and detailing any abuses described in paragraph (1), including a description of the use of funds appropriations used to carry out this subsection.

(c) INSPECTOR GENERAL OVERSIGHT PLAN FOR THE FEDERAL BUREAU OF INVESTIGATION.—Not later than 30 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Congress a plan for oversight of the Federal Bureau of Investigation. The Inspector General shall consider the following activities for inclusion in such plan:

(1) FINANCIAL SYSTEMS.—Auditing the financial systems, information technology systems, and computer security systems of the Federal Bureau of Investigation.

(2) PROGRAMS AND PROCESSES.—Auditing and evaluating programs and processes of the Federal Bureau of Investigation to identify systemic weaknesses or implementation failures and to recommend corrective action.

(3) INTERNAL AFFAIRS OFFICES.—Reviewing the activities of internal affairs offices of the Federal Bureau of Investigation, including the Inspections Division and the Office of Professional Responsibility.

(4) PERSONNEL.—Investigating allegations of serious misconduct by personnel of the Federal Bureau of Investigation.

(5) OTHER PROGRAMS AND OPERATIONS.—Reviewing matters relating to any other program or and operation of the Federal Bureau of Investigation that the Inspector General determines requires review.

(6) RESOURCES.—Identifying resources needed by the Inspector General to implement such plan.

(d) REVIEW OF INVESTIGATIVE TOOLS.—Not later than August 31, 2003, the Deputy shall review the implementation, use, and operation (including the impact on civil rights and liberties) of the law enforcement and intelligence authorities contained in title I of this Act and provide a report to the President and Congress.

**SEC. 703. FEASIBILITY STUDY ON USE OF BIOMETRIC IDENTIFIER SCANNING SYSTEM WITH ACCESS TO THE FBI INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM AT OVERSEAS CONSULAR POSTS AND POINTS OF ENTRY TO THE UNITED STATES.**

(a) IN GENERAL.—The Attorney General, in consultation with the Secretary of State and the Secretary of Transportation, shall conduct a study on the feasibility of utilizing a biometric identifier (fingerprint) scanning system, with access to the database of the Federal Bureau of Investigation Integrated Automated Fingerprint Identification System, at consular offices abroad and at points of entry into the United States to enhance the ability of State Department and immigration officials to identify aliens who may be wanted in connection with criminal or terrorist investigations in the United States or abroad prior to the issuance of visas or entry into the United States.

(b) REPORT TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Attorney General shall submit a report summarizing the findings of the study authorized under subsection (a) to the Committee on International Relations and the Committee on the Judiciary of the House of Representatives and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate.

**SEC. 704. STUDY OF ACCESS.**

(a) IN GENERAL.—Not later than December 31, 2002, the Federal Bureau of Investigation shall study and report to Congress on the feasibility of providing to airlines access via computer to the names of passengers who are suspected of terrorist activity by Federal officials.

(b) AUTHORIZATION.—There are authorized to be appropriated for fiscal years 2002 though 2003 not more than $250,000 to carry out subsection (a).

**SEC. 705. ENFORCEMENT OF CERTAIN ANTI-TERRORISM JUDGMENTS.**

(a) SHORT TITLE.—This section may be cited as the "Justice for Victims of Terrorism Act".

(b) DEFINITION.—

(1) IN GENERAL.—Section 1603(b) of title 28, United States Code, is amended—

(A) in paragraph (3) by striking the period and inserting "; and";

(B) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively (and by moving the margins 2 em spaces to the right);

(C) by striking "(b)" through "entity—" and inserting the following:

"(b) An 'agency or instrumentality of a foreign state' means—

"(1) any entity—"; and

(D) by adding at the end the following:

"(2) for purposes of sections 1605(a)(7) and 1610(a)(7) and (f), any entity as defined under subparagraphs (A) and (B) of paragraph (1), and subparagraph (C) of paragraph (1) shall not apply.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 1391(f)(3) of title 28, United States Code, is amended by striking "1603(b)" and inserting "1603(b)(1)".

(c) ENFORCEMENT OF JUDGMENTS.—Section 1610(f) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A) by striking "(including any agency or instrumentality or such state)" and inserting "(including any agency or instrumentality of such state), except to the extent of any punitive damages awarded"; and

(B) by adding at the end the following:

"(C) Notwithstanding any other provision of law, moneys due from or payable by the United States (including any agency or instrumentality thereof) to any state against which a judgment is pending under section 1605(a)(7) shall be subject to attachment and execution with respect to that judgment, in like manner and to the same extent as if the United States were a private person, except to the extent of any punitive damages awarded."; and

(2) by striking paragraph (3) and adding the following:

"(3)(A) Subject to subparagraph (B), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive this subsection in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

"(B) A waiver under this paragraph shall not apply to—

"(i) if property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations has been used for any nondiplomatic purpose (including use as rental property), the proceeds of such use; or

"(ii) if any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations is sold or otherwise transferred for value to a third party, the proceeds of such sale or transfer.

"(C) In this paragraph, the term 'property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations' and the term 'asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations' mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

"(4) For purposes of this subsection, all assets of any agency or instrumentality of a foreign state shall be treated as assets of that foreign state.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any claim for which a foreign state is not immune under section 1605(a)(7) of title 28, United States Code, arising before, on, or after the date of the enactment of this Act.

(e) PAYGO ADJUSTMENT.—The Director of the Office of Management and Budget shall not make any estimates of changes in direct spending outlays and receipts under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902(d)) for any fiscal year resulting from the enactment of this section.

# TITLE VIII—PRIVATE SECURITY OFFICER QUALITY ASSURANCE

**SEC. 801. SHORT TITLE.**

This title may be cited as the "Private Security Officer Quality Assurance Act of 2001".

**SEC. 802. FINDINGS.**

Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) the private security industry provides numerous opportunities for entry-level job applicants, including individuals suffering from unemployment due to economic conditions or dislocations;

(3) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are only supplemented by private security officers who provide prevention and reporting services in support of, but not in place of, regular sworn police;

(4) given the growth of large private shopping malls, and the consequent reduction in the number of public shopping streets, the American public is more likely to have contact with private security personnel in the course of a day than with sworn law enforcement officers;

(5) regardless of the differences in their duties, skill, and responsibilities, the public has difficulty in discerning the difference between sworn law enforcement officers and private security personnel; and

(6) the American public demands the employment of qualified, well-trained private security personnel as an adjunct, but not a replacement for sworn law enforcement officers.

**SEC. 803. BACKGROUND CHECKS.**

(a) IN GENERAL.—An association of employers of private security officers, designated for the purpose of this section by the Attorney General, may submit fingerprints or other methods of positive identification approved by the Attorney General, to the Attorney General on behalf of any applicant for a State license or certificate of registration as a private security officer or employer of private security officers. In response to such a submission, the Attorney General may, to the extent provided by State law conforming to the requirements of the second paragraph under the heading "Federal Bureau of Investigation" and the subheading "Salaries and Expenses" in title II of Public Law 92–544 (86 Stat. 1115), exchange, for licensing and employment purposes, identification and criminal history records with the State governmental agencies to which such applicant has applied.

(b) REGULATIONS.—The Attorney General may prescribe such regulations as may be necessary to carry out this section, including measures relating to the security, confidentiality, accuracy, use, and dissemination of information and audits and recordkeeping and the imposition of fees necessary for the recovery of costs.

(c) REPORT.—The Attorney General shall report to the Senate and House Committees on the Judiciary 2 years after the date of enactment of this Act on the number of inquiries made by the association of employers under this section and their disposition.

**SEC. 804. SENSE OF CONGRESS.**

It is the sense of Congress that States should participate in the background check system established under section 803.

**SEC. 805. DEFINITIONS.**

As used in this title—

(1) the term "employee" includes an applicant for employment;

(2) the term "employer" means any person that—

(A) employs one or more private security officers; or

(B) provides, as an independent contractor, for consideration, the services of one or more private security officers (possibly including oneself);

(3) the term "private security officer"—

(A) means—

(i) an individual who performs security services, full or part time, for consideration as an independent contractor or an employee, whether armed or unarmed and in uniform or plain clothes whose primary duty is to perform security services, or

(ii) an individual who is an employee of an electronic security system company who is engaged in one or more of the following activities in the State: burglar alarm technician, fire alarm technician, closed circuit television technician, access control technician, or security system monitor; but

(B) does not include—

(i) sworn police officers who have law enforcement powers in the State,

(ii) attorneys, accountants, and other professionals who are otherwise licensed in the State,

(iii) employees whose duties are primarily internal audit or credit functions,

(iv) persons whose duties may incidentally include the reporting or apprehension of shoplifters or trespassers, or

(v) an individual on active duty in the military service;

(4) the term "certificate of registration" means a license, permit, certificate, registration card, or other formal written permission from the State for the person to engage in providing security services;

(5) the term "security services" means the performance of one or more of the following:

(A) the observation or reporting of intrusion, larceny, vandalism, fire or trespass;

(B) the deterrence of theft or misappropriation of any goods, money, or other item of value;

(C) the observation or reporting of any unlawful activity;

(D) the protection of individuals or property, including proprietary information, from harm or misappropriation;

(E) the control of access to premises being protected;

(F) the secure movement of prisoners;

(G) the maintenance of order and safety at athletic, entertainment, or other public activities;

(H) the provision of canine services for protecting premises or for the detection of any unlawful device or substance; and

(I) the transportation of money or other valuables by armored vehicle; and

(6) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

## PURPOSE AND SUMMARY

H.R. 2975, the "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001," provides enhanced investigative tools and improves information sharing for the law enforcement and intelligence communities to combat terrorism and terrorist-related crimes. The enhanced law enforcement tools and information sharing-provisions will assist in the prevention of future terrorist activities and the preliminary acts and crimes which further such activities. To protect the delicate balance between law enforcement and civil liberties, the bill provides additional government reporting requirements, disciplinary actions for abuse, and civil penalties.

## BACKGROUND AND NEED FOR THE LEGISLATION

On September 11, 2001, the United States was attacked by terrorist. After the attacks the country became aware of the need to better defend and protect the nation, liberty and citizens within our own borders. There are several key legislative changes needed to mobilize the nation against terrorism and to assist law enforcement and the intelligence community to determine who carried out the

horrific acts of Tuesday, September 11, 2001, and to bring our criminal investigative capabilities to prevent future attacks.

## HEARINGS

On September 24, 2001, the Committee on the Judiciary held one hearing on the Administration's proposed legislation the "Mobilization Against Terrorism Act of 2001," which formed the basis of H.R. 2975, the "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001." Testimony was received from four witnesses, representing the Department of Justice. The witnesses were: The Honorable John Aschroft, Attorney General; Honorable Michael Chertoff, Assistant Attorney General for the Criminal Division; Honorable Larry Thompson, Deputy Attorney General; and Honorable Viet Dinh, Assistant Attorney General for Legal Policy.

## COMMITTEE CONSIDERATION

On October 3, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 2975, as amended, by a 36–0 vote, a quorum being present.

## VOTES OF THE COMMITTEE

(1) An amendment was offered by Mr. Boucher (for himself, Mr. Goodlatte, and Mr. Cannon) to insert language at the end of title I that states "Nothing in this Act shall impose any additional technical obligation or requirement on a provider of wire or electronic communication service or other person to furnish facilities, services or technical assistance." The amendment passed by voice vote.

(2) An amendment was offered by Mr. Frank to provide increased civil liability for unlawful disclosures of information obtained by wire or electronic interception, access to electronically-stored communications, pen register and trap trace, or the Foreign Intelligence Surveillance Act of 1978 (FISA) intelligence gathering and to provide administrative discipline for intentional violations and to provide procedures for actions against the United States. The amendment passed by voice vote.

(3) An amendment was offered by Mr. Berman to sections 103 and 154, clarifying that the term "foreign intelligence information" is the same term that is defined under section 1801(e) of title 50, the Foreign Intelligence Surveillance Act. The amendment passed by voice vote.

(4) Amendments were offered en bloc by Mr. Sensenbrenner (for himself, Mr. Conyers, Mr. Hyde, and Mr. Berman) to, among other things, clarify that upon request, those being served with the generic pen/trap order created under this section shall receive written or electronic certification that the assistance provided related to the order; to authorize five million dollars to be appropriated for antidrug training for South and Central Asia police; to establish a feasibility study on the use of a biometric identifier scanning system with access to the FBI Integrated Automated Fingerprint Identification system at overseas consular posts and points of entry to the United States; to clarify that a court of competent jurisdiction for nationwide search warrants must have jurisdiction over the offense being investigated; and to modify the current designation

process by allowing either the Secretary of State or the Attorney General to determine designation of a foreign terrorist organization and if they fail to agree, the President shall make such determination. The amendment passed by voice vote.

(5) An amendment was offered by Mr. Hyde to make inadmissible any alien who the government knows or has reason to believe is a money launderer. The Secretary of State shall create a watchlist, to be checked before the issuance of a visa or admission of an alien into the U.S., which identifies persons who are known or suspected of money laundering. The amendment passed by voice vote.

(6) An amendment was offered by Mr. Nadler (for himself and Ms. Jackson Lee) to provide that the U.S. government can only seek information from the home government about an asylum applicant who is a suspected terrorist if the U.S. government does not disclose the fact that the alien has applied for asylum nor any information sufficient to give rise to an inference that the applicant has applied for asylum. Mr. Bachus offered an amendment to the amendment to strike the base provision—section 205(b)—from the bill. Both amendments passed by voice vote.

(7) Amendments were offered en bloc by Mr. Sensenbrenner (for himself, Mr. Conyers, Mr. Scott, Mr. Weiner, Mr. Issa, Mr. Keller, Mr. Barr, Mr. Cannon, Mr. Nadler and Ms. Jackson Lee). Mr. Scott offered an amendment to exclude military and military personnel from the provisions regarding extraterritorial jurisdiction in the bill who are already covered under the Military Extraterritorial Jurisdiction Act of 2000. Mr. Weiner and Mr. Issa offered amendments to increase the amount paid to public safety officers disabled or killed in the line of duty from $100,000 to $250,000. An amendment offered by Mr. Keller would authorize $250,000 to require the FBI to study the feasibility of providing the airlines access to information regarding suspected terrorists. One of the amendments, offered by Mr. Barr, provided that the Attorney General and the Deputy Attorney General may, with no further delegation, certify an alien as an terrorist for purposes of mandatory detention. The bill had provided this authority to the Attorney General and the INS Commissioner. An amendment offered by Mr. Barr would allow an association of employers of private security officers to submit fingerprints or other methods of identification to the Attorney General for purposes of State licensing or certification. Another of the amendments, offered by Mr. Cannon (for himself and Mr. Issa), amends current law to revise the definition of "agency or instrumentality of a foreign state" for purposes of provisions regarding exceptions to: 1) the jurisdictional immunity of a foreign state where money damages are sought against the state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act; and 2) the immunity from attachment or execution where the judgment relates to a claim for which the foreign state is not immune. Another of the amendments, to be offered by Mr. Nadler (for himself and Ms. Jackson Lee), amends the section of the bill providing for mandatory detention of alien terrorists by providing that if an alien detained pursuant to the section was ordered removed as a terrorist (or on the other grounds allowing certification) and had not been removed

within 90 days and was unlikely to be removed in the reasonably foreseeable future, the alien could be detained for additional periods of up to 6 months if the Attorney General demonstrated that release would not protect the national security of the United States or ensure the public's safety. The en bloc amendment passed by voice vote.

(8) An amendment was offered by Ms. Lofgren to sunset most of the changes made to current immigration law by title II(a) of the bill. The amendment failed by voice vote.

(9) An amendment was offered by Mr. Weiner to amend the foreign student tracking system created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by advancing the date by which the system must be fully operational, providing that students who are nationals of countries that have repeatedly provided support for acts of international terrorism may be assessed a higher fee than other foreign students, and providing that the Attorney General shall provide to the Secretary of State and the Director of the FBI the information collected by the system. The amendment passed by a rollcall vote of 25–8.

ROLLCALL NO. 1

| | Ayes | Nays | Present |
|---|---|---|---|
| Mr. Hyde | X | | |
| Mr. Gekas | | | |
| Mr. Coble | X | | |
| Mr. Smith (Texas) | X | | |
| Mr. Gallegly | X | | |
| Mr. Goodlatte | X | | |
| Mr. Bryant | X | | |
| Mr. Chabot | X | | |
| Mr. Barr | X | | |
| Mr. Jenkins | X | | |
| Mr. Cannon | X | | |
| Mr. Graham | | | |
| Mr. Bachus | X | | |
| Mr. Hostettler | X | | |
| Mr. Green | X | | |
| Mr. Keller | X | | |
| Mr. Issa | X | | |
| Ms. Hart | X | | |
| Mr. Flake | X | | |
| Mr. Pence | X | | |
| Mr. Conyers | | X | |
| Mr. Frank | | X | |
| Mr. Berman | | X | |
| Mr. Boucher | | | |
| Mr. Nadler | X | | |
| Mr. Scott | | X | |
| Mr. Watt | | X | |
| Ms. Lofgren | X | | |
| Ms. Jackson Lee | X | | |
| Ms. Waters | | X | |
| Mr. Meehan | | X | |
| Mr. Delahunt | | | |
| Mr. Wexler | X | | |
| Ms. Baldwin | | X | |
| Mr. Weiner | X | | |
| Mr. Schiff | X | | |
| Mr. Sensenbrenner, Chairman | X | | |
| Total | 25 | 8 | |

(10) An amendment was offered by Ms. Jackson Lee to provide funds for enhanced technology for security and enforcement at the northern border. The amendment passed by voice vote.

(11) An amendment was offered by Mr. Scott to narrow the list of persons restricted from possessing biological agents. Mr. Scott's amendment changed definition of persons restricted due to the indictment for a crime, to those persons indicted for a Federal terrorism offense. The amendment failed by voice vote.

(12) An amendment was offered by Mr. Scott to tighten the intent requirement to require actual intent instead of apparent intent for the definition of "domestic terrorism." The amendment failed by voice vote.

(13) Vote on final passage was adopted by a rollcall vote of 36–0.

ROLLCALL NO. 2

| | Ayes | Nays | Present |
|---|---|---|---|
| Mr. Hyde | X | | |
| Mr. Gekas | X | | |
| Mr. Coble | X | | |
| Mr. Smith (Texas) | X | | |
| Mr. Gallegly | X | | |
| Mr. Goodlatte | X | | |
| Mr. Bryant | X | | |
| Mr. Chabot | X | | |
| Mr. Barr | X | | |
| Mr. Jenkins | X | | |
| Mr. Cannon | X | | |
| Mr. Graham | X | | |
| Mr. Bachus | X | | |
| Mr. Hostettler | X | | |
| Mr. Green | X | | |
| Mr. Keller | X | | |
| Mr. Issa | X | | |
| Ms. Hart | X | | |
| Mr. Flake | X | | |
| Mr. Pence | X | | |
| Mr. Conyers | X | | |
| Mr. Frank | X | | |
| Mr. Berman | X | | |
| Mr. Boucher | X | | |
| Mr. Nadler | X | | |
| Mr. Scott | X | | |
| Mr. Watt | X | | |
| Ms. Lofgren | X | | |
| Ms. Jackson Lee | X | | |
| Ms. Waters | X | | |
| Mr. Meehan | X | | |
| Mr. Delahunt | X | | |
| Mr. Wexler | | | |
| Ms. Baldwin | X | | |
| Mr. Weiner | X | | |
| Mr. Schiff | X | | |
| Mr. Sensenbrenner, Chairman | X | | |
| Total | 36 | 0 | |

## Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activi-

ties under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## PERFORMANCE GOALS AND OBJECTIVES

The bill is intended to: (1) improve the government's ability to identify, dismantle, disrupt and punish terrorist organizations for terrorist and related criminal activities by enhancing and clarifying law enforcement investigative tools and by improving information sharing between law enforcement and government agencies that have responsibilities related to protecting the Nation against terrorism; and (2) to protect the balance between civil liberties and law enforcement by requiring new reporting obligations and administrative oversight.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures. This bill does provide new budgetary authority.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2975, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, October 10, 2001.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
*Committee on the Judiciary,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2975, the Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz and Lanette Walker (for Federal costs), who can be reached at 226–2860, Victoria Heid Hall (for the impact on state, local, and tribal governments), who can be reached at 225–3220, and Paige Piper/Bach (for the impact on the private sector), who can be reached at 226–2940.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Member

*H.R. 2975—Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001.*

SUMMARY

H.R. 2975 would expand the powers of Federal law enforcement agencies to investigate and prosecute terrorist acts, establish new Federal crimes, and increase penalties for acts of terrorism. The bill would allow certain victims of Iranian terrorism who have won judgments against Iran in U.S. court to collect monetary damages from the U.S. government. H.R. 2975 also would increase the payments to families of public safety officers who have died as a result of injuries incurred in the line of duty. Finally, the bill would authorize funding for the Immigration and Naturalization Service (INS), the Drug Enforcement Administration (DEA), and the Department of the Interior (DOI) to undertake activities to combat terrorism.

CBO estimates that enacting the bill would increase direct spending for payments to victims of terrorism and death benefits for public safety officers by a total of $107 million in fiscal year 2002 and by about $20 million in each year thereafter. Because this legislation would affect direct spending and receipts, pay-as-you-go procedures would apply. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 2975 would cost about $1 billion over the 2002–2006 period, mostly for additional INS personnel.

Two provisions of H.R. 2975 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates, however, that the cost of those mandates would fall well below the thresholds established in UMRA ($56 million for intergovernmental mandates and $113 million for private-sector mandates in 2001, adjusted annually for inflation).

The remaining provisions of the bill are either excluded from UMRA because they are necessary for the national security or contain no mandates.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2975 is shown in the following table. The costs of this legislation falls within budget functions 150 (international affairs), 300 (natural resources and environment), and 750 (administration of justice).

| | By Fiscal Year, in Millions of Dollars | | | | |
|---|---|---|---|---|---|
| | 2002 | 2003 | 2004 | 2005 | 2006 |
| **CHANGES IN DIRECT SPENDING** | | | | | |
| Payments to Victims of Terrorism | | | | | |
| Estimated Budget Authority | 33 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 33 | 0 | 0 | 0 | 0 |
| Public Safety Officer Death Benefits | | | | | |
| Estimated Budget Authority | 74 | 19 | 20 | 20 | 21 |
| Estimated Outlays | 74 | 19 | 20 | 20 | 21 |
| **CHANGES IN SPENDING SUBJECT TO APPROPRIATION** | | | | | |
| Increased INS Personnel on Northern Border | | | | | |
| Estimated Authorization Level | 107 | 161 | 206 | 211 | 217 |
| Estimated Outlays | 102 | 159 | 206 | 211 | 216 |
| Improved INS Technology on Northern Border | | | | | |
| Authorization Level | 50 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 40 | 10 | 0 | 0 | 0 |
| DOI Costs for Law Enforcement | | | | | |
| Estimated Authorization Level | 10 | 10 | 11 | 11 | 11 |
| Estimated Outlays | 9 | 10 | 11 | 11 | 11 |
| DEA Costs for Drug Control | | | | | |
| Authorization Level | 5 | 0 | 0 | 0 | 0 |
| Estimated Outlays | 4 | 1 | 0 | 0 | 0 |
| Additional Reporting Requirements | | | | | |
| Estimated Authorization Level | 1 | a | a | a | a |
| Estimated Outlays | 1 | a | a | a | a |
| Total Changes in Discretionary Spending | | | | | |
| Estimated Authorization Level | 173 | 171 | 217 | 222 | 228 |
| Estimated Outlays | 156 | 180 | 217 | 222 | 227 |

a. Less than $500,000.

Note: The bill also would increase governmental receipts, but by less than $500,000 a year.

## BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2002, that the necessary amounts will be appropriated for each year, and that spending will follow the historical rates for the authorized activities.

Implementing H.R. 2975 would increase direct spending, discretionary spending, and governmental receipts. CBO estimates that enacting H.R. 2975 would increase direct spending for payments to victims of terrorism and death benefits for public safety officers by a total of $107 million in fiscal year 2002 and by about $20 million in each year thereafter. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 2975 would cost about $1 billion over the 2002–2006 period, mostly for additional INS personnel. The impact on receipts is not likely to be significant in any year.

DIRECT SPENDING AND RECEIPTS

*Payments to Victims of Terrorism.* H.R. 2975 would enable victims of Iranian terrorism who have won judgments against Iran in U.S. courts to collect monetary damages from the Foreign Military Sales (FMS) Trust Fund. CBO estimates that enacting this provision would increase direct spending by $33 million in 2002.

The FMS Trust Fund holds nearly $400 million in funds previously paid by Iran for the purchase of military equipment that was not delivered. The disposition of those funds is currently before the Iran-U.S. Claims Tribunal, an international body established to settle disputes between the two nations. Section 705 of the bill would allow victims who have received judgments for monetary damages by a court to obtain amounts from the FMS Trust Fund to satisfy those judgments. Based on information from the State Department, CBO estimates that victims have been awarded damages of about $33 million and we expect these victims would seek compensation from the fund in 2002. In addition, CBO expects that other judgments could be awarded in the future. However, we cannot estimate the likelihood or the amount of any such additional judgments.

CBO cannot determine whether the payment of these claims to terrorist victims would reduce, eliminate, or leave unaltered any liability of the United States to Iran, which is yet to be determined by the Iran-U.S. Claims Tribunal. Thus, it is possible that some or all of the funds we estimate will be paid to victims or terrorism under this bill could be offset by a reduction in payments that would be made from the FMS Trust Fund to Iran under current law. CBO, however, has no basis for predicting the future decisions of the Iran-U.S. Claims Tribunal, nor the response of the governments to such decisions.

*Public Safety Officers Death Benefits.* H.R. 2975 would increase the Federal payment to each family of a public safety officer who has died in the line of duty from $155,000 to $250,000. This provision would apply retroactively beginning on January 1, 2001. Under current law, the families of public safety officers who have died as a result of injuries sustained in the line of duty are eligible for a payment of about $155,000. H.R. 2975 would increase this payment to $250,000. CBO estimates that the families of over 750 officers in fiscal year 2002 and about 200 officers in each year thereafter would be eligible for this payment. The 2002 estimate includes about 400 deaths related to the terrorist attacks on September 11, 2001, about 150 other deaths in 2001, and about 200 deaths in 2002—based on the number of deaths of public safety officers in the line of duty experienced in recent years.

CBO estimates that enacting H.R. 2975 would increase payments for death benefits by $74 million in 2002 and about $20 million in each year thereafter. For the families of officers killed during the attacks on September 11, it is possible that these payments would result in a reduction in other Federal compensation payments that may be made under Public Law 107–42, the Airline Transportation Safety and System Stabilization Act, which offers compensation to victims of the September 11 terrorist attacks. However, the Department of Justice (DOJ) has not yet issued guidelines on how this compensation will be provided. In particular, DOJ has not deter-

mined which payments to victims of the attacks will result in a reduction in Federal compensation payments.

*Additional Fines.* Enacting H.R. 2975 would establish civil and criminal fines for new crimes that would be established by the bill. Based on information from DOJ, CBO estimates that any additional collections would not be significant because of the small number of individuals that are likely to be subject to such fines. Civil fines are classified as governmental receipts (revenues). Criminal fines are recorded as receipts and deposited in the Crime Victims Fund, and spent without further appropriation action.

SPENDING SUBJECT TO APPROPRIATION

H.R. 2975 would authorize the appropriation of such sums as necessary to triple the number of INS border patrol personnel and INS inspectors stationed along the northern border of the United States. According to the INS, there are currently 855 border patrol agents and inspectors stationed along the northern border of the United States. H.R. 2975 would require the agency to triple that force, resulting in an additional 1,710 agents and inspectors, plus an estimated 200 support personnel. CBO expects that implementing such a major increase in personnel would be complete by 2004. Based on information from INS, CBO estimates that this would cost $102 million in fiscal year 2002 and about $900 million over the 2002–2006 period, subject to appropriation of the necessary sums.

Title II also would authorize the appropriation of $50 million for INS to improve the technology and equipment used to monitor the northern border.

Title VI of the bill would authorize DOI to contract with other Federal agencies, state and local governments, and tribal governments to provide law enforcement personnel to protect Bureau of Reclamation facilities and lands and enforce Federal laws. This title also would authorize DOI to reimburse those entities for their services. Based on information from the Bureau of Reclamation and the Bureau of Land Management, CBO estimates that implementing title VI would cost $52 million over the 2002–2006 period.

H.R. 2975 would authorize the appropriation of $5 million for fiscal year 2002 for the DEA to provide training to police and other drug control assistance in south and central Asia.

H.R. 2975 would require the DOJ and the Federal judiciary to prepare a total of about a half-dozen reports. Based on information from the affected agencies, CBO estimates that the reports would cost about $1 million in fiscal year 2002 and less than $500,000 annually thereafter.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act specifies pay-as-you-go procedures for legislation affecting direct spending and receipts. These procedures would apply to H.R. 2975 because it would affect both direct spending and receipts, as shown in the following table. (The estimated changes in receipts are less than $500,00 each year.) For purposes of enforcing pay-as-you-go procedures, only the effects in the budget year and the succeeding 4 years are counted.

| | By Fiscal Year, in Millions of Dollars | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
| Changes in outlays | 107 | 19 | 20 | 20 | 21 | 21 | 22 | 22 | 23 | 23 |
| Changes in receipts | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Two provisions of H.R. 2975 would impose intergovernmental and private-sector mandates as defined in UMRA by increasing reporting requirements for state courts and prohibiting certain individuals from handling specific biological agents.

Section 112 would require judges to report to the Administrative Office of the United States Courts on all applications for court orders that would require a provider of remote computing service to disclose the contents of electronic communication. CBO estimates that the cost to comply with the additional reporting requirement would be well below the annual threshold established in UMRA for intergovernmental mandates ($56 million in 2001, adjusted annually for inflation).

Section 305 would prohibit certain people, as defined in the bill, from shipping, transporting, possessing, or receiving specified biological agents or toxins in interstate or foreign commerce. According to the Centers for Disease Control and Prevention, the number of entities affected by this restriction would be limited. Consequently, CBO estimates that the cost to comply with the mandate would fall well below the annual threshold established in UMRA for private-sector mandates ($113 million in 2001, adjusted annually for inflation).

Section 4 of UMRA excludes from the application of that act, any legislative provisions that are necessary for the national security. CBO has determined that the remaining provisions of H.R. 2975 either fit within that exclusion or contain no mandates.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz, Lanette Walker, Julie Middleton (226–2860), and Joseph C. Whitehill (226–2840)
Impact on State, Local, and Tribal Governments: Victoria Heid Hall (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, of the Constitution.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

*Section 1. Short Title*

This Act may be cited as the "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001."

*Section 2. Table of Contents*

*Section 3. Construction; Severability*

### TITLE I—INTELLIGENCE GATHERING
### SUBTITLE A—ELECTRONIC SURVEILLANCE

*Section 101. Modification of Authorities Relating to Use of Pen Registers and Trap and Trace Devices*

Under 18 U.S.C. § 3121(b), law enforcement may obtain authorization from a court, upon certification that the information to be obtained is relevant to a pending criminal investigation, to install and use a "pen register" device that identifies the telephone numbers dialed or pulsed from (outgoing calls) or a "trap and trace" device that identifies the telephone numbers to a particular telephone (incoming calls). These court authorizations do not permit capturing or recording of the content of any such communication under the terms of the court order.

Currently, the government must apply for a new pen/trap order in every jurisdiction where the target telephone is located. This can cause serious delays that could be devastating to an investigation, particularly where additional criminal or terrorist acts are planned.

Section 101 *does not* change the requirement under 18 U.S.C. § 3121 that law enforcement seek a *court order* to install and use pen registers/trap and trace devices. It does not change the law requiring that the attorney for the government certify to the court that the information sought is relevant to an ongoing criminal investigation.

This section does change the current law requiring the government to obtain the order in the jurisdiction where the telephone (or its equivalent) is located. This section authorizes the court with jurisdiction over the offense of the investigation to issue the order, thus streamlining an investigation and eliminating the need to intrude upon the resources of courts and prosecutors with no connection to the investigation.

Under the bill, 18 U.S.C. § 3123(a) would authorize courts to issue a single pen register/trap and trace order that could be executed in multiple jurisdictions anywhere in the United States. The bill divides the existing 18 U.S.C. § 3123(a) into two paragraphs. The new subsection (a)(1) applies to Federal investigations and provides that the order may be *issued to any provider of communication services within the United States* whose assistance is appropriate to the effectuation of the order. Subsection (a)(2) applies to State law enforcement and does not change the current authority granted to State officials.

This section updates the language of the statute to clarify that the pen/register authority applies to modern communication technologies. Current statutory references to the target "line," for example, are revised to encompass a "line or other facility." Such a

facility includes: a cellular telephone number; a specific cellular telephone identified by its electronic serial number (ESN); an Internet user account or e-mail address; or an Internet Protocol (IP) address, port number, or similar computer network address or range of addresses. In addition, because the statute takes into account a wide variety of such facilities, section 3123(b)(1)(C) allows applicants for pen register or trap and trace orders to submit a description of the communications to be traced using any of these or other identifiers.

Moreover, the section clarifies that orders for the installation of pen register and trap and trace devices may obtain any non-content information—"dialing, routing, addressing, and signaling information"—utilized in the processing or transmitting of wire and electronic communications.[1] Just as today, such an order could not be used to intercept the contents of communications protected by the wiretap statute. The amendments reinforce the statutorily prescribed line between a communication's contents and non-content information, a line identical to the constitutional distinction drawn by the U.S. Supreme Court in *Smith v. Maryland,* 442 U.S. 735, 741–43 (1979).

Thus, for example, an order under the statute could not authorize the collection of email subject lines, which are clearly content. Further, an order could not be used to collect information other than "dialing, routing, addressing, and signaling" information, such as the the portion of a URL (Uniform Resource Locator) specifying Web search terms or the name of a requested file or article.

This concept, that the information properly obtained by using a pen register or trap and trace device is non-content information, applies across the board to all communications media, and to actual connections as well as attempted connections (such as busy signals and similar signals in the telephone context and packets that merely request a telnet connection in the Internet context).

Further, because the pen register or trap and trace "device" is often incapable of being physically "attached" to the target facility due to the nature of modern communication technology, section 101 makes two other related changes. First, in recognition of the fact that such functions are commonly performed today by software instead of physical mechanisms, the section allows the pen register or trap and trace device to be "attached or applied" to the target facility. Likewise, the definitions of "pen register" and "trap and trace device" in section 3127 are revised to include an intangible "process" (such as a software routine) which collects the same information as a physical device.

Section 101(c) amends the definition section to include a new nexus standard under § 3127(2)(A) to provide that the issuing court must have jurisdiction *over the crime being investigated rather than the communication line upon which the device is to be installed.* This section is also amended to account for the new technologies relating to the different modes of communication.

Section 101(d) amends section 3124(d) to ensure that communication providers continue to be covered under that section. Technology providers are concerned that the single order provisions of

[1] Thus, for example, non-content information contained in the "options field" of a network packet header constitutes "signaling" information and is properly obtained by an authorized pen register or trap and trace device.

section 101 of the bill eliminates the protection of § 3124(d) of title 18 that provides that "no cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in *accordance with the terms of a court order*." Once there is a nation-wide order it will not specify the provider and thus, the providers believe they could become liable upon compliance with the order. The intent of the current statutory language is to protect providers who comply with court orders, which direct them to assist law enforcement in obtaining the non-content information. The bill removes the phrase "the terms of" so that the phrase reads "in accordance with a court order." This will keep the requirement of a court order but protect the providers even when that order does not specify the provider.

Current practice includes compliance with pen registers and trap and trace orders by the service provider using its systems and technologies to provide the government all non-content information ordered by the order without the installation of an additional device by the government to capture that order. It is intended that these alternative compliance procedures should continue when the provider is willing and technologically able to comply with the order by these means in an efficient, complete and timely manner.

Additionally, this section clarifies that upon request, those being served with the generic pen/trap order created under this section shall receive written or electronic certification from the serving officer or official stating that the assistance provided is related to the order.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 102. Seizure of Voice-Mail Messages Pursuant to Warrants*

This section requires *a court to issue an order* authorizing law enforcement to seize voice mail messages pursuant to a *search warrant upon a showing of probable cause.* The Committee recognizes that voice mail is a stored electronic communication and should be treated accordingly. Thus, this section harmonizes all criminal provisions dealing with obtained stored electronic communication—requiring *a warrant issued by a judge after establishing probable cause.*

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 103. Authorized Disclosure*

This provision will allow law enforcement to share "title III" (Wiretap Statute) information with specified government agencies to further intelligence or national security investigations. Under current law, 18 U.S.C. § 2517(1) allows any investigative or law enforcement officer who obtains information under the Wiretap Statute to disclose the information to the extent that the information assists a criminal investigation to another investigative or law enforcement officer. The current statutory language has hampered law enforcement in sharing information or receiving information from other government agencies outside of law enforcement that perform official duties that might nevertheless relate to terrorist activities or the national security. This section of the bill would

amend the definition under § 2510(7) of "investigative or law enforcement officer" to include any member of Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or the President or Vice President of the United States for the purposes only of § 2517 when it relates to foreign intelligence information as defined under title 50 U.S.C. § 1801(e) of the Foreign Intelligence Surveillance Act.

As with current law, the disclosure or sharing of information must be made to persons within these agencies who are engaged in the performance of the official duties of the official making or receiving the information.

The bill also limits the information to that which relates to foreign intelligence information. This language narrows that which was proposed by the Administration that would have authorized disclosure to "any officer or employee of the executive branch."

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 104. Savings Provision*

This section is a technical and conforming amendment that would add chapter 206 (relating to pen registers/trap and trace orders) to section § 2511(f) of the Wiretap Statute. Section 2511(f) provides that nothing in chapter 119 (relating to the interception of communications), chapter 121 (relating to stored wire and electronic communications and transactional records access), or section 705 of the Communications Act of 1934, "shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law. . . ." The bill would include chapter 206 under that § 2511(f).

This section also updates the language to include electronic communications.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 105. Interception of Computer Trespasser Communications*

Cyberattacks may be the work of terrorists or criminals. These attacks come in many forms that cost companies and citizens millions of dollars and endanger public safety. For instance, the denial-of-service attacks, where the objective of the attack is to disable the computer system, can shut down businesses or emergency responders or national security centers. This type of attack causes the target site's servers to run out of memory and become incapable of responding to the queries of legitimate customers or users. The victims of these computer trespasser's should be able to authorize law enforcement to intercept the trespassers communications. Section 105 amends current law to clarify that law enforcement may intercept such communications when authorized by the victims, under limited circumstances.

Section 105(1) of the bill adds to the definitions under 18 U.S.C. § 2510 the term: (1) "protected computer" and provides that the term has the same meaning set forth in § 1030 of title 18; and (2) the term "computer trespasser" means a person who *is accessing a protected computer without authorization and thus has no reason-*

*able expectation of privacy in any communication transmitted to, through, or from the protected computer.*

Section 105(2) of the bill amends current law to allow victims of computer intrusions to authorize law enforcement to intercept the communications of a *computer trespasser,* under limited circumstances. The circumstances are: (1) the owner or operator of the protected computer must authorize the interception of the trespasser's communications; (2) the person who intercepts the communication must be lawfully engaged in an investigation; (3) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communication to be intercepted will be relevant to the investigation; and (4) *the investigator may only intercept communications of the computer trespasser.*

Section 105(3) would update the "good faith reliance" defense in section 2520(d), so that the computer trespasser situation is also covered. Current law provides that a communications provider that relies in good faith on:

> (1) a court warrant or order, a grand jury subpoena, or a statutory authorization; (2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or (3) a good faith determination that section 2511(3) of this title permitted the conduct complained of; [has] a complete defense against civil or criminal action brought under this chapter or any other law."

Section 105(3) clarifies that communications providers assisting law-enforcement under this section will continue to be covered by the good faith reliance defense under 2320(d).

The Committee does not intend that section 105 (Interception of Computer Trespasser Communications) apply to persons who access a computer (as defined in 18 U.S.C. 1030 (e)(1)), protected computer (as defined in 18 U.S.C. 1030 (e)(2)), computer system, or computer network, for the purpose of testing the security and reliability of such computer, protected computer, computer system, or computer network. Furthermore, the Committee believes that critical infrastructures (as defined in Executive Order 13010, 61 F.R. 37347, 42 U.S.C. 5195) should undergo automated electronic testing of their internal and external network assets, on a frequent and recurring basis.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 106. Technical Amendment*

Title 18 U.S.C. Section 2518(3) provides four criteria upon which a judge may enter an ex parte order authorizing the interception of wire, oral, or electronic communications. Section 2518(3)(c) is missing a coordinating conjunction. This section simply adds the coordinating conjunction "and" to 18 U.S.C. § 2518(3)(c).

*Section 107. Scope of Subpoenas for Record of Electronic Communications*

Terrorists and other criminals often use aliases in registering for Internet and telephone services. This creates a problem for law enforcement attempting to identify the suspects of terrorist acts or

criminal acts that often support the terrorists. While the government currently can subpoena electronic communications or a remote computing services provider for the name, address and length of service of a suspect, this information does not help when the suspected terrorist or criminal lies about his or her identity. Permitting investigators to obtain credit card and other payment information by a subpoena, along with subscriber information (already permitted to be obtained under current law), will help law enforcement track a suspect and establish his or her true identity.

This section would amend 18 U.S.C. § 2703(c) to authorize a subpoena for transactional records to include information regarding the form of payment in order to assist law enforcement in determining the user's identity.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 108. Nationwide Service of Search Warrants for Electronic Evidence*

Title 18 U.S.C. § 2703(a) requires a search warrant to compel service providers to disclose unopened e-mails. This section *does not affect the requirement for a search warrant,* but rather attempts to address the investigative delays caused by the cross-jurisdictional nature of the Internet. Currently, Federal Rules of Criminal Procedure 41 requires that the "warrant" be obtained "within the district" where the property is located. An investigator, for example, located in Boston who is investigating a suspected terrorist in that city, might have to seek a suspect's electronic e-mail from an Internet service provider (ISP) account located in California. The investigator would then need to coordinate with agents, prosecutors and judges in the district in California where the ISP is located to obtain a warrant to search. These time delays could be devastating to an investigation, especially where additional criminal or terrorist acts are planned.

Section 108 amends § 2703 to authorize the court with jurisdiction over the investigation to issue the warrant directly, without requiring the intervention of its counterpart in the district where the ISP is located.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 109. Clarification of Scope*

This section amends § 2511(2) of title 18 to clarify that when a cable company is providing the services of a telephone company or Internet service provider, that cable company must comply with the same laws governing the interception and disclosure of wire and electronic communications that currently apply to all other telephone companies or Internet service providers. The amendment *does not affect the current prohibition* under 631(h) of the Communication Act concerning the released records that reveal what a customer chooses to view, for example what particular premium channels or "pay per view" shows the customer selects.

Under current law, the Communications Act as amended (passed at a time when cable companies provided only television viewing services on cable lines) prohibits a cable operator, with certain exceptions, from disclosing personally identifiable information con-

cerning any subscriber without prior written or electronic notice to the subscriber concerned. At the same time, criminal laws governing the interception and disclosure of wire and electronic communications permit the court to order non-disclosure of the government interception.[2] The section will end this perceived conflict in current law that has placed cable companies in the awkward position of trying to follow conflicting provisions of law.

*Section 110. Emergency Disclosure of Electronic Communications to Protect Life and Limb*

This section amends 18 U.S.C. § 2702 to authorize electronic communications service providers to disclose the communications (or records relating to such communications) of their customers or subscribers if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay.

This section would also amend the law to allow communications providers to disclose non-content information (such as the subscriber's login records). Under current law, the communications provider is expressly permitted to disclose content information but not expressly permitted to provide non-content information. This change would cure this problem and would permit the disclosure of the less-protected information, parallel to the disclosure of the more protected information.

Additionally, this section would ensure that providers of communications remain covered under § 2703(e), the no cause of action provision, when assisting law enforcement with an investigation. Under current law, there is a "no cause of action against providers disclosing information . . . in accordance with the terms of a court order, warrant, subpoena, or certification under [chapter 121]." This section would add information disclosed under "statutory authorization," to cover providers that contact authorities in emergency situations.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 111. Use as Evidence*

This section extends the statutory exclusionary rule in 18 U.S.C. § 2515 to electronic communications by amending the statutory suppression of evidence rule under the 1968 Wiretap Statute providing that illegally intercepted wire or oral communications cannot be used in court or in agency hearings under section 2515. The extension covers both real-time and stored communications. The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 112. Reports Concerning the Disclosure of the Contents of Electronic Communications*

This section amends 18 U.S.C. § 2703, *et. seq.*, which governs access to stored wire and electronic communications to require the government to compile and publish annual reports of data regarding the government's acquisition of this type of information. The criminal wiretap and pen/trap statutes already require reporting.

[2] *See* e.g.,18 U.S.C. §§ 3123(d); 2703 and 2705

The sunset provision in section 162 would sunset this section on December 31, 2003.

The Committee recognizes that this bill imposes reporting requirements on the Administrative Office of the U.S. Courts that will require the hiring of additional analysts. This Committee urges Congress to appropriate sufficient funds for the Administrative Office of the U.S. Courts to comply with the reporting requirements contained in this bill.

TITLE I—INTELLIGENCE GATHERING
SUBTITLE B—FOREIGN INTELLIGENCE SURVEILLANCE AND CLASSIFIED INFORMATION

*Section 151. Period of Orders of Electronic Surveillance of Non-United States Persons Under Foreign Intelligence Surveillance*

This section amends § 1805(e)(1) of title 50, (Foreign Intelligence Surveillance Act (FISA)), to extend the FISA court authorized maximum period for electronic surveillance of officers and employees of foreign powers and of members of international terrorist cells from 90 days to a year. This section also amends § 1824(d) of title 50, to extend the FISA court authorized maximum period for a physical search targeted against officers and employees of foreign powers and members of international terrorist cells from 45 days to 90 days.

Under current law, the government may go back to the FISA court after the 90- or 45-day period to get an extension on the same basis as the original order application. The Committee recognizes, however, that it often takes longer than the established periods to get on the premises or to conduct electronic surveillance and that the delay in reapplying poses a threat to our national security.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 152. Multi-Point Authority*

Section 1805(c)(2)(B) of title 50, permits the FISA court to order third parties, like common carriers, custodians, landlords and others, who are specified in the order, (specified persons) to provide assistance and information to law enforcement authorities in the installation of a wiretap or the collection of information related to a foreign intelligence investigation.

Section 152 amends 1805(c)(2)(B) to insert language that permits the FISA court to direct the order to "other persons" *if the court finds* that the "actions of the target of the application may have the effect of thwarting the identification of a specified person," who would be required to assist in the installation of any court-authorized intercept. This amendment is intended to expand the existing authority to allow for circumstances where the court finds that the actions of a target may thwart the identification of a specified person in the order. This is usually accomplished by the target moving his location. The move necessitates the use of third parities other than those specified in the original order to assist in installation of the listening device.

This amendment allows the FISA court to compel any such new necessary parties to assist in the installation and to furnish all information, facilities, or technical assistance necessary without spe-

cifically naming such persons. Nevertheless, the target of the electronic surveillance must still be identified or described in the order as under existing law.

For example, international terrorists and foreign intelligence officers are trained to thwart surveillance by changing hotels, cell phones, Internet accounts, etc. just prior to important meetings or communications. Under present law, each time this happens the government must return to the FISA court for a new order just to change the name of the third party needed to assist in the new installation. The amendment permits the court to issue a generic order that can be presented to the new carrier, landlord or custodian directing their assistance to assure that the surveillance may be undertaken as soon as technically feasible.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 153. Foreign Intelligence Information*

Under 50 U.S.C. § 1804(a)(7)(B) and 50 U.S.C. § 1823(a)(7)(B) a FISA application requires certification, among other things, that "the purpose" of surveillance or search is to obtain foreign intelligence information. The certification for an order against any person who knowingly engages in espionage or terrorism may only be made upon written request of an official designated by the President. The Attorney General must *personally* review the application.

Presently, a FISA certification request can only be used where foreign intelligence gathering is the *sole or primary purpose* of the investigation as interpreted by the courts. This requires law enforcement to evaluate constantly the relative weight of criminal and intelligence purposes when seeking to open a FISA investigation and thereafter as it proceeds.

Section 153 amends 50 U.S.C. § 1804(a)(7)(B) and 1823(a)(7)(B) to require that certain officials (designated by the President) certify that obtaining foreign intelligence information is "a *significant* purpose" of the investigation.

This bill language represents a compromise between current law and what the Administration had proposed.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 154. Foreign Intelligence Information Sharing*

Currently, the Wiretap Statute (18 U.S.C. § 2510 *et. seq.*) limits disclosure and dissemination of information obtained for law enforcement purposes. Section 154 of the bill makes it lawful for foreign intelligence information, as defined in FISA, that is obtained as a result of a criminal investigation to be shared with *specified* law-enforcement, intelligence, protective, immigration, or national-defense personnel *where they are performing official duties.*

Under current law, it is impossible for law enforcement or criminal investigators and the intelligence community to share foreign intelligence information collected under a criminal wiretap without seeking court authority. This limitation can adversely affect a criminal or counter-terrorism investigation where time is of the essence in preventing further deadly actions. This section makes it clear that law-enforcement and the intelligence community may

share foreign intelligence information in the performance of their official duties without seeking a subpoena or court authority.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 155. Pen Register and Trap and Trace Authority*

Section 155 amends section 1842(c) of FISA (50 U.S.C. § 1842(c)) (the pen register and trap and trace provisions) to mirror similar provisions currently exist in criminal law (18 U.S.C. § 3121 *et. seq.*). Currently, the "pen register and trap and trace" provisions of FISA go beyond the criminal law requirement of certification of relevance, and require that the communication instrument (e.g., a telephone line) has been used to contact a "foreign power" or agent of a foreign power. This is a greater burden than exists in even a minor criminal investigation.

Section 155 clarifies that an application for pen register and trap and trace authority under FISA will be the same as the pen register and trap and trace authority defined in the criminal law. It will require the *attorney for the government* to certify to the court that the information sought is relevant to an ongoing FISA investigation. The current statutory burden of having to show that the *telephone line* has been, or is about to be used to contact a foreign power or terrorist is eliminated to conform to the existing and less burdensome criminal standards. The attorney for the government still must certify the information sought is relevant to an ongoing FISA investigation which continues to be directed at an agent of a foreign power.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 156. Business Records*

The Administration had sought administrative subpoena authority without having to go to court. Instead, section 156 amends title 50 U.S.C. § 1861 by providing for an application to the FISA court for an order directing the production of tangible items such as books, records, papers, documents and other items upon certification to the court that the records sought are *relevant to an ongoing foreign intelligence investigation.* The amendment also provides a good faith defense for persons producing items pursuant to this section which does not constitute a waiver of any privilege in any other proceeding.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 157. Miscellaneous National Security Authorities*

Section 2709 of title 18 permits the Director of the Federal Bureau of Investigation to request, through a National Security Letter (NSL), subscriber information and toll billing records of a wire or electronic communication service provider. The request must certify (1) that the information sought is relevant to an authorized foreign counterintelligence investigation; and (2) there are specific and articulable facts that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in FISA. This requirement is more burdensome than the corresponding criminal authorities, which require only a certifi-

cation of relevance. The additional requirement of documentation of specific and articulable facts showing the person or entity is a foreign power or an agent of a foreign power cause substantial delays in counterintelligence and counterterrorism investigations. Such delays are unacceptable as our law enforcement and intelligence community works to thwart additional terrorist attacks that threaten the national security of the United States and her citizens' lives and livelihoods.

Section 157 amends title 18 U.S.C. § 2709 to mirror criminal subpoenas and allow a NSL to be issued when the FBI certifies, the information sought is "relevant to an authorized foreign counterintelligence investigation." This harmonizes this provision with existing criminal law where an Assistant United States Attorney may issue a grand jury subpoena for all such records in a criminal case.

The sunset provision in section 162 would sunset this section on December 31, 2003.

*Section 158. Proposed Legislation*

Section 158 of the bill provides that no later than August 31, 2003, the President shall propose legislation, with regard to the provisions set to expire under section 162 of this Act, if the President judges it to be necessary and expedient.

*Section 159. Presidential Authority*

Section 203 of the International Emergency Economic Powers Act (50 U.S.C. § 1702) grants to the President the power to exercise certain authorities relating to commerce with foreign nations upon his determination that there exits an unusual and extraordinary threat to the United States. Under this authority, the President may, among other things, freeze certain foreign assets within the jurisdiction of the United States. A separate law, the Trading With the Enemy Act, authorizes the President to take title to enemy assets when Congress has declared war.

Section 159 of this bill amends section 203 of the International Emergency Economic Powers Act to provide the President with authority similar to what he currently has under the Trading With the Enemy Act in circumstances where there has been an armed attack on the United States, or where Congress has enacted a law authorizing the President to use armed force against a foreign country, foreign organization, or foreign national. The proceeds of any foreign assets to which the President takes title under this authority must be placed in a segregated account can only be used in accordance with a statute authorizing the expenditure of such proceeds.

Section 159 also makes a number of clarifying and technical changes to section 203 of the International Emergency Economic Powers Act, most of which will not change the way that provision currently is implemented.

*Section 160. Clarification of No Technology Mandates.*

Current law requires communications service providers to furnish "all information, facilities, and technical assistance necessary to accomplish . . ." the execution of the court order (18 U.S.C. 3124(a)). This Act is not intended to affect obligations under the

Communications Assistance for Law Enforcement Act[3], nor does the Act impose any additional technical obligation or requirement on a provider of wire or electronic communication service or other person to furnish facilities or technical assistance.

*Section 161. Civil Liability for Certain Unauthorized Disclosures*

This section increases the civil liability for unlawful disclosures of information obtained by wire or electronic intercepts, access to electronically-stored communications, pen register and trap and trace, and FISA intelligence. This section also provides administrative discipline for intentional violations and affords procedures for actions against the United States.

*Section 162. Sunset*

This section would sunset the provisions of this title (other than section 109 and 159 relating to the Communications Act) on December 31, 2003.

TITLE II—ALIENS ENGAGING IN TERRORIST ACTIVITY
SUBTITLE A—DETENTION AND REMOVAL OF ALIENS ENGAGING IN TERRORIST ACTIVITY

*Section 201: Changes in Classes of Aliens who Are Ineligible for Admission and Deportable Due to Terrorist Activity*

Under current law, unless otherwise specified, an alien is inadmissible and deportable for engaging in terrorist activity only when the alien has used explosives or firearms. The Act eliminates this limitation. A terrorist can use any object—including a knife, a boxcutter, or an airplane—in a terrorist act.

Under current law, there is no general prohibition against an alien contributing funds or other material support to a terrorist organization, while there is a prohibition against soliciting membership in or funds from others for a terrorist organization. The Act provides that an alien is inadmissible and deportable for contributing funds or material support to, or soliciting funds for or membership in, an organization that has been designated as a terrorist organization by the Secretary of State, or for contributing to, or soliciting in or for, any non-designated terrorist organization if the alien knows or reasonably should know that the funds, material support or solicitation will further terrorist activity.

Current immigration law does not define "terrorist organization" for purposes of making an alien inadmissible and deportable. The Act defines such an organization to include 1) an organization so designated by the Secretary of State (under a process provided for under current law) and 2) any group of two of more individuals which commits terrorist activities or plans or prepares to commit (including locating targets for) terrorist activities. This latter category includes any group which has a significant subgroup that carries out such activities.

The Act provides that an alien will not be admitted into the United States if the alien is a representative of a political, social or other similar group whose public endorsement of terrorism undermines the effort of the U.S. to eliminate or reduce terrorism. Also inadmissable will be an alien who has used his or her promi-

[3] 47 U.S.C. 1001 et. seq.

nence to endorse or espouse terrorism or to persuade others to support terrorism if this would undermine the efforts of the U.S. to reduce or eliminate terrorism, and an alien who is associated with a terrorist organization and intends while in the U.S. to engage in activities that could endanger the welfare, safety, or security of the U.S. These provisions are similar to current law's "foreign policy" ground of inadmissibility, barring entry to an alien whose entry or proposed activities in the U.S. would have potentially serious adverse foreign policy consequences for the U.S.

The Act makes deportable an alien who is a representative of a terrorist organization so designated by the Secretary of State. It also makes deportable a representative of a political, social or other similar group who publicly endorses terrorism only if the endorsement undermines the effort of the U.S. to eliminate or reduce terrorism and is intended and likely to incite or produce imminent lawless action. Also deportable is an alien who has used his or her prominence to endorse terrorism or to persuade others to support terrorism only if this will undermine the efforts of the U.S. to reduce or eliminate terrorism and is intended and likely to incite or produce imminent lawless action.

The intent of the bill is to make an alien inadmissible and deportable who has provided any material support to an organization designated as a "foreign terrorist organizations" by the Secretary of State pursuant to 8 U.S.C. sec. 1189. However, with respect to terrorist organizations which have not been so designated, and to organizations prior to their designation, the provision of material support, the soliciting of funds, and the soliciting for members is not a deportable or inadmissible offense unless the alien knew or reasonably should have known that the act would further terrorist activity. Thus, in such cases, support given to non-designated organizations for purposes of humanitarian aid is permitted. This presumes that the alien does not provide material support for a so-called humanitarian "front" group of a terrorist organization when the alien knows or reasonably should know that the material support is in reality in furtherance of terrorist activity.

*Section 202. Changes in Designation of Foreign Terrorist Organizations*

Current law provides a process whereby the Secretary of State can designate an organization as a foreign terrorist organization. The Act provides that either the Secretary or the Attorney General may recommend an organization for designation, and the organization will be so designated if the other concurs. In instances where either official cannot gain the other's concurrence, the President shall decide on the requested designation. The Act also clarifies that organizations can be redesignated as terrorist organizations and that designations and redesignations can be revoked.

*Section 203. Mandatory Detention of Suspected Terrorists; Habeas Corpus; Judicial Review*

Under the current regulatory regime, the INS can detain an alien for 48 hours before making a decision as to charging the alien with a crime or removable offense (except that in the event of emergency or other extraordinary circumstance, an additional reasonable time is allowed). The INS uses this time to establish an

alien's true identity, to check domestic and foreign databases for information about the alien, and to liaise with law enforcement agencies.

The Act provides a mechanism whereby the Attorney General can certify an alien as a suspected terrorist (or for espionage or certain other offenses) and detain him for 7 days before charging. If no charges are filed by the end of this period, the alien must be released. Otherwise, the Attorney General shall maintain custody of the alien until the alien is removed from the U.S. or found not to be inadmissible or deportable.

The Attorney General or Deputy Attorney General (with no power of delegation) may certify an alien as a terrorist if they have reasonable grounds to believe that the alien is a terrorist. Judicial review as to certification or detention is limited to habeas corpus review in the U.S. District Court for the District of Columbia. Such judicial review shall include review of the merits of the decision to certify an alien as a terrorist.

The alien shall be maintained in custody irrespective of any relief from removal granted the alien, until the Attorney General determines that the alien no longer warrants certification. However, if an alien detained pursuant to this section was ordered removed as a terrorist (or on the other grounds allowing certification) and has not been removed within 90 days and is unlikely to be removed in the reasonably foreseeable future, the alien may be detained for additional periods of up to 6 months if the Attorney General demonstrates that release will not protect the national security of the United States or ensure the public's safety.

The Attorney General must submit a report to Congress on the use of this section every 6 months.

*Section 204. Changes in Conditions for Granting Asylum*

The Act clarifies that even if the INS charges an alien for purposes of removal or deportation with a non terrorist-based offense, if the alien seeks asylum, the INS can seek to oppose its grant by providing evidence that the alien is a terrorist.

*Section 205. Multilateral Cooperation Against Terrorists*

The Records of the State Department pertaining to the issuance of or refusal to issue visas to enter the U.S. are confidential and can be used only in the formulation and enforcement of U.S. law. The Act provides that the government can provide such records to a foreign government on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism.

*Section 206. Requiring Sharing by the Federal Bureau of Investigation of Certain Criminal Record Extracts with other Federal Agencies in Order to Enhance Border Security*

The Act provides that the Justice Department shall provide to the State Department and the INS access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, Wanted Persons File, and to any other files maintained by the NCIC that may be mutually agreed upon by the Justice Department and the official to be provided access, for purposes of determining whether a visa applicant or an applicant for admission has a criminal history record. Such

access shall be provided by means of extracts of the records for placement in the State Department's automated visa lookout database or other appropriate database. The State Department shall establish the conditions for the use of the information in order to limit the redissemination of the information, to ensure that it is used solely to determine whether to issue a visa, to ensure the security, confidentiality and destruction of the information, and to protect any privacy rights of the subjects of the information.

*Section 207. Inadmissibility of Aliens Engaged in Money Laundering*

The Act makes inadmissible any alien who the government knows or had reason to believe is a money launderer. The Secretary of State shall create a watchlist, to be checked before the issuance of a visa or admission into the U.S., which identifies persons who are known or suspected of money laundering.

*Section 208. Program to Collect Information Relating to Nonimmigrant Foreign Students and Other Exchange Program Participants*

The Act amends the foreign student tracking system created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Act advances the date by which the system must be fully operational and provides that students who are nationals of countries that have repeatedly provided support for acts of international terrorism may be assessed a higher fee than other foreign students. In addition, the Act provides that the Attorney General shall provide to the Secretary of State and the Director of the FBI the information collected by the system.

*Section 209. Protection of Northern Border*

The Act authorizes the appropriation of funds necessary to triple the number of Border Patrol personnel in each State along the northern border and the number of INS inspectors at each port of entry along the northern border. The Act also authorizes $50 million to the INS for purposes of making improvements in technology for monitoring the northern border.

SUBTITLE B—PRESERVATION OF IMMIGRATION BENEFITS FOR VICTIMS OF TERRORISM

It is certain that some aliens fell victim to the terrorist attacks on the U.S. on September 11. This subtitle endeavors to modify the immigration laws to provide humanitarian relief to these victims and their family members.

*Section 211. Special Immigrant Status*

The Act provides permanent resident status through the special immigrant program to an alien who was the beneficiary of a petition filed (on or before September 11) to grant the alien permanent residence as an employer-sponsored immigrant or of an application for labor certification (filed on or before September 11), if the petition or application was rendered null because of the disability of the beneficiary or loss of employment of the beneficiary due to physical damage to, or destruction of, the business of the petitioner or applicant as a direct result of the terrorist attacks on September

11, or because of the death of the petitioner or applicant as a direct result of the terrorist attacks. Permanent residence would be granted to an alien who was the spouse or child of an alien who was the beneficiary of a petition filed on or before September 11 to grant the beneficiary permanent residence as a family-sponsored immigrant (as long as the spouse or child follows to join not later than September 11, 2003). Permanent residence would be granted to the beneficiary of a petition for a nonimmigrant visa as the spouse or the fiancé (and their children) of a U.S. citizen where the petitioning citizen died as a direct result of the terrorist attack. The section also provides permanent resident status to the grandparents of a child both of whose parents died as a result of the terrorist attacks, if either of such deceased parents was a citizen of the U.S. or a permanent resident.

*Section 212. Extension of Filing or Reentry Deadlines*

The Act provides that an alien who was legally in a nonimmigrant status and was disabled as a direct result of the terrorist attacks on September 11 (and his or her spouse and children) may remain lawfully in the U.S. (and receive work authorization) until the later of the date that his or her status normally terminates or September 11, 2002. Such status is also provided to the nonimmigrant spouse and children of an alien who died as a direct result of the terrorist attacks.

The Act provides that an alien who was lawfully present as a nonimmigrant at the time of the terrorist attacks will be granted 60 additional days to file an application for extension or change of status if the alien was prevented from so filing as a direct result of the terrorist attacks. Also, an alien who was lawfully present as a nonimmigrant at the time of the attacks but was then unable to timely depart the U.S. as a direct result of the attacks will be considered to have departed legally if doing so before November 11. An alien who was in lawful nonimmigrant status at the time of the attacks (and his or her spouse and children) but not in the U.S. at that time and was then prevented from returning to the U.S. in order to file a timely application for an extension of status as a direct result of the terrorist attacks will be given 60 additional days to file an application and will have his or her status extended 60 days beyond the original due date of the application.

Under current law, winners of the fiscal year 2001 diversity visa lottery must enter the U.S. or adjust status by September 30, 2001. The Act provides that such an alien may enter the U.S. or adjust status until April 1, 2002, if the alien was prevented from doing so by September 30, 2001 as a direct result of the terrorist attacks. If the visa quota for the 2001 diversity visa program has already been exceeded, the alien shall be counted under the 2002 program. Also, if a winner of the 2001 lottery died as a direct result of the terrorist attacks, the spouse and children of the alien shall still be eligible for permanent residence under the program. The ceiling placed on the number of diversity immigrants shall not be exceeded in any case.

Under the Act, in the case of an alien who was issued an immigrant visa that expires before December 31, 2001, if the alien was unable to timely enter the U.S. as a direct result of the terrorist attacks, the validity shall be extended until December 31.

Under the Act, in the case of an alien who was granted parole that expired on or after September 11, if the alien was unable to enter the U.S. prior to the expiration date as a direct result of the terrorist attacks, the parole is extended an additional 90 days.

Under the Act, in the case of an alien granted voluntary departure that expired between September 11 and October 11, 2001, voluntary departure is extended an additional 30 days.

*Section 213. Humanitarian Relief for Certain Surviving Spouses and Children*

Current law provides that an alien who was the spouse of a U.S. citizen for at least 2 years before the citizen died shall remain eligible for immigrant status as an immediate relative. This also applies to the children of the alien. The Act provides that if the citizen died as a direct result of the terrorist attacks, the 2 year requirement is waived.

The Act provides that if an alien spouse, child, or unmarried adult son or daughter had been the beneficiary of an immigrant visa petition filed by a permanent resident who died as a direct result of the terrorist attacks, the alien will still be eligible for permanent residence. In addition, if an alien spouse, child, or unmarried adult son or daughter of a permanent resident who died as a direct result of the terrorist attacks was present in the U.S. on September 11 but had not yet been petitioned for permanent residence, the alien can self-petition for permanent residence.

The Act provides that an alien spouse or child of an alien who 1) died as a direct result of the terrorist attacks and 2) was a permanent resident (petitioned-for by an employer) or an applicant for adjustment of status for an employment-based immigrant visa, may have his or her application for adjustment adjudicated despite the death (if the application was filed prior to the death).

*Section 214. "Age-Out" Protection for Children*

Under current law, certain visas are only available to an alien until the alien's 21st birthday. The Act provides that an alien whose 21st birthday occurs this September and who is a beneficiary for a petition or application filed on or before September 11 shall be considered to remain a child for 90 days after the alien's 21st birthday. For an alien whose 21st birthday occurs after this September, (and who had a petition for application filed on his or her behalf on or before September 11) the alien shall be considered to remain a child for 45 days after the alien's 21st birthday.

*Section 215. Temporary Administrative Relief*

The Act provides that temporary administrative relief may be provided to an alien who was lawfully present on September 10, was on that date the spouse, parent or child of someone who died or was disabled as a direct result of the terrorist attacks, and is not otherwise entitled to relief under any other provision of Subtitle B.

*Section 216. Evidence of Death, Disability, or Loss of Employment*

The Attorney General shall establish appropriate standards for evidence demonstrating that a death, disability, or loss of employment due to physical damage to, or destruction of, a business, oc-

curred as a direct result of the terrorist attacks on September 11. The Attorney General is not required to promulgate regulations prior to implementing Subtitle B.

*Section 217. No Benefit to Terrorists or Family Members of Terrorists*

No benefit under Subtitle B shall be provided to anyone culpable for the terrorist attacks on September 11 or to any family member of such an individual.

*Section 218. Definitions*

The term "specified terrorist activity" means any terrorist activity conducted against the Government or the people of the U.S. on September 11, 2001.

TITLE III—CRIMINAL JUSTICE
SUBTITLE A—SUBSTANTIVE CRIMINAL LAW

*Section 301. Statute of Limitations for Prosecuting Terrorism Offenses*

Current law provides that certain offenses, which are generally associated with terrorist activity, are subject to a either a 5-year or 8-year statute of limitations (18 U.S.C. § 3282 and 18 U.S.C. § 3286). This section amends current law to provide no statute of limitations exists for certain of these crimes (the most serious) and a 15-year statute of limitation for others.

Specifically, under this section, the prosecution may bring a case at any time for any "Federal terrorism offense," which must be shown to be "calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct."

The prosecution may bring a case at any time for any of the underlying offenses listed in this section that are generally the most serious crimes related to terrorism (without regard to the "calculated to influence" element). The prosecution may bring a case within 15 years for any other crimes listed in this section that are typically related to terrorist activities.

This provision applies to any crime committed before, on, or after enactment of this section.

*Section 302. Alternative Maximum Penalties for Terrorism Crimes*

Under current law, penalties for certain offenses associated with terrorist activity are capped at twenty-years maximum imprisonment (some are capped at 10 years). This section changes current law to allow a judge to sentence a terrorist to prison for any number of years, up to life, for any offense that is defined as a "Federal terrorism offense." To prove a "Federal terrorism offense," the prosecution must prove both the elements of the underlying crime and that the crime was calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct.

This section does not impose a mandatory life sentence. It simply gives the sentencing judge discretion to impose increased penalties by the bill language "may be sentenced to life imprisonment."

*Section 303. Penalties for Terrorist Conspiracies*

Under current law, many, but not all, of the crimes that are considered to be linked to terrorism include provisions to allow prosecution for attempts or conspiracies to commit such offenses. This section brings the remaining terrorists related crimes into conformity with existing provisions of the law to ensure that any person who attempts to commit or conspires to commit a "Federal terrorism offense" (as defined in 18 U.S.C. § 25(2)) or any crime related to terrorism (included in section 309(2)) will be subject to the same penalties as those that may be imposed upon one who actually commits that offense, including the new enhanced penalties listed above (in section 301).

This provision prohibits a person convicted of a conspiracy or attempt to commit a crime from being sentenced to death.

This provision is consistent with current and long-standing drug laws under title 21 of the U.S. Code.

*Section 304. Terrorism Crimes as RICO Predicates*

Terrorism, like traditional organized crime, is often characterized by a continuing pattern of criminal activity. This provision gives prosecutors the same tools to bring terrorists to justice as they have for organized crime.

This provision would allow any "Federal terrorism offense" or any of the most serious crimes related to terrorism to be prosecuted using the Racketeer Influenced and Corrupt Organization provisions (title 18, chapter 96) of the 1970 Organized Crime Control Act of 1970. The RICO provisions in the bill do create new crimes. These provisions merely enhance the civil and criminal consequences of certain crimes that have been deemed RICO predicates by Congress and provide better investigative and prosecutorial tools to identify and prove crimes.

RICO may currently be used against any person who invests in or acquires an interest in, or conducts or participates in the affairs of an enterprise which engages in or whose activities affect interstate or foreign commerce through the collection of an unlawful debt or the patterned commission of various State and Federal crimes. Violations of law prosecuted under RICO are subject to fines, forfeitures, or imprisonment for not more than 20 years or life (18 U.S.C. § 1963), depending on the penalties allowed under the predicate offenses. Anyone injured by a RICO violation may recover treble damages, court costs, and attorney fees under the civil RICO laws.

The pattern of activity element of RICO requires the commission of two or more predicate offenses that are clearly related and suggest either a continuity of criminal activity or the threat of such continuity of criminal activity (18 U.S.C. § 1961(5)). This provision allows the prosecution to establish a pattern of ongoing activity related to terrorism.

*Section 305. Biological Weapons*

Currently under title 18 U.S.C. § 175, anyone who knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon or knowingly assists a foreign state or organization to do so or attempts, threatens, or conspires to do so, may be fined or im-

prisoned or both. The terms "biological agent," "toxin" and "delivery system" as used in this section are defined in 18 U.S.C. § 178.

This section changes the definition of what is considered to be prohibited behavior "for use as a weapon" to include the development, production, transfer, acquisition, retention or possession of any biological agent, toxin, or delivery system other than for a prophylactic, protective, or other peaceful purpose. This changes current law by expanding the scope of the term for "use as a weapon" to include use of any biological materials or transfer of any such materials where no legitimate purpose can be shown.

This section also creates a new offense punishable by a fine or up to 10 years in prison for knowingly possessing a biological agent or toxin of any type or quantity that is not reasonably justified for any peaceful purpose. This offense was created to deter persons from possessing any biological agent or toxin or any quantity of a biological agent that is not absolutely necessary for a legitimate purpose. This provision is included to prevent terrorists from targeting facilities that use biological agents or toxins in their business or from stockpiling biological agents or toxins. This prohibition does not apply to governmental activity authorized under the National Security Act of 1947.

This section also prohibits any alien from a country recognized by the Secretary of State as supporting international terrorism from possessing, receiving or transporting a biological agent or toxin. It also prohibits possession, receipt or transportation of biological agents or toxins by many of those who are forbidden to own firearms under United States law. Penalties for violation of this section range from a fine to 10 years imprisonment or both.

*Section 306. Support of Terrorism Through Expert Advice or Assistance*

Under title 18 U.S.C. § 2339A, it is a crime to provide material support for certain terrorist activities. This section expands the list of terrorist related crimes for which assistance is prohibited. (see section 309 below).

The definition of providing material support to terrorists in title 18 is expanded to include providing "expert advice or assistance." This will only be a crime if it is provided "knowing or intending that [the expert advice or assistance] be used in preparation for, or in carrying out," any "Federal terrorism offense" (as defined in 18 U.S.C. § 25) or any of the crimes related to terrorism listed under section 309(2).

*Section 307. Prohibition Against Harboring*

Under title 18 U.S.C. § 792, to harbor or conceal an individual one knows or has reason to believe has committed or is about to commit a crime of espionage against the United States is a crime punishable by up to 10 years in prison. This section amends the law to create a similar (but not identical) prohibition against harboring someone who one knows has committed or is about to commit any of the enumerated crimes generally associated with terrorist activity. This section also provides extraterritorial jurisdiction over any violation of this section.

*Section 308. Post-Release Supervision of Terrorists*

Currently, under title 18 U.S.C. § 3583, the length of time for post-release supervision is based on the severity of the crime. This section changes current law to allow a person convicted of a "Federal terrorism offense" to be under supervision for as long as the sentencing judge determines is necessary up to life.

*Section 309. Definitions*

This section adds a new section to current law under title 18 to define "Federal terrorism offense." It uses the current definition of a "Federal crime of terrorism" included in 18 U.S.C. § 2332b(g)(5) and expands it to include underlying crimes related to biological weapons; possession, production or transfer of chemical weapons; harboring terrorists; fraud, theft or extortion related to computers; disclosure of identities of covert agents; assault on a flight crew member with a dangerous weapon; endangering human life by carrying an explosive or incendiary device on an aircraft; or homicide or attempted homicide committed on an aircraft.

Under this section, a crime is only considered to be a "Federal terrorism offense" if it can be proven to be "calculated to influence or affect the conduct of government by intimidation or coercion; or to retaliate against government conduct."

Additionally, any attempt or conspiracy to commit any violation of this section is considered a "Federal terrorism offense" and therefore will be subject to the same penalties.

This section also adds the definition of "domestic terrorism" to title 18 U.S.C. § 2331 which currently defines "international terrorism." This new definition is used in this legislation.

*Section 310. Civil Damages*

This section amends § 2707(c) that allows for civil damages against those who violate the provisions of § 2703. Under current law, in no case shall a person entitled to recover damages receive less than the sum of $1,000. This section would increase that amount to $10,000.

TITLE III—CRIMINAL JUSTICE
SUBTITLE B—CRIMINAL PROCEDURE

*Section 351. Single-Jurisdiction Search Warrants for Terrorism*

Rule 41(a) of the Federal Rules of Criminal Procedure currently requires that a search warrant be obtained within the judicial district where the property to be searched is located. The only exception is where property or a person now in the district might leave before the warrant is executed. This restriction often causes unnecessary delays and burdens on law enforcement officers investigating terrorist activities that have occurred across multiple judicial districts. These delays can have serious adverse consequences on an ongoing terrorism investigation.

Section 351 amends rule 41(a) to provide that in an investigation of domestic or international terrorism a search warrant can be obtained in any district court of the United States, or any United States Court of Appeals, having jurisdiction over the offense being investigated. It permits the prosecution to obtain a warrant from

the judge in the district where the investigation is being conducted, regardless of where the property to be searched is located.

*Section 352. DNA Identification of Terrorists*

The DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a(d)(1)) governs the collection of DNA samples from convicted felons and includes a number of Federal crimes for which the DNA samples are required to be collected. Present law, however, does not cover a number of crimes that may be committed by terrorists. Currently, offenses relating to murders on hijacked aircraft, to blowing up buildings or to murder of U.S. nationals abroad are not qualifying Federal offenses for purposes of DNA sample collection. This new section extends DNA sample collection to all persons convicted of Federal terrorism offenses (as defined in 18 U.S.C. § 25).

*Section 353. Grand Jury Matters*

Rule 6(e)(3)(A) of the Federal Rules of Criminal Procedure provides for an exception to the otherwise prohibited disclosure of matters occurring before the grand jury. This Act amends rule 6(e) to permit the sharing of grand jury information that pertains to international or domestic terrorism, or national security, to a limited group of officials (including the President and Vice President) so long as they are performing official duties. The government is required to apply to the court in order to disclose the grand jury material. Permitting the sharing of certain grand jury information with those in the intelligence community will assist in the investigation of terrorist crimes and protect the national security.

*Section 354. Extraterritoriality*

Chapter 113B of title 18 (18 U.S.C. § 2331 *et. seq.*) sets forth the crimes of terrorism, including acts of terrorism across national boundaries. Under current law, certain terrorism crimes can be prosecuted by the United States regardless of where they are committed. For example, section 2333b (terrorism transcending national boundaries) and section 2332a (use of weapons of mass destruction). There are, however, no explicit extraterritoriality provisions in other statutes that may be violated by terrorists. This section of the bill clarifies that extraterritorial Federal jurisdiction exists for any Federal terrorism offense.

*Section 355. Jurisdiction over crimes committed at the United States facilities abroad.*

Title 18 U.S.C. § 7 entitled "Special Maritime and Territorial Jurisdiction of the United States defined" is a critical means of jurisdiction for Diplomatic Security agents. Certain statutes are limited to the scope of 18 U.S.C. § 7, such as 18 U.S.C. § 114 (Maiming), 18 U.S.C. § 1111 (Murder), 18 U.S.C. § 1112 (Manslaughter), 18 U.S.C. § 1113 (Attempt to commit Murder or Manslaughter), and 18 U.S.C.§ 2243(a) (Sexual Abuse of a minor). In the year 2000, extraterritoriality regarding U.S. embassies and U.S. embassy housing overseas was the subject of differing interpretations by judicial circuits.

Diplomatic Security agents have operated under the legal precedent of *United States v. Erdos,* 474 F2d 157 (4th Cir., 1973), which

held that an Embassy was within the special maritime and territorial jurisdiction of the United States. This precedent is now being challenged. This section would make it clear that embassies and embassy housing of the United States in foreign states are included in the special maritime and territorial jurisdiction of the United States. This section does not apply to members of the Armed Forces because they would already be subject to the special maritime and territorial jurisdiction of the United States under title 18 U.S.C. § 3261(a).

*Section 356. Special Agent authorities.*

This section amends § 37(a) of the State Department Basic Authorities Act (22 U.S.C. § 2709(a)), which sets forth the authorities of special agents in the Diplomatic Security Service. It both clarifies and enhances the scope of authorities of special agents in order that they can better fulfill their responsibilities.

First, this provision places special agents on a par with other Federal law enforcement officers by enabling them to obtain and execute search and arrest warrants as well as obtain and serve subpoenas or summonses issued under the authority of the United States. Under current law, special agents may exercise these investigatory authorities only for offenses involving passport or visa issuance. They cannot exercise these essential authorities, for example, with respect to the protection of foreign officials or the Secretary of State. Currently, a special agent on protective detail who identifies an individual outside the Secretary of State's residence who is the subject of a warrant for planning the assassination of the Secretary of State cannot execute that warrant.

Second, this section expands and clarifies the scope of special agent's authority to arrest individuals without a warrant when a Federal offense is committed in their presence, and to make arrests for felonies if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony. It also would enable special agents to arrest individuals interfering in their protective functions (see below) or without having to rely on local law enforcement officials.

Third, this provision would subject an individual to a criminal misdemeanor penalty who interferes with a special agent, or another Federal law enforcement agent temporarily detailed in support of the Diplomatic Service protective mission. This is similar to a provision that pertains to interference with Secret Service agents or other Federal law enforcement officers detailed to assist the Secret Service in its protective mission (18 U.S.C. § 3056(d)).

TITLE IV—FINANCIAL INFRASTRUCTURE

*Section 401. Laundering the Proceeds of Terrorism*

This section amends title 18 U.S.C. § 1956(c)(7)(D), which prohibits conducting or attempting to conduct a financial transaction knowing that the property involved represents the proceeds of a specified unlawful activity, by adding a further predicate offense to the list of specified unlawful activities in order to provide a more comprehensive coverage of the crime of money-laundering related to terrorism. 18 U.S.C. § 2339B, which prohibits providing material support or resources to foreign terrorist organizations, would be

added to the list of crimes which define the term "specified unlawful activity."

*Section 402. Material Support for Terrorism*

This section amends the definition of "material support or resources" under title 18 U.S.C. § 2339A, which currently is defined as "currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials." This section would replace the term "other financial securities" with the phrase "monetary instruments or financial securities." This change would allow for a broader range of monetary instruments to be included within the scope of "material support or resources."

*Section 403. Assets of Terrorist Organizations*

This section would amend 18 U.S.C. § 981 to expressly provide that any property used to commit or facilitate the commission of, derived from, or otherwise involved in a Federal crime of terrorism (as defined in 18 U.S.C. § 2331) is subject to civil forfeiture provisions. Currently, only the "proceeds" of a crime of terrorism are subject to civil forfeiture provisions.

*Section 404. Technical Clarification Relating to Provision of Material Support to Terrorism*

This section would clarify that the exceptions for food and agricultural products to the nation's Trade Sanctions Programs provided for in the Trade Sanctions Reform and Export Enhancement Act of 2000 shall not limit the provisions of 18 U.S.C. 2339A or 2339B which prohibit providing material support or resources to terrorists and terrorist organizations. With this section, it is clear that anyone who provides food and agricultural products in support of terrorist activity will still be subject to criminal prosecution under sections 2339A and 2339B and will not be able to hide behind the exceptions to the Trade Sanctions Program.

*Section 405. Disclosure of Tax Information in terrorism and nation security investigations*

This section amends 26 U.S.C. 6103(i)(3) to permit the disclosure of return information by the Internal Revenue Service to the extent necessary to the head of any Federal law enforcement agency in order to assist in the investigation of terrorist incidents, threats, or activities. The disclosure may also be made upon the particularized request of the head of a Federal law enforcement agency. The section also provides that, upon the application of a person appointed by the President and confirmed by the Senate, return information shall be open to inspection by, or disclosure to, officers and employees of the Department of Justice and the Department of Treasury engaged in the collection or analysis of intelligence information concerning terrorist organizations or activities. Such information may be disseminated to other agencies only for use in analysis of and investigation into terrorist activities.

*Section 406. Extraterritorial Jurisdiction*

Generally, 18 U.S.C. 1029 prohibits the production, use, or trafficking of counterfeit access devices. Access devices are any card, code, account number, pin number or other means of account access that can be used to obtain money, goods, services, or any other thing of value. This section would add a new paragraph that would make any person outside the jurisdiction of the United States criminally liable for a violation of 18 U.S.C. 1029 if the offense involves an access device issued , owned, managed, or controlled by a financial institution within the jurisdiction of the United States and the person transports, delivers, conveys, or otherwise stores, or holds within the jurisdiction of the United States, the proceeds of such offense or property derived therefrom. Depending on the persons level of involvement, the maximum penalty ranges from 10 to 20 years imprisonment.

TITLE V—EMERGENCY AUTHORIZATIONS

*Section 501. Office of Justice Programs*

This section removes any caps or limitations available under the Victim's of Crime Fund to address the needs of the victims of the terrorist attacks of September 11, 2001. This provision specifically allows the funds allocated for responding to the needs of victims of terrorism within the United States to be awarded to victim service organizations, public agencies (Federal, State and local), and nongovernmental organizations that provide assistance to victims of crime. This section makes changes to the public safety officer benefits (PSOB) programs to provide for public safety officers disabled in the September 11, 2001, terrorist acts and the rescue efforts associated with these acts.

*Section 502. Attorney General's Authority to Pay Rewards*

This section specifies that any reward offered by the Attorney General in connection with hijackings or terrorist acts shall not be subject to spending limitations or count toward any aggregate spending limitations.

*Section 503. Limited Authority to Pay Overtime*

Under the Department of Justice Appropriations Act for FY 2001, overtime pay for INS agents was limited to $30,000. This section removes the limitation on overtime pay that was included in DOJ Appropriations Act for 2001 for border patrol and other INS agents.

*Section 504. Department of State Reward Authority*

This section amends the reward program operated by the Secretary of State, which provides rewards for information that assists in the prevention of acts of terrorism, narcotics trafficking, and other criminal activities. In addition to the information the Secretary of State is authorized to make rewards for, this section would authorize the Secretary to offer rewards for information that leads to "dismantling an organization" or information regarding the "identification or location of an individual holding a leadership position in a terrorist organization." This section also amends the Secretary of States rewards program to increase the maximum pay-

ment allowed to $10 million or more if the Secretary personally determines that an offer or payment is essential to the national security interests of the United States.

*Section 505: Authorization of Funds for DEA Police Training in South and Central Asia*

An amendment offered by Mr. Hyde, which was adopted by the Committee, created a new Section 505 of the bill. Section 505 authorizes $5,000,000 for FY 2002 for regional antidrug training in the Republic of Turkey by the Drug Enforcement Administration for police, as well as increased precursor chemical control efforts in the South and Central Asia region.

One source of funding for the activities of the Taliban and Al Qaida is drug trafficking in heroin. Most of the chemicals necessary for the production of heroin come from South and Central Asia. Once the heroin is produced, most of it is smuggled through Turkey for sale in Europe. This section will provide assistance to train Turkish and South and Central Asian law enforcement to combat drug trafficking at all stages in the production and transportation of heroin.

*Section 506: Public Safety Officer Benefits*

Currently, payments are made to families of public safety officers killed or officers disabled in the line of duty. This provision will increase the authorized payment level from $100,000 to $250,000 for any death or disability occurring on or after January 1, 2001.

TITLE VI—DAM SECURITY

*Section 601. Security of Reclamation Dams, Facilities, and Resources*

Section 2805(a) of the Reclamation Recreation Management Act of 1992 (16 U.S.C. 460l–33(a)) provides that the Secretary of the Interior shall promulgate such regulations as are necessary to ensure the protection and well-being of the public with respect to the use of Reclamation lands and ensure the protection of resource values. This section of the bill provides that any person who violates any regulation promulgated by the Secretary of the Interior under 16 U.S.C. 460l–33(a) shall be fined, imprisoned not more than 6 months, or both. This section also provides that the Secretary may authorize law enforcement personnel from the Department of the Interior, other Federal agencies, or law enforcement personnel of any State or local government to act as law enforcement officers within a Reclamation project or on Reclamation lands. This will ensure that an appropriate penalty will be attached to any violation of regulations intended to protect the public safety on Reclamation lands and that law enforcement officers will be available to enforce those regulations.

TITLE VII—MISCELLANEOUS

*Section 701. Employment of Translators by the Federal Bureau of Investigations*

There is a great need to increase the number of translators available to the Federal Bureau of Investigation in order to assist in the war on terrorism. This section authorizes the Director of the Fed-

eral Bureau of Investigation to expedite the employment of personnel as translators to support counterterrorism investigations and operations. This section also directs the FBI to establish such security requirements as are necessary for these translators and to report to Congress regarding the status of translators employed by the Department of Justice.

*Section 702. Review of the Department of Justice*

In the wake of several significant incidents of security lapses and breach of regulations, there has arisen the need for independent oversight of the Federal Bureau of Investigations. Oversight of the Federal Bureau of Investigations is currently under the jurisdiction of the Department of Justice Office of Professional Responsibility. This section directs the Inspector General of the Department of Justice to appoint a Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigations who shall be responsible for supervising independent oversight of the FBI until September 30, 2004. This section also directs the Deputy Inspector to review all information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees of the Department of Justice, which could include allegations of inappropriate profiling at the border.

*Section 703. Feasability study on use of biometric identifier scanning system with access to the FBI Integrated Automated Fingerprint Identification System at overseas consular posts and points of entry to the United States*

Requires the Attorney General to conduct a study of the feasibility of utilizing a biometric identifier (fingerprint) scanning system at consular offices and points of entry into the United States to identify aliens who may be wanted in connection with criminal or terrorist investigations in the United States or abroad. A biometric fingerprint scanning system is a sophisticated computer scanning technology that analyzes a persons fingerprint and compares the measurement with a verified sample digitally stored in the system. The accuracy of these systems is claimed to be above 99.9%. The biometric identifier system contemplated by this section would have access to the database of the Federal Bureau of Investigation Integrated Automated Fingerprint Identification System. The section requires that the Attorney General shall submit a summary of the findings of the study to Congress within 90 days.

*Section 704. Study of access*

Requires the Federal Bureau of Investigation to study and report to Congress, not later than December 31, 2002, on the feasibility of providing to airlines access via computer to the names of passengers who are suspected of terrorist activity by Federal officials. This section authorizes to be appropriated for fiscal years 2002 through 2003 not more than $250,000 to conduct this study and report to Congress.

*Section 705. Enforcement of certain anti-terrorism judgments*

Under current law, 18 U.S.C. § 1604, a foreign state is immune from the jurisdiction of the courts of the United States. There are general exceptions to this law set forth in 18 U.S.C. § 1605. One of

those exceptions, 18 U.S.C. § 1605(a)(7), provides that a foreign state shall not be immune from the jurisdiction of the courts of the United States in cases where personal injury or death has occurred as a result of a terrorist act. 18 U.S.C. § 1610(f)(1)(A) allows any judgment in such a case to be enforced against the property in the United States of foreign state that would otherwise be immune, including embassy property. However, 18 U.S.C. § 1610(f)(3) allows the President to waive this exception in the interests of national security. Section 705 would limit the President's ability to waive the exception in 18 U.S.C. § 1610(f)(1)(A). Under this section, the President's waiver authority would not apply to assets of a foreign state in the United States that have been used for any nondiplomatic purpose and assets that have been sold to a third party (the proceeds from the sale of such assets would be subject to seizure).

TITLE VIII—PRIVATE SECURITY OFFICER QUALITY ASSURANCE

*Section 801. Short Title*

This section is cited as the "Private Security Officer Quality Assurance Act of 2001".

*Section 802. Findings*

Private security officers are much more prominent in society today than years ago. Members of the public are increasingly likely to have contact with these individuals and often mistake them for law enforcement officers. It is important that private security officers are qualified, well-trained individuals to supplement the work of sworn law enforcement officers.

*Section 803. Background Checks*

An association of employers of private security officers may submit fingerprints or other methods of identification to the Attorney General for purposes of State licensing or certification. The Attorney General may prescribe any necessary regulations related to security, confidentiality, accuracy, use, dissemination of this information and may impose such fees which may be necessary.

*Section 804. Sense of Congress*

It is the sense of Congress that States should participate in the background check system.

*Section 805. Definitions*

This section defines terms related to this title.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## TITLE 18, UNITED STATES CODE

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# PART I—CRIMES

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## CHAPTER 1—GENERAL PROVISIONS

Sec.
1. Repealed.
* * * * * * *
*25. Federal terrorism offense defined.*
* * * * * * *

### § 7. Special maritime and territorial jurisdiction of the United States defined

The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:

(1) * * *

* * * * * * *

*(9)(A) With respect to offenses committed by or against a United States national, as defined in section 1203(c) of this title—*

*(i) the premises of United States diplomatic, consular, military, or other United States Government missions or entities in foreign states, including the buildings, parts of buildings, and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities; and*

*(ii) residences in foreign states and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities, except that this paragraph does not supercede any treaty or international agreement in force on the date of the enactment of this paragraph.*

*(B) This paragraph does not apply with respect to an offense committed by a person described in section 3261(a).*

* * * * * * *

### *§ 25. Federal terrorism offense defined*

*As used in this title, the term "Federal terrorism offense" means an offense that is—*

*(1) is calculated to influence or affect the conduct of government by intimidation or coercion; or to retaliate against government conduct; and*

*(2) is a violation of, or an attempt or conspiracy to violate section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175, 175b (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 791 (relating to harboring terrorists), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f) or (i) (relating to arson and bombing of certain property), 930(c), 956*

*(relating to conspiracy to injure property of a foreign government), 1030(a)(1), 1030(a)(5)(A), or 1030(a)(7) (relating to protection of computers), 1114 (relating to protection of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to injury of Government property or contracts), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366 (relating to destruction of an energy facility), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992, 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture);*

*(3) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284);*

*(4) section 601 (relating to disclosure of identities of covert agents) of the National Security Act of 1947 (50 U.S.C. 421); or*

*(5) any of the following provisions of title 49: section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3), (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved, or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.*

* * * * * * *

## CHAPTER 10—BIOLOGICAL WEAPONS

Sec.
175. Prohibitions with respect to biological weapons.
* * * * * * *
*175b. Possession by restricted persons.*
* * * * * * *

### § 175. Prohibitions with respect to biological weapons

(a) * * *

*(b) ADDITIONAL OFFENSE.—Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both.*

[(b)] *(c)* DEFINITION.—For purposes of this [section, the] *section—*

*(1) the* term "for use as a weapon" [does not include] *includes* the development, production, transfer, acquisition, retention, or possession of any biological agent, toxin, or delivery system for *other than* prophylactic, protective, or other peaceful [purposes.] *purposes, and*

*(2) the terms biological agent and toxin do not encompass any biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.*

* * * * * * *

***§ 175b. Possession by restricted persons***

*(a) No restricted person described in subsection (b) shall ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), and is not exempted under subsection (h) of such section 72.6, or Appendix A of part 72 of such title; except that the term select agent does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.*

*(b) As used in this section, the term "restricted person" means an individual who—*

*(1) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;*

*(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;*

*(3) is a fugitive from justice;*

*(4) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));*

*(5) is an alien illegally or unlawfully in the United States;*

*(6) has been adjudicated as a mental defective or has been committed to any mental institution; or*

*(7) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination that remains in effect that such country has repeatedly provided support for acts of international terrorism.*

*(c) As used in this section, the term "alien" has the same meaning as that term is given in section 1010(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), and the term "lawfully" admitted for permanent residence has the same meaning as that*

*term is given in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).*

*(d) Whoever knowingly violates this section shall be fined under this title or imprisoned not more than ten years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized governmental activity under title V of the National Security Act of 1947.*

* * * * * * *

## CHAPTER 37—ESPIONAGE AND CENSORSHIP

Sec.
*791. Prohibition against harboring.*
792. Harboring or concealing persons.

* * * * * * *

### *§ 791. Prohibition against harboring*

*Whoever harbors or conceals any person who he knows has committed, or is about to commit, an offense described in section 25(2) or this title shall be fined under this title or imprisoned not more than ten years or both. There is extraterritorial Federal jurisdiction over any violation of this section or any conspiracy or attempt to violate this section. A violation of this section or of such a conspiracy or attempt may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.*

* * * * * * *

## CHAPTER 46—FORFEITURE

* * * * * * *

### § 981. Civil forfeiture

(a)(1) The following property is subject to forfeiture to the United States:

(A) * * *

* * * * * * *

*(G) All assets, foreign or domestic—*

*(i) of any person, entity, or organization engaged in planning or perpetrating any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;*

*(ii) acquired or maintained by any person for the purpose of supporting, planning, conducting, or concealing an act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property; or*

*(iii) derived from, involved in, or used or intended to be used to commit any act of domestic terrorism or international terrorism (as defined in section 2331) against the*

*United States, citizens or residents of the United States, or their property.*

* * * * * * *

## CHAPTER 47—FRAUD AND FALSE STATEMENTS

* * * * * * *

### § 1029. Fraud and related activity in connection with access devices

(a) * * *

* * * * * * *

*(h) Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsection (a) or (b) of this section, shall be subject to the fines, penalties, imprisonment, and forfeiture provided in this title if—*

*(1) the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and*

*(2) the person transports, delivers, conveys, transfers to or through, or otherwise stores, secrets, or holds within the jurisdiction of the United States, any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom.*

* * * * * * *

## CHAPTER 95—RACKETEERING

* * * * * * *

### § 1956. Laundering of monetary instruments

(a) * * *

* * * * * * *

(c) As used in this section—

(1) * * *

* * * * * * *

(7) the term "specified unlawful activity" means—

(A) * * *

* * * * * * *

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (relating to entry of goods by means of false

statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), or section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services),, section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), or section 2339A *or 2339B* (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code,, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading

with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), or any felony violation of the Foreign Corrupt Practices Act; or

* * * * * * *

## CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

* * * * * * *

### § 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibi-

tion of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, **[**or**]** (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of **[**financial gain.**]** *financial gain, or (G) any act that is a Federal terrorism offense or is indictable under any of the following provisions of law: section 32 (relating to destruction of aircraft or aircraft facilities), 37(a)(1) (relating to violence at international airports), 175 (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f) or (i) when it involves a bombing (relating to arson and bombing of certain property), 930(c) when it involves an attack on a Federal facility, 1114 when it involves murder (relating to protection of officers and employees of the United States), 1116 when it involves murder (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1362 (relating to destruction of communication lines, stations, or systems), 1366 (relating to destruction of an*

*energy facility), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992 (relating to trainwrecking), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture) of this title; section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284); or section 46502 (relating to aircraft piracy) or 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49;*

* * * * * * *

## CHAPTER 113B—TERRORISM

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Sec.
2331. Definitions.

* * * * * * *

*2332c. Attempts and conspiracies.*

* * * * * * *

2338. [Exclusive] Federal jurisdiction.

* * * * * * *

### § 2331. Definitions

As used in this chapter—

(1) the term "international terrorism" means activities that—

(A) * * *

(B) appear to be intended *(or to have the effect)*—

(i) * * *

* * * * * * *

(iii) to affect the conduct of a government [by assassination or kidnapping] *(or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof)*; and

* * * * * * *

(3) the term "person" means any individual or entity capable of holding a legal or beneficial interest in property; [and]

(4) the term "act of war" means any act occurring in the course of—

(A) * * *

* * * * * * *

(C) armed conflict between military forces of any origin[.]*; and*

*(5) the term "domestic terrorism" means activities that—*

*(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; and*

*(B) appear to be intended (or to have the effect)—*

*(i) to intimidate or coerce a civilian population;*

*(ii) to influence the policy of a government by intimidation or coercion; or*

*(iii) to affect the conduct of a government (or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof).*

* * * * * * *

**§ 2332b. Acts of terrorism transcending national boundaries**

(a) * * *

* * * * * * *

(g) DEFINITIONS.—As used in this section—

(1) * * *

* * * * * * *

(5) the term "Federal crime of terrorism" means an offense that—

(A) * * *

(B) [is a violation of—

[(i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 (relating to biological weapons), 351 (relating to congressional, cabinet, and Supreme Court assassination, kidnapping, and assault), 831 (relating to nuclear materials), 842 (m) or (n) (relating to plastic explosives), 844(e) (relating to certain bombings), 844 (f) or (i) (relating to arson and bombing of certain property), 930(c), 956 (relating to conspiracy to injure property of a foreign government), 1114 (relating to protection of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to injury of Government property or contracts), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366 (relating to destruction of an energy facility), 1751 (relating to Presidential and Presidential staff assassination, kidnapping, and assault), 1992, 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries),

2332c, 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture);

[(ii) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284); or

[(iii) section 46502 (relating to aircraft piracy) or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49] *is a Federal terrorism offense.*

***§ 2332c. Attempts and conspiracies***

*(a) Except as provided in subsection (c), any person who attempts or conspires to commit any Federal terrorism offense shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.*

*(b) Except as provided in subsection (c), any person who attempts or conspires to commit any offense described in section 25(2) shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.*

*(c) A death penalty may not be imposed by operation of this section.*

* * * * * * *

**§ 2338. [Exclusive] Federal jurisdiction**

*There is extraterritorial Federal jurisdiction over any Federal terrorism offense and any offense under this chapter, in addition to any extraterritorial jurisdiction that may exist under the law defining the offense, if the person committing the offense or the victim of the offense is a national of the United States (as defined in section 101 of the Immigration and Nationality Act) or if the offense is directed at the security or interests of the United States.* The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter.

**§ 2339A. Providing material support to terrorists**

(a) OFFENSE.—Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, [a violation of section 32, 37, 81, 175, 351, 831, 842 (m) or (n), 844 (f) or (i), 903(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332c, or 2340A of this title or section 46502 of title 49] *any Federal terrorism offense or any offense described in section 25(2)*, or in preparation for, or in carrying out, the concealment or an escape from the commission of any such [violation,] *offense,* shall be fined under this title, imprisoned not more than 10 years, or both. *A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.*

(b) DEFINITION.—In this section, the term "material support or resources" means currency [or other financial securities] *or monetary instruments or financial securities*, financial services, lodging, training, *expert advice or assistance,* safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

* * * * * * *

## CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

Sec.
2510. Definitions.

* * * * * * *

[2515. Prohibition of use as evidence of intercepted wire or oral communications.]
*2515. Prohibition of use as evidence of intercepted wire, oral, or electronic communications.*

* * * * * * *

### § 2510. Definitions

As used in this chapter—

(1) "wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce [and such term includes any electronic storage of such communication];

* * * * * * *

(7) "Investigative or law enforcement officer" means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses*, and (for purposes only of section 2517 as it relates to foreign intelligence information as that term is defined in section 101(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(e))) any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or the President or Vice President of the United States*;

* * * * * * *

(14) "electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of *wire or* electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

* * * * * * *

(17) "electronic storage" means—

(A) * * *

(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; [and]

(18) "aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception[.]*;*

*(19) "protected computer" has the meaning set forth in section 1030; and*

*(20) "computer trespasser" means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer.*

**§ 2511. Interception and disclosure of wire, oral, or electronic communications prohibited**

(1) * * *

(2)(a) * * *

* * * * * * *

(f) Nothing contained in this chapter or chapter 121, or section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter [or chapter 121]*, chapter 121, or chapter 206* and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic [wire and oral] *wire, oral, and electronic* communications may be conducted.

* * * * * * *

*(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser, if—*

*(i) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;*

*(ii) the person acting under color of law is lawfully engaged in an investigation;*

*(iii) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and*

*(iv) such interception does not acquire communications other than those transmitted to or from the computer trespasser.*

*(j) With respect to a voluntary or obligatory disclosure of information (other than information revealing customer cable viewing activity) under this chapter, chapter 121, or chapter 206, subsections (c)(2)(B) and (h) of section 631 of the Communications Act of 1934 do not apply.*

* * * * * * *

**§ 2515. Prohibition of use as evidence of intercepted [wire or oral] *wire, oral, or electronic* communications**

[Whenever any wire or oral communication has been intercepted] *(a) Except as provided in subsection (b), whenever any wire, oral, or electronic communication has been intercepted, or any electronic communication in electronic storage has been disclosed*, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter *or chapter 121.*

*(b) Subsection (a) does not apply to the disclosure, before a grand jury or in a criminal trial, hearing, or other criminal proceeding, of the contents of a communication, or evidence derived therefrom, against a person alleged to have intercepted, used, or disclosed the communication in violation of this chapter, or chapter 121, or participated in such violation.*

* * * * * * *

**§ 2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications**

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter *or under the circumstances described in section 2515(b)*, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter *or under the circumstances described in section 2515(b)*, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

* * * * * * *

**§ 2518. Procedure for interception of wire, oral, or electronic communications**

(1) * * *

* * * * * * *

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that—

(a) * * *

* * * * * * *

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; *and*

* * * * * * *

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(a) * * *

* * * * * * *

may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in **[**subsection (d)**]** *subsection (8)(d)* of this section on the person named in the application.

* * * * * * *

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire **[**or oral**]***, oral, or electronic* communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that—

(i) * * *

* * * * * * *

(iii) the interception was not made in conformity with the order of authorization or approval**[**.**]***;*

*except that no suppression may be ordered under the circumstances described in section 2515(b).* Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire **[**or oral**]***, oral, or electronic* communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

* * * * * * *

[(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.]

* * * * * * *

**§ 2520. Recovery of civil damages authorized**

(a) * * *

* * * * * * *

(c) COMPUTATION OF DAMAGES.—(1) * * *

*(2) In an action under this section by a citizen or legal permanent resident of the United States against the United States or any Federal investigative or law enforcement officer (or against any State investigative or law enforcement officer for disclosure or unlawful use of information obtained from Federal investigative or law enforcement officers), the court may assess as damages whichever is the greater of—*

*(A) the sum of actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or*

*(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.*

[(2)] *(3)* In any other action under this section, the court may assess as damages whichever is the greater of—

(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

(d) DEFENSE.—A good faith reliance on—

(1) * * *

* * * * * * *

(3) a good faith determination that section 2511(3) *or 2511(2)(i)* of this title permitted the conduct complained of;

* * * * * * *

*(f) IMPROPER DISCLOSURE IS VIOLATION.—Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2520(a).*

*(g) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.*

*(h) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the*

*Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.*

* * * * * * *

## CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

Sec.
2701. Unlawful access to stored communications.
[2702. Disclosure of contents.
[2703. Requirements for governmental access.]
*2702. Voluntary disclosure of customer communications or records.*
*2703. Required disclosure of customer communications or records.*

* * * * * * *

### [§ 2702. Disclosure of contents]

### *§ 2702. Voluntary disclosure of customer communications or records*

(a) PROHIBITIONS.—Except as provided in subsection (b)—

(1) * * *

(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

(A) * * *

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing[.]*; and*

*(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.*

(b) [EXCEPTIONS.—A person or entity] *EXCEPTIONS FOR DISCLOSURE OF COMMUNICATIONS.—A provider described in subsection (a)* may divulge the contents of a communication—

(1) * * *

* * * * * * *

(6) to a law enforcement agency—

(A) if the contents—

(i) * * *

(ii) appear to pertain to the commission of a crime; [or]

(B) if required by section 227 of the Crime Control Act of 1990[.]*; or*

*(C) if the provider reasonably believes that an emergency involving immediate danger of death or serious phys-*

*ical injury to any person requires disclosure of the information without delay.*

*(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER RECORDS.—A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—*

*(1) as otherwise authorized in section 2703;*

*(2) with the lawful consent of the customer or subscriber;*

*(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;*

*(4) to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or*

*(5) to any person other than a governmental entity.*

* * * * * * *

**[§ 2703. Requirements for governmental access]**

***§ 2703. Required disclosure of customer communications or records***

(a) [CONTENTS OF ELECTRONIC] *CONTENTS OF WIRE OR ELECTRONIC* COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the [contents of an electronic] *contents of a wire or electronic* communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued [under the Federal Rules of Criminal Procedure] *using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation* or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the [contents of an electronic] *contents of a wire or electronic* communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) [CONTENTS OF ELECTRONIC] *CONTENTS OF WIRE OR ELECTRONIC* COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of [any electronic] *any wire or electronic* communication to which this paragraph is made applicable by paragraph (2) of this subsection—

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued [under the Federal Rules of Criminal Procedure] *using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation* or equivalent State warrant; or

* * * * * * *

(2) Paragraph (1) is applicable with respect to [any electronic] *any wire or electronic* communication that is held or maintained on that service—

(A) * * *

* * * * * * *

(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1)(A) [Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

[(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when] *A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when* the governmental entity—

(i) obtains a warrant issued [under the Federal Rules of Criminal Procedure] *using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation* or equivalent State warrant;

(ii) obtains a court order for such disclosure under subsection (d) of this section;

(iii) has the consent of the subscriber or customer to such disclosure; [or]

(iv) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title)[.]*; or*

*(v) seeks information pursuant to subparagraph (B).*

[(C)] *(B)* A provider of electronic communication service or remote computing service shall disclose to a governmental [entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a] *entity the*—

*(i) name;*

*(ii) address;*

*(iii) local and long distance telephone connection records, or records of session times and durations;*

*(iv) length of service (including start date) and types of service utilized;*

*(v) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and*

*(vi) means and source of payment (including any credit card or bank account number);*

*of a* subscriber to or customer of such service [and the types of services the subscriber or customer utilized,] when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under subparagraph [(B)] *(A)*.

* * * * * * *

(e) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, [or certification] *certification, or statutory authorization* under this chapter.

* * * * * * *

*(g) REPORTS CONCERNING THE DISCLOSURE OF THE CONTENTS OF ELECTRONIC COMMUNICATIONS.—*

*(1) By January 31 of each calendar year, the judge issuing or denying an order, warrant, or subpoena, or the authority issuing or denying a subpoena, under subsection (a) or (b) of this section during the preceding calendar year shall report on each such order, warrant, or subpoena to the Administrative Office of the United States Courts—*

*(A) the fact that the order, warrant, or subpoena was applied for;*

*(B) the kind of order, warrant, or subpoena applied for;*

*(C) the fact that the order, warrant, or subpoena was granted as applied for, was modified, or was denied;*

*(D) the offense specified in the order, warrant, subpoena, or application;*

*(E) the identity of the agency making the application; and*

*(F) the nature of the facilities from which or the place where the contents of electronic communications were to be disclosed.*

*(2) In January of each year the Attorney General or an Assistant Attorney General specially designated by the Attorney General shall report to the Administrative Office of the United States Courts—*

*(A) the information required by subparagraphs (A) through (F) of paragraph (1) of this subsection with respect to each application for an order, warrant, or subpoena made during the preceding calendar year; and*

*(B) a general description of the disclosures made under each such order, warrant, or subpoena, including—*

*(i) the approximate number of all communications disclosed and, of those, the approximate number of incriminating communications disclosed;*

*(ii) the approximate number of other communications disclosed; and*

*(iii) the approximate number of persons whose communications were disclosed.*

*(3) In June of each year, beginning in 2003, the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning*

*the number of applications for orders, warrants, or subpoenas authorizing or requiring the disclosure of the contents of electronic communications pursuant to subsections (a) and (b) of this section and the number of orders, warrants, or subpoenas granted or denied pursuant to subsections (a) and (b) of this section during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by paragraphs (1) and (2) of this subsection. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by paragraphs (1) and (2) of this subsection.*

* * * * * * *

**§ 2707. Civil action**

(a) * * *

* * * * * * *

(c) DAMAGES.—*(1)* The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of **[**$1,000**]** *$10,000*. If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.

*(2) In an action under this section by a citizen or legal permanent resident of the United States against the United States or any Federal investigative or law enforcement officer (or against any State investigative or law enforcement officer for disclosure or unlawful use of information obtained from Federal investigative or law enforcement officers), the court may assess as damages whichever is the greater of—*

*(A) the sum of actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or*

*(B) statutory damages of $10,000.*

* * * * * * *

*(f) IMPROPER DISCLOSURE IS VIOLATION.—Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2707(a).*

*(g) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector Gen-*

*eral for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.*

*(h) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.*

* * * * * * *

**§ 2709. Counterintelligence access to telephone toll and transactional records**

(a) * * *

(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may—

(1) request the name, address, length of service, and local and long distance toll billing records*, or electronic communication transactional records* of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is **[**made that—

**[**(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

**[**(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and**]** *made that the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and*

(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is **[**made that—

**[**(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

**[**(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

**[**(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

**[**(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence

activities that involve or may involve a violation of the criminal statutes of the United States.] *made that the information sought is relevant to an authorized foreign counterintelligence investigation.*

* * * * * * *

**§ 2711. Definitions for chapter**

As used in this chapter—

(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; [and]

(2) the term "remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system[.]*; and*

*(3) the term "court of competent jurisdiction" has the meaning given that term in section 3127, and includes any Federal court within that definition, without geographic limitation.*

* * * * * * *

## CHAPTER 203—ARREST AND COMMITMENT

Sec.
3041. Power of courts and magistrates.

* * * * * * *

[3059A. Special rewards for information relating to certain financial institution offenses.
[3059B. General reward authority.]

* * * * * * *

**[§ 3059. Rewards and appropriations therefor**

[(a)(1) There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $25,000 as a reward or rewards for the capture of anyone who is charged with violation of criminal laws of the United States or any State or of the District of Columbia, and an equal amount as a reward or rewards for information leading to the arrest of any such person, to be apportioned and expended in the discretion of, and upon such conditions as may be imposed by, the Attorney General of the United States. Not more than $25,000 shall be expended for information or capture of any one person.

[(2) If any of the said persons shall be killed in resisting lawful arrest, the Attorney General may pay any part of the reward money in his discretion to the person or persons whom he shall adjudge to be entitled thereto but no reward money shall be paid to any official or employee of the Department of Justice of the United States.

[(b) The Attorney General each year may spend not more than $10,000 for services or information looking toward the apprehension of narcotic law violators who are fugitives from justice.

[(c)(1) In special circumstances and in the Attorney General's sole discretion, the Attorney General may make a payment of up to $10,000 to a person who furnishes information unknown to the Government relating to a possible prosecution under section 2326 which results in a conviction.

[(2) A person is not eligible for a payment under paragraph (1) if—

[(A) the person is a current or former officer or employee of a Federal, State, or local government agency or instrumentality who furnishes information discovered or gathered in the course of government employment;

[(B) the person knowingly participated in the offense;

[(C) the information furnished by the person consists of an allegation or transaction that has been disclosed to the public—

[(i) in a criminal, civil, or administrative proceeding;

[(ii) in a congressional, administrative, or General Accounting Office report, hearing, audit, or investigation; or

[(iii) by the news media, unless the person is the original source of the information; or

[(D) when, in the judgment of the Attorney General, it appears that a person whose illegal activities are being prosecuted or investigated could benefit from the award.

[(3) For the purposes of paragraph (2)(C)(iii), the term "original source" means a person who has direct and independent knowledge of the information that is furnished and has voluntarily provided the information to the Government prior to disclosure by the news media.

[(4) Neither the failure of the Attorney General to authorize a payment under paragraph (1) nor the amount authorized shall be subject to judicial review.

**[§ 3059A. Special rewards for information relating to certain financial institution offenses**

[(a)(1) In special circumstances and in the Attorney General's sole discretion, the Attorney General may make payments to persons who furnish information unknown to the Government relating to a possible prosecution under section 215, 225, 287, 656, 657, 1001, 1005, 1006, 1007, 1014, 1032, 1341, 1343, 1344, or 1517 of this title affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States, or to a possible prosecution for conspiracy to commit such an offense.

[(2) The amount of a payment under paragraph (1) shall not exceed $50,000 and shall be paid from the Financial Institution Information Award Fund established under section 2569 of the Financial Institutions Anti-Fraud Enforcement Act of 1990.

[(b) A person is not eligible for a payment under subsection (a) if—

[(1) the person is a current or former officer or employee of a Federal or State government agency or instrumentality who furnishes information discovered or gathered in the course of his government employment;

[(2) the furnished information consists of allegations or transactions that have been disclosed to a member of the public in a criminal, civil, or administrative proceeding, in a congressional, administrative, or General Accounting Office report, hearing, audit or investigation, from any other government source, or from the news media unless the person is the original source of the information;

[(3) the person is an institution-affiliated party (as defined in section 3(u) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(u)) which withheld information during the course of any bank examination or investigation authorized pursuant to section 10 of such Act (12 U.S.C. 1820) who such party owed a fiduciary duty to disclose;

[(4) the person is a member of the immediate family of the individual whose activities are the subject of the declaration or where, in the discretion of the Attorney General, it appears the individual could benefit from the award; or

[(5) the person knowingly participated in the violation of the section with respect to which the payment would be made.

[(c) For the purposes of subsection (b)(2), the term "original source" means a person who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government prior to the disclosure.

[(d) Neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review.

[(e)(1) A person who—

[(A) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the person on behalf of the person or others in furtherance of a prosecution under any of the sections referred to in subsection (a) (including provision of information relating to, investigation for, initiation of, testimony for, or assistance in such a prosecution); and

[(B) was not a knowing participant in the unlawful activity that is the subject of such a prosecution,

may, in a civil action, obtain all relief necessary to make the person whole.

[(2) Relief under paragraph (1) shall include—

[(A)(i) reinstatement with the same seniority status;

[(ii) 2 times the amount of back pay plus interest; and

[(iii) interest on the backpay,

that the plaintiff would have had but for the discrimination; and

[(B) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

**[§ 3059B. General reward authority**

[(a) Notwithstanding any other provision of law, the Attorney General may pay rewards and receive from any department or agency funds for the payment of rewards under this section to any individual who assists the Department of Justice in performing its functions.

[(b) Not later than 30 days after authorizing a reward under this section that exceeds $100,000, the Attorney General shall give notice to the respective chairmen of the Committees on Appropriations and the Committees on the Judiciary of the Senate and the House of Representatives.

[(c) A determination made by the Attorney General to authorize an award under this section and the amount of any reward au-

thorized shall be final and conclusive, and not subject to judicial review.]

***§ 3059. Rewards and appropriation therefor***

*(a) IN GENERAL.—Subject to subsection (b), the Attorney General may pay rewards in accordance with procedures and regulations established or issued by the Attorney General.*

*(b) LIMITATIONS.— The following limitations apply with respect to awards under subsection (a):*

*(1) No such reward, other than in connection with a terrorism offense or as otherwise specifically provided by law, shall exceed $2,000,000.*

*(2) No such reward of $250,000 or more may be made or offered without the personal approval of either the Attorney General or the President.*

*(3) The Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and the House of Representatives not later than 30 days after the approval of a reward under paragraph (2);*

*(4) Any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5) may provide the Attorney General with funds for the payment of rewards.*

*(5) Neither the failure to make or authorize such a reward nor the amount of any such reward made or authorized shall be subject to judicial review.*

*(c) DEFINITION.—In this section, the term "reward" means a payment pursuant to public advertisements for assistance to the Department of Justice.*

* * * * * * *

## CHAPTER 204—REWARDS FOR INFORMATION CONCERNING TERRORIST ACTS AND ESPIONAGE

* * * * * * *

### § 3072. Determination of entitlement; maximum amount; Presidential approval; conclusiveness

The Attorney General shall determine whether an individual furnishing information described in section 3071 is entitled to a reward and the amount to be paid. [A reward under this section may be in an amount not to exceed $500,000. A reward of $100,000 or more may not be made without the approval of the President or the Attorney General personally. A determination made by the Attorney General or the President under this chapter shall be final and conclusive, and no court shall have power or jurisdiction to review it.]

* * * * * * *

### [§ 3075. Authorization for appropriations

[There are authorized to be appropriated, without fiscal year limitation, $5,000,000 for the purpose of this chapter.]

* * * * * * *

## CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

Sec.
3121. General prohibition on pen register and trap and trace device use; exception.
* * * * * * *
*3128. Civil action.*

* * * * * * *

### § 3121. General prohibition on pen register and trap and trace device use; exception

(a) * * *

* * * * * * *

(c) LIMITATION.—A government agency authorized to install and use a pen register *or trap and trace device* under this chapter or under State law shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing*, routing, addressing,* and signaling information utilized in [call processing] *the processing and transmitting of wire and electronic communications*.

* * * * * * *

### § 3123. Issuance of an order for a pen register or a trap and trace device

[(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.]

*(a) IN GENERAL.—*

*(1) Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order shall, upon service thereof, apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order. Whenever such an order is served on any person or entity not specifically named in the order, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the assistance of the person or entity being served is related to the order.*

*(2) Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law-enforcement or investigative officer has certified to the court*

*that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.*

(b) CONTENTS OF ORDER.—An order issued under this section—

(1) shall specify—

(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line *or other facility* to which the pen register or trap and trace device is to be attached *or applied*;

(B) the identity, if known, of the person who is the subject of the criminal investigation;

**[**(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and**]**

*(C) the attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic limits of the order; and*

* * * * * * *

(d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

(1) * * *

(2) the person owning or leasing the line *or other facility* to which the pen register or a trap and trace device is attached**[**, or who has been ordered by the court**]** *or applied, or who is obligated by the order* to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

* * * * * * *

**§ 3124. Assistance in installation and use of a pen register or a trap and trace device**

(a) * * *

* * * * * * *

(d) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with **[**the terms of**]** a court order under this chapter or request pursuant to section 3125 of this title.

* * * * * * *

**§ 3127. Definitions for chapter**

As used in this chapter—

(1) the terms "wire communication", "electronic communication", [and] "electronic communication service", *and "contents"* have the meanings set forth for such terms in section 2510 of this title;

(2) the term "court of competent jurisdiction" means—

[(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or]

*(A) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals having jurisdiction over the offense being investigated; or*

(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

(3) the term "pen register" means a device *or process* which records or decodes [electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device *or process* is attached] *dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted (but not including the contents of such communication)*, but such term does not include any device *or process* used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device *or process* used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

(4) the term "trap and trace device" means a device *or process* which captures the incoming electronic or other impulses which identify the originating number [of an instrument or device from which a wire or electronic communication was transmitted;] *or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication (but not including the contents of such communication);*

* * * * * * *

### *§ 3128. Civil action*

*(a) CAUSE OF ACTION.—Except as provided in section 3124(d), any person aggrieved by any violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.*

*(b) RELIEF.—In any action under this section, appropriate relief includes—*

*(1) such preliminary and other equitable or declaratory relief as may be appropriate;*

*(2) damages under subsection (c) and punitive damages in appropriate cases; and*

*(3) a reasonable attorney's fee and other litigation costs reasonably incurred.*

*(c) DAMAGES.—In any action under this section, the court may assess as damages whichever is the greater of—*

*(1) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or*

*(2) statutory damages of $10,000.*

*(d) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.*

*(e) IMPROPER DISCLOSURE IS VIOLATION.—Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 3128(a).*

*(f) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.*

*(g) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.*

* * * * * * *

## CHAPTER 213—LIMITATIONS

3281. Capital offenses.

* * * * * * *

[3286. Extension of statute of limitation for certain terrorism offenses.]
*3286. Terrorism offenses.*

* * * * * * *

### [§ 3286. Extension of statute of limitation for certain terrorism offenses

[Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any non-capital offense involving a violation of section 32 (aircraft destruction), section 37 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2332a (use of weapons of mass destruction), 2332b (acts of terrorism transcending national boundaries), or section 2340A (torture) of this title or section 46502, 46504, 46505, or 46506 of title 49, unless the indictment is found

or the information is instituted within 8 years after the offense was committed.]

***§ 3286. Terrorism offenses***

*(a) An indictment may be found or an information instituted at any time without limitation for any Federal terrorism offense or any of the following offenses:*

*(1) A violation of, or an attempt or conspiracy to violate, section 32 (relating to destruction of aircraft or aircraft facilities), 37(a)(1) (relating to violence at international airports), 175 (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 791 (relating to harboring terrorists), 831 (relating to nuclear materials), 844(f) or (i) when it relates to bombing (relating to arson and bombing of certain property), 1114(1) (relating to protection of officers and employees of the United States), 1116, if the offense involves murder (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 2332(a)(1) (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries) of this title.*

*(2) Section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284);*

*(3) Section 601 (relating to disclosure of identities of covert agents) of the National Security Act of 1947 (50 U.S.C. 421).*

*(4) Section 46502 (relating to aircraft piracy) of title 49.*

*(b) An indictment may be found or an information instituted within 15 years after the offense was committed for any of the following offenses:*

*(1) Section 175b (relating to biological weapons), 842(m) or (n) (relating to plastic explosives), 930(c) if it involves murder (relating to possessing a dangerous weapon in a Federal facility), 956 (relating to conspiracy to injure property of a foreign government), 1030(a)(1), 1030(a)(5)(A), or 1030(a)(7) (relating to protection of computers), 1362 (relating to destruction of communication lines, stations, or systems), 1366 (relating to destruction of an energy facility), 1992 (relating to trainwrecking), 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture).*

*(2) Any of the following provisions of title 49: the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3), (relating to explosive or incendiary devices, or endangerment of human life by*

*means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved, or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.*

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## CHAPTER 227—SENTENCES

### SUBCHAPTER A—GENERAL PROVISIONS

* * * * * * *

**§ 3559. Sentencing classification of offenses**

(a) * * *

* * * * * * *

*(e) AUTHORIZED TERMS OF IMPRISONMENT FOR TERRORISM CRIMES.—A person convicted of any Federal terrorism offense may be sentenced to imprisonment for any term of years or for life, notwithstanding any maximum term of imprisonment specified in the law describing the offense. The authorization of imprisonment under this subsection is supplementary to, and does not limit, the availability of any other penalty authorized by the law describing the offense, including the death penalty, and does not limit the applicability of any mandatory minimum term of imprisonment, including any mandatory life term, provided by the law describing the offense.*

* * * * * * *

### SUBCHAPTER D—IMPRISONMENT

* * * * * * *

**§ 3583. Inclusion of a term of supervised release after imprisonment**

(a) * * *

* * * * * * *

*(j) SUPERVISED RELEASE TERMS FOR TERRORISM OFFENSES.—Notwithstanding subsection (b), the authorized terms of supervised release for any Federal terrorism offense are any term of years or life.*

* * * * * * *

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## FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

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*TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES*

*Sec.*
*501. Access to certain business records for foreign intelligence and international terrorism investigations.*
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* * * * * * *

## TITLE I—ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

* * * * * * *

### APPLICATION FOR AN ORDER

SEC. 104. (a) Each application for an order approving electronic surveillance under this title shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 103. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this title. It shall include—

(1) * * *

* * * * * * *

(7) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

(A) * * *

(B) [that the] *that a significant* purpose of the surveillance is to obtain foreign intelligence information;

* * * * * * *

### ISSUANCE OF AN ORDER

SEC. 105. (a) * * *

* * * * * * *

(c) An order approving an electronic surveillance under this section shall—

(1) * * *

(2) direct—

(A) * * *

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person*, or, in circumstances where the Court finds that the actions of the target of the electronic surveillance may have the effect of thwarting the identification of a specified person, such other persons,* furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

* * * * * * *

(e)(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 101(a), (1), (2), or (3), *or an agent of a foreign power, as defined in section 101(b)(1)(A),* for the period specified in the application or for one year, whichever is less.

* * * * * * *

CIVIL LIABILITY

SEC. 110. *(a)* CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101 (a) or (b)(1)(A), respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 109 shall have a cause of action against any person *or entity* who committed such violation and shall be entitled to recover—

**[**(a)**]** *(1)* actual damages, but not less than liquidated damages of **[**$1,000**]** *$10,000* or $100 per day for each day of violation, whichever is greater;

**[**(b)**]** *(2)* punitive damages; and

**[**(c)**]** *(3)* reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

*(b) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.*

*(c) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, the head shall report conclusions for the determination and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.*

*(d) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.*

* * * * * * *

# TITLE III—PHYSICAL SEARCHES WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

* * * * * * *

APPLICATION FOR AN ORDER

SEC. 303. (a) Each application for an order approving a physical search under this title shall be made by a Federal officer in writing upon oath or affirmation to a judge of the Foreign Intelligence Surveillance Court. Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements for such application as set forth in this title. Each application shall include—

(1) * * *

* * * * * * *

(7) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive branch officers employed in the area of national security or defense and appointed by the President, by and with the advice and consent of the Senate—

(A) * * *

(B) [that the] *that a significant* purpose of the search is to obtain foreign intelligence information;

* * * * * * *

ISSUANCE OF AN ORDER

SEC. 304. (a) * * *

* * * * * * *

(d)(1) An order issued under this section may approve a physical search for the period necessary to achieve its purpose, or for [forty-five] *90* days, whichever is less, except that an order under this section shall approve a physical search targeted against a foreign power, as defined in paragraph (1), (2), or (3) of section 101(a), *or an agent of a foreign power, as defined in section 101(b)(1)(A),* for the period specified in the application or for one year, whichever is less.

* * * * * * *

CIVIL LIABILITY

SEC. 308. *(a) CIVIL ACTION.*—An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in sec-

tion 101 (a) or (b)(1)(A), respectively, of this Act, whose premises, property, information, or material has been subjected to a physical search within the United States or about whom information obtained by such a physical search has been disclosed or used in violation of section 307 shall have a cause of action against any person *or entity* who committed such violation and shall be entitled to recover—

(1) actual damages, but not less than liquidated damages of **[**$1,000**]** *$10,000* or $100 per day for each day of violation, whichever is greater;

(2) punitive damages; and

(3) reasonable attorney's fees and other investigative and litigation costs reasonably incurred.

*(b) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.*

*(c) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, the head shall report the conclusions for the determination and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.*

*(d) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.*

* * * * * * *

## TITLE IV—PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES

* * * * * * *

### PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

SEC. 402. (a) * * *

* * * * * * *

(c) Each application under this section shall require the approval of the Attorney General, or a designated attorney for the Government, and shall include—

(1) the identity of the Federal officer seeking to use the pen register or trap and trace device covered by the application; *and*

(2) a certification by the applicant that the information likely to be obtained *from the telephone line to which the pen*

*register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device* is relevant to an ongoing foreign intelligence or international terrorism investigation being conducted by the Federal Bureau of Investigation under guidelines approved by the Attorney General[; and].

[(3) information which demonstrates that there is reason to believe that the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device, has been or is about to be used in communication with—

[(A) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States; or

[(B) a foreign power or agent of a foreign power under circumstances giving reason to believe that the communication concerns or concerned international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States.]

* * * * * * *

*PENALTIES*

*SEC. 407. (a) PROHIBITED ACTIVITIES.—A person is guilty of an offense if the person intentionally—*

*(1) installs or uses a pen register or trap and trace device under color of law except as authorized by statute; or*

*(2) discloses or uses information obtained under color of law by using a pen register or trap and trace device, knowing or having reason to know that the information was obtained through using a pen register or trap and trace device not authorized by statute.*

*(b) DEFENSE.—It is a defense to a prosecution under subsection (a) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the pen register or trap and trace device was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.*

*(c) PENALTIES.—An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.*

*(d) FEDERAL JURISDICTION .—There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.*

*CIVIL LIABILITY*

*SEC. 408. (a) CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101(a) or (b)(1)(A), respectively, who has been subjected to a pen register or trap and trace device or about whom information obtained by a pen register or trap and trace device has been disclosed or used in violation of section 407 shall have a cause of action against any*

*person or entity who committed such violation and shall be entitled to recover—*

*(1) actual damages, but not less than liquidated damages of $10,000, whichever is greater;*

*(2) punitive damages; and*

*(3) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.*

*(b) LIMITATION.—A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.*

*(c) ADMINISTRATIVE DISCIPLINE.—If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, the head shall report the conclusions for the determination and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.*

*(d) ACTIONS AGAINST THE UNITED STATES.—Any action against the United States shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.*

## TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

### [DEFINITIONS

[SEC. 501. As used in this title:

[(1) The terms "foreign power", "agent of a foreign power", "foreign intelligence information", "international terrorism", and "Attorney General" shall have the same meanings as in section 101 of this Act.

[(2) The term "common carrier" means any person or entity transporting people or property by land, rail, water, or air for compensation.

[(3) The term "physical storage facility" means any business or entity that provides space for the storage of goods or materials, or services related to the storage of goods or materials, to the public or any segment thereof.

[(4) The term "public accommodation facility" means any inn, hotel, motel, or other establishment that provides lodging to transient guests.

[(5) The term "vehicle rental facility" means any person or entity that provides vehicles for rent, lease, loan, or other similar use to the public or any segment thereof.

[ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

[SEC. 502. (a) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order authorizing a common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to release records in its possession for an investigation to gather foreign intelligence information or an investigation concerning international terrorism which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

[(b) Each application under this section—

[(1) shall be made to—

[(A) a judge of the court established by section 103(a) of this Act; or

[(B) a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the release of records under this section on behalf of a judge of that court; and

[(2) shall specify that—

[(A) the records concerned are sought for an investigation described in subsection (a); and

[(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.

[(c)(1) Upon application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application satisfies the requirements of this section.

[(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

[(d)(1) Any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility shall comply with an order under subsection (c).

[(2) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, or officer, employee, or agent thereof, shall disclose to any person (other than those officers, agents, or employees of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section) that the Federal Bureau of Investigation has sought or obtained records pursuant to an order under this section.]

*ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS*

*SEC. 501. (a) In any investigation to gather foreign intelligence information or an investigation concerning international terrorism, such investigation being conducted by the Federal Bureau of Inves-*

*tigation under such guidelines as the Attorney General may approve pursuant to Executive Order No. 12333 (or a successor order), the Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) that are relevant to the investigation.*

*(b) Each application under this section—*

*(1) shall be made to—*

*(A) a judge of the court established by section 103(a) of this Act; or*

*(B) a United States magistrate judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the release of records under this section on behalf of a judge of that court; and*

*(2) shall specify that the records concerned are sought for an investigation described in subsection (a).*

*(c)(1) Upon application made pursuant to this section, the judge shall enter an ex parte order as requested requiring the production the tangible things sought if the judge finds that the application satisfies the requirements of this section.*

*(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).*

*(d) A person who, in good faith, produces tangible things under an order issued pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.*

CONGRESSIONAL OVERSIGHT

SEC. [503.] *502.* (a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests for records under this title.

* * * * * * *

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## SECTION 624 OF THE FAIR CREDIT REPORTING ACT

(Public Law 90–321)

### § 624. Disclosures to FBI for counterintelligence purposes

(a) IDENTITY OF FINANCIAL INSTITUTIONS.—Notwithstanding section 604 or any other provision of this title, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 1101 of the Right to Financial Privacy Act of 1978) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for that information, signed by the Director of the Federal Bureau of Investigation, or the Di-

rector's designee, which certifies compliance with this section. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in [writing that—

[(1) such information is necessary for the conduct of an authorized foreign counterintelligence investigation; and

[(2) there are specific and articulable facts giving reason to believe that the consumer—

[(A) is a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978) or a person who is not a United States person (as defined in such section 101) and is an official of a foreign power; or

[(B) is an agent of a foreign power and is engaging or has engaged in an act of international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.]

*writing that such information is necessary for the conduct of an authorized foreign counterintelligence investigation.*

(b) IDENTIFYING INFORMATION.—Notwithstanding the provisions of section 604 or any other provision of this title, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director's designee, which certifies compliance with this subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in [writing that—

[(1) such information is necessary to the conduct of an authorized counterintelligence investigation; and

[(2) there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978).]

*writing that such information is necessary for the conduct of an authorized foreign counterintelligence investigation.*

(c) COURT ORDER FOR DISCLOSURE OF CONSUMER REPORTS.—Notwithstanding section 604 or any other provision of this title, if requested in writing by the Director of the Federal Bureau of Investigation, or a designee of the Director, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing in [camera that—

[(1) the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation; and

[(2) there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought—

[(A) is an agent of a foreign power, and

[(B) is engaging or has engaged in an act of international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may

involve a violation of criminal statutes of the United States.]

*camera that the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation.*

* * * * * * *

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## SECTION 203 OF THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT

GRANT OF AUTHORITIES

SEC. 203. (a)(1) At the times and to the extent specified in section 202, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) * * *

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof, *or*

[(iii) the importing or exporting of currency or securities; and]

*(iii) the importing or exporting of currency or securities,*

*by any person, or with respect to any property, subject to the jurisdiction of the United States;*

(B) investigate*, block during the pendency of an investigation for a period of not more than 90 days (which may be extended by an additional 60 days if the President determines that such blocking is necessary to carry out the purposes of this Act)*, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any [interest;] *interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and*

[by any person, or with respect to any property, subject to the jurisdiction of the United States.]

*(C) when a statute has been enacted authorizing the use of force by United States armed forces against a foreign country, foreign organization, or foreign national, or when the United States has been subject to an armed attack by a foreign country, foreign organization, or foreign national, confiscate any property, subject to the jurisdiction of the United States, of any foreign country, foreign organization, or foreign national against whom United States armed forces may be used pursuant to such statute or, in the case of an armed attack against the United States, that the President determines has planned, authorized, aided, or engaged in such attack; and*

*(i) all right, title, and interest in any property so confiscated shall vest when, as, and upon the terms directed*

*by the President, in such agency or person as the President may designate from time to time,*

*(ii) upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, except that the proceeds of any such liquidation or sale, or any cash assets, shall be segregated from other United States Government funds and shall be used only pursuant to a statute authorizing the expenditure of such proceeds or assets, and*

*(iii) such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.*

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## IMMIGRATION AND NATIONALITY ACT

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* * * * * * *

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## TITLE I—GENERAL

* * * * * * *

LIAISON WITH INTERNAL SECURITY OFFICERS *AND DATA EXCHANGE*

SEC. 105. *(a) LIAISON WITH INTERNAL SECURITY OFFICERS.*—The Commissioner and the Administrator shall have authority to maintain direct and continuous liaison with the Directors of the Federal Bureau of Investigation and the Central Intelligence Agency and with other internal security officers of the Government for the purpose of obtaining and exchanging information for use in enforcing the provisions of this Act in the interest of [the internal security of] *the internal and border security of* the United States. The Commissioner and the Administrator shall maintain direct and continuous liaison with each other with a view to a coordinated, uniform, and efficient administration of this Act, and all other immigration and nationality laws.

*(b) CRIMINAL HISTORY RECORD INFORMATION.—The Attorney General and the Director of the Federal Bureau of Investigation*

*shall provide the Secretary of State and the Commissioner access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the official to be provided access, for the purpose of determining whether a visa applicant or applicant for admission has a criminal history record indexed in any such file. Such access shall be provided by means of extracts of the records for placement in the Department of State's automated visa lookout database or other appropriate database, and shall be provided without any fee or charge. The Director of the Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon by the Attorney General and the official provided access. Upon receipt of such updated extracts, the receiving official shall make corresponding updates to the official's databases and destroy previously provided extracts. Such access to any extract shall not be construed to entitle the Secretary of State to obtain the full content of the corresponding automated criminal history record. To obtain the full content of a criminal history record, the Secretary of State shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.*

*(c) RECONSIDERATION.—The provision of the extracts described in subsection (b) may be reconsidered by the Attorney General and the receiving official upon the development and deployment of a more cost-effective and efficient means of sharing the information.*

*(d) REGULATIONS.—For purposes of administering this section, the Secretary of State shall, prior to receiving access to National Crime Information Center data, promulgate final regulations—*

*(1) to implement procedures for the taking of fingerprints; and*

*(2) to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order—*

*(A) to limit the redissemination of such information;*

*(B) to ensure that such information is used solely to determine whether to issue a visa to an individual;*

*(C) to ensure the security, confidentiality, and destruction of such information; and*

*(D) to protect any privacy rights of individuals who are subjects of such information.*

* * * * * * *

## TITLE II—IMMIGRATION

### CHAPTER 1—SELECTION SYSTEM

* * * * * * *

#### ASYLUM

SEC. 208. (a) * * *

(b) CONDITIONS FOR GRANTING ASYLUM.—

(1) * * *

(2) EXCEPTIONS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to an alien if the Attorney General determines that—

(i) * * *

* * * * * * *

(v) the alien is [inadmissible under] *described in* subclause (I), (II), (III), or (IV) of section 212(a)(3)(B)(i) or [removable under] *described in* section 237(a)(4)(B) (relating to terrorist activity), unless, in the case only of an alien [inadmissible under] *described in* subclause (IV) of section 212(a)(3)(B)(i), the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) * * *

(2) CRIMINAL AND RELATED GROUNDS.—

(A) * * *

* * * * * * *

*(I) MONEY LAUNDERING.—Any alien—*

*(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments); or*

*(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;*

*is inadmissible.*

(3) SECURITY AND RELATED GROUNDS.—

(A) * * *

(B) TERRORIST ACTIVITIES.—

(i) IN GENERAL.—Any alien who—

(I) has engaged in a terrorist activity[,]*;*

(II) a consular officer or the Attorney General knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iii))[,]*;*

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity**[**,**]***;*

**[**(IV) is a representative (as defined in clause (iv)) of a foreign terrorist organization, as designated by the Secretary under section 219, which the alien knows or should have known is a terrorist organization or**]**

*(IV) is a representative of—*

*(a) a foreign terrorist organization, as designated by the Secretary of State under section 219; or*

*(b) a political, social, or other similar group whose public endorsement of terrorist activity the Secretary of State has determined undermines the efforts of the United States to reduce or eliminate terrorist activities;*

(V) is a member of a foreign terrorist organization, as designated by the Secretary under section 219**[**,**]***; or*

*(VI) has used the alien's prominence within a foreign state or the United States to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines the efforts of the United States to reduce or eliminate terrorist activities;*

is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.

(ii) TERRORIST ACTIVITY DEFINED.—As used in this Act, the term "terrorist activity" means any activity which is unlawful under the laws of the place where it is committed **[**(or which, if committed in the United States,**]** *(or which, if it had been or were to be committed in the United States,* would be unlawful under the laws of the United States or any State) and which involves any of the following:

(I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

* * * * * * *

(V) The use of any—

(a) * * *

(b) **[**explosive or firearm**]** *explosive, firearm, or other object* (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

* * * * * * *

**[**(iii) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term "engage in terrorist activity" means to commit, in an individual capacity or as a

member of an organization, an act of terrorist activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time, including any of the following acts:

[(I) The preparation or planning of a terrorist activity.

[(II) The gathering of information on potential targets for terrorist activity.

[(III) The providing of any type of material support, including a safe house, transportation, communications, funds, false documentation or identification, weapons, explosives, or training, to any individual the actor knows or has reason to believe has committed or plans to commit a terrorist activity.

[(IV) The soliciting of funds or other things of value for terrorist activity or for any terrorist organization.

[(V) The solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in a terrorist activity.]

*(iii) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term "engage in terrorist activity" means, in an individual capacity or as a member of an organization—*

*(I) to commit a terrorist activity;*

*(II) to plan or prepare to commit a terrorist activity;*

*(III) to gather information on potential targets for a terrorist activity;*

*(IV) to solicit funds or other things of value for—*

*(a) a terrorist activity;*

*(b) an organization designated as a foreign terrorist organization under section 219; or*

*(c) a terrorist organization described in clause (v)(II), but only if the solicitor knows, or reasonably should know, that the solicitation would further a terrorist activity;*

*(V) to solicit any individual—*

*(a) to engage in conduct otherwise described in this clause;*

*(b) for membership in a terrorist government;*

*(c) for membership in an organization designated as a foreign terrorist organization under section 219; or*

*(d) for membership in a terrorist organization described in clause (v)(II), but only if the solicitor knows, or reasonably should know, that the solicitation would further a terrorist activity; or*

*(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, and radiological weapons), explosives, or training—*

*(a) for the commission of a terrorist activity;*

*(b) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;*

*(c) to an organization designated as a foreign terrorist organization under section 219; or*

*(d) to a terrorist organization described in clause (v)(II), but only if the actor knows, or reasonably should know, that the act would further a terrorist activity.*

* * * * * * *

*(v) TERRORIST ORGANIZATION DEFINED.—As used in this subparagraph, the term "terrorist organization" means—*

*(I) an organization designated as a foreign terrorist organization under section 219; or*

*(II) with regard to a group that is not an organization described in subclause (I), a group of 2 or more individuals, whether organized or not, which engages in, or which has a significant subgroup which engages in, the activities described in subclause (I), (II), or (III) of clause (iii).*

*(vi) SPECIAL RULE FOR MATERIAL SUPPORT.—Clause (iii)(VI)(b) shall not be construed to include the affording of material support to an individual who committed or planned to commit a terrorist activity, if the alien establishes by clear and convincing evidence that such support was afforded only after such individual permanently and publicly renounced, rejected the use of, and had ceased to engage in, terrorist activity.*

* * * * * * *

*(F) ENDANGERMENT.—Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.*

* * * * * * *

DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS

SEC. 219. (a) DESIGNATION.—

(1) IN GENERAL.—The [Secretary] *official specified under subsection (d)* is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the [Secretary] *official specified under subsection (d)* finds that—

(A) * * *

(B) the organization engages in terrorist activity (as defined in section [212(a)(3)(B));] *212(a)(3)(B)), engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)(2)), or retains the capability and intent to engage in terrorist activity or to engage in terrorism (as so defined);* and

(C) the terrorist activity *or terrorism* of the organization threatens the security of United States nationals or the national security of the United States.

(2) PROCEDURE.—

[(A) NOTICE.—Seven days before making a designation under this subsection, the Secretary shall, by classified communication—

[(i) notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor; and

[(ii) seven days after such notification, publish the designation in the Federal Register.]

*(A) NOTICE.—*

*(i) IN GENERAL.—Seven days before a designation is made under this subsection, the Secretary of State shall, by classified communication, notify the Speaker and minority leader of the House of Representatives, the President pro tempore, majority leader, and minority leader of the Senate, the members of the relevant committees, and the Secretary of the Treasury, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.*

*(ii) PUBLICATION OF DESIGNATION.—The Secretary of State shall publish the designation in the Federal Register seven days after providing the notification under clause (i).*

(B) EFFECT OF DESIGNATION.—

(i) For purposes of section 2339B of title 18, United States Code, a designation under this subsection shall take effect upon publication under subparagraph (A)*(ii)*.

(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

(C) FREEZING OF ASSETS.—Upon notification under [paragraph (2),] *subparagraph (A)(i),* the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.

(3) RECORD.—

(A) IN GENERAL.—In making a designation under this subsection, the [Secretary] *official specified under subsection (d)* shall create an administrative record.

(B) CLASSIFIED INFORMATION.—The [Secretary] *official specified under subsection (d)* may consider classified information in making a designation under this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection [(c)] *(b).*

(4) PERIOD OF DESIGNATION.—

(A) * * *

(B) REDESIGNATION.—The [Secretary] *official specified under subsection (d)* may redesignate a foreign organization as a foreign terrorist organization for an additional 2-year period at the end of the 2-year period referred to in subparagraph (A) (but not sooner than 60 days prior to the termination of such period) upon a finding that the relevant circumstances described in paragraph (1) still exist. *The official specified under subsection (d) may also redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.* The procedural requirements of paragraphs (2) and (3) shall apply to a redesignation under this subparagraph.

* * * * * * *

(6) REVOCATION BASED ON CHANGE IN CIRCUMSTANCES.—

(A) IN GENERAL.—The [Secretary] *official specified under subsection (d)* may revoke a designation made under paragraph (1) *or a redesignation made under paragraph (4)(B)* if the [Secretary] *official specified under subsection (d)* finds that—

(i) the circumstances that were the basis for the designation *or redesignation* have changed in such a manner as to warrant revocation [of the designation]; or

(ii) the national security of the United States warrants a revocation [of the designation].

(B) PROCEDURE.—The procedural requirements of paragraphs (2) [through (4)] *and (3)* shall apply to a revocation under this paragraph.

*(C) EFFECTIVE DATE.—Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.*

(7) EFFECT OF REVOCATION.—The revocation of a designation under paragraph (5) or (6)*, or the revocation of a redesignation under paragraph (6),* shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

(8) USE OF DESIGNATION IN TRIAL OR HEARING.—If a designation under this subsection has become effective under paragraph [(1)(B),] *(2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)* a defendant in a criminal action *or an alien in a removal proceeding* shall not be permitted to raise any question concerning the validity of the issuance of such designation *or redesignation* as a defense or an objection at any trial or hearing.

* * * * * * *

(c) DEFINITIONS.—As used in this section—

(1) * * *

(2) the term "national security" means the national defense, foreign relations, or economic interests of the United States; *and*

(3) the term "relevant committees" means the Committees on the Judiciary, Intelligence, and Foreign Relations of the Senate and the Committees on the Judiciary, Intelligence, and International Relations of the House of Representatives[; and].

[(4) the term "Secretary" means the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General.]

*(d) IMPLEMENTATION OF DUTIES AND AUTHORITIES.—*

*(1) BY SECRETARY OR ATTORNEY GENERAL.—Except as otherwise provided in this subsection, the duties under this section shall, and authorities under this section may, be exercised by—*

*(A) the Secretary of State—*

*(i) after consultation with the Secretary of the Treasury and with the concurrence of the Attorney General; or*

*(ii) upon instruction by the President pursuant to paragraph (2); or*

*(B) the Attorney General—*

*(i) after consultation with the Secretary of the Treasury and with the concurrence of the Secretary of State; or*

*(ii) upon instruction by the President pursuant to paragraph (2).*

*(2) CONCURRENCE.—The Secretary of State and the Attorney General shall each seek the other's concurrence in accordance with paragraph (1). In any case in which such concurrence is denied or withheld, the official seeking the concurrence shall so notify the President and shall request the President to make a determination as to how the issue shall be resolved. Such no-*

*tification and request of the President may not be made before the earlier of—*

*(A) the date on which a denial of concurrence is received; or*

*(B) the end of the 60-day period beginning on the date the concurrence was sought.*

*(3) EXCEPTION.—It shall be the duty of the Secretary of State to carry out the procedural requirements of paragraphs (2)(A) and (6)(B) of subsection (a) in all cases, including cases in which a designation or revocation is initiated by the Attorney General.*

* * * * * * *

CHAPTER 3—ISSUANCE OF ENTRY DOCUMENTS

* * * * * * *

APPLICATIONS FOR VISAS

SEC. 222. (a) * * *

* * * * * * *

(f) [The records] *(1) Subject to paragraphs (2) and (3), the records* of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the [United States, except that in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.] *United States.*

*(2) In the discretion of the Secretary of State, certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.*

*(3)(A) Subject to the provisions of this paragraph, the Secretary of State may provide copies of records of the Department of State and of diplomatic and consular offices of the United States (including the Department of State's automated visa lookout database) pertaining to the issuance or refusal of visas or permits to enter the United States, or information contained in such records, to foreign governments if the Secretary determines that it is necessary and appropriate.*

*(B) Such records and information may be provided on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism. General access to records and information may be provided under an agreement to limit the use of such records and information to the purposes described in the preceding sentence.*

*(C) The Secretary of State shall make any determination under this paragraph in consultation with any Federal agency that compiled or provided such records or information.*

*(D) To the extent possible, such records and information shall be made available to foreign governments on a reciprocal basis.*

* * * * * * *

CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

* * * * * * *

*MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW*

*SEC. 236A. (a) DETENTION OF TERRORIST ALIENS.—*

*(1) CUSTODY.—The Attorney General shall take into custody any alien who is certified under paragraph (3).*

*(2) RELEASE.—Except as provided in paragraphs (5) and (6), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States or found not to be inadmissible or deportable, as the case may be. Except as provided in paragraph (6), such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3).*

*(3) CERTIFICATION.—The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien—*

*(A) is described in section 212(a)(3)(A)(i), 212(a)(3)(A)(iii), 212(a)(3)(B), 237(a)(4)(A)(i), 237(a)(4)(A)(iii), or 237(a)(4)(B); or*

*(B) is engaged in any other activity that endangers the national security of the United States.*

*(4) NONDELEGATION.—The Attorney General may delegate the authority provided under paragraph (3) only to the Deputy Attorney General. The Deputy Attorney General may not delegate such authority.*

*(5) COMMENCEMENT OF PROCEEDINGS.—The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.*

*(6) LIMITATION ON INDEFINITE DETENTION.—An alien detained under paragraph (1) who has been ordered removed based on one or more of the grounds of inadmissibility or deportability referred to in paragraph (3)(A), who has not been removed within the removal period specified under section 241(a)(1)(A), and whose removal is unlikely in the reasonably foreseeable future, may be detained for additional periods of up to six months if the Attorney General demonstrates that the release of the alien will not protect the national security of the United States or adequately ensure the safety of the community or any person.*

*(b) HABEAS CORPUS AND JUDICIAL REVIEW.—Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3)*

*or (a)(6)) is available exclusively in habeas corpus proceedings initiated in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.*

* * * * * * *

SEC. 237. (a) CLASSES OF DEPORTABLE ALIENS.—Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) * * *

* * * * * * *

(4) SECURITY AND RELATED GROUNDS.—

(A) * * *

[(B) TERRORIST ACTIVITIES.—Any alien who has engaged, is engaged, or at any time after admission engages in any terrorist activity (as defined in section 212(a)(3)(B)(iii)) is deportable.]

*(B) TERRORIST ACTIVITIES.—Any alien is deportable who—*

*(i) has engaged, is engaged, or at any time after admission engages in terrorist activity (as defined in section 212(a)(3)(B)(iii));*

*(ii) is a representative (as defined in section 212(a)(3)(B)(iv)) of—*

*(I) a foreign terrorist organization, as designated by the Secretary of State under section 219; or*

*(II) a political, social, or other similar group whose public endorsement of terrorist activity—*

*(a) is intended and likely to incite or produce imminent lawless action; and*

*(b) has been determined by the Secretary of State to undermine the efforts of the United States to reduce or eliminate terrorist activities; or*

*(iii) has used the alien's prominence within a foreign state or the United States—*

*(I) to endorse, in a manner that is intended and likely to incite or produce imminent lawless action and that has been determined by the Secretary of State to undermine the efforts of the United States to reduce or eliminate terrorist activities, terrorist activity; or*

*(II) to persuade others, in a manner that is intended and likely to incite or produce imminent lawless action and that has been determined by the Secretary of State to undermine the efforts of the United States to reduce or eliminate terrorist*

*activities, to support terrorist activity or a terrorist organization (as defined in section 212(a)(3)(B)(v)).*

* * * * * * *

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## SECTION 641 OF THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

**SEC. 641. PROGRAM TO COLLECT INFORMATION RELATING TO NONIMMIGRANT FOREIGN STUDENTS AND OTHER EXCHANGE PROGRAM PARTICIPANTS.**

(a) * * *

* * * * * * *

(e) FUNDING.—

(1) * * *

* * * * * * *

(4) AMOUNT AND USE OF FEES.—

(A) ESTABLISHMENT OF AMOUNT.—The Attorney General shall establish the amount of the fee to be imposed on, and collected from, an alien under paragraph (1). Except as provided in subsection (g)(2), the fee imposed on any individual may not exceed $100. The amount of the fee shall be based on the Attorney General's estimate of the cost per alien of conducting the information collection program described in this section, except that, in the case of an alien admitted under section 101(a)(15)(J) of the Immigration and Nationality Act as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $40, except that, in the case of an alien admitted under section 101(a)(15)(J) of the Immigration and Nationality Act as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed $35. *In the case of an alien who is a national of a country, the government of which the Secretary of State has determined, for purposes of section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), has repeatedly provided support for acts of international terrorism, the Attorney General may impose on, and collect from, the alien a fee that is greater than that imposed on other aliens described in paragraph (3).*

* * * * * * *

(f) JOINT REPORT.—[Not later than 4 years after the commencement of the program established under subsection (a),] *Not later than 120 days after the date of the enactment of the PATRIOT Act of 2001,* the Attorney General, the Secretary of State, and the Secretary of Education shall jointly submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the operations of the program and the feasibility of expanding the program to cover the nationals of all countries.

(g) WORLDWIDE APPLICABILITY OF THE PROGRAM.—

(1) EXPANSION OF PROGRAM.—Not later than [12 months] *120 days* after the submission of the report required by subsection (f), the Attorney General, in consultation with the Sec-

retary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

* * * * * * *

*(h) DATA EXCHANGE.—Notwithstanding any other provision of law, the Attorney General shall provide to the Secretary of State and the Director of the Federal Bureau of Investigation the information collected under subsection (a)(1).*

**[**(h)**]** *(i)* DEFINITIONS.—As used in this section:

(1) * * *

* * * * * * *

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## FEDERAL RULES OF CRIMINAL PROCEDURE

* * * * * * *

## III. INDICTMENT AND INFORMATION

### Rule 6. The Grand Jury

(a) * * *

* * * * * * *

(e) RECORDING AND DISCLOSURE OF PROCEEDINGS.

(1) * * *

* * * * * * *

(3) EXCEPTIONS.

(A) * * *

* * * * * * *

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

(i) * * *

* * * * * * *

(iii) when the disclosure is made by an attorney for the government to another federal grand jury; **[**or**]**

(iv) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of state criminal law, to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law**[**.**]***; or*

*(v) when permitted by a court at the request of an attorney for the government, upon a showing that the matters pertain to international or domestic terrorism (as defined in section 2331 of title 18, United States Code) or national security, to any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or to the President or Vice President of the United States, for the performance of official duties.*

* * * * * * *

## IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

* * * * * * *

### Rule 41. Search and Seizure

(a) AUTHORITY TO ISSUE WARRANT. Upon the request of a federal law enforcement officer or an attorney for the government, a search warrant authorized by this rule may be issued (1) by a federal magistrate judge, or a state court of record within the federal district, for a search of property or for a person within the district and (2) by a federal magistrate judge for a search of property or for a person either within or outside the district if the property or person is within the district when the warrant is sought but might move outside the district before the warrant is executed *and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of title 18, United States Code), by a Federal magistrate judge in any district court of the United States (including a magistrate judge of such court), or any United States Court of Appeals, having jurisdiction over the offense being investigated, for a search of property or for a person within or outside the district.*

* * * * * * *

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## SECTION 3 OF THE DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000

**SEC. 3. COLLECTION AND USE OF DNA IDENTIFICATION INFORMATION FROM CERTAIN FEDERAL OFFENDERS.**

(a) * * *

* * * * * * *

(d) QUALIFYING FEDERAL OFFENSES.—(1) The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses under title 18, United States Code, as determined by the Attorney General:

(A) * * *

* * * * * * *

*(G) Any Federal terrorism offense (as defined in section 25 of title 18, United States Code).*

[(G)] *(H)* Any attempt or conspiracy to commit any of the above offenses.

* * * * * * *

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## STATE DEPARTMENT BASIC AUTHORITIES ACT OF 1956

### TITLE I—BASIC AUTHORITIES GENERALLY

* * * * * * *

**SEC. 36. DEPARTMENT OF STATE REWARDS PROGRAM.**

(a) * * *

(b) REWARDS AUTHORIZED.—In the sole discretion of the Secretary (except as provided in subsection (c)(2)) and in consultation,

as appropriate, with the Attorney General, the Secretary may pay a reward to any individual who furnishes information leading to—

(1) * * *

* * * * * * *

(4) the arrest or conviction in any country of any individual aiding or abetting in the commission of an act described in paragraph (1), (2), or (3); [or]

(5) the prevention, frustration, or favorable resolution of an act described in paragraph (1), (2), or (3)[.], *including by dismantling an organization in whole or significant part; or*

*(6) the identification or location of an individual who holds a leadership position in a terrorist organization.*

* * * * * * *

(d) FUNDING.—

(1) * * *

[(2) LIMITATION.—No amount of funds may be appropriated under paragraph (1) which, when added to the unobligated balance of amounts previously appropriated to carry out this section, would cause such amounts to exceed $15,000,000.

[(3) ALLOCATION OF FUNDS.—To the maximum extent practicable, funds made available to carry out this section should be distributed equally for the purpose of preventing acts of international terrorism and for the purpose of preventing international narcotics trafficking.]

[(4)] *(2)* PERIOD OF AVAILABILITY.—Amounts appropriated under paragraph (1) shall remain available until expended.

(e) LIMITATIONS AND CERTIFICATION.—

[(1) MAXIMUM AMOUNT.—No reward paid under this section may exceed $5,000,000.]

*(1) AMOUNT OF AWARD.—*

*(A) Except as provided in subparagraph (B), no reward paid under this section may exceed $10,000,000.*

*(B) The Secretary of State may authorize the payment of an award not to exceed $25,000,000 if the Secretary determines that payment of an award exceeding the amount under subparagraph (A) is important to the national interest of the United States.*

* * * * * * *

SPECIAL AGENTS

SEC. 37. (a) GENERAL AUTHORITY.—Under such regulations as the Secretary of State may prescribe, special agents of the Department of State and the Foreign Service may—

(1) * * *

[(2) For the purpose of conducting such investigation—

[(A) obtain and execute search and arrest warrants,

[(B) make arrests without warrant for any offense concerning passport or visa issuance or use of the special agent has reasonable grounds to believe that the person has committed or is committing such offense, and

[(C) obtain and serve subpoenas and summonses issued under the authority of the United States;]

*(2) in the course of performing the functions set forth in paragraphs (1) and (3), obtain and execute search and arrest warrants, as well as obtain and serve subpoenas and summonses, issued under the authority of the United States;*

(3) protect and perform protective functions directly related to maintaining the security and safety of—

(A) * * *

* * * * * * *

(F) an individual who has been designated by the President *or President-elect* to serve as Secretary of State, prior to that individual's appointment.

* * * * * * *

[(5) arrest without warrant any person for a violation of section 111, 112, 351, 970, or 1028 , of title 18, United States Code—

[(A) in the case of a felony violation, if the special agent has reasonable grounds to believe that such person—

[(i) has committed or is committing such violation; and

[(ii) is in or is fleeing from the immediate area of such violation; and

[(B) in the case of a felony or misdemeanor violation, if the violation is committed in the presence of the special agent.]

*(5) in the course of performing the functions set forth in paragraphs (1) and (3), make arrests without warrant for any offense against the United States committed in the presence of the special agent, or for any felony cognizable under the laws of the United States if the special agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.*

* * * * * * *

*(d) INTERFERENCE WITH AGENTS.—Whoever knowingly and willfully obstructs, resists, or interferes with a Federal law enforcement agent engaged in the performance of the protective functions authorized by this section shall be fined under title 18 or imprisoned not more than one year, or both.*

*(e) PERSONS UNDER PROTECTION OF SPECIAL AGENTS.—Whoever engages in any conduct—*

*(1) directed against an individual entitled to protection under this section, and*

*(2) which would constitute a violation of section 112 or 878 of title 18, United States Code, if such individual were a foreign official, an official guest, or an internationally protected person, shall be subject to the same penalties as are provided for such conduct directed against an individual subject to protection under such section of title 18.*

* * * * * * *

**INTERNAL REVENUE CODE OF 1986**

* * * * * * *

# Subtitle F—Procedure and Administration

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## CHAPTER 61—INFORMATION AND RETURNS

* * * * * * *

## Subchapter B—Miscellaneous Provisions

* * * * * * *

**SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.**

(a) GENERAL RULE.—Returns and return information shall be confidential, and except as authorized by this title—

(1) * * *

(2) no officer or employee of any State, *any local law enforcement agency receiving information under subsection (i)(7)(A),* any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section, and

* * * * * * *

(i) DISCLOSURE TO FEDERAL OFFICERS OR EMPLOYEES FOR ADMINISTRATION OF FEDERAL LAWS NOT RELATING TO TAX ADMINISTRATION.—

(1) * * *

* * * * * * *

(3) DISCLOSURE OF RETURN INFORMATION TO APPRISE APPROPRIATE OFFICIALS OF CRIMINAL *OR TERRORIST* ACTIVITIES OR EMERGENCY CIRCUMSTANCES.—

(A) * * *

* * * * * * *

*(C) TERRORIST ACTIVITIES, ETC.—*

*(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The head of the agency may disclose such return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.*

*(ii) DISCLOSURE TO THE DEPARTMENT OF JUSTICE.—Returns and taxpayer return information may also be disclosed to the Attorney General under clause*

*(i) to the extent necessary for, and solely for use in preparing, an application under paragraph (7)(D).*

*(iii) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.*

*(iv) TERMINATION.—No disclosure may be made under this subparagraph after December 31, 2003.*

(4) USE OF CERTAIN DISCLOSED RETURNS AND RETURN INFORMATION IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS.—

(A) RETURNS AND TAXPAYER RETURN INFORMATION.—Except as provided in subparagraph (C), any return or taxpayer return information obtained under paragraph (1) *or (7)(C)* may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party—

(i) * * *

* * * * * * *

(B) RETURN INFORMATION (OTHER THAN TAXPAYER RETURN INFORMATION).—Except as provided in subparagraph (C), any return information (other than taxpayer return information) obtained under paragraph (1), (2), [or (3)(A)] *(3)(A) or (C), or (7)* may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party.

* * * * * * *

(6) CONFIDENTIAL INFORMANTS; IMPAIRMENT OF INVESTIGATIONS.—The Secretary shall not disclose any return or return information under paragraph (1), (2), (3)(A) *or(C)*, (5), [or (7)] *(7), or (8)* if the Secretary determines (and, in the case of a request for disclosure pursuant to a court order described in paragraph (1)(B) or (5)(B), certifies to the court) that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

*(7) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—*

*(A) DISCLOSURE TO LAW ENFORCEMENT AGENCIES.—*

*(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (iii), the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal law enforcement agency who are personally and directly engaged in the response to or investigation of terrorist incidents, threats, or activities.*

*(ii) DISCLOSURE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.—The head of any Federal law enforcement agency may disclose return information obtained under clause (i) to officers and employees of any State or local law enforcement agency but only if such agency is part of a team with the Federal law en-*

*forcement agency in such response or investigation and such information is disclosed only to officers and employees who are personally and directly engaged in such response or investigation.*

*(iii) REQUIREMENTS.—A request meets the requirements of this clause if—*

*(I) the request is made by the head of any Federal law enforcement agency (or his delegate) involved in the response to or investigation of terrorist incidents, threats, or activities, and*

*(II) the request sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.*

*(iv) LIMITATION ON USE OF INFORMATION.—Information disclosed under this subparagraph shall be solely for the use of the officers and employees to whom such information is disclosed in such response or investigation.*

*(B) DISCLOSURE TO INTELLIGENCE AGENCIES.—*

*(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (ii), the Secretary may disclose return information (other than taxpayer return information) to those officers and employees of the Department of Justice, the Department of the Treasury, and other Federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning terrorists and terrorist organizations and activities. For purposes of the preceding sentence, the information disclosed under the preceding sentence shall be solely for the use of such officers and employees in such investigation, collection, or analysis.*

*(ii) REQUIREMENTS.—A request meets the requirements of this subparagraph if the request—*

*(I) is made by an individual described in clause (iii), and*

*(II) sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.*

*(iii) REQUESTING INDIVIDUALS.—An individual described in this subparagraph is an individual—*

*(I) who is an officer or employee of the Department of Justice or the Department of the Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the United States Secret Service, and*

*(II) who is responsible for the collection and analysis of intelligence and counterintelligence information concerning terrorists and terrorist organizations and activities.*

*(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.*

*(C) DISCLOSURE UNDER EX PARTE ORDERS.—*

*(i) IN GENERAL.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under clause (ii), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal law enforcement agency or Federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and counterintelligence information concerning any terrorist activity or threats. Return or return information opened pursuant to the preceding sentence shall be solely for the use of such officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to any such terrorist activity or threat.*

*(ii) APPLICATION FOR ORDER.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, or any United States attorney may authorize an application to a Federal district court judge or magistrate for the order referred to in clause (i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—*

*(I) there is reasonable cause to believe, based upon information believed to be reliable, that the taxpayer whose return or return information is to be disclosed may be connected to a terrorist activity or threat,*

*(II) there is reasonable cause to believe that the return or return information may be relevant to a matter relating to such terrorist activity or threat, and*

*(III) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning terrorist activity, terrorist threats, or terrorist organizations.*

*(D) SPECIAL RULE FOR EX PARTE DISCLOSURE BY THE IRS.—*

*(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (C)(i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that the requirements of subclauses (I) and (II) of subparagraph (C)(ii) are met.*

*(ii) LIMITATION ON USE OF INFORMATION.—Information disclosed under clause (i)—*

*(I) may be disclosed only to the extent necessary to apprise the head of the appropriate Fed-*

*eral law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity, and*

*(II) shall be solely for use in a Federal investigation, analysis, or proceeding concerning terrorist activity, terrorist threats, or terrorist organizations.*

*The head of such Federal agency may disclose such information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.*

*(E) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2003.*

[(7)] *(8)* COMPTROLLER GENERAL.—

(A) RETURNS AVAILABLE FOR INSPECTION.—Except as provided in subparagraph (C), upon written request by the Comptroller General of the United States, returns and return information shall be open to inspection by, or disclosure to, officers and employees of the General Accounting Office for the purpose of, and to the extent necessary in, making—

(i) * * *

* * * * * * *

(p) PROCEDURE AND RECORDKEEPING.—

(1) * * *

* * * * * * *

(3) RECORDS OF INSPECTION AND DISCLOSURE.—

(A) SYSTEM OF RECORDKEEPING.—Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (f)(5), (h)(1), (3)(A), or (4), (i)(4), or [(7)(A)(ii)] *(8)(A)(ii)*, (k)(1), (2), (6), (8), or (9) (l)(1), (4)(B), (5), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), or (17) (m) or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

* * * * * * *

(C) PUBLIC REPORT ON DISCLOSURES.—The Secretary shall, within 90 days after the close of each calendar year,

furnish to the Joint Committee on Taxation for disclosure to the public a report with respect to the records or accountings described in subparagraph (A) which—

(i) provides with respect to each Federal agency, each agency, body, or commission described in subsection (d), (i)(3)(B)(i) *or (7)(A)(ii)* or (l)(6), and the General Accounting Office the number of—

(I) * * *

* * * * * * *

(4) SAFEGUARDS.—Any Federal agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), [or (5),] *(5), or (7),* (j)(1), (2) or (5), (k)(8), (l)(1), (2), (3), (5), (11), (13), (14), or (17) or (o)(1), the General Accounting Office, the Congressional Budget Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i) *or (7)(A)(ii)* or (l)(6), (7), (8), (9), (12), (15), or (16) or any other person described in subsection (l)(16) shall, as a condition for receiving returns or return information—

(A) * * *

* * * * * * *

(F) upon completion of use of such returns or return information—

(i) * * *

(ii) in the case of an agency described in subsections (h)(2), (h)(5), (i)(1), (2), (3), [or (5),] *(5) or (7),* (j)(1), (2) or (5), (k)(8), (l)(1), (2), (3), (5), (10), (11), (12), (13), (14), (15), or (17) or (o)(1), the General Accounting Office, or the Congressional Budget Office, either—

(I) * * *

* * * * * * *

(6) AUDIT OF PROCEDURES AND SAFEGUARDS.—

(A) * * *

(B) RECORDS OF INSPECTION AND REPORTS BY THE COMPTROLLER GENERAL.—The Comptroller General shall—

(i) maintain a permanent system of standardized records and accountings of returns and return information inspected by officers and employees of the General Accounting Office under subsection [(i)(7)(A)(ii)] *(i)(8)(A)(ii)* and shall, within 90 days after the close of each calendar year, furnish to the Secretary a report with respect to, or summary of, such records or accountings in such form and containing such information as the Secretary may prescribe, and

* * * * * * *

## CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

* * * * * * *

## Subchapter A—Crimes

* * * * * * *

### PART I—GENERAL PROVISIONS

* * * * * * *

**SEC. 7213. UNAUTHORIZED DISCLOSURE OF INFORMATION.**

(a) RETURNS AND RETURN INFORMATION.—

(1) * * *

(2) STATE AND OTHER EMPLOYEES.—It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i) *or (7)(A)(ii)*, (l)(6), (7), (8), (9), (10), or (12), (15), or (16) or (m)(2), (4), (5), (6), or (7) of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

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## OMNIBUS CONSOLIDATED AND EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT, 1999

(Public Law 105–277)

### DIVISION A—OMNIBUS CONSOLIDATED APPROPRIATIONS

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the several departments, agencies, corporations and other organizational units of the Government for the fiscal year 1999, and for other purposes, namely:

SEC. 101(a). * * *

* * * * * * *

(b) For programs, projects or activities in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act:

AN ACT Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1999, and for other purposes.

### TITLE I—DEPARTMENT OF JUSTICE

* * * * * * *

#### GENERAL PROVISIONS—DEPARTMENT OF JUSTICE

* * * * * * *

SEC. 112. Notwithstanding any other provision of law, during fiscal year 1999, the Assistant Attorney General for the Office of Justice Programs of the Department of Justice—

(1) may make grants, or enter into cooperative agreements and contracts, for the Office of Justice Programs and the component organizations of that Office *(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351)*; and

(2) shall have final authority over all *functions, including any* grants, cooperative agreements, and contracts made, or entered into, for the Office of Justice Programs and the component organizations of that Office *(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351)*.

* * * * * * *

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## DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2000

(Public Law 106–113)

### TITLE I—DEPARTMENT OF JUSTICE

* * * * * * *

### GENERAL PROVISIONS—DEPARTMENT OF JUSTICE

* * * * * * *

SEC. 108. (a) Notwithstanding any other provision of law, for fiscal year 2000, the Assistant Attorney General for the Office of Justice Programs of the Department of Justice—

(1) may make grants, or enter into cooperative agreements and contracts, for the Office of Justice Programs and the component organizations of that Office *(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351)*; and

(2) shall have final authority over all *functions, including any* grants, cooperative agreements and contracts made, or entered into, for the Office of Justice Programs and the component organizations of that Office *(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351)*, except for grants made under the provisions of sections 201, 202, 301, and 302 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; and sections 204(b)(3), 241(e)(1), 243(a)(1), 243(a)(14) and 287A(3) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

* * * * * * *

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## SECTION 1404B OF THE VICTIMS OF CRIME ACT OF 1984

**SEC. 1404B. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.**

(a) * * *

(b) VICTIMS OF TERRORISM WITHIN THE UNITED STATES.—The Director may make supplemental grants as provided in section 1402(d)(5) to States for eligible crime victim compensation and assistance programs*, to victim service organizations, to public agencies (including Federal, State, or local governments), and to nongovernmental organizations that provide assistance to victims of crime,* to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney's Offices for use in coordination with State victim compensation and assistance efforts in providing emergency relief.

* * * * * * *

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## SECTION 1 OF THE ACT OF SEPTEMBER 18, 2001

(Public Law 107–37)

AN ACT To provide for the expedited payment of certain benefits for a public safety officer who was killed or suffered a catastrophic injury as a direct and proximate result of a personal injury sustained in the line of duty in connection with the terrorist attacks of September 11, 2001.

**SECTION 1. EXPEDITED PAYMENT FOR HEROIC PUBLIC SAFETY OFFICERS.**

Notwithstanding the limitations of subsection (b) of section 1201 or the provisions of subsections (c), (d), and (e) of such section or section 1202 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796, 3796a), upon certification *(containing identification of all eligible payees of benefits under section 1201)* by a public agency that a public safety officer employed by such agency was killed or suffered a catastrophic injury *producing permanent and total disability* as a direct and proximate result of a personal injury sustained in the line of duty as described in section **[**1201(a)**]** *1201* of such Act in connection with the rescue or recovery efforts related to the terrorist attacks of September 11, 2001, the Director of the Bureau of Justice Assistance shall authorize payment to qualified beneficiaries, said payment to be made not later than 30 days after receipt of such certification, benefits described under subpart 1 of part L of such Act (42 U.S.C. 3796 et seq.).

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## CRIME CONTROL ACT OF 1990

(Public Law 101–647)

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# TITLE XXV—BANKING LAW ENFORCEMENT

* * * * * * *

## Subtitle H—Actions Against Persons Committing Bank Fraud Crimes

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### CHAPTER 1—DECLARATIONS PROVIDING NEW CLAIMS TO THE UNITED STATES

* * * * * * *

**SEC. 2565. RIGHTS OF DECLARANTS; PARTICIPATION IN ACTIONS, AWARDS.**

(a) * * *

* * * * * * *

(c) CRIMINAL CONVICTION.—(1) When the United States obtains a criminal conviction and the Attorney General determines that the conviction was based in whole or in part on the information contained in a valid declaration filed under section 2561, [the declarant shall have the right to receive not less than $5,000 and not more than $100,000, any such award to be paid from the Financial Institution Information Award Fund established under section 2569.] *the Attorney General may, in the Attorney General's discretion, pay a reward to the declaring.*

* * * * * * *

[(e) PROHIBITION OF DOUBLE AWARDS.—(1) No person shall receive both an award under this section and a reward under either section 34 of the Federal Deposit Insurance Act or section 3509A of title 18, United States Code, for providing the same or substantially similar information.

[(2) When a person qualifies for both an award under this section and a reward under either section 34 of the Federal Deposit Insurance Act or section 3509A of title 18, United States Code, for providing the same or substantially similar information, the person may notify the Attorney General in writing of the person's election to seek an award under this section or a reward under such other section.]

* * * * * * *

**[SEC. 2569. FINANCIAL INSTITUTION INFORMATION AWARD FUND.**

[(a) ESTABLISHMENT.—There is established in the United States Treasury a special fund to be known as the Financial Institution Information Award Fund (referred to as the "Fund") which shall be available to the Attorney General without fiscal year limitation to pay awards to declarants pursuant to section 2565(c) and to pay special rewards pursuant to section 3059A of title 18, United States Code.

[(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund such funds as are necessary to maintain the Fund at a level not to exceed $5,000,000.]

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## DEPARTMENT OF JUSTICE APPROPRIATIONS ACT, 2001

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### TITLE I—DEPARTMENT OF JUSTICE

* * * * * * *

#### IMMIGRATION AND NATURALIZATION SERVICE

##### SALARIES AND EXPENSES

For expenses necessary for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration, as follows:

##### ENFORCEMENT AND BORDER AFFAIRS

For salaries and expenses for the Border Patrol program, the detention and deportation program, the intelligence program, the investigations program, and the inspections program, including not to exceed $50,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General; purchase for police-type use (not to exceed 3,165 passenger motor vehicles, of which 2,211 are for replacement only), without regard to the general purchase price limitation for the current fiscal year, and hire of passenger motor vehicles; acquisition, lease, maintenance and operation of aircraft; research related to immigration enforcement; for protecting and maintaining the integrity of the borders of the United States including, without limitation, equipping, maintaining, and making improvements to the infrastructure; and for the care and housing of Federal detainees held in the joint Immigration and Naturalization Service and United States Marshals Service's Buffalo Detention Facility, $2,547,057,000; of which not to exceed $10,000,000 shall be available for costs associated with the training program for basic officer training, and $5,000,000 is for payments or advances arising out of contractual or reimbursable agreements with State and local law enforcement agencies while engaged in cooperative activities related to immigration; of which not to exceed $5,000,000 is to fund or reimburse other Federal agencies for the costs associated with the care, maintenance, and repatriation of smuggled illegal aliens: [*Provided*, That none of the funds available to the Immigration and Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of $30,000 during the calendar year beginning January 1, 2001:] *Provided further*, That uniforms may be purchased without regard to the general purchase price limitation for the current fiscal year: *Provided further*, That, in addition to reimbursable full-time equivalent workyears available to the Immigration and Naturalization Service, not to exceed 19,783 positions and 19,191 full-time equivalent workyears shall be supported from the funds ap-

propriated under this heading in this Act for the Immigration and Naturalization Service: *Provided further*, That none of the funds provided in this or any other Act shall be used for the continued operation of the San Clemente and Temecula checkpoints unless the checkpoints are open and traffic is being checked on a continuous 24-hour basis.

CITIZENSHIP AND BENEFITS, IMMIGRATION SUPPORT AND PROGRAM DIRECTION

For all programs of the Immigration and Naturalization Service not included under the heading "Enforcement and Border Affairs", $578,819,000, of which not to exceed $400,000 for research shall remain available until expended: *Provided*, That not to exceed $5,000 shall be available for official reception and representation expenses: *Provided further*, That the Attorney General may transfer any funds appropriated under this heading and the heading "Enforcement and Border Affairs" between said appropriations notwithstanding any percentage transfer limitations imposed under this appropriation Act and may direct such fees as are collected by the Immigration and Naturalization Service to the activities funded under this heading and the heading "Enforcement and Border Affairs" for performance of the functions for which the fees legally may be expended: *Provided further*, That not to exceed 40 permanent positions and 40 full-time equivalent workyears and $4,300,000 shall be expended for the Offices of Legislative Affairs and Public Affairs: *Provided further*, That the latter two aforementioned offices shall not be augmented by personnel details, temporary transfers of personnel on either a reimbursable or non-reimbursable basis, or any other type of formal or informal transfer or reimbursement of personnel or funds on either a temporary or long-term basis: *Provided further*, That the number of positions filled through non-career appointment at the Immigration and Naturalization Service, for which funding is provided in this Act or is otherwise made available to the Immigration and Naturalization Service, shall not exceed four permanent positions and four full-time equivalent workyears: [*Provided further*, That none of the funds available to the Immigration and Naturalization Service shall be used to pay any employee overtime pay in an amount in excess of $30,000 during the calendar year beginning January 1, 2001:] *Provided further*, That funds may be used, without limitation, for equipping, maintaining, and making improvements to the infrastructure and the purchase of vehicles for police-type use within the limits of the Enforcement and Border Affairs appropriation: *Provided further*, That, in addition to reimbursable full-time equivalent workyears available to the Immigration and Naturalization Service, not to exceed 3,100 positions and 3,150 full-time equivalent workyears shall be supported from the funds appropriated under this heading in this Act for the Immigration and Naturalization Service: *Provided further*, That, notwithstanding any other provision of law, during fiscal year 2001, the Attorney General is authorized and directed to impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, for any employee of the Immigration and Naturalization Service who violates policies and procedures set forth by the Department of Justice

relative to the granting of citizenship or who willfully deceives the Congress or department leadership on any matter.

* * * * * * *

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## SECTION 1201 OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1986

PAYMENTS

SEC. 1201. (a) In any case in which the Bureau of Justice Assistance (hereinafter in this part referred to as the "Bureau") determines, under regulations issued pursuant to this part, that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Bureau shall pay a benefit of [$100,000] *$200,000*, adjusted in accordance with subsection (h), as follows:

(1) * * *

* * * * * * *

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## SECTION 2805 OF THE RECLAMATION RECREATION MANAGEMENT ACT OF 1992

**SEC. 2805. MANAGEMENT OF RECLAMATION LANDS.**

(a) ADMINISTRATION.—(1) * * *

* * * * * * *

*(3) Any person who violates any such regulation which is issued pursuant to this Act shall be fined under title 18, United States Code, imprisoned not more than 6 months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate judge designated for that purpose by the court by which such judge was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18, United States Code.*

*(4) The Secretary may—*

*(A) authorize law enforcement personnel from the Department of the Interior to act as law enforcement officers to maintain law and order and protect persons and property within a Reclamation project or on Reclamation lands;*

*(B) authorize law enforcement personnel of any other Federal agency that has law enforcement authority, with the exception of the Department of Defense, or law enforcement personnel of any State or local government, including Indian tribes, when deemed economical and in the public interest, and with the concurrence of that agency or that State or local government, to act as law enforcement officers within a Reclamation project or on Reclamation lands with such enforcement powers as may be so assigned them by the Secretary to carry out the regulations promulgated under paragraph (2);*

*(C) cooperate with any State or local government, including Indian tribes, in the enforcement of the laws or ordinances of that State or local government; and*

*(D) provide reimbursement to a State or local government, including Indian tribes, for expenditures incurred in connection with activities under subparagraph (B).*

*(5) Officers or employees designated or authorized by the Secretary under paragraph (4) are authorized to—*

*(A) carry firearms within a Reclamation project or on Reclamation lands and make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony, and if such arrests occur within a Reclamation project or on Reclamation lands or the person to be arrested is fleeing therefrom to avoid arrest;*

*(B) execute within a Reclamation project or on Reclamation lands any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation issued pursuant to law for an offense committed within a Reclamation project or on Reclamation lands; and*

*(C) conduct investigations within a Reclamation project or on Reclamation lands of offenses against the United States committed within a Reclamation project or on Reclamation lands, if the Federal law enforcement agency having investigative jurisdiction over the offense committed declines to investigate the offense or concurs with such investigation.*

*(6)(A) Except as otherwise provided in this paragraph, a law enforcement officer of any State or local government, including Indian tribes, designated to act as a law enforcement officer under paragraph (4) shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, employment discrimination, leave, unemployment compensation, and Federal benefits.*

*(B) For purposes of chapter 171 of title 28, United States Code, popularly known as the Federal Tort Claims Act, a law enforcement officer of any State or local government, including Indian tribes, shall, when acting as a designated law enforcement officer under paragraph (4) and while under Federal supervision and control, and only when carrying out Federal law enforcement responsibilities, be considered a Federal employee.*

*(C) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to compensation to Federal employees for work injuries, a law enforcement officer of any State or local government, including Indian tribes, shall, when acting as a designated law enforcement officer under paragraph (4) and while under Federal supervision and control, and only when carrying out Federal law enforcement responsibilities, be deemed a civil service employee of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, and the provisions of that subchapter shall apply. Benefits under this subchapter shall be reduced by the amount of any entitlement to State or local workers' compensation benefits arising out of the same injury or death.*

*(7) Nothing in paragraphs (3) through (9) shall be construed or applied to limit or restrict the investigative jurisdiction of any Fed-*

*eral law enforcement agency, or to affect any existing right of a State or local government, including Indian tribes, to exercise civil and criminal jurisdiction within a Reclamation project or on Reclamation lands.*

*(8) For the purposes of this subsection, the term "law enforcement personnel" means employees of a Federal, State, or local government agency, including an Indian tribal agency, who have successfully completed law enforcement training approved by the Secretary and are authorized to carry firearms, make arrests, and execute service of process to enforce criminal laws of their employing jurisdiction.*

*(9) The law enforcement authorities provided for in this subsection may be exercised only pursuant to rules and regulations promulgated by the Secretary and approved by the Attorney General.*

* * * * * * *

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## TITLE 28, UNITED STATES CODE

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# PART IV—JURISDICTION AND VENUE

* * * * * * *

## CHAPTER 87—DISTRICT COURTS; VENUE

* * * * * * *

### § 1391. Venue generally

(a) * * *

* * * * * * *

(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

(1) * * *

* * * * * * *

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section ⟦1603(b)⟧ *1603(b)(1)* of this title; or

* * * * * * *

## CHAPTER 97—JURISDICTIONAL IMMUNITIES OF FOREIGN STATES

* * * * * * *

### § 1603. Definitions

For purposes of this chapter—

(a) * * *

⟦(b) An "agency or instrumentality of a foreign state" means any entity—⟧ *(b) An "agency or instrumentality of a foreign state" means—*

*(1) any entity—*

**[**(1)**]** *(A)* which is a separate legal person, corporate or otherwise, and

**[**(2)**]** *(B)* which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

**[**(3)**]** *(C)* which is neither a citizen of a State of the United States as defined in section 1332 (c) and (d) of this title, nor created under the laws of any third country**[**.**]***; and*

*(2) for purposes of sections 1605(a)(7) and 1610(a)(7) and (f), any entity as defined under subparagraphs (A) and (B) of paragraph (1), and subparagraph (C) of paragraph (1) shall not apply.*

* * * * * * *

**§ 1610. Exceptions to the immunity from attachment or execution**

(a) * * *

* * * * * * *

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state **[**(including any agency or instrumentality or such state)**]** *(including any agency or instrumentality of such state), except to the extent of any punitive damages awarded* claiming such property is not immune under section 605(a)(7).

* * * * * * *

*(C) Notwithstanding any other provision of law, moneys due from or payable by the United States (including any agency or instrumentality thereof) to any state against which a judgment is pending under section 1605(a)(7) shall be subject to attachment and execution with respect to that judgment, in like manner and to the same extent as if the United States were a private person, except to the extent of any punitive damages awarded.*

* * * * * * *

**[**(3) WAIVER.—The President may waive any provision of paragraph (1) in the interest of national security.**]**

*(3)(A) Subject to subparagraph (B), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive this subsection in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property*

*subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.*

*(B) A waiver under this paragraph shall not apply to—*

*(i) if property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations has been used for any nondiplomatic purpose (including use as rental property), the proceeds of such use; or*

*(ii) if any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations is sold or otherwise transferred for value to a third party, the proceeds of such sale or transfer.*

*(C) In this paragraph, the term "property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations" and the term "asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations" mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.*

*(4) For purposes of this subsection, all assets of any agency or instrumentality of a foreign state shall be treated as assets of that foreign state.*

* * * * * * *

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One Hundred Seventh Congress

**Congress of the United States**

Committee on International Relations

House of Representatives

Washington, DC 20515

Telephone: (202) 225–5021

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DEMOCRATIC CHIEF COUNSEL

October 9, 2001

The Honorable F. James Sensenbrenner
Chairman
House Committee on the Judiciary
2138 Rayburn HOB
Washington, D.C. 20515

Dear Jim:

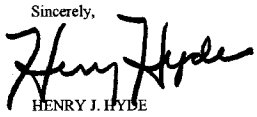
I am writing to you concerning H.R. 2975, the "Patriot Act of 2001," which was ordered favorably reported by the House Committee on the Judiciary on October 3, 2001.

As we have discussed, the bill contains matters within the jurisdiction of the House International Relations Committee and I appreciate your willingness to work with this Committee on those matters. Due to the exigencies of time, this Committee is willing to be discharged from further consideration of H.R. 2975 so that you may proceed to the floor in an expeditious manner.

This waiver does not in any way waive our subject matter jurisdiction over the matters contained in the House bill or its Senate counterpart. Furthermore, I would expect that you would support the appointment of conferees from this Committee on those matters within our Rule X jurisdiction committed to any conference committee on this legislation.

I also request that a copy of this letter and your response be included in the Record during the debate on H.R. 2975.

Sincerely,



HENRY J. HYDE
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable Tom Lantos
The Honorable John Conyers, Jr.

HJH:df/ld

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ONE HUNDRED SEVENTH CONGRESS

# Congress of the United States
## House of Representatives

COMMITTEE ON THE JUDICIARY

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ADAM B. SCHIFF, California

October 9, 2001

The Honorable Henry J. Hyde
Chairman
House Committee on International Relations
2170 Rayburn
Washington, D.C. 20515

Dear Henry:

This letter responds to your letter dated October 9, 2001, concerning H.R. 2975, the "Patriot Act of 2001," which was favorably reported by the House Committee on the Judiciary on October 3, 2001.

I agree that the bill contains matters within the jurisdiction of the House Committee on International Relations and appreciate your willingness to be discharged from further consideration of H.R. 2975 so that we may proceed to the floor.

Pursuant to your request, a copy of your letter and this letter will be included in the report of the Committee on the Judiciary on H.R. 2975.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable Tom Lantos

JAMES V. HANSEN, CHAIRMAN

**U.S. House of Representatives**
**Committee on Resources**
**Washington, DC 20515**

October 10, 2001

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
2138 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to indicate my support for bringing H.R. 2975, the "Patriot Act of 2001," to the floor of the House as quickly as possible. I strongly support this vital legislation.

H.R. 2975 was additionally referred to the Committee on Resources. I appreciate you incorporating certain legislative provisions in the final bill at my request. To expedite consideration of the this important legislation, I will not insist on the referral and will allow the Committee on Resources to be discharged from further consideration of the measure. However, this action does not waive the Committee's jurisdiction over those matters contained within the bill, and I ask that the Committee on Resources be represented on any conference committee on H.R. 2975, or any similar bill, if one becomes necessary.

Thank you, again, for your willingness to work with the Committee on Resources on the issue of helping to ensure the safety and security of federal dams and facilities, and for the responsiveness and professionalism of your staff.

Sincerely,

JAMES V. HANSEN
Chairman

cc: The Honorable Nick J. Rahall, II

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

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ONE HUNDRED SEVENTH CONGRESS

# Congress of the United States
## House of Representatives

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ADAM B. SCHIFF, California

October 9, 2001

The Honorable James Hansen
Chairman
House Committee on Resources
1324 Longworth – The Capitol
Washington, D.C. 20515

Dear Jim:

This letter responds to your letter dated October 9, 2001, concerning H.R. 2975, the "Patriot Act of 2001," which was favorably reported by the House Committee on the Judiciary on October 3, 2001.

I agree that the bill contains matters within the jurisdiction of the House Committee on Resources and appreciate your willingness to be discharged from further consideration of H.R. 2975 so that we may proceed to the floor.

Pursuant to your request, a copy of your letter and this letter will be included in the report of the Committee on the Judiciary on H.R. 2975.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable Nick J. Rahall, II

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ONE HUNDRED SEVENTH CONGRESS

**U.S. House of Representatives**
**Committee on Energy and Commerce**
**Washington, DC 20515–6115**

W.J. "BILLY" TAUZIN, LOUISIANA,
CHAIRMAN

October 10, 2001

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JANE HARMAN, CALIFORNIA

DAVID V. MARVENTANO, STAFF DIRECTOR

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

I am writing with regard to H.R. 2975, the PATRIOT Act of 2001. As you know, H.R. 2975 was ordered reported, amended, by the Committee on the Judiciary on October 3, 2001.

I recognize your desire to bring this legislation before the House in an expeditious manner. Accordingly, I will not exercise the Committee's right to a referral on the cable provisions of the bill that set forth in section 109 that are within our jurisdiction. By agreeing to waive its consideration of the bill, however, the Energy and Commerce Committee does not waive its jurisdiction over H.R. 2975. In addition, the Energy and Commerce Committee reserves its authority to seek conferees on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this or similar legislation. I ask for your commitment to support any request by the Energy and Commerce Committee for appropriate conferees on H.R. 2975 or similar legislation.

I request that you include this letter as a part of the Committee's report on H.R. 2975 and as part of the Record during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

W.J. "Billy" Tauzin
Chairman

WJT/res

cc: The Honorable John D. Dingell
The Honorable Charles W. Johnson, III, Parliamentarian

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ONE HUNDRED SEVENTH CONGRESS

# Congress of the United States
## House of Representatives

COMMITTEE ON THE JUDICIARY

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WASHINGTON, DC 20515–6216

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ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California

October 9, 2001

The Honorable Billy Tauzin
Chairman
House Committee on Energy and Commerce
2125 Rayburn HOB
Washington, D.C. 20515

Dear Billy:

This letter responds to your letter dated October 9, 2001, concerning H.R. 2975, the "Patriot Act of 2001," which was favorably reported by the House Committee on the Judiciary on October 3, 2001.

I agree that the bill contains matters within the jurisdiction of the House Committee on Energy and Commerce and appreciate your willingness to be discharged from further consideration of H.R. 2975 so that we may proceed to the floor.

Pursuant to your request, a copy of your letter and this letter will be included in the report of the Committee on the Judiciary on H.R. 2975.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable John Dingell

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# Congress of the United States

## House of Representatives

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MINORITY CHIEF COUNSEL

October 10, 2001

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COMMITTEE ON JUDICIARY

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

I am writing concerning H.R. 2975, the "Anti-Terrorism Act of 2001," which was ordered reported by the Committee on the Judiciary on Wednesday, October 3, 2001. I appreciate your cooperation in this matter.

As you know, the Committee on Ways and Means has long maintained jurisdiction in matters concerning the Internal Revenue Code. The Committee on Ways and Means drafted the text for Sec. 405 of the bill, which grants authority to the Secretary of the Treasury to disclose taxpayer information related to terrorist investigations.

Therefore, in order to expedite this important legislation for floor consideration the Committee will forgo action on this bill. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I would appreciate your response to this letter, confirming this understanding with respect to the H.R. 2975, and would ask that a copy of our exchange of letters on this matter be included in your committee report.

Best regards,

Bill Thomas

Bill Thomas
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable Richard K. Armey
The Honorable Tom Delay
The Honorable David Dreier
The Honorable Richard A. Gephardt
The Honorable David E. Bonior
The Honorable Charles B. Rangel
The Honorable Martin Frost
The Honorable John Conyers, Jr.
Mr. Charles W. Johnson, III, Parliamentarian

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# Congress of the United States
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ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California

October 9, 2001

The Honorable Bill Thomas
Chairman
House Committee on Ways and Means
1102 Longworth HOB
Washington, D.C. 20515

Dear Bill:

This letter responds to your letter dated October 9, 2001, concerning H.R. 2975, the "Patriot Act of 2001," which was favorably reported by the House Committee on the Judiciary on October 3, 2001.

I agree that the bill contains matters within the jurisdiction of the Ways and Means Committee and appreciate your willingness to be discharged from further consideration of H.R. 2975 so that we may proceed to the floor.

Pursuant to your request, a copy of your letter and this letter will be included in the report of the Committee on the Judiciary on H.R. 2975.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable Charles Rangel

MARKUP TRANSCRIPT

# BUSINESS MEETING

## WEDNESDAY, OCTOBER 3, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Committee met, pursuant to notice, at 2:00 p.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. As the first order of business today, I would like to welcome two Members appointed to the Judiciary Committee last night.

First, I would like to welcome back Ed Bryant to the Committee after a leave of absence. Our distinguished colleague has represented the Seventh District of Tennessee since 1994, and we are glad to have him back in our ranks. Mr. Bryant will rank after Mr. Goodlatte.

I would also like to welcome to the Committee Mike Pence. Mr. Pence is a freshman who represents the Second District of Indiana, and we are very glad to have you both on the Committee as we consider this important legislation before us today.

Mr. CONYERS. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. CONYERS. May we join in that, saying welcome to our two colleagues.

Chairman SENSENBRENNER. Absolutely.

Now, pursuant to notice, I call up the bill H.R. 2975, the Patriot Act of 2001, for purposes of markup and move as favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment by title, except that a manager's amendment offered by the Chairman and Ranking Minority Member may be considered at any point during the consideration of this bill.

[The bill, H.R. 2975, follows:]

I

107TH CONGRESS
1ST SESSION

# H. R. 2975

To combat terrorism, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2001

Mr. SENSENBRENNER (for himself, Mr. CONYERS, Mr. HYDE, Mr. COBLE, Mr. GOODLATTE, Mr. JENKINS, Ms. JACKSON-LEE of Texas, Mr. CANNON, Mr. MEEHAN, Mr. GRAHAM, Mr. BACHUS, Mr. WEXLER, Mr. HOSTETTLER, Mr. KELLER, Mr. ISSA, Ms. HART, Mr. FLAKE, Mr. SCHIFF, Mr. THOMAS, Mr. GOSS, Mr. RANGEL, Mr. BERMAN, and Ms. LOFGREN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Intelligence (Permanent Select), International Relations, Resources, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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# A BILL

To combat terrorism, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001''.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The following is the table of contents for this Act:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Construction; severability.

TITLE I—INTELLIGENCE GATHERING

Subtitle A—Electronic Surveillance

Sec. 101. Modification of authorities relating to use of pen registers and trap and trace devices.
Sec. 102. Seizure of voice-mail messages pursuant to warrants.
Sec. 103. Authorized disclosure.
Sec. 104. Savings provision.
Sec. 105. Interception of computer trespasser communications.
Sec. 106. Technical amendment.
Sec. 107. Scope of subpoenas for records of electronic communications.
Sec. 108. Nationwide service of search warrants for electronic evidence.
Sec. 109. Clarification of scope.
Sec. 110. Emergency disclosure of electronic communications to protect life and limb.
Sec. 111. Use as evidence.
Sec. 112. Reports concerning the disclosure of the contents of electronic communications.

Subtitle B—Foreign Intelligence Surveillance and Other Information

Sec. 151. Period of orders of electronic surveillance of non-United States persons under foreign intelligence surveillance.
Sec. 152. Multi-point authority.
Sec. 153. Foreign intelligence information.
Sec. 154. Foreign intelligence information sharing.
Sec. 155. Pen register and trap and trace authority.
Sec. 156. Business records.
Sec. 157. Miscellaneous national-security authorities.
Sec. 158. Proposed legislation.
Sec. 159. Presidential authority.
Sec. 160. Sunset.

TITLE II—ALIENS ENGAGING IN TERRORIST ACTIVITY

Subtitle A—Detention and Removal of Aliens Engaging in Terrorist Activity

Sec. 201. Changes in classes of aliens who are ineligible for admission and deportable due to terrorist activity.
Sec. 202. Changes in designation of foreign terrorist organizations.
Sec. 203. Mandatory detention of suspected terrorists; habeas corpus; judicial review.
Sec. 204. Multilateral cooperation against terrorists.
Sec. 205. Changes in conditions for granting asylum and asylum procedures.
Sec. 206. Protection of northern border.
Sec. 207. Requiring sharing by the Federal Bureau of Investigation of certain criminal record extracts with other Federal agencies in order to enhance border security.

Subtitle B—Preservation of Immigration Benefits for Victims of Terrorism

Sec. 211. Special immigrant status.
Sec. 212. Extension of filing or reentry deadlines.
Sec. 213. Humanitarian relief for certain surviving spouses and children.
Sec. 214. ''Age-out'' protection for children.
Sec. 215. Temporary administrative relief.
Sec. 216. Evidence of death, disability, or loss of employment.
Sec. 217. No benefits to terrorists or family members of terrorists.
Sec. 218. Definitions.

TITLE III—CRIMINAL JUSTICE

Subtitle A—Substantive Criminal Law

Sec. 301. Statute of limitation for prosecuting terrorism offenses.
Sec. 302. Alternative maximum penalties for terrorism crimes.
Sec. 303. Penalties for terrorist conspiracies.
Sec. 304. Terrorism crimes as RICO predicates.
Sec. 305. Biological weapons.
Sec. 306. Support of terrorism through expert advice or assistance.
Sec. 307. Prohibition against harboring.
Sec. 308. Post-release supervision of terrorists.
Sec. 309. Definition.
Sec. 310. Civil damages.

Subtitle B—Criminal Procedure

Sec. 351. Single-jurisdiction search warrants for terrorism.
Sec. 352. DNA identification of terrorists.
Sec. 353. Grand jury matters.
Sec. 354. Extraterritoriality.
Sec. 355. Jurisdiction over crimes committed at United States facilities abroad.
Sec. 356. Special agent authorities.

TITLE IV—FINANCIAL INFRASTRUCTURE

Sec. 401. Laundering the proceeds of terrorism.
Sec. 402. Material support for terrorism.
Sec. 403. Assets of terrorist organizations.
Sec. 404. Technical clarification relating to provision of material support to terrorism.
Sec. 405. Disclosure of tax information in terrorism and national security investigations.
Sec. 406. Extraterritorial jurisdiction.

TITLE V—EMERGENCY AUTHORIZATIONS

Sec. 501. Office of Justice programs.
Sec. 502. Attorney General's authority to pay rewards.
Sec. 503. Limited authority to pay overtime.
Sec. 504. Department of State reward authority.

TITLE VI—DAM SECURITY

Sec. 601. Security of reclamation dams, facilities, and resources.

TITLE VII—MISCELLANEOUS

Sec. 701. Employment of translators by the Federal Bureau of Investigation.
Sec. 702. Review of the Department of Justice.

**SEC. 3. CONSTRUCTION; SEVERABILITY.**

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

# TITLE I—INTELLIGENCE GATHERING

## Subtitle A—Electronic Surveillance

**SEC. 101. MODIFICATION OF AUTHORITIES RELATING TO USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES.**

(a) GENERAL LIMITATION ON USE BY GOVERNMENTAL AGENCIES.—Section 3121(c) of title 18, United States Code, is amended—

(1) by inserting ''or trap and trace device'' after ''pen register'';

(2) by inserting '', routing, addressing,'' after ''dialing''; and

(3) by striking ''call processing'' and inserting ''the processing and transmitting of wire and electronic communications''.

(b) ISSUANCE OF ORDERS.—

(1) IN GENERAL.—Subsection (a) of section 3123 of title 18, United States Code, is amended to read as follows:

''(a) IN GENERAL.—

''(1) Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order shall, upon service thereof, apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order.

''(2) Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law-en-

forcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.''.

(2) CONTENTS OF ORDER.—Subsection (b)(1) of section 3123 of title 18, United States Code, is amended—

(A) in subparagraph (A)—

(i) by inserting ''or other facility'' after ''telephone line''; and

(ii) by inserting before the semicolon at the end ''or applied''; and

(B) by striking subparagraph (C) and inserting the following:

''(C) the attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device under subsection (a)(2), the geographic limits of the order; and''.

(3) NONDISCLOSURE REQUIREMENTS.—Subsection (d)(2) of section 3123 of title 18, United States Code, is amended—

(A) by inserting ''or other facility'' after ''the line''; and

(B) by striking '', or who has been ordered by the court'' and inserting ''or applied, or who is obligated by the order''.

(c) DEFINITIONS.—

(1) COURT OF COMPETENT JURISDICTION.—Paragraph (2) of section 3127 of title 18, United States Code, is amended by striking subparagraph (A) and inserting the following:

''(A) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals having jurisdiction over the offense being investigated; or''.

(2) PEN REGISTER.—Paragraph (3) of section 3127 of title 18, United States Code, is amended—

(A) by striking ''electronic or other impulses'' and all that follows through ''is attached'' and inserting ''dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire

or electronic communication is transmitted (but not including the contents of such communication)''; and

(B) by inserting ''or process'' after ''device'' each place it appears.

(3) TRAP AND TRACE DEVICE.—Paragraph (4) of section 3127 of title 18, United States Code, is amended—

(A) by inserting ''or process'' after ''a device''; and

(B) by striking ''of an instrument'' and all that follows through the end and inserting ''or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication (but not including the contents of such communication);''.

(4) CONFORMING AMENDMENT.—Section 3127(1) of title 18, United States Code, is amended—

(A) by striking ''and''; and

(B) by inserting ''and 'contents''' after''electronic communication service''.

(d) NO LIABILITY FOR INTERNET SERVICE PROVIDERS.—Section 3124(d) of title 18, United States Code, is amended by striking ''the terms of''.

**SEC. 102. SEIZURE OF VOICE-MAIL MESSAGES PURSUANT TO WARRANTS.**

Title 18, United States Code, is amended—

(1) in section 2510—

(A) in paragraph (1), by striking all the words after ''commerce''; and

(B) in paragraph (14), by inserting ''wire or'' after ''transmission of''; and

(2) in section 2703—

(A) in the headings for subsections (a) and (b), by striking ''CONTENTS OF ELECTRONIC'' and inserting ''CONTENTS OF WIRE OR ELECTRONIC'';

(B) in subsection (a), by striking ''contents of an electronic'' and inserting ''contents of a wire or electronic'' each place it appears; and

(C) in subsection (b), by striking ''any electronic'' and inserting ''any wire or electronic'' each place it appears.

**SEC. 103. AUTHORIZED DISCLOSURE.**

Section 2510(7) of title 18, United States Code, is amended by inserting '', and (for purposes only of section

2517 as it relates to foreign intelligence information) any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or the President or Vice President of the United States'' after ''such offenses''.

**SEC. 104. SAVINGS PROVISION.**

Section 2511(2)(f) of title 18, United States Code, is amended—

(1) by striking ''or chapter 121'' and inserting '', chapter 121, or chapter 206''; and

(2) by striking ''wire and oral'' and inserting ''wire, oral, and electronic''.

**SEC. 105. INTERCEPTION OF COMPUTER TRESPASSER COMMUNICATIONS.**

Chapter 119 of title 18, United States Code, is amended—

(1) in section 2510—

(A) in paragraph (17), by striking ''and'' at the end;

(B) in paragraph (18), by striking the period and inserting a semi-colon; and

(C) by adding after paragraph (18) the following:

''(19) 'protected computer' has the meaning set forth in section 1030; and

"(20) 'computer trespasser' means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer.";

(2) in section 2511(2), by inserting after paragraph (h) the following:

"(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser, if—

"(i) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

"(ii) the person acting under color of law is lawfully engaged in an investigation;

"(iii) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and

"(iv) such interception does not acquire communications other than those transmitted to or from the computer trespasser."; and

(3) in section 2520(d)(3), by inserting ''or 2511(2)(i)'' after ''2511(3)''.

**SEC. 106. TECHNICAL AMENDMENT.**

Section 2518(3)(c) of title 18, United States Code, is amended by inserting ''and'' after the semicolon.

**SEC. 107. SCOPE OF SUBPOENAS FOR RECORDS OF ELECTRONIC COMMUNICATIONS.**

Section 2703(c)(1)(C) of title 18, United States Code, is amended—

(1) by striking ''entity the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a'' and inserting the following:

''entity the—

''(A) name;

''(B) address;

''(C) local and long distance telephone connection records, or records of session times and durations;

''(D) length of service (including start date) and types of service utilized;

''(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

"(F) means and source of payment (including any credit card or bank account number);

of a"; and

(2) by striking "and the types of services the subscriber or customer utilized," after "of a subscriber to or customer of such service,".

**SEC. 108. NATIONWIDE SERVICE OF SEARCH WARRANTS FOR ELECTRONIC EVIDENCE.**

Chapter 121 of title 18, United States Code, is amended—

(1) in section 2703, by striking "under the Federal Rules of Criminal Procedure" each place it appears and inserting "using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation"; and

(2) in section 2711—

(A) in paragraph (1), by striking "and";

(B) in paragraph (2), by striking the period and inserting "; and"; and

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

"(3) the term 'court of competent jurisdiction' has the meaning given that term in section 3127,

and includes any Federal court within that definition, without geographic limitation.''.

**SEC. 109. CLARIFICATION OF SCOPE.**

Section 2511(2) of title 18, United States Code, as amended by section 106(2) of this Act, is further amended by adding at the end the following:

''(j) With respect to a voluntary or obligatory disclosure of information (other than information revealing customer cable viewing activity) under this chapter, chapter 121, or chapter 206, subsections (c)(2)(B) and (h) of section 631 of the Communications Act of 1934 do not apply.

**SEC. 110. EMERGENCY DISCLOSURE OF ELECTRONIC COMMUNICATIONS TO PROTECT LIFE AND LIMB.**

(a) Section 2702 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows: **''§ 2702. Voluntary disclosure of customer communications or records'' ;**

(2) in subsection (a)(2)(B) by striking the period and inserting ''; and'';

(3) in subsection (a), by inserting after paragraph (2) the following:

''(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information

pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.'';

(4) in subsection (b), by striking ''EXCEPTIONS.—A person or entity'' and inserting ''EXCEPTIONS FOR DISCLOSURE OF COMMUNICATIONS.—A provider described in subsection (a)'';

(5) in subsection (b)(6)—

(A) in subparagraph (A)(ii), by striking ''or'';

(B) in subparagraph (B), by striking the period and inserting ''; or'';

(C) by inserting after subparagraph (B) the following:

''(C) if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of the information without delay.''; and

(6) by inserting after subsection (b) the following:

''(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER RECORDS.—A provider described in subsection (a) may divulge a record or other information pertaining to a sub-

scriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

"(1) as otherwise authorized in section 2703;

"(2) with the lawful consent of the customer or subscriber;

"(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

"(4) to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

"(5) to any person other than a governmental entity.".

(b) Section 2703 of title 18, United States Code, is amended—

(1) so that the section heading reads as follows: **"§ 2703. Required disclosure of customer communications or records";**

(2) in subsection (c)(1)—

(A) in subparagraph (A), by striking "Except" and all that follows through "only when" in subparagraph (B) and inserting "A governmental entity may require a provider of elec-

tronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when'';

(B) by striking ''or'' at the end of clause (iii) of subparagraph (B);

(C) by striking the period at the end of clause (iv) of subparagraph (B) and inserting ''; or'';

(D) by inserting after clause (iv) of subparagraph (B) the following:

''(v) seeks information pursuant to subparagraph (B).'';

(E) in subparagraph (C), by striking ''(B)'' and inserting ''(A)''; and

(F) by redesignating subparagraph (C) as subparagraph (B); and

(3) in subsection (e), by striking ''or certification'' and inserting ''certification, or statutory authorization''.

**SEC. 111. USE AS EVIDENCE.**

(a) IN GENERAL.—Section 2515 of title 18, United States Code, is amended—

(1) by striking "**wire or oral**" in the heading and inserting "**wire, oral, or electronic**";

(2) by striking "Whenever any wire or oral communication has been intercepted" and inserting "(a) Except as provided in subsection (b), whenever any wire, oral, or electronic communication has been intercepted, or any electronic communication in electronic storage has been disclosed";

(3) by inserting "or chapter 121" after "this chapter"; and

(4) by adding at the end the following:

"(b) Subsection (a) does not apply to the disclosure, before a grand jury or in a criminal trial, hearing, or other criminal proceeding, of the contents of a communication, or evidence derived therefrom, against a person alleged to have intercepted, used, or disclosed the communication in violation of this chapter, or chapter 121, or participated in such violation.".

(b) SECTION 2517.—Paragraphs (1) and (2) of section 2517 are each amended by inserting "or under the circumstances described in section 2515(b)" after "by this chapter".

(c) SECTION 2518.—Section 2518 of title 18, United States Code, is amended—

(1) in subsection (7), by striking ''subsection (d)'' and inserting ''subsection (8)(d)''; and

(2) in subsection (10)—

(A) in paragraph (a)—

(i) by striking ''or oral'' each place it appears and inserting '', oral, or electronic'';

(ii) by striking the period at the end of clause (iii) and inserting a semicolon; and

(iii) by inserting ''except that no suppression may be ordered under the circumstances described in section 2515(b).'' before ''Such motion''; and

(B) by striking paragraph (c).

(d) CLERICAL AMENDMENT.—The item relating to section 2515 in the table of sections at the beginning of chapter 119 of title 18, United States Code, is amended to read as follows:

''2515. Prohibition of use as evidence of intercepted wire, oral, or electronic communications.''.

**SEC. 112. REPORTS CONCERNING THE DISCLOSURE OF THE CONTENTS OF ELECTRONIC COMMUNICATIONS.**

Section 2703 of title 18, United States Code, is amended by adding at the end the following:

"(g) REPORTS CONCERNING THE DISCLOSURE OF THE CONTENTS OF ELECTRONIC COMMUNICATIONS.—

"(1) By January 31 of each calendar year, the judge issuing or denying an order, warrant, or subpoena, or the authority issuing or denying a subpoena, under subsection (a) or (b) of this section during the preceding calendar year shall report on each such order, warrant, or subpoena to the Administrative Office of the United States Courts—

"(A) the fact that the order, warrant, or subpoena was applied for;

"(B) the kind of order, warrant, or subpoena applied for;

"(C) the fact that the order, warrant, or subpoena was granted as applied for, was modified, or was denied;

"(D) the offense specified in the order, warrant, subpoena, or application;

"(E) the identity of the agency making the application; and

"(F) the nature of the facilities from which or the place where the contents of electronic communications were to be disclosed.

"(2) In January of each year the Attorney General or an Assistant Attorney General specially des-

ignated by the Attorney General shall report to the Administrative Office of the United States Courts—

"(A) the information required by subparagraphs (A) through (F) of paragraph (1) of this subsection with respect to each application for an order, warrant, or subpoena made during the preceding calendar year; and

"(B) a general description of the disclosures made under each such order, warrant, or subpoena, including—

"(i) the approximate number of all communications disclosed and, of those, the approximate number of incriminating communications disclosed;

"(ii) the approximate number of other communications disclosed; and

"(iii) the approximate number of persons whose communications were disclosed.

"(3) In June of each year, beginning in 2003, the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders, warrants, or subpoenas authorizing or requiring the disclosure of the contents of electronic communications pursuant to sub-

sections (a) and (b) of this section and the number of orders, warrants, or subpoenas granted or denied pursuant to subsections (a) and (b) of this section during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by paragraphs (1) and (2) of this subsection. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by paragraphs (1) and (2) of this subsection.''.

## Subtitle B—Foreign Intelligence Surveillance and Other Information

### SEC. 151. PERIOD OF ORDERS OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS UNDER FOREIGN INTELLIGENCE SURVEILLANCE.

(a) INCLUDING AGENTS OF A FOREIGN POWER.—(1) Section 105(e)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(e)(1)) is amended by inserting ''or an agent of a foreign power, as defined in section 101(b)(1)(A),'' after ''or (3),''.

(2) Section 304(d)(1) of such Act (50 U.S.C. 1824(d)(1)) is amended by inserting ''or an agent of a foreign power, as defined in section 101(b)(1)(A),'' after ''101(a),''.

(b) PERIOD OF ORDER.—Such section 304(d)(1) is further amended by striking ''forty-five'' and inserting ''90''.

**SEC. 152. MULTI-POINT AUTHORITY.**

Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by inserting '', or, in circumstances where the Court finds that the actions of the target of the electronic surveillance may have the effect of thwarting the identification of a specified person, such other persons,'' after ''specified person''.

**SEC. 153. FOREIGN INTELLIGENCE INFORMATION.**

Sections 104(a)(7)(B) and 303(a)(7)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(7)(B), 1823(a)(7)(B)) are each amended by striking ''that the'' and inserting ''that a significant''.

**SEC. 154. FOREIGN INTELLIGENCE INFORMATION SHARING.**

Notwithstanding any other provision of law, it shall be lawful for foreign intelligence information obtained as part of a criminal investigation (including information ob-

tained pursuant to chapter 119 of title 18, United States Code) to be provided to any Federal law-enforcement-, intelligence-, protective-, national-defense, or immigration personnel, or the President or the Vice President of the United States, for the performance of official duties.

**SEC. 155. PEN REGISTER AND TRAP AND TRACE AUTHORITY.**

Section 402(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is amended—

(1) in paragraph (1), by adding ''and'' at the end;

(2) in paragraph (2)—

(A) by inserting ''from the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device'' after ''obtained''; and

(B) by striking ''; and'' and inserting a period; and

(3) by striking paragraph (3).

**SEC. 156. BUSINESS RECORDS.**

(a) IN GENERAL.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended to read as follows:

"ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

"SEC. 501. (a) In any investigation to gather foreign intelligence information or an investigation concerning international terrorism, such investigation being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General may approve pursuant to Executive Order No. 12333 (or a successor order), the Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) that are relevant to the investigation.

"(b) Each application under this section—

"(1) shall be made to—

"(A) a judge of the court established by section 103(a) of this Act; or

"(B) a United States magistrate judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the

release of records under this section on behalf of a judge of that court; and

''(2) shall specify that the records concerned are sought for an investigation described in subsection (a).

''(c)(1) Upon application made pursuant to this section, the judge shall enter an ex parte order as requested requiring the production the tangible things sought if the judge finds that the application satisfies the requirements of this section.

''(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

''(d) A person who, in good faith, produces tangible things under an order issued pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.''.

(b) CONFORMING AMENDMENTS.—(1) Section 502 of such Act (50 U.S.C. 1862) is repealed.

(2) Section 503 of such Act (50 U.S.C. 1863) is redesignated as section 502.

(c) CLERICAL AMENDMENT.—The table of contents at the beginning of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by strik-

ing the items relating to title V and inserting the following:

"TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

"501. Access to certain business records for foreign intelligence and international terrorism investigations.
"502. Congressional oversight.".

**SEC. 157. MISCELLANEOUS NATIONAL-SECURITY AUTHORITIES.**

(a) Section 2709(b) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ", or electronic communication transactional records" after "toll billing records"; and

(B) by striking "made that" and all that follows through the end of such paragraph and inserting "made that the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and"; and

(2) in paragraph (2), by striking "made that" and all that follows through the end and inserting "made that the information sought is relevant to an authorized foreign counterintelligence investigation.".

(b) Section 624 of Public Law 90–321 (15 U.S.C. 1681u) is amended—

(1) in subsection (a), by striking ''writing that'' and all that follows through the end and inserting ''writing that such information is necessary for the conduct of an authorized foreign counterintelligence investigation.'';

(2) in subsection (b), by striking ''writing that'' and all that follows through the end and inserting ''writing that such information is necessary for the conduct of an authorized foreign counterintelligence investigation.''; and

(3) in subsection (c), by striking ''camera that'' and all that follows through ''States.'' and inserting ''camera that the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation.''.

**SEC. 158. PROPOSED LEGISLATION.**

Not later than August 31, 2003, the President shall propose legislation relating to the provisions set to expire by section 160 of this Act as the President may judge necessary and expedient.

**SEC. 159. PRESIDENTIAL AUTHORITY.**

Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) is amended in subsection (a)(1)—

(1) in subparagraph (A)—

(A) in clause (ii), by adding ''or'' after ''thereof,''; and

(B) by striking clause (iii) and inserting the following:

''(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;'';

(2) by striking after subparagraph (B), ''by any person, or with respect to any property, subject to the jurisdiction of the United States'';

(3) in subparagraph (B)—

(A) by inserting after ''investigate'' the following: '', block during the pendency of an investigation for a period of not more than 90 days (which may be extended by an additional 60 days if the President determines that such blocking is necessary to carry out the purposes of this Act),''; and

(B) by striking ''interest;'' and inserting ''interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and''; and

(4) by adding at the end the following new subparagraph:

''(C) when a statute has been enacted authorizing the use of force by United States armed forces against a foreign country, foreign organization, or foreign national, or when the United States has been subject to an armed attack by a foreign country, foreign organization, or foreign national, confiscate any property, subject to the jurisdiction of the United States, of any foreign country, foreign organization, or foreign national against whom United States armed forces may be used pursuant to such statute or, in the case of an armed attack against the United States, that the President determines has planned, authorized, aided, or engaged in such attack; and

''(i) all right, title, and interest in any property so confiscated shall vest when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time,

"(ii) upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, except that the proceeds of any such liquidation or sale, or any cash assets, shall be segregated from other United States Government funds and shall be used only pursuant to a statute authorizing the expenditure of such proceeds or assets, and

"(iii) such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.".

**SEC. 160. SUNSET.**

This title and the amendments made by this title (other than sections 109 (relating to clarification of scope) and 159 (relating to presidential authority)) and the amendments made by those sections shall take effect on the date of enactment of this Act and shall cease to have any effect on December 31, 2003.

# TITLE II—ALIENS ENGAGING IN TERRORIST ACTIVITY

## Subtitle A—Detention and Removal of Aliens Engaging in Terrorist Activity

### SEC. 201. CHANGES IN CLASSES OF ALIENS WHO ARE INELIGIBLE FOR ADMISSION AND DEPORTABLE DUE TO TERRORIST ACTIVITY.

(a) ALIENS INELIGIBLE FOR ADMISSION DUE TO TERRORIST ACTIVITIES.—Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) in clause (i)—

(A) in subclauses (I), (II), and (III), by striking the comma at the end and inserting a semicolon;

(B) by amending subclause (IV) to read as follows:

"(IV) is a representative of—

"(a) a foreign terrorist organization, as designated by the Secretary of State under section 219; or

"(b) a political, social, or other similar group whose public

endorsement of terrorist activity the Secretary of State has determined undermines the efforts of the United States to reduce or eliminate terrorist activities;'';

(C) in subclause (V), by striking any comma at the end, by striking any ''or'' at the end, and by adding ''; or'' at the end; and

(D) by inserting after subclause (V) the following:

''(VI) has used the alien's prominence within a foreign state or the United States to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines the efforts of the United States to reduce or eliminate terrorist activities;'';

(2) in clause (ii)—

(A) in the matter preceding subclause (I), by striking ''(or which, if committed in the United States,'' and inserting ''(or which, if it

had been or were to be committed in the United States,''; and

(B) in subclause (V)(b), by striking ''explosive or firearm'' and inserting ''explosive, firearm, or other object'';

(3) by amending clause (iii) to read as follows:

''(iii) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term 'engage in terrorist activity' means, in an individual capacity or as a member of an organization—

''(I) to commit a terrorist activity;

''(II) to plan or prepare to commit a terrorist activity;

''(III) to gather information on potential targets for a terrorist activity;

''(IV) to solicit funds or other things of value for—

''(a) a terrorist activity;

''(b) an organization designated as a foreign terrorist organization under section 219; or

"(c) a terrorist organization described in clause (v)(II), but only if the solicitor knows, or reasonably should know, that the solicitation would further a terrorist activity;

"(V) to solicit any individual—

"(a) to engage in conduct otherwise described in this clause;

"(b) for membership in a terrorist government;

"(c) for membership in an organization designated as a foreign terrorist organization under section 219; or

"(d) for membership in a terrorist organization described in clause (v)(II), but only if the solicitor knows, or reasonably should know, that the solicitation would further a terrorist activity; or

"(VI) to commit an act that the actor knows, or reasonably should

know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, and radiological weapons), explosives, or training—

"(a) for the commission of a terrorist activity;

"(b) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

"(c) to an organization designated as a foreign terrorist organization under section 219; or

"(d) to a terrorist organization described in clause (v)(II), but only if the actor knows, or reasonably should know, that the act would further a terrorist activity."; and

(4) by adding at the end the following:

"(v) TERRORIST ORGANIZATION DEFINED.—As used in this subparagraph, the term 'terrorist organization' means—

"(I) an organization designated as a foreign terrorist organization under section 219; or

"(II) with regard to a group that is not an organization described in subclause (I), a group of 2 or more individuals, whether organized or not, which engages in, or which has a significant subgroup which engages in, the activities described in subclause (I), (II), or (III) of clause (iii).

"(vi) SPECIAL RULE FOR MATERIAL SUPPORT.—Clause (iii)(VI)(b) shall not be construed to include the affording of material support to an individual who committed or planned to commit a terrorist activity, if the alien establishes by clear and convincing evidence that such support was afforded only after such individual permanently and publicly renounced, rejected the use of, and had ceased to engage in, terrorist activity.".

(b) ALIENS INELIGIBLE FOR ADMISSION DUE TO ENDANGERMENT.—Section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)) is amended by adding at the end the following:

"(F) ENDANGERMENT.—Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.".

(c) ALIENS DEPORTABLE DUE TO TERRORIST ACTIVITIES.—Section 237(a)(4)(B) of the Immigration and Nationality (8 U.S.C. 1227(a)(4)(B)) is amended to read as follows:

"(B) TERRORIST ACTIVITIES.—Any alien is deportable who—

"(i) has engaged, is engaged, or at any time after admission engages in terrorist activity (as defined in section 212(a)(3)(B)(iii));

"(ii) is a representative (as defined in section 212(a)(3)(B)(iv)) of—

"(I) a foreign terrorist organization, as designated by the Secretary of State under section 219; or

"(II) a political, social, or other similar group whose public endorsement of terrorist activity—

"(a) is intended and likely to incite or produce imminent lawless action; and

"(b) has been determined by the Secretary of State to undermine the efforts of the United States to reduce or eliminate terrorist activities; or

"(iii) has used the alien's prominence within a foreign state or the United States—

"(I) to endorse, in a manner that is intended and likely to incite or produce imminent lawless action and that has been determined by the Secretary of State to undermine the efforts of the United States to reduce or

eliminate terrorist activities, terrorist activity; or

"(II) to persuade others, in a manner that is intended and likely to incite or produce imminent lawless action and that has been determined by the Secretary of State to undermine the efforts of the United States to reduce or eliminate terrorist activities, to support terrorist activity or a terrorist organization (as defined in section 212(a)(3)(B)(v))."

(d) RETROACTIVE APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to—

(A) actions taken by an alien before such date, as well as actions taken on or after such date; and

(B) all aliens, without regard to the date of entry or attempted entry into the United States—

(i) in removal proceedings on or after such date (except for proceedings in which

there has been a final administrative decision before such date); or

(ii) seeking admission to the United States on or after such date.

(2) SPECIAL RULE FOR ALIENS IN EXCLUSION OR DEPORTATION PROCEEDINGS.—Notwithstanding any other provision of law, the amendments made by this section shall apply to all aliens in exclusion or deportation proceedings on or after the date of the enactment of this Act (except for proceedings in which there has been a final administrative decision before such date) as if such proceedings were removal proceedings.

(3) SPECIAL RULE FOR SECTION 219 ORGANIZATIONS.—

(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), no alien shall be considered inadmissible under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)), or deportable under section 237(a)(4)(B) of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendments made by subsection (a), on the ground that the alien engaged in a terrorist activity described in subclause (IV)(b), (V)(c), or (VI)(c) of section

212(a)(3)(B)(iii) of such Act (as so amended) with respect to a group at any time when the group was not a foreign terrorist organization designated by the Secretary of State under section 219 of such Act (8 U.S.C. 1189).

(B) CONSTRUCTION.—Subparagraph (A) shall not be construed to prevent an alien from being considered inadmissible or deportable for having engaged in a terrorist activity—

(i) described in subclause (IV)(b), (V)(c), or (VI)(c) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to a foreign terrorist organization at any time when such organization was designated by the Secretary of State under section 219 of such Act; or

(ii) described in subclause (IV)(c), (V)(d), or (VI)(d) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to any group described in any of such subclauses.

**SEC. 202. CHANGES IN DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.**

Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking ''212(a)(3)(B));'' and inserting ''212(a)(3)(B)), engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)(2)), or retains the capability and intent to engage in terrorist activity or to engage in terrorism (as so defined);''; and

(B) in subparagraph (C), by inserting ''or terrorism'' after ''activity'';

(2) in paragraph (2)—

(A) by amending subparagraph (A) to read as follows:

''(A) NOTICE.—

''(i) IN GENERAL.—Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and minority leader of the House of Representatives, the President pro tempore, majority leader, and minority leader of the Senate,

the members of the relevant committees, and the Secretary of the Treasury, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

''(ii) PUBLICATION OF DESIGNATION.—The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).'';

(B) in subparagraph (B), by striking ''(A).'' and inserting ''(A)(ii).''; and

(C) in subparagraph (C), by striking ''paragraph (2),'' and inserting ''subparagraph (A)(i),'';

(3) in paragraph (3)(B), by striking ''subsection (c).'' and inserting ''subsection (b).';

(4) in paragraph (4)(B), by inserting after the first sentence the following: ''The Secretary may also redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the rel-

evant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.'';

(5) in paragraph (6)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i), by inserting ''or a redesignation made under paragraph (4)(B)'' after ''paragraph (1)'';

(ii) in clause (i)—

(I) by inserting ''or redesignation'' after ''designation'' the first place it appears; and

(II) by striking ''of the designation;'' and inserting a semicolon; and

(iii) in clause (ii), by striking ''of the designation.'' and inserting a period;

(B) in subparagraph (B), by striking ''through (4)'' and inserting ''and (3)''; and

(C) by adding at the end the following:

''(C) EFFECTIVE DATE.—Any revocation shall take effect on the date specified in the

revocation or upon publication in the Federal Register if no effective date is specified.'';

(6) in paragraph (7), by inserting '', or the revocation of a redesignation under paragraph (6),'' after ''(5) or (6)''; and

(7) in paragraph (8)—

(A) by striking ''(1)(B),'' and inserting ''(2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)'';

(B) by inserting ''or an alien in a removal proceeding'' after ''criminal action''; and

(C) by inserting ''or redesignation'' before ''as a defense''.

**SEC. 203. MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW.**

(a) IN GENERAL.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after section 236 the following:

''MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW

''SEC. 236A. (a) DETENTION OF TERRORIST ALIENS.—

"(1) CUSTODY.—The Attorney General shall take into custody any alien who is certified under paragraph (3).

"(2) RELEASE.—Except as provided in paragraph (5), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States. Such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3).

"(3) CERTIFICATION.—The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien—

"(A) is described in section 212(a)(3)(A)(i), 212(a)(3)(A)(iii), 212(a)(3)(B), 237(a)(4)(A)(i), 237(a)(4)(A)(iii), or 237(a)(4)(B); or

"(B) is engaged in any other activity that endangers the national security of the United States.

"(4) NONDELEGATION.—The Attorney General may delegate the authority provided under para-

graph (3) only to the Commissioner. The Commissioner may not delegate such authority.

"(5) COMMENCEMENT OF PROCEEDINGS.—The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.

"(b) HABEAS CORPUS AND JUDICIAL REVIEW.—Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3)) is available exclusively in habeas corpus proceedings in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.".

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236 the following:

"Sec. 236A. Mandatory detention of suspected terrorists; habeas corpus; judicial review.".

(c) REPORTS.—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, with respect to the reporting period, on—

(1) the number of aliens certified under section 236A(a)(3) of the Immigration and Nationality Act, as added by subsection (a);

(2) the grounds for such certifications;

(3) the nationalities of the aliens so certified;

(4) the length of the detention for each alien so certified; and

(5) the number of aliens so certified who—

(A) were granted any form of relief from removal;

(B) were removed;

(C) the Attorney General has determined are no longer an alien who may be so certified; or

(D) were released from detention.

**SEC. 204. MULTILATERAL COOPERATION AGAINST TERRORISTS.**

Section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)) is amended—

(1) by striking ''The records'' and inserting ''(1) Subject to paragraphs (2) and (3), the records'';

(2) by striking ''United States,'' and all that follows through the period at the end and inserting ''United States.''; and

(3) by adding at the end the following:

''(2) In the discretion of the Secretary of State, certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

''(3)(A) Subject to the provisions of this paragraph, the Secretary of State may provide copies of records of the Department of State and of diplomatic and consular offices of the United States (including the Department of State's automated visa lookout database) pertaining to the issuance or refusal of visas or permits to enter the United States, or information contained in such records, to foreign governments if the Secretary determines that it is necessary and appropriate.

''(B) Such records and information may be provided on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism. General access to records and information may be provided under an

agreement to limit the use of such records and information to the purposes described in the preceding sentence.

''(C) The Secretary of State shall make any determination under this paragraph in consultation with any Federal agency that compiled or provided such records or information.

''(D) To the extent possible, such records and information shall be made available to foreign governments on a reciprocal basis.''.

**SEC. 205. CHANGES IN CONDITIONS FOR GRANTING ASYLUM AND ASYLUM PROCEDURES.**

(a) ALIENS INELIGIBLE FOR ASYLUM DUE TO TERRORIST ACTIVITIES.—

(1) IN GENERAL.—Section 208(b)(2)(A)(v) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)(v)) is amended—

(A) by striking ''inadmissible under'' and inserting ''described in''; and

(B) by striking ''removable under'' and inserting ''described in''.

(2) RETROACTIVE APPLICATION OF AMENDMENTS.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to—

(A) actions taken by an alien before such date, as well as actions taken on or after such date; and

(B) all aliens, without regard to the date of entry or attempted entry into the United States, whose application for asylum is pending on or after such date (except for applications with respect to which there has been a final administrative decision before such date).

(b) DISCLOSURE OF ASYLUM APPLICATION INFORMATION.—

(1) IN GENERAL.—Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended by adding at the end the following:

''(e) LIMITATION ON CONFIDENTIALITY OF INFORMATION.—

''(1) IN GENERAL.—The restrictions on information disclosure in section 208.6 of title 8, Code of Federal Regulations (as in effect on the date of the enactment of the PATRIOT Act or pursuant to any successor provision), shall not apply to a disclosure to any person, if—

''(A) the disclosure is made in the course of an investigation of an alien to determine if

the alien is described in section 212(a)(3)(B)(i) or 237(a)(4)(B); and

"(B) the Attorney General has reasonable grounds to believe that the alien may be so described.

"(2) EXCEPTION.—The requirement of paragraph (1)(B) shall not apply to an alien if the alien alleges that the alien is eligible for asylum, in whole or in part, because a foreign government believes that the alien is described in section 212(a)(3)(B)(i) or 237(a)(4)(B).

"(3) DISCLOSURES TO FOREIGN GOVERNMENTS.—If the Attorney General desires to disclose information to a foreign government under paragraph (1), the Attorney General shall request the Secretary of State to make the disclosure.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to the disclosure of information on or after such date.

**SEC. 206. PROTECTION OF NORTHERN BORDER.**

There are authorized to be appropriated—

(1) such sums as may be necessary to triple the number of Border Patrol personnel (from the num-

ber authorized under current law) in each State along the northern border;

(2) such sums as may be necessary to triple the number of Immigration and Naturalization Service inspectors (from the number authorized under current law) at ports of entry in each State along the northern border; and

(3) an additional $50,000,000 to the Immigration and Naturalization Service for purposes of making improvements in technology for monitoring the northern border and acquiring additional equipment at the northern border.

**SEC. 207. REQUIRING SHARING BY THE FEDERAL BUREAU OF INVESTIGATION OF CERTAIN CRIMINAL RECORD EXTRACTS WITH OTHER FEDERAL AGENCIES IN ORDER TO ENHANCE BORDER SECURITY.**

(a) IN GENERAL.—Section 105 of the Immigration and Nationality Act (8 U.S.C. 1105), is amended—

(1) in the section heading, by adding ''AND DATA EXCHANGE'' at the end;

(2) by inserting ''(a) LIAISON WITH INTERNAL SECURITY OFFICERS.—'' after ''105.'';

(3) by striking ''the internal security of'' and inserting ''the internal and border security of''; and

(4) by adding at the end the following:

"(b) CRIMINAL HISTORY RECORD INFORMATION.—The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Secretary of State and the Commissioner access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the official to be provided access, for the purpose of determining whether a visa applicant or applicant for admission has a criminal history record indexed in any such file. Such access shall be provided by means of extracts of the records for placement in the Department of State's automated visa lookout database or other appropriate database, and shall be provided without any fee or charge. The Director of the Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon by the Attorney General and the official provided access. Upon receipt of such updated extracts, the receiving official shall make corresponding updates to the official's databases and destroy previously provided extracts. Such access to any extract shall not be construed to entitle the Secretary of State to obtain the full content of the corresponding

automated criminal history record. To obtain the full content of a criminal history record, the Secretary of State shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

"(c) RECONSIDERATION.—The provision of the extracts described in subsection (b) may be reconsidered by the Attorney General and the receiving official upon the development and deployment of a more cost-effective and efficient means of sharing the information.

"(d) REGULATIONS.—For purposes of administering this section, the Secretary of State shall, prior to receiving access to National Crime Information Center data, promulgate final regulations—

"(1) to implement procedures for the taking of fingerprints; and

"(2) to establish the conditions for the use of the information received from the Federal Bureau of Investigation, in order—

"(A) to limit the redissemination of such information;

"(B) to ensure that such information is used solely to determine whether to issue a visa to an individual;

"(C) to ensure the security, confidentiality, and destruction of such information; and

"(D) to protect any privacy rights of individuals who are subjects of such information.".

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by amending the item relating to section 105 to read as follows:

"Sec. 105. Liaison with internal security officers and data exchange.".

(c) EFFECTIVE DATE AND IMPLEMENTATION.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall be fully implemented not later than 18 months after such date.

(d) REPORTING REQUIREMENT.—Not later than 2 years after the date of the enactment of this Act, the Attorney General and the Secretary of State, jointly, shall report to the Congress on the implementation of the amendments made by this section.

(e) CONSTRUCTION.—Nothing in this section, or in any other law, shall be construed to limit the authority of the Attorney General or the Director of the Federal Bureau of Investigation to provide access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, or to any other information maintained by such center, to any Federal agency or officer authorized to en-

force or administer the immigration laws of the United States, for the purpose of such enforcement or administration, upon terms that are consistent with sections 212 through 216 of the National Crime Prevention and Privacy Compact Act of 1998 (42 U.S.C. 14611 et seq.).

## Subtitle B—Preservation of Immigration Benefits for Victims of Terrorism

**SEC. 211. SPECIAL IMMIGRANT STATUS.**

(a) IN GENERAL.—For purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Attorney General may provide an alien described in subsection (b) with the status of a special immigrant under section 101(a)(27) of such Act (8 U.S.C. 1101(a(27)), if the alien—

(1) files with the Attorney General a petition under section 204 of such Act (8 U.S.C. 1154) for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4)); and

(2) is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility, the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.

(b) ALIENS DESCRIBED.—

(1) PRINCIPAL ALIENS.—An alien is described in this subsection if—

(A) the alien was the beneficiary of—

(i) a petition that was filed with the Attorney General on or before September 11, 2001—

(I) under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) to classify the alien as a family-sponsored immigrant under section 203(a) of such Act (8 U.S.C. 1153(a)) or as an employment-based immigrant under section 203(b) of such Act (8 U.S.C. 1153(b)); or

(II) under section 214(d) (8 U.S.C. 1184(d)) of such Act to authorize the issuance of a nonimmigrant visa to the alien under section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)); or

(ii) an application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)) that was

filed under regulations of the Secretary of Labor on or before such date; and

(B) such petition or application was revoked or terminated (or otherwise rendered null), either before or after its approval, due to a specified terrorist activity that directly resulted in—

(i) the death or disability of the petitioner, applicant, or alien beneficiary; or

(ii) loss of employment due to physical damage to, or destruction of, the business of the petitioner or applicant.

(2) SPOUSES AND CHILDREN.—

(A) IN GENERAL.—An alien is described in this subsection if—

(i) the alien was, on September 10, 2001, the spouse or child of a principal alien described in paragraph (1); and

(ii) the alien—

(I) is accompanying such principal alien; or

(II) is following to join such principal alien not later than September 11, 2003.

(B) CONSTRUCTION.—For purposes of construing the terms ''accompanying'' and ''following to join'' in subparagraph (A)(ii), any death of a principal alien that is described in paragraph (1)(B)(i) shall be disregarded.

(3) GRANDPARENTS OF ORPHANS.—An alien is described in this subsection if the alien is a grandparent of a child, both of whose parents died as a direct result of a specified terrorist activity, if either of such deceased parents was, on September 10, 2001, a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States.

(c) PRIORITY DATE.—Immigrant visas made available under this section shall be issued to aliens in the order in which a petition on behalf of each such alien is filed with the Attorney General under subsection (a)(1), except that if an alien was assigned a priority date with respect to a petition described in subsection (b)(1)(A)(i), the alien may maintain that priority date.

(d) NUMERICAL LIMITATIONS.—For purposes of the application of sections 201 through 203 of the Immigration and Nationality Act (8 U.S.C. 1151–1153) in any fiscal year, aliens eligible to be provided status under this section shall be treated as special immigrants described

in section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)) who are not described in subparagraph (A), (B), (C), or (K) of such section.

**SEC. 212. EXTENSION OF FILING OR REENTRY DEADLINES.**

(a) AUTOMATIC EXTENSION OF NONIMMIGRANT STATUS.—

(1) IN GENERAL.—Notwithstanding section 214 of the Immigration and Nationality Act (8 U.S.C. 1184), in the case of an alien described in paragraph (2) who was lawfully present in the United States as a nonimmigrant on September 10, 2001, the alien may remain lawfully in the United States in the same nonimmigrant status until the later of—

(A) the date such lawful nonimmigrant status otherwise would have terminated if this subsection had not been enacted; or

(B) 1 year after the death or onset of disability described in paragraph (2).

(2) ALIENS DESCRIBED.—

(A) PRINCIPAL ALIENS.—An alien is described in this paragraph if the alien was disabled as a direct result of a specified terrorist activity.

(B) SPOUSES AND CHILDREN.—An alien is described in this paragraph if the alien was, on September 10, 2001, the spouse or child of—

(i) a principal alien described in subparagraph (A); or

(ii) an alien who died as a direct result of a specified terrorist activity.

(3) AUTHORIZED EMPLOYMENT.—During the period in which a principal alien or alien spouse is in lawful nonimmigrant status under paragraph (1), the alien shall be provided an ''employment authorized'' endorsement or other appropriate document signifying authorization of employment not later than 30 days after the alien requests such authorization.

(b) NEW DEADLINES FOR EXTENSION OR CHANGE OF NONIMMIGRANT STATUS.—

(1) FILING DELAYS.—In the case of an alien who was lawfully present in the United States as a nonimmigrant on September 10, 2001, if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is

filed not later than 60 days after it otherwise would have been due.

(2) DEPARTURE DELAYS.—In the case of an alien who was lawfully present in the United States as a nonimmigrant on September 10, 2001, if the alien is unable timely to depart the United States as a direct result of a specified terrorist activity, the alien shall not be considered to have been unlawfully present in the United States during the period beginning on September 11, 2001, and ending on the date of the alien's departure, if such departure occurs on or before November 11, 2001.

(3) SPECIAL RULE FOR ALIENS UNABLE TO RETURN FROM ABROAD.—

(A) PRINCIPAL ALIENS.—In the case of an alien who was in a lawful nonimmigrant status on September 10, 2001, but who was not present in the United States on such date, if the alien was prevented from returning to the United States in order to file a timely application for an extension of nonimmigrant status as a direct result of a specified terrorist activity—

(i) the alien's application shall be considered timely filed if it is filed not later

than 60 days after it otherwise would have been due; and

(ii) the alien's lawful nonimmigrant status shall be considered to continue until the later of—

(I) the date such status otherwise would have terminated if this subparagraph had not been enacted; or

(II) the date that is 60 days after the date on which the application described in clause (i) otherwise would have been due.

(B) SPOUSES AND CHILDREN.—In the case of an alien who is the spouse or child of a principal alien described in subparagraph (A), if the spouse or child was in a lawful nonimmigrant status on September 10, 2001, the spouse or child may remain lawfully in the United States in the same nonimmigrant status until the later of—

(i) the date such lawful nonimmigrant status otherwise would have terminated if this subparagraph had not been enacted; or

(ii) the date that is 60 days after the date on which the application described in subparagraph (A) otherwise would have been due.

(c) DIVERSITY IMMIGRANTS.—

(1) WAIVER OF FISCAL YEAR LIMITATION.—Notwithstanding section 203(e)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(e)(2)), an immigrant visa number issued to an alien under section 203(c) of such Act for fiscal year 2001 may be used by the alien during the period beginning on October 1, 2001, and ending on April 1, 2002, if the alien establishes that the alien was prevented from using it during fiscal year 2001 as a direct result of a specified terrorist activity.

(2) WORLDWIDE LEVEL.—In the case of an alien entering the United States as a lawful permanent resident, or adjusting to that status, under paragraph (1), the alien shall be counted as a diversity immigrant for fiscal year 2001 for purposes of section 201(e) of the Immigration and Nationality Act (8 U.S.C. 1151(e)), unless the worldwide level under such section for such year has been exceeded, in which case the alien shall be counted as a diversity immigrant for fiscal year 2002.

(3) TREATMENT OF FAMILY MEMBERS OF CERTAIN ALIENS.—In the case of a principal alien issued an immigrant visa number under section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c)) for fiscal year 2001, if such principal alien died as a direct result of a specified terrorist activity, the aliens who were, on September 10, 2001, the spouse and children of such principal alien shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) of section 203 of such Act, be entitled to the same status, and the same order of consideration, that would have been provided to such alien spouse or child under section 203(d) of such Act if the principal alien were not deceased.

(d) EXTENSION OF EXPIRATION OF IMMIGRANT VISAS.—Notwithstanding the limitations under section 221(c) of the Immigration and Nationality Act (8 U.S.C. 1201(c)), in the case of any immigrant visa issued to an alien that expires or expired before December 31, 2001, if the alien was unable to effect entry to the United States as a direct result of a specified terrorist activity, then the period of validity of the visa is extended until December 31, 2001, unless a longer period of validity is otherwise provided under this subtitle.

(e) GRANTS OF PAROLE EXTENDED.—In the case of any parole granted by the Attorney General under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) that expires on a date on or after September 11, 2001, if the alien beneficiary of the parole was unable to return to the United States prior to the expiration date as a direct result of a specified terrorist activity, the parole is deemed extended for an additional 90 days.

(f) VOLUNTARY DEPARTURE.—Notwithstanding section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c), if a period for voluntary departure under such section expired during the period beginning on September 11, 2001, and ending on October 11, 2001, such voluntary departure period is deemed extended for an additional 30 days.

**SEC. 213. HUMANITARIAN RELIEF FOR CERTAIN SURVIVING SPOUSES AND CHILDREN.**

(a) TREATMENT AS IMMEDIATE RELATIVES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, if the citizen died as a direct result of a specified terrorist activ-

ity, the alien (and each child of the alien) shall be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death, but only if the alien files a petition under section 204(a)(1)(A)(ii) of such Act within 2 years after such date and only until the date the alien remarries.

(b) SPOUSES, CHILDREN, UNMARRIED SONS AND DAUGHTERS OF LAWFUL PERMANENT RESIDENT ALIENS.—

(1) IN GENERAL.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien before September 11, 2001, shall be considered (if the spouse, child, son, or daughter has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for preference status under such section with the same priority date as that assigned prior to the death described in paragraph (3)(A). No new petition shall be required to be filed. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(2) SELF-PETITIONS.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act may file a petition for such classification with the Attorney General, if the spouse, child, son, or daughter was present in the United States on September 11, 2001. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(3) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified terrorist activity; and

(B) on the day of such death, was lawfully admitted for permanent residence in the United States.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES AND CHILDREN OF EMPLOYMENT-BASED IMMIGRANTS.—

(1) IN GENERAL.—Any alien who was, on September 10, 2001, the spouse or child of an alien described in paragraph (2), and who applied for adjustment of status prior to the death described in

paragraph (2)(A), may have such application adjudicated as if such death had not occurred.

(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a specified terrorist activity; and

(B) on the day before such death, was—

(i) an alien lawfully admitted for permanent residence in the United States by reason of having been allotted a visa under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)); or

(ii) an applicant for adjustment of status to that of an alien described in clause (i), and admissible to the United States for permanent residence.

(d) WAIVER OF PUBLIC CHARGE GROUNDS.—In determining the admissibility of any alien accorded an immigration benefit under this section, the grounds for inadmissibility specified in section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) shall not apply.

**SEC. 214. "AGE-OUT" PROTECTION FOR CHILDREN.**

For purposes of the administration of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), in the case of an alien—

(1) whose 21st birthday occurs in September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 90 days after the alien's 21st birthday for purposes of adjudicating such petition or application; and

(2) whose 21st birthday occurs after September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 45 days after the alien's 21st birthday for purposes of adjudicating such petition or application.

**SEC. 215. TEMPORARY ADMINISTRATIVE RELIEF.**

The Attorney General, for humanitarian purposes or to ensure family unity, may provide temporary administrative relief to any alien who—

(1) was lawfully present in the United States on September 10, 2001;

(2) was on such date the spouse, parent, or child of an individual who died or was disabled as a direct result of a specified terrorist activity; and

(3) is not otherwise entitled to relief under any other provision of this subtitle.

**SEC. 216. EVIDENCE OF DEATH, DISABILITY, OR LOSS OF EMPLOYMENT.**

(a) IN GENERAL.—The Attorney General shall establish appropriate standards for evidence demonstrating, for purposes of this subtitle, that any of the following occurred as a direct result of a specified terrorist activity:

(1) Death.

(2) Disability.

(3) Loss of employment due to physical damage to, or destruction of, a business.

(b) WAIVER OF REGULATIONS.—The Attorney General shall carry out subsection (a) as expeditiously as possible. The Attorney General is not required to promulgate regulations prior to implementing this subtitle.

**SEC. 217. NO BENEFITS TO TERRORISTS OR FAMILY MEMBERS OF TERRORISTS.**

Notwithstanding any other provision of this subtitle, nothing in this subtitle shall be construed to provide any benefit or relief to—

(1) any individual culpable for a specified terrorist activity; or

(2) any family member of any individual described in paragraph (1).

**SEC. 218. DEFINITIONS.**

(a) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this subtitle, the definitions used in the Immigration and Nationality Act (excluding the definitions applicable exclusively to title III of such Act) shall apply in the administration of this subtitle.

(b) SPECIFIED TERRORIST ACTIVITY.—For purposes of this subtitle, the term ''specified terrorist activity'' means any terrorist activity conducted against the Government or the people of the United States on September 11, 2001.

# TITLE III—CRIMINAL JUSTICE

## Subtitle A—Substantive Criminal Law

**SEC. 301. STATUTE OF LIMITATION FOR PROSECUTING TERRORISM OFFENSES.**

(a) IN GENERAL.—Section 3286 of title 18, United States Code, is amended to read as follows:

**"§ 3286. Terrorism offenses**

''(a) An indictment may be found or an information instituted at any time without limitation for any Federal terrorism offense or any of the following offenses:

''(1) A violation of, or an attempt or conspiracy to violate, section 32 (relating to destruction of aircraft or aircraft facilities), 37(a)(1) (relating to violence at international airports), 175 (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 792 (relating to harboring terrorists), 831 (relating to nuclear materials), 844(f) or (i) when it relates to bombing (relating to arson and bombing of certain property), 1114(1) (relating to protection of officers and employees of the United States), 1116, if the offense involves murder (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 2332(a)(1) (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b

(relating to acts of terrorism transcending national boundaries) of this title.

"(2) Section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284);

"(3) Section 601 (relating to disclosure of identities of covert agents) of the National Security Act of 1947 (50 U.S.C. 421).

"(4) Section 46502 (relating to aircraft piracy) of title 49.

"(b) An indictment may be found or an information instituted within 15 years after the offense was committed for any of the following offenses:

"(1) Section 175b (relating to biological weapons), 842(m) or (n) (relating to plastic explosives), 930(c) if it involves murder (relating to possessing a dangerous weapon in a Federal facility), 956 (relating to conspiracy to injure property of a foreign government), 1030(a)(1), 1030(a)(5)(A), or 1030(a)(7) (relating to protection of computers), 1362 (relating to destruction of communication lines, stations, or systems), 1366 (relating to destruction of an energy facility), 1992 (relating to trainwrecking), 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155

(relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture).

"(2) Any of the following provisions of title 49: the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3), (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved, or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 213 of title 18, United States Code, is amended by amending the item relating to section 3286 to read as follows:

"3286. Terrorism offenses.".

(c) APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of enactment of this section.

**SEC. 302. ALTERNATIVE MAXIMUM PENALTIES FOR TERRORISM CRIMES.**

Section 3559 of title 18, United States Code, is amended by adding after subsection (d) the following:

''(e) AUTHORIZED TERMS OF IMPRISONMENT FOR TERRORISM CRIMES.—A person convicted of any Federal terrorism offense may be sentenced to imprisonment for any term of years or for life, notwithstanding any maximum term of imprisonment specified in the law describing the offense. The authorization of imprisonment under this subsection is supplementary to, and does not limit, the availability of any other penalty authorized by the law describing the offense, including the death penalty, and does not limit the applicability of any mandatory minimum term of imprisonment, including any mandatory life term, provided by the law describing the offense.''.

**SEC. 303. PENALTIES FOR TERRORIST CONSPIRACIES.**

Chapter 113B of title 18, United States Code, is amended—

(1) by inserting after section 2332b the following:

**"§ 2332c. Attempts and conspiracies**

''(a) Except as provided in subsection (c), any person who attempts or conspires to commit any Federal terrorism offense shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

''(b) Except as provided in subsection (c), any person who attempts or conspires to commit any offense described in section 25(2) shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

''(c) A death penalty may not be imposed by operation of this section.''; and

(2) in the table of sections at the beginning of the chapter, by inserting after the item relating to section 2332b the following new item:

''2332c. Attempts and conspiracies.''.

**SEC. 304. TERRORISM CRIMES AS RICO PREDICATES.**

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking ''or (F)'' and inserting ''(F)''; and

(2) by striking ''financial gain;'' and inserting ''financial gain, or (G) any act that is a Federal terrorism offense or is indictable under any of the following provisions of law: section 32 (relating to de-

1 struction of aircraft or aircraft facilities), 37(a)(1)
2 (relating to violence at international airports), 175
3 (relating to biological weapons), 229 (relating to
4 chemical weapons), 351(a)–(d) (relating to congres-
5 sional, cabinet, and Supreme Court assassination
6 and kidnaping), 831 (relating to nuclear materials),
7 842(m) or (n) (relating to plastic explosives), 844(f)
8 or (i) when it involves a bombing (relating to arson
9 and bombing of certain property), 930(c) when it in-
10 volves an attack on a Federal facility, 1114 when it
11 involves murder (relating to protection of officers
12 and employees of the United States), 1116 when it
13 involves murder (relating to murder or manslaughter
14 of foreign officials, official guests, or internationally
15 protected persons), 1203 (relating to hostage tak-
16 ing), 1362 (relating to destruction of communication
17 lines, stations, or systems), 1366 (relating to de-
18 struction of an energy facility), 1751(a)–(d) (relat-
19 ing to Presidential and Presidential staff assassina-
20 tion and kidnaping), 1992 (relating to
21 trainwrecking), 2280 (relating to violence against
22 maritime navigation), 2281 (relating to violence
23 against maritime fixed platforms), 2332a (relating
24 to use of weapons of mass destruction), 2332b (re-
25 lating to acts of terrorism transcending national

boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture) of this title; section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284); or section 46502 (relating to aircraft piracy) or 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.''.

**SEC. 305. BIOLOGICAL WEAPONS.**

Chapter 10 of title 18, United States Code, is amended—

(1) in section 175—

(A) in subsection (b)—

(i) by striking, ''section, the'' and inserting ''section—

''(1) the'';

(ii) by striking ''does not include'' and inserting ''includes'';

(iii) by inserting ''other than'' after ''system for''; and

(iv) by striking ''purposes.'' and inserting ''purposes, and

''(2) the terms biological agent and toxin do not encompass any biological agent or toxin that is in its

naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.'';

(B) by redesignating subsection (b) as subsection (c); and

(C) by inserting after subsection (a) the following:

''(b) ADDITIONAL OFFENSE.—Whoever knowingly possesses any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, or other peaceful purpose, shall be fined under this title, imprisoned not more than 10 years, or both.'';

(2) by inserting after section 175a the following:

**''§ 175b. Possession by restricted persons**

''(a) No restricted person described in subsection (b) shall ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of

1996 (Public Law 104–132), and is not exempted under subsection (h) of such section 72.6, or Appendix A of part 72 of such title; except that the term select agent does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

"(b) As used in this section, the term 'restricted person' means an individual who—

"(1) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;

"(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

"(3) is a fugitive from justice;

"(4) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(5) is an alien illegally or unlawfully in the United States;

"(6) has been adjudicated as a mental defective or has been committed to any mental institution; or

"(7) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pur-

suant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination that remains in effect that such country has repeatedly provided support for acts of international terrorism.

''(c) As used in this section, the term 'alien' has the same meaning as that term is given in section 1010(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), and the term 'lawfully' admitted for permanent residence has the same meaning as that term is given in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

''(d) Whoever knowingly violates this section shall be fined under this title or imprisoned not more than ten years, or both, but the prohibition contained in this section shall not apply with respect to any duly authorized governmental activity under title V of the National Security Act of 1947.''; and

(3) in the table of sections in the beginning of such chapter, by inserting after the item relating to section 175a the following:

''175b. Possession by restricted persons.''.

**SEC. 306. SUPPORT OF TERRORISM THROUGH EXPERT ADVICE OR ASSISTANCE.**

Section 2339A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''a violation'' and all that follows through ''49'' and inserting ''any Federal terrorism offense or any offense described in section 25(2)''; and

(B) by striking ''violation,'' and inserting ''offense,''; and

(2) in subsection (b), by inserting ''expert advice or assistance,'' after ''training,''.

**SEC. 307. PROHIBITION AGAINST HARBORING.**

Title 18, United States Code, is amended by adding the following new section:

**''§ 791. Prohibition against harboring**

''Whoever harbors or conceals any person who he knows has committed, or is about to commit, an offense described in section 25(2) or this title shall be fined under this title or imprisoned not more than ten years or both. There is extraterritorial Federal jurisdiction over any violation of this section or any conspiracy or attempt to violate this section. A violation of this section or of such a conspiracy or attempt may be prosecuted in any Federal judicial district in which the underlying offense was com-

mitted, or in any other Federal judicial district as provided by law.''.

**SEC. 308. POST-RELEASE SUPERVISION OF TERRORISTS.**

Section 3583 of title 18, United States Code, is amended by adding at the end the following:

''(j) SUPERVISED RELEASE TERMS FOR TERRORISM OFFENSES.—Notwithstanding subsection (b), the authorized terms of supervised release for any Federal terrorism offense are any term of years or life.''.

**SEC. 309. DEFINITION.**

(a) Chapter 1 of title 18, United States Code, is amended—

(1) by adding after section 24 a new section as follows:

**''§ 25. Federal terrorism offense defined**

''As used in this title, the term 'Federal terrorism offense' means an offense that is—

''(1) is calculated to influence or affect the conduct of government by intimidation or coercion; or to retaliate against government conduct; and

''(2) is a violation of, or an attempt or conspiracy to violate- section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction),

175, 175b (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 792 (relating to harboring terrorists), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f) or (i) (relating to arson and bombing of certain property), 930(c), 956 (relating to conspiracy to injure property of a foreign government), 1030(a)(1), 1030(a)(5)(A), or 1030(a)(7) (relating to protection of computers), 1114 (relating to protection of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to injury of Government property or contracts), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366 (relating to destruction of an energy facility), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992, 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155 (relating to destruction of national

defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture);

"(3) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284);

"(4) section 601 (relating to disclosure of identities of covert agents) of the National Security Act of 1947 (50 U.S.C. 421); or

"(5) any of the following provisions of title 49: section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3), (relating to explosive or incendiary de-

vices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved, or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.''; and

(2) in the table of sections in the beginning of such chapter, by inserting after the item relating to section 24 the following:

''25. Federal terrorism offense defined.''.

(b) Section 2332b(g)(5)(B) of title 18, United States Code, is amended by striking ''is a violation'' and all that follows through ''title 49'' and inserting ''is a Federal terrorism offense''.

(c) Section 2331 of title 18, United States Code, is amended—

(1) in paragraph (1)(B)—

(A) by inserting ''(or to have the effect)'' after ''intended''; and

(B) in clause (iii), by striking ''by assassination or kidnapping'' and inserting ''(or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof)'';

(2) in paragraph (3), by striking ''and'';

(3) in paragraph (4), by striking the period and inserting ''; and''; and

(4) by inserting the following paragraph (4):

"(5) the term 'domestic terrorism' means activities that—

"(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; and

"(B) appear to be intended (or to have the effect)—

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government (or any function thereof) by mass destruction, assassination, or kidnapping (or threat thereof).".

**SEC. 310. CIVIL DAMAGES.**

Section 2707(c) of title 18, United States Code, is amended by striking "$1,000" and inserting "$10,000".

# Subtitle B—Criminal Procedure

**SEC. 351. SINGLE-JURISDICTION SEARCH WARRANTS FOR TERRORISM.**

Rule 41(a) of the Federal Rules of Criminal Procedure is amended by inserting after "executed" the following: "and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of

title 18, United States Code), by a Federal magistrate judge in any district in which activities related to the terrorism may have occurred, for a search of property or for a person within or outside the district''.

**SEC. 352. DNA IDENTIFICATION OF TERRORISTS.**

Section 3(d)(1) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)(1)) is amended—

(1) by redesignating subparagraph (G) as subparagraph (H); and

(2) by inserting after subparagraph (F) the a new subparagraph as follows:

''(G) Any Federal terrorism offense (as defined in section 25 of title 18, United States Code).''.

**SEC. 353. GRAND JURY MATTERS.**

Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure is amended—

(1) by adding at the end the following:

''(v) when permitted by a court at the request of an attorney for the government, upon a showing that the matters pertain to international or domestic terrorism (as defined in section 2331 of title 18, United States Code) or national security, to any

Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or to the President or Vice President of the United States, for the performance of official duties.'';

(2) by striking ''or'' at the end of subdivision (iii); and

(3) by striking the period at the end of subdivision (iv) and inserting ''; or''.

**SEC. 354. EXTRATERRITORIALITY.**

Chapter 113B of title 18, United States Code, is amended—

(1) in the heading for section 2338, by striking ''**Exclusive**'';

(2) in section 2338, by inserting ''There is extraterritorial Federal jurisdiction over any Federal terrorism offense and any offense under this chapter, in addition to any extraterritorial jurisdiction that may exist under the law defining the offense, if the person committing the offense or the victim of the offense is a national of the United States (as defined in section 101 of the Immigration and Nationality Act) or if the offense is directed at the security or interests of the United States.'' before ''The district courts''; and

(3) in the table of sections at the beginning of such chapter, by striking ''Exclusive'' in the item relating to section 2338.

**SEC. 355. JURISDICTION OVER CRIMES COMMITTED AT UNITED STATES FACILITIES ABROAD.**

Section 7 of title 18, United States Code, is amended by adding at the end the following:

''(9) With respect to offenses committed by or against a United States national, as defined in section 1203(c) of this title—

''(A) the premises of United States diplomatic, consular, military, or other United States Government missions or entities in foreign states, including the buildings, parts of buildings, and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities; and

''(B) residences in foreign states and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities, except that this paragraph does not supercede any treaty or international agreement in force

on the date of the enactment of this paragraph.''.

**SEC. 356. SPECIAL AGENT AUTHORITIES.**

(a) GENERAL AUTHORITY OF SPECIAL AGENTS.—Section 37(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709(a)) is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) in the course of performing the functions set forth in paragraphs (1) and (3), obtain and execute search and arrest warrants, as well as obtain and serve subpoenas and summonses, issued under the authority of the United States;'';

(2) in paragraph (3)(F) by inserting ''or President-elect'' after ''President''; and

(3) by striking paragraph (5) and inserting the following:

''(5) in the course of performing the functions set forth in paragraphs (1) and (3), make arrests without warrant for any offense against the United States committed in the presence of the special agent, or for any felony cognizable under the laws of the United States if the special agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.''.

(b) CRIMES.—Section 37 of such Act (22 U.S.C. 2709) is amended by inserting after subsection (c) the following new subsections:

"(d) INTERFERENCE WITH AGENTS.—Whoever knowingly and willfully obstructs, resists, or interferes with a Federal law enforcement agent engaged in the performance of the protective functions authorized by this section shall be fined under title 18 or imprisoned not more than one year, or both.

"(e) PERSONS UNDER PROTECTION OF SPECIAL AGENTS.—Whoever engages in any conduct—

"(1) directed against an individual entitled to protection under this section, and

"(2) which would constitute a violation of section 112 or 878 of title 18, United States Code, if such individual were a foreign official, an official guest, or an internationally protected person, shall be subject to the same penalties as are provided for such conduct directed against an individual subject to protection under such section of title 18.".

# TITLE IV—FINANCIAL INFRASTRUCTURE

**SEC. 401. LAUNDERING THE PROCEEDS OF TERRORISM.**

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "or 2339B" after "2339A".

**SEC. 402. MATERIAL SUPPORT FOR TERRORISM.**

Section 2339A of title 18, United States Code, is amended—

(1) in subsection (a), by adding at the end the following ''A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.''; and

(2) in subsection (b), by striking ''or other financial securities'' and inserting ''or monetary instruments or financial securities''.

**SEC. 403. ASSETS OF TERRORIST ORGANIZATIONS.**

Section 981(a)(1) of title 18, United States Code, is amended by inserting after subparagraph (F) the following:

''(G) All assets, foreign or domestic—

''(i) of any person, entity, or organization engaged in planning or perpetrating any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

''(ii) acquired or maintained by any person for the purpose of supporting, planning, con-

ducting, or concealing an act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property; or

"(iii) derived from, involved in, or used or intended to be used to commit any act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property.".

**SEC. 404. TECHNICAL CLARIFICATION RELATING TO PROVISION OF MATERIAL SUPPORT TO TERRORISM.**

No provision of title IX of Public Law 106–387 shall be understood to limit or otherwise affect section 2339A or 2339B of title 18, United States Code.

**SEC. 405. DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS.**

(a) DISCLOSURE WITHOUT A REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Paragraph (3) of section 6103(i) of the Internal Revenue Code of 1986 (relating to disclosure of return information to apprise appropriate officials of criminal activities or emer-

gency circumstances) is amended by adding at the end the following new subparagraph:

"(C) TERRORIST ACTIVITIES, ETC.—

"(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The head of the agency may disclose such return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

"(ii) DISCLOSURE TO THE DEPARTMENT OF JUSTICE.—Returns and taxpayer return information may also be disclosed to the Attorney General under clause (i) to the extent necessary for, and solely for use in preparing, an application under paragraph (7)(D).

"(iii) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

"(iv) TERMINATION.—No disclosure may be made under this subparagraph after December 31, 2003.".

(b) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Subsection (i) of section 6103 of such Code (relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—

"(A) DISCLOSURE TO LAW ENFORCEMENT AGENCIES.—

"(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (iii), the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal

law enforcement agency who are personally and directly engaged in the response to or investigation of terrorist incidents, threats, or activities.

"(ii) DISCLOSURE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.—The head of any Federal law enforcement agency may disclose return information obtained under clause (i) to officers and employees of any State or local law enforcement agency but only if such agency is part of a team with the Federal law enforcement agency in such response or investigation and such information is disclosed only to officers and employees who are personally and directly engaged in such response or investigation.

"(iii) REQUIREMENTS.—A request meets the requirements of this clause if—

"(I) the request is made by the head of any Federal law enforcement agency (or his delegate) involved in the response to or investigation of terrorist incidents, threats, or activities, and

"(II) the request sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

"(iv) LIMITATION ON USE OF INFORMATION.—Information disclosed under this subparagraph shall be solely for the use of the officers and employees to whom such information is disclosed in such response or investigation.

"(B) DISCLOSURE TO INTELLIGENCE AGENCIES.—

"(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (ii), the Secretary may disclose return information (other than taxpayer return information) to those officers and employees of the Department of Justice, the Department of the Treasury, and other Federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning ter-

rorists and terrorist organizations and activities. For purposes of the preceding sentence, the information disclosed under the preceding sentence shall be solely for the use of such officers and employees in such investigation, collection, or analysis.

"(ii) REQUIREMENTS.—A request meets the requirements of this subparagraph if the request—

"(I) is made by an individual described in clause (iii), and

"(II) sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

"(iii) REQUESTING INDIVIDUALS.—An individual described in this subparagraph is an individual—

"(I) who is an officer or employee of the Department of Justice or the Department of the Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the United States Secret Service, and

"(II) who is responsible for the collection and analysis of intelligence and counterintelligence information concerning terrorists and terrorist organizations and activities.

"(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

"(C) DISCLOSURE UNDER EX PARTE ORDERS.—

"(i) IN GENERAL.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under clause (ii), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal law enforcement agency or Federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and

counterintelligence information concerning any terrorist activity or threats. Return or return information opened pursuant to the preceding sentence shall be solely for the use of such officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to any such terrorist activity or threat.

"(ii) APPLICATION FOR ORDER.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, or any United States attorney may authorize an application to a Federal district court judge or magistrate for the order referred to in clause (i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

"(I) there is reasonable cause to believe, based upon information believed to be reliable, that the taxpayer whose return or return information is

to be disclosed may be connected to a terrorist activity or threat,

"(II) there is reasonable cause to believe that the return or return information may be relevant to a matter relating to such terrorist activity or threat, and

"(III) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning terrorist activity, terrorist threats, or terrorist organizations.

"(D) SPECIAL RULE FOR EX PARTE DISCLOSURE BY THE IRS.—

"(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (C)(i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that the requirements of

subclauses (I) and (II) of subparagraph (C)(ii) are met.

"(ii) LIMITATION ON USE OF INFORMATION.—Information disclosed under clause (i)—

"(I) may be disclosed only to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity, and

"(II) shall be solely for use in a Federal investigation, analysis, or proceeding concerning terrorist activity, terrorist threats, or terrorist organizations.

The head of such Federal agency may disclose such information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

"(E) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2003.".

(c) CONFORMING AMENDMENTS.—

(1) Section 6103(a)(2) of such Code is amended by inserting ''any local law enforcement agency receiving information under subsection (i)(7)(A),'' after ''State,''.

(2) The heading of section 6103(i)(3) of such Code is amended by inserting ''OR TERRORIST'' after ''CRIMINAL''.

(3) Paragraph (4) of section 6103(i) of such Code is amended—

(A) in subparagraph (A) by inserting ''or (7)(C)'' after ''paragraph (1)'', and

(B) in subparagraph (B) by striking ''or (3)(A)'' and inserting ''(3)(A) or (C), or (7)''.

(4) Paragraph (6) of section 6103(i) of such Code is amended—

(A) by striking ''(3)(A)'' and inserting ''(3)(A) or (C), and

(B) by striking ''or (7)'' and inserting ''(7), or (8)''.

(5) Section 6103(p)(3) of such Code is amended—

(A) in subparagraph (A) by striking ''(7)(A)(ii)'' and inserting ''(8)(A)(ii)'', and

(B) in subparagraph (C) by striking ''(i)(3)(B)(i)'' and inserting ''(i)(3)(B)(i) or (7)(A)(ii)''.

(6) Section 6103(p)(4) of such Code is amended—

(A) in the matter preceding subparagraph (A)—

(i) by striking ''or (5),'' the first place it appears and inserting ''(5), or (7),'', and

(ii) by striking ''(i)(3)(B)(i),'' and inserting ''(i)(3)(B)(i) or (7)(A)(ii),'', and

(B) in subparagraph (F)(ii) by striking ''or (5),'' the first place it appears and inserting ''(5) or (7),''.

(7) Section 6103(p)(6)(B)(i) of such Code is amended by striking ''(i)(7)(A)(ii)'' and inserting ''(i)(8)(A)(ii)''.

(8) Section 7213(a)(2) of such Code is amended by striking ''(i)(3)(B)(i),'' and inserting ''(i)(3)(B)(i) or (7)(A)(ii),''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures made on or after the date of the enactment of this Act.

**SEC. 406. EXTRATERRITORIAL JURISDICTION.**

Section 1029 of title 18, United States Code, is amended by adding at the end the following:

''(h) Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsection (a) or (b) of this section, shall be subject to the fines, penalties, imprisonment, and forfeiture provided in this title if—

''(1) the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and

''(2) the person transports, delivers, conveys, transfers to or through, or otherwise stores, secrets, or holds within the jurisdiction of the United States, any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom.''.

# TITLE V—EMERGENCY AUTHORIZATIONS

**SEC. 501. OFFICE OF JUSTICE PROGRAMS.**

(a) In connection with the airplane hijackings and terrorist acts (including, without limitation, any related search, rescue, relief, assistance, or other similar activi-

ties) that occurred on September 11, 2001, in the United States, amounts transferred to the Crime Victims Fund from the Executive Office of the President or funds appropriated to the President shall not be subject to any limitation on obligations from amounts deposited or available in the Fund.

(b) Section 112 of title I of section 101(b) of division A of Public Law 105–277 and section 108(a) of Appendix A of Public Law 106–113 (113 Stat. 1501A–20) are amended—

(1) after ''that Office'', each place it occurs, by inserting ''(including, notwithstanding any contrary provision of law (unless the same should expressly refer to this section), any organization that administers any program established in title 1 of Public Law 90–351)''; and

(2) by inserting ''functions, including any'' after ''all''.

(c) Section 1404B(b) of the Victim Compensation and Assistance Act is amended after ''programs'' by inserting '', to victim service organizations, to public agencies (including Federal, State, or local governments), and to non-governmental organizations that provide assistance to victims of crime,''.

(d) Section 1 of Public Law 107–37 is amended—

(1) by inserting ''(containing identification of all eligible payees of benefits under section 1201)'' before ''by a'';

(2) by inserting ''producing permanent and total disability'' after ''suffered a catastrophic injury''; and

(3) by striking ''1201(a)'' and inserting ''1201''.

**SEC. 502. ATTORNEY GENERAL'S AUTHORITY TO PAY REWARDS.**

(a) IN GENERAL.—Title 18, United States Code, is amended by striking sections 3059 through 3059B and inserting the following:

**''§ 3059. Rewards and appropriation therefor**

''(a) IN GENERAL.—Subject to subsection (b), the Attorney General may pay rewards in accordance with procedures and regulations established or issued by the Attorney General.

''(b) LIMITATIONS.— The following limitations apply with respect to awards under subsection (a):

''(1) No such reward, other than in connection with a terrorism offense or as otherwise specifically provided by law, shall exceed $2,000,000.

"(2) No such reward of $250,000 or more may be made or offered without the personal approval of either the Attorney General or the President.

"(3) The Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Appropriations and the Judiciary of the Senate and the House of Representatives not later than 30 days after the approval of a reward under paragraph (2);

"(4) Any executive agency or military department (as defined, respectively, in sections 105 and 102 of title 5) may provide the Attorney General with funds for the payment of rewards.

"(5) Neither the failure to make or authorize such a reward nor the amount of any such reward made or authorized shall be subject to judicial review.

"(c) DEFINITION.—In this section, the term 'reward' means a payment pursuant to public advertisements for assistance to the Department of Justice.".

(b) CONFORMING AMENDMENTS.——

(1) Section 3075 of title 18, United States Code, and that portion of section 3072 of title 18, United States Code, that follows the first sentence, are repealed.

((2) Public Law 101–647 is amended—

(A) in section 2565—

(i) by striking all the matter after ''title,'' in subsection (c)(1) and inserting ''the Attorney General may, in the Attorney General's discretion, pay a reward to the declaring.''; and

(ii) by striking subsection (e); and

(C) by striking section 2569.

**SEC. 503. LIMITED AUTHORITY TO PAY OVERTIME.**

The matter under the headings ''Immigration And Naturalization Service: Salaries and Expenses, Enforcement And Border Affairs and Immigration And Naturalization Service: Salaries and Expenses, Citizenship And Benefits, Immigration And Program Direction'' in the Department of Justice Appropriations Act, 2001 (as enacted into law by Appendix B (H.R. 5548) of Public Law 106–553 (114 Stat. 2762A–58 to 2762A–59)) is amended by striking the following each place it occurs: ''*Provided,* That none of the funds available to the Immigration and Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of $30,000 during the calendar year beginning January 1, 2001:''.

**SEC. 504. DEPARTMENT OF STATE REWARD AUTHORITY.**

(a) CHANGES IN REWARD AUTHORITY.—Section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708) is amended—

(1) in subsection (b)—

(A) by striking ''or'' at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting '', including by dismantling an organization in whole or significant part; or''; and

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

''(6) the identification or location of an individual who holds a leadership position in a terrorist organization.'';

(2) in subsection (d), by striking paragraphs (2) and (3) and redesignating paragraph (4) as paragraph (2); and

(3) by amending subsection (e)(1) to read as follows:

''(1) AMOUNT OF AWARD.—

''(A) Except as provided in subparagraph (B), no reward paid under this section may exceed $10,000,000.

"(B) The Secretary of State may authorize the payment of an award not to exceed $25,000,000 if the Secretary determines that payment of an award exceeding the amount under subparagraph (A) is important to the national interest of the United States.".

(b) SENSE OF CONGRESS REGARDING REWARDS RELATING TO THE SEPTEMBER 11, 2001 ATTACK.—It is the sense of the Congress that the Secretary of State should use the authority of section 36 of the State Department Basic Authorities Act of 1956, as amended by subsection (a), to offer a reward of $25,000,000 for Osama bin Laden and other leaders of the September 11, 2001 attack on the United States.

# TITLE VI—DAM SECURITY

**SEC. 601. SECURITY OF RECLAMATION DAMS, FACILITIES, AND RESOURCES.**

Section 2805(a) of the Reclamation Recreation Management Act of 1992 (16 U.S.C. 460l–33(a)) is amended by adding at the end the following:

"(3) Any person who violates any such regulation which is issued pursuant to this Act shall be fined under title 18, United States Code, imprisoned not more than 6 months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any

United States magistrate judge designated for that purpose by the court by which such judge was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18, United States Code.

"(4) The Secretary may—

"(A) authorize law enforcement personnel from the Department of the Interior to act as law enforcement officers to maintain law and order and protect persons and property within a Reclamation project or on Reclamation lands;

"(B) authorize law enforcement personnel of any other Federal agency that has law enforcement authority, with the exception of the Department of Defense, or law enforcement personnel of any State or local government, including Indian tribes, when deemed economical and in the public interest, and with the concurrence of that agency or that State or local government, to act as law enforcement officers within a Reclamation project or on Reclamation lands with such enforcement powers as may be so assigned them by the Secretary to carry out the regulations promulgated under paragraph (2);

"(C) cooperate with any State or local government, including Indian tribes, in the enforcement of

the laws or ordinances of that State or local government; and

"(D) provide reimbursement to a State or local government, including Indian tribes, for expenditures incurred in connection with activities under subparagraph (B).

"(5) Officers or employees designated or authorized by the Secretary under paragraph (4) are authorized to—

"(A) carry firearms within a Reclamation project or on Reclamation lands and make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony, and if such arrests occur within a Reclamation project or on Reclamation lands or the person to be arrested is fleeing therefrom to avoid arrest;

"(B) execute within a Reclamation project or on Reclamation lands any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation issued pursuant to law for an of-

fense committed within a Reclamation project or on Reclamation lands; and

"(C) conduct investigations within a Reclamation project or on Reclamation lands of offenses against the United States committed within a Reclamation project or on Reclamation lands, if the Federal law enforcement agency having investigative jurisdiction over the offense committed declines to investigate the offense or concurs with such investigation.

"(6)(A) Except as otherwise provided in this paragraph, a law enforcement officer of any State or local government, including Indian tribes, designated to act as a law enforcement officer under paragraph (4) shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, employment discrimination, leave, unemployment compensation, and Federal benefits.

"(B) For purposes of chapter 171 of title 28, United States Code, popularly known as the Federal Tort Claims Act, a law enforcement officer of any State or local government, including Indian tribes, shall, when acting as a designated law enforcement officer under paragraph (4) and while under Federal supervision and control, and only

when carrying out Federal law enforcement responsibilities, be considered a Federal employee.

"(C) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to compensation to Federal employees for work injuries, a law enforcement officer of any State or local government, including Indian tribes, shall, when acting as a designated law enforcement officer under paragraph (4) and while under Federal supervision and control, and only when carrying out Federal law enforcement responsibilities, be deemed a civil service employee of the United States within the meaning of the term 'employee' as defined in section 8101 of title 5, and the provisions of that subchapter shall apply. Benefits under this subchapter shall be reduced by the amount of any entitlement to State or local workers' compensation benefits arising out of the same injury or death.

"(7) Nothing in paragraphs (3) through (9) shall be construed or applied to limit or restrict the investigative jurisdiction of any Federal law enforcement agency, or to affect any existing right of a State or local government, including Indian tribes, to exercise civil and criminal jurisdiction within a Reclamation project or on Reclamation lands.

"(8) For the purposes of this subsection, the term 'law enforcement personnel' means employees of a Fed-

eral, State, or local government agency, including an Indian tribal agency, who have successfully completed law enforcement training approved by the Secretary and are authorized to carry firearms, make arrests, and execute service of process to enforce criminal laws of their employing jurisdiction.

''(9) The law enforcement authorities provided for in this subsection may be exercised only pursuant to rules and regulations promulgated by the Secretary and approved by the Attorney General.''.

# TITLE VII—MISCELLANEOUS

## SEC. 701. EMPLOYMENT OF TRANSLATORS BY THE FEDERAL BUREAU OF INVESTIGATION.

(a) AUTHORITY.—The Director of the Federal Bureau of Investigation is authorized to expedite the employment of personnel as translators to support counterterrorism investigations and operations without regard to applicable Federal personnel requirements and limitations.

(b) SECURITY REQUIREMENTS.—The Director of the Federal Bureau of Investigation shall establish such security requirements as are necessary for the personnel employed as translators.

(c) REPORT.—The Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate on—

(1) the number of translators employed by the FBI and other components of the Department of Justice;

(2) any legal or practical impediments to using translators employed by other Federal State, or local agencies, on a full, part-time, or shared basis; and

(3) the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.

**SEC. 702. REVIEW OF THE DEPARTMENT OF JUSTICE.**

(a) APPOINTMENT OF DEPUTY INSPECTOR GENERAL FOR CIVIL RIGHTS, CIVIL LIBERTIES, AND THE FEDERAL BUREAU OF INVESTIGATION.—The Inspector General of the Department of Justice shall appoint a Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation (hereinafter in this section referred to as the ''Deputy'').

(b) CIVIL RIGHTS AND CIVIL LIBERTIES REVIEW.—The Deputy shall—

(1) review information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling

by government employees and officials including employees and officials of the Department of Justice;

(2) make public through the Internet, radio, television, and newspaper advertisements information on the responsibilities and functions of, and how to contact, the Deputy; and

(3) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on a semi-annual basis a report on the implementation of this subsection and detailing any abuses described in paragraph (1), including a description of the use of funds appropriations used to carry out this subsection.

(c) INSPECTOR GENERAL OVERSIGHT PLAN FOR THE FEDERAL BUREAU OF INVESTIGATION.—Not later than 30 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Congress a plan for oversight of the Federal Bureau of Investigation. The Inspector General shall consider the following activities for inclusion in such plan:

(1) FINANCIAL SYSTEMS.—Auditing the financial systems, information technology systems, and computer security systems of the Federal Bureau of Investigation.

(2) PROGRAMS AND PROCESSES.—Auditing and evaluating programs and processes of the Federal Bureau of Investigation to identify systemic weaknesses or implementation failures and to recommend corrective action.

(3) INTERNAL AFFAIRS OFFICES.—Reviewing the activities of internal affairs offices of the Federal Bureau of Investigation, including the Inspections Division and the Office of Professional Responsibility.

(4) PERSONNEL.—Investigating allegations of serious misconduct by personnel of the Federal Bureau of Investigation.

(5) OTHER PROGRAMS AND OPERATIONS.—Reviewing matters relating to any other program or and operation of the Federal Bureau of Investigation that the Inspector General determines requires review.

(6) RESOURCES.—Identifying resources needed by the Inspector General to implement such plan.

(d) REVIEW OF INVESTIGATIVE TOOLS.—Not later than August 31, 2003, the Deputy shall review the implementation, use, and operation (including the impact on civil rights and liberties) of the law enforcement and intel-

1 ligence authorities contained in title I of this Act and pro-
2 vide a report to the President and Congress.

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Chairman SENSENBRENNER. Let me say that this is a little bit different than the procedure that we have utilized in the past. The entire bill is open for amendment, but I believe that for purposes of better order and better debate, if we did it title by title, we could concentrate on the issues presented in each title. Hearing the unpleasant noise of bells in my right ear, let me now recess the Committee until after the second vote.

Let me say that it is the Chair's intention to continue this markup through the classified briefing that is being held across the street beginning at 4:00 o'clock, because it is important that the Committee report this bill out today, and it is also the Chair's intention to keep the Committee in session until we have a final vote on reporting the bill out. The Committee is now recessed until after the second vote.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. The Chair notes the presence of a working quorum, and when the Committee recessed the bill had been called up and unanimous consent had been granted to consider the bill by title. In order to speed things up, I would like to limit opening statements to Mr. Conyers and myself. Without objection, all Members' opening statements may be included in the record at this point.

The Chair will now recognize himself for an opening statement.

On September 11th, not only our Nation but our entire way of life was attacked. From the moment that the first plane smashed into the North Twin Tower, our lives were changed forever. The sordid acts of the 19 men and the elaborate network of organizations that support their cause have opened our eyes to the clear and present danger that threatens our great country. Now that our blinders have been removed, the question is how we will act to help prevent future attacks.

Today we meet with one purpose in mind, to provide law enforcement with important additional tools to help prevent this sort of catastrophe from ever happening on U.S. soil again. A true patriot is one who loves, supports and defends his or her country. In the days and weeks following this horrific act, it has become clear to the world that the United States is a nation of patriots who through the selfless act of the New York firefighters and rescue workers, the heroism of the passengers on Flight 93, the charitable donations of our citizens' blood and money and the proud display of our most enduring symbol of freedom, the American flag. The united efforts of this country are reflected in the bipartisan efforts of this bill, which I was pleased to introduce with the Ranking Member, Mr. Conyers, along with the cosponsorship of 18 bipartisan Members of this Committee.

The bill represents the essence of compromise. The left is not completely happy with this bill, and neither is the right, but certainly does not represent the Justice Department's wish list. I think it means we have got it just about right. We are considering this legislation today because the rules of war on terrorism are vastly different than the wars this country has fought in the past. We are uncertain who the enemy is. We are uncertain where the enemy is. We are more uncertain than ever before about the next move of the enemy. Because of this uncertainty, we have had to change the way we think about the safety and security of our coun-

try and its people. We must develop new weapons for the protection against this new kind of war.

It is important that this new approach to safety and security that is required us to take action today. The bipartisan legislation we are considering today will give law enforcement new weapons to fight a new kind of war. Terrorists have weapons that law enforcement cannot protect against right now. Technology has made extraordinary advances, but those advances in the wrong hand have made us more vulnerable to attack.

Attorney General Ashcroft testified before the Judiciary Committee that, quote, we are today sending our troops into the modern field of battle with antique weapons, unquote. Indeed, it cannot be denied that law enforcement tools created decades ago were crafted for rotary telephones, not e-mail, the Internet, mobile communications and voicemail. Thus, the Patriot Act modernizes surveillance capabilities by ensuring that pen register and trap and trace court orders apply to new technologies such as the Internet and can be executed in multiple jurisdictions anywhere in the United States.

Criminal provisions dealing with stored electronic communications will be updated to allow law enforcement to seize stored voicemail messages in the same way they can seize a taped answering machine message. Additionally under this bill the court may authorize a pen register or trap-trace order that follows the person from cell phone to cell phone, rather than requiring law enforcement to return to court every time the person switches cell phones.

The bill, consistent with our constitutional system of government, still requires a judge to approve wiretap search warrants and registers and trap-trace devices. The Patriot Act also toughens our substantive criminal law statutes in order to treat crimes of terrorism with the same level of importance as the most serious crimes in our country, and it expands the definition of support of terrorism for which a person could be prosecuted to include providing expert advice to terrorists or harboring terrorists or concealing a suspected terrorist.

Of equal importance, the bill will not do anything to take away the freedoms of innocent citizens. Of course, we all recognize that the fourth amendment to the Constitution prevents the government from conducting unreasonable searches and seizures, and that is why the Patriot Act will not change the United States's Constitution or the rights guaranteed to citizens of this country under the Bill of Rights.

Of course, the first civil right of every American is to be free of domestic terrorism, and this bill ensures that right by strengthening our Nation's law enforcement for the protection of all Americans and to ensure domestic tranquility.

We have produced the means to address many of the shortcomings of current law, and to improve our law enforcement ability to eradicate terrorism from our borders while preserving the civil liberties of our citizens.

I would like to thank both my staff and the minority staff for their extensive work and collaboration in drafting this legislation.

I am also grateful for the cooperation of the Bush Administration, particularly for making Justice Department officials available to brief Members of this Committee at almost any time and place.

I urge the Members of this Committee to support this delicate compromise legislation and the important purpose it will serve in fighting terrorism in this country and abroad.

I believe there is an unquestionable need for this bill. In fact, I am convinced our homeland security depends upon it.

At this time, I yield to the gentleman from Michigan for whatever comments he cares to make.

Mr. CONYERS. Thank you, Chairman Sensenbrenner, and our thanks to the 16 Members on the Democratic side for having invited us to work with you in crafting this bill. In my tenure on the Committee, I have not experienced the degree of cooperation between the majority and minority that has been displayed over the last 2 weeks on a bill as complex and as possibly contentious as this. There is still work to be done, but we are off to a good start.

I also advance my thanks to you for preserving regular order on this matter. It is well known that many prefer that the Administration proposal be taken directly to the floor, but I believe that in the national interest order is preserved, and we reach a better result by taking the additional time required to go through this Committee and by getting some of the bothersome details as correct as we can.

There is no doubt we are subject to conflicting instincts and inclinations on this bill. Protecting civil liberties and fighting terrorism in the wake of a national tragedy is not an easy thing to do. My friends in law enforcement tell me that they can be trusted not to abuse the sweeping new powers that they have requested, and I love to believe my friends in law enforcement. I wish that I could be confident that that would occur, but history has proven otherwise, regardless of what political party might have been in charge.

During the Civil War Abraham Lincoln suspended the writ of habeas corpus. In the wake of World War I, we experienced the Pommer raids when thousands of immigrants were wrongfully detained, beaten and deported. World War II brought about the shameful internship of Japanese American citizens. The Korean War led to the era of McCarthyism, guilt by association, and the Vietnamese War resulted in the FBI digging into the personal lives of those opposed to the Administration policy.

There have also been anguish, sometimes strident cries, for a rush to judgment. Let us get this out fast. Now, Chairman Sensenbrenner and I have both sought to expedite this process as much as possible. At the same time, the Founding Fathers did not intend the Congress to be a passive part of government, especially in times of crisis when the Bill of Rights may be threatened. So as much as I want to help John Ashcroft do his job as effectively as possible, it would be irresponsible to give him a blank check.

On the other hand, my many friends in the civil liberties community tell me that there is no need to broaden the wiretap and surveillance laws. After much consideration, I have come to the conclusion that it is appropriate to update our laws to reflect 21st century reality. In the age of disposable cell phones, it makes sense to authorize multi-point wiretaps. I am sympathetic to the Attorney General when he complains we have given him more tools to fight

organized crime than terrorism, but with these new powers must come accountability, additional accountability. This is why I insisted on extending the statutory exclusionary rule, increasing penalties for violating our surveillance laws and creating a new office in the Department of Justice to oversee civil liberties abuses.

We also insisted the legislation be written in a manner that does not treat immigrants as our enemies. Diversity, after all, is our great strength, not our weakness, and each day every immigrant who has reached our shores is still entitled to dignity, respect and at least due process. That is why indefinite detention without evidence or court review has no place in our legal system.

What we come to in closing is the old question, is this a perfect bill? Well, but it does represent a marked improvement over the Administration's initial proposal. As a matter of fact, I am having a side by side of the original Ashcroft proposals with the bill that is now before us at this moment. Among other things, I am hoping we can tighten the bill to safeguard innocent Americans from being subject to CIA snooping. It is imperative that as we hold this markup and move on to the floor, we continue to work together in good faith and to seek common ground. Our Nation deserves no less, and I am grateful to all of the Members of this Committee and our staffs for the work that they have done thus far.

[The prepared statement of Mr. Issa follows:]

PREPARED STATEMENT OF THE HONORABLE DARRELL ISSA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Thank you, Mr. Chairman and Ranking Member Conyers, for expediting the markup of H.R. 2975, "The PATRIOT Act of 2001," to the full Judiciary Committee. I also want to thank the Judiciary Committee Staff for their time and expertise in working with the Justice Department, the President and individual Members of the Judiciary Committee in putting together this bill. H.R. 2975 will give the Justice Department the pertinent tools to investigate, apprehend and prosecute the perpetrators of terrorism, while at the same time preserving the civil liberties of all Americans.

As our nation recovers from the terrifying attacks on September 11th, it is apparent that the FBI, CIA and the INS were not sufficiently coordinated and currently do not have sufficient access to shared information in order to prevent future attacks. Immediate remedies are needed to apprehend the terrorists that planned these heinous acts and those that are plotting for the future. The Judiciary Committee has an opportunity to approve a bill that will give additional surveillance measures and greater abilities to prosecute terrorists to the Justice Department so they may better combat terrorism. But thoughtful consideration is needed in order to avoid the latent abuse of our rights as U.S. citizens by our own government.

The Justice Department has asked this Congress for many of the provisions included in this bill, and I am certain that the Judiciary Committee will be asked to provide additional tools to intelligence agencies in the future as terrorism reveals itself in different forms. The success resulting from this bill should not be measured by how many terrorists we apprehend, but in terms of the number of lives saved by our deliberate action today.

I thank the Chairman for scheduling this markup today of H.R. 2975 and urge my colleagues to support final passage of this bill.

Chairman SENSENBRENNER. I thank the gentleman from Michigan.

Are there amendments? Gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Mr. Chairman, I have a number of them. The number——

Chairman SENSENBRENNER. Please turn your mike on.

The CLERK. I have several amendments.

Chairman SENSENBRENNER. Okay. Title I is open to amendment at any point. Is the gentleman from Illinois' amendment to title I—okay. This is a title III amendment. Are there any amendments to title I?

Mr. BOUCHER. Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from Virginia.

Mr. BOUCHER. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R.——

Mr. BOUCHER. I ask unanimous consent, Mr. Chairman, that the amendment be considered as read.

Chairman SENSENBRENNER. Well, let us have the Clerk pass some of them out.

The CLERK. Amendment to H.R. 2975, offered by Messrs. Boucher, Goodlatte and Cannon. Insert at the end of title I the following: Section——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman from Virginia is recognized for 5 minutes.

[The amendment follows:]

Amendment to HR 2975
Offered by Messrs. Boucher, Goodlatte and Cannon

Insert at the end of Title I the following:

"Section ___: Clarification of No Technology Mandates

Nothing in this Act shall impose any additional technical obligation or requirement on a provider of wire or electronic communication service or other person to furnish facilities, services or technical assistance. "

Mr. BOUCHER. Thank you very much, Mr. Chairman. It is my pleasure to join with our colleagues Messrs. Goodlatte and Cannon, in offering this amendment. It would merely ensure that nothing in the act imposes a mandate on communications service providers to redesign or modify their equipment, their facilities, their services, their features of system configuration in order to comply with the mandates of this act. The Department of Justice has indicated that it does not intend that any such burden be placed on communications service providers. The amendment merely reflects that intent and would prevent any provision from being interpreted as imposing such a mandate.

Mr. Chairman, I——

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. BOUCHER.—think this is noncontroversial, and I would be pleased to yield to the gentleman.

Chairman SENSENBRENNER. I thank the gentleman for yielding. This is a constructive provision to the bill and it says the bill will not impose any technological obligation on any provider of wire electronic communications service. That is not the intent of the bill, and I think that this clarifies this.

Mr. CONYERS. Would the gentleman yield?

Mr. BOUCHER. I would be pleased to yield.

Mr. CONYERS. I would like the gentleman from Virginia to know that I think this is a constructive addition to the bill.

Mr. BOUCHER. I thank the Chairman and the Ranking Member and I would be——

Mr. GOODLATTE. Would the gentleman yield?

Mr. BOUCHER. I would be pleased to yield.

Mr. GOODLATTE. I think this is a constructive addition to the bill. As you know, there have been a great many concerns regarding previous laws that have been passed, particularly COLEA, that have imposed inordinate burdens on the telecommunications industry. Sometimes those things are necessary and appropriate, sometimes not, but simply to do it without understanding what the costs are and so on is not the way to go. We have done that before, and we run into a lot of difficulties as a result. So this amendment is a good one, and I appreciate the Chairman accepting it.

Mr. BOUCHER. I thank the gentleman.

Chairman SENSENBRENNER. The question is on adoption of the amendment of the gentleman from Virginia, Mr. Boucher. Those in favor will signify by saying aye. Opposed, no. The ayes appear to have it. The ayes have it and the amendment is agreed to.

Are there further amendments to title I?

Mr. GOODLATTE. Mr. Chairman.

Chairman SENSENBRENNER. The other gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOODLATTE. Mr. Chairman, I have an amendment at the desk which, based upon conversations with you and with Chairman Smith, I do not intend to offer, but I want to reach an understanding with the Chair as to how he intends to approach this problem. The amendment deals with the issue of defining what is content when you move pen register and trap and trace legislation on to the Internet. As you know, when you use those devices to capture outgoing e-mails, incoming e-mails, movement around the Internet to different Web sites and so on, you can secure a great deal more information than you get in the equivalent when you do something on the telephone, where basically all you get is the telephone number made or the telephone number received.

I am referring to things like the subject headers on e-mails, like the second and third and below level URLs, which are the indications of, once you visit a Web site, what exactly you are looking at on the Web site. If someone were able to follow somebody as they surfed the Internet and saw every single page they looked at, they could write quite a convincing dossier about that individual without ever having obtained any court approval to obtain that level of information.

We have attempted to work on language. We do have language that we have shown to other Members of the Committee that we have not yet reached agreement on, but it would be very helpful if there were report language included within that made clear that this legislation does not include content and gave some definition of what that content is.

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. GOODLATTE. I would yield.

Chairman SENSENBRENNER. The gentleman states what the intent of the legislation is precisely, and that is that the pen register and trap and trace provisions are not to get into content of these types of electronic communications but merely where they have come from and where they go to. We will work on getting appropriate report language in the Committee report and further work with the gentleman as well as with the Justice Department as this legislation moves through the process just to make sure that there is not an expansive definition of content.

Ms. LOFGREN. Would the gentleman yield?

Mr. GOODLATTE. Yes, I would yield to the gentlelady from California.

Ms. LOFGREN. Just briefly. I thank the gentleman for yielding. I am glad that this is going to be addressed in the report. I think it is worth stating also that in the discussions that we had at a staff level, and Members as well, with the Justice Department and the White House, they made it very clear that they agreed with this, and this is not an argument. It is just a clarification, and I think that is important for the public to know, and I thank the gentleman for yielding.

Mr. GOODLATTE. The gentlewoman is correct. I am happy to yield to the gentleman from Texas, the Chairman of the Subcommittee.

Mr. SMITH. Thank you, Mr. Goodlatte. I do appreciate your consulting with me earlier about your amendments and the intent behind those amendments, and I just want to make clear that while I think report language is acceptable, I want to make sure that the report language does not in any way indicate that we are rolling back current law. I think you agree with that.

Mr. GOODLATTE. I do agree with that. We have no intention of rolling back current law. We simply want to make clear that when the law says you cannot get content without getting a court order, that that will apply to content on the Internet. We need to define that, because it is different than content when it comes to telephone calls.

Mr. BOUCHER. Would the gentleman yield?

Mr. GOODLATTE. I will yield to the gentleman from Virginia.

Mr. BOUCHER. I thank the gentleman very much for bringing this concern before the Committee today. I share the concern the gentleman has announced that the message line on e-mail and the Web pages within a given Web site should not be accessible to law enforcement simply through the very minimal standards that attach to the use of a pen registered device, and I think the gentleman has raised a very important concern, and I want to thank Chairman Sensenbrenner for agreeing to work with us as we address this concern between now and the time this measure reaches the floor.

Mr. GOODLATTE. I thank the Chairman also and yield back my time.

Chairman SENSENBRENNER. Are there amendments to title I?

The gentlewoman from California, Ms. Waters.

Ms. WATERS. I have an amendment at the desk and I move to——

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 2975, offered by Ms. Waters, Page 13, Line 23 in paren section 108, strike "without geographic limitation" and insert "in any district in which significant activities related to the terrorism may have occurred.".

Page 91, Line 2, section 351, insert significant before activities.

[The amendment follows:]

**AMENDMENT TO H.R. ____**

**OFFERED BY MS. WATERS**

Page 13, line 23 [section 108], strike ''without geographic limitation'' and insert ''in any district in which significant activities related to the terrorism may have occurred''.

Page 91, line 2 [section 351], insert ''significant'' before ''activities''.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. Let me make the observation before recognizing the gentlewoman that an amendment to section 351 is not in order, because that is the title III. Does the gentlewoman wish to modify her amendment to delete that part of it?

Ms. WATERS. Well, I thought, Mr. Chairman, that that part of it would be consistent with the Page 13, Line 23, section 108. I think if you did not amend both of them, you would have conflicting sections.

Chairman SENSENBRENNER. Without objection, the gentlewoman from California will be granted unanimous consent to amend both titles on this amendment. Hearing none, so ordered, and the gentlewoman is recognized for 5 minutes.

Ms. WATERS. Thank you very much. There are two provisions of H.R. 2975 that deal with nationwide service of search warrants. Section 108 of title I applies to electronic evidence and section 351 of title III deals with warrants and criminal procedure. As written, both sections would allow the government to apply for search warrants in any jurisdiction throughout the United States. This greatly expanded jurisdiction is not limited by requirement that there be a connection between the court and the place where the crime occurred. It would encourage the government to engage in forum shopping, applying for search warrants to judges that it knows will not give close scrutiny to the applications. It would also mean that the government can apply to courts and jurisdictions far from where the actual search occurs so that it becomes very difficult, if not impossible, for the person being searched to challenge the search.

I understand the government's interest in nationwide searches as a way to deal with the increasing use of electronic information. At the same time, we must be careful not to allow too much opportunity for forum shopping. My amendment would strike a balance between those two competing interests by requiring that warrants be issued in districts in which significant activities related to the terrorism may have occurred. The amendment would limit the ability of the government to forum shop, while still accommodating the government's need to obtain warrants quickly.

This is a minor but important technical change to H.R. 2975. I would urge your support of the amendment. I would think that my colleagues would not want significant activities to have occurred in California and the government go and shop to get a search warrant in Mississippi. It just doesn't make good sense. I would ask for an aye vote.

Chairman SENSENBRENNER. Will the gentlewoman yield back the balance of her time?

Ms. WATERS. I yield back the balance of my time.

Chairman SENSENBRENNER. I recognize myself for 5 minutes in opposition to the amendment. The current law creates unnecessary delays and burdens for the government in the investigation of terrorist activities and networks that span a number of districts, and should the amendment of the gentlewoman from California be adopted, there can be terrorist activity in a certain part of the country, a search warrant can be issued, and at the speed of light an e-mail can be sent to another part of the country and the government would then have to go into court and get another search

warrant in order to execute it. This could allow valuable evidence to slip through the fingers of the government, and a single nationwide search warrant would not allow that to happen. I believe that limiting search warrant applications in terrorism cases only to districts where there is significant terrorism activity will not solve the problem of unnecessary delays and burdens, since terrorism knows no boundaries and would not limit itself to any particular point in the country.

I would furthermore point out that one of the essential parts of the compromise that this bill represents is the 2-year sunset provision. If there are abuses such as those of the concern of the gentlewoman from California, this Committee will have an ample opportunity to review those abuses at the time there is legislation introduced to extend the sunset provision to some future date.

So for all of these reasons, I would urge the Committee to reject the amendment and yield back the balance of my time.

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. WATT. Mr. Chairman, may I make a parliamentary inquiry?

Chairman SENSENBRENNER. The gentleman will state his parliamentary inquiry.

Mr. WATT. Some of us are confused about which bill we are marking up, what we are using as the markup vehicle, because this——

Chairman SENSENBRENNER. It is the printed H.R. 2975, and unanimous consent was granted to consider this bill by title. So amendments to title I are in order at this time.

Mr. WATT. Is it this bill?

Chairman SENSENBRENNER. I believe so.

Mr. WATT. Because this—the amendments don't seem to correspond with this bill. I guess that is what is raising the—people seem to be working off of some—something other——

Mr. DELAHUNT. Would the gentleman yield?

Mr. WATT. Who am I yielding to?

Mr. DELAHUNT. Mr. Delahunt of Massachusetts.

Mr. WATT. Mr. Delahunt, yes.

Mr. DELAHUNT. I think the amendment really refers to—no. I am speaking to page 13. It should be page 14, line 2.

Mr. WATT. Well, not if you were using the other—some other draft that we received yesterday, I think is what everybody seems to be amending.

Chairman SENSENBRENNER. Well, I think we know where this amendment—this particular amendment fits in. Let me ask those who are planning to offer amendments to make sure that the page and line numbers are properly stated on the amendment so that everybody knows where it fits in in the bill.

Mr. NADLER. Would the gentleman yield?

Mr. WATT. I will yield to the gentleman if he allows me to.

Mr. NADLER. Mr. Chairman, I think there is a copy entitled H.R. "blank" to Sensenbrenner and Mr. Conyers, which is not the—with an October 2nd date on it, and I think that is what we are using—most of us are using to—for the purposes of amendment.

Ms. WATERS. If the gentleman will yield, I think that——

Chairman SENSENBRENNER. I am informed by my counsel that before there is a printed version, the legislative counsel was instructed to draft the sections in the Xerox version; and after the

printed version appeared on the scene, the alleged counsel was instructed to draft to that. So I guess it depends upon how early the amendments were drafted. Without objection, the page and line numbers are conformed on the gentlewoman from California's amendment to the printed version of the bill, and again the Chair would reiterate his request that those who are planning on offering amendments later on in the process make the page and line numbers refer to the printed version of today rather than the Xeroxed version of yesterday.

Mr. BERMAN. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from California, Mr. Berman, seek recognition?

Mr. BERMAN. I move to strike the last——

Chairman SENSENBRENNER. Well, there presently is the Waters amendment that is pending.

Mr. BERMAN. It is just—it is to strike the last word in order to——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BERMAN. The summary of 108 put out by the staff says that the court with the jurisdiction over the investigation, is the court to issue the warrant directly. That of course doesn't appear in the language in section 108, and I am wondering if staff can clarify if that is true, because if that is true then it wouldn't be forum shopping, because that would be the court that would have the ability to issue the warrant.

Chairman SENSENBRENNER. I believe that section 101 defines court of competent jurisdiction, and 108 references back to that.

Mr. BERMAN. All right. So that in 101——

Chairman SENSENBRENNER. Would the gentleman yield? The clarification of that will be in the manager's amendment that will be offered at the end of title I.

Mr. BERMAN. So that—you are telling me that on 108, to get this sort of national search warrant, you have to go to the court which has jurisdiction over the—where the investigation is——

Chairman SENSENBRENNER. The court with jurisdiction over the offense under investigation.

Mr. BERMAN. So at——

Ms. WATERS. Or.

Mr. BERMAN. Or what? I yield to the gentlelady from California for the "or.".

Ms. WATERS. Or the United States Court of Appeals having jurisdiction over the offense being investigated or——

Mr. BERMAN. I can't hear you. Tell us what line you are reading.

Ms. WATERS. All right. We are trying to find the right bill that we are working from. The section that you are referring to, Congressman Berman, states in a District Court of United States, including a magistrate——

Mr. BERMAN. Could you just tell us the page you are reading from?

Ms. WATERS. On page 7, line 14.

Mr. BERMAN. The court of competent jurisdiction. Okay.

Ms. WATERS. In a District Court of the United States, including a magistrate judge of such a court or any United States Court of Appeals having jurisdiction over the offense being investigated or.

Mr. BERMAN. Well, then, all right. That is very different language than the summary, which talks about it——

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. BERMAN. All right. But that is the—in other words, the "or" doesn't refer to other jurisdictions. The "or" refers to——

Ms. WATERS. What does it refer to?

Mr. BERMAN. A pen register. In other words—right.

Ms. WATERS. What does "or" refer to, somebody?

Mr. BERMAN. Here are the different courts of competent jurisdiction. For a pen register——

Mr. FRANK. Would the gentleman yield?

Mr. BERMAN. Yeah. The question really is, is what comes after the "or" in the original——

Mr. FRANK. If the gentleman would yield, the "or" is in the original statute. That then would be picking up most of the original statute. So somebody would have to go to the code, but the "or" would refer to whatever is in the existing statute the way that is written.

Mr. BERMAN. I mean, if the intention here is to limit the ability to grant this national warrant to the place where the district——

Ms. WATERS. Significant activity.

Mr. BERMAN.—or the Court of Appeals has jurisdiction over the offense being investigated, then it is—it does deal with the issue of the forum shopping, and the concern that causes this amendment to rise. Is it the intention in proposing this to have that be the place where they have to go?

Mr. DELAHUNT. Would the gentleman yield?

Chairman SENSENBRENNER. If the gentleman would yield, this restricts forum shopping. The "or" is existing statute. The new language for the nationwide search warrant is the court of competent jurisdiction in the district or, in the case of Court of Appeals, in the circuit where the offense being investigated has arisen.

Ms. WATERS. Go ahead.

Mr. DELAHUNT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose, the gentleman from Massachusetts?

Mr. DELAHUNT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I just want to be clear, because I think that the gentlelady has a point, and if I may, I am going to try to summarize what I think her concern is in terms of the forum shopping, but, however, the intention—and maybe it is not adequately expressed in the Committee bill in terms of the—as she describes it, forum shopping. I think it is the intention of the Committee and the legislative intent here is the court of jurisdiction where the offense is committed would be the court where the application for the nationwide search warrant would be applied for.

Ms. WATERS. That is right.

Mr. DELAHUNT. If I am correct, I believe it is the position of the Chair that that is consistent with his understanding of the Committee's proposal and that it would be taken care of. The language would be taken care of in a manager's amendment.

Ms. WATERS. Would the gentleman yield?

Mr. DELAHUNT. I will yield to the gentlelady.

Ms. WATERS. First of all, let us make it very clear, even though I don't like the idea of being able to get these search warrants attached to the person and, you know, all over the United States, et cetera, or all over wherever. This amendment is simply trying to say that you must get the search warrant in the jurisdiction where the significant activity took place. Now, you can take that search warrant and go all over the United States with it, but you have to get it in the correct jurisdiction, and I don't think there is any language in this bill that ties it down. This allows for forum shopping where you could get the search warrant any place, and the person who would want to contest it may have to travel a long distance to contest it. I mean, I just think that we can perfect the language——

Mr. DELAHUNT. I think it is the intention here that the government is seeking to stay in one place, if you will, where the offense allegedly occurred rather than doing exactly what you are saying, traveling all over the country because of the speed with which these terrorist groups now operate. So, in other words, if an offense was committed in Los Angeles, that the Federal District Court in Los Angeles would provide the venue for an application for a search warrant.

Ms. WATERS. Right.

Mr. DELAHUNT. That search warrant, once approved, could be executed in New York or Boston or anywhere. Is that what the gentlelady——

Ms. WATERS. That is absolutely true. That is exactly what we are trying to do. If you are suggesting that that is what the bill intends to do and if you are suggesting for the Chair that they will clean it up in the manager's amendment, then the job is done.

Mr. DELAHUNT. I ask the Chair if that——

Mr. SCOTT. Would the gentleman yield?

Mr. DELAHUNT. I will yield to the gentleman, but first the gentleman from California, Mr. Berman.

Mr. BERMAN. I think the Chairman, by his representation, made it clear that it is—you go to the court—the District Court or the Court of Appeals which has jurisdiction over the offense being investigated. That is where you have to go. Because I think the two issues you have raised,

Ms. Waters, are both right. The notion of forum shopping and then the question of the attack. But as I understand it practically speaking, you attack a search warrant in the context of a trial where the evidence is seized in that search and you are still able to do that wherever that trial takes place. So there you don't have to go back to the original court which issued the search warrant. You go to the court where the prosecution is underway and you seek to throw out the evidence gathered in the search warrant, and you can attack the validity of the search warrant at that time. So I think in a way both of your concerns are quite legitimate, but both are answered by the definition of the court of competent jurisdiction.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Massachusetts.

Mr. FRANK. Mr. Chairman, and let me further respond to the legitimate concerns——

Chairman SENSENBRENNER. Does the gentleman from Massachusetts seek his own time?

Mr. FRANK. Yes, I do.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. Thank you, Mr. Chairman. The gentleman asked what came after the "or." I think one of the things we are going to need to do is keep the relevant volumes of the code on, because what comes after the "or" is what is already in the code. It isn't amended. And the fear I think was, well, "or" what? And here is what the "or what." the "or" actually—what we are amending is the Federal jurisdiction. The "or" is the State jurisdiction and here is what comes after the "or." it is 3127(2)(B). The "or" is a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register, et cetera. And that is not being amended.

So that is the answer. We are amending in here the Federal jurisdiction, and we are leaving the current statute with regard to State jurisdiction unchanged.

Chairman SENSENBRENNER. If the gentleman will yield.

Mr. FRANK. Yes.

Chairman SENSENBRENNER. We are drafting an addition to the manager's amendment that I think hits this point. It is presently being Xeroxed off, so I would like to ask the forbearance of the Committee. Perhaps if the gentlewoman would withdraw her amendment without prejudice to reoffering it if she doesn't like what is in the manager's amendment.

Ms. WATERS. I have no problems with that, Mr. Chairman. Okay.

Mr. FRANK. Mr. Chairman—I am sorry. I will yield to the gentlewoman.

Ms. WATERS. If what you are suggesting to me is that we both understand what we are trying to do and that you are not opposed to it—I am certainly not trying to do anything other than get it in the proper jurisdiction of significant activity—then I have no problems with withdrawing it and having you work on it and clean it up.

Chairman SENSENBRENNER. The amendment is withdrawn, at least temporarily. Are there further amendments?

Mr. FRANK. Mr. Chairman, I just wanted to finish. I would hope we would have volumes of the code on, because there will be other dangling prepositions that——

Chairman SENSENBRENNER. Will the staff bring volumes of the code and a thesaurus on dangling prepositions?

Are there further amendments?

Mr. SCHIFF. Would the Chairman yield on that last point?

Chairman SENSENBRENNER. The gentleman from California.

Mr. SCHIFF. Thank you, Mr. Chairman. I move to strike the last word.

Chairman Sensenbrenner. The gentleman is recognized

for——

Mr. SCHIFF. The only precaution that I would offer in the redrafting, to address the gentlelady's concerns, is that while we all have the events of September 11th very much in mind, that may not be

the archetype investigation. There may not always be a clear court of jurisdiction over the offense. There may be in fact many courts of jurisdiction. If, for example, you are investigating a conspiracy to commit a terrorist act which has not yet taken place, the conspiracy is an offense but you cannot necessarily say that a conspiracy between terrorists operating in Canada, in Boston, in New York and in Dallas has a nexus in only one jurisdiction. And so we don't want to draft the language to preclude law enforcement going to an appropriate court and getting jurisdiction going after the genesis of a terrorist case.

Chairman SENSENBRENNER. If the gentleman will yield, I think the gentleman has correctly stated what is in this bill, is that it could be any court where there is terrorist activity. An offense can occur in many jurisdictions, but if it is running investigations.

Mr. SCOTT. Would the gentleman yield?

Mr. SCHIFF. Yes.

Chairman SENSENBRENNER. The time belongs to the gentleman from California.

Mr. SCOTT. Sometimes we make a differentiation between venue and jurisdiction. The court can have jurisdiction but it may not be the right venue. Some of these crimes are not multijurisdictional. Most of it is in one place, and what the gentlelady from California is saying, that if you are going to pick a judge, you ought to have the judge—ought to have some connection to the crime, that you couldn't have one judge in Oklahoma issuing all the search warrants for the country. If the crime has been committed in California, you ought to go to a California judge. If it has been done in California, New York, Illinois, you can go to any of the judges and they can issue all the warrants for the case. But the judge ought to have some connection to the crime.

Chairman SENSENBRENNER. If the gentleman would yield, I think the change to the manager's amendment addresses these concerns. If we can go on to something else and then come back to this when everybody sees what the language that is being proposed will do, I think we can expedite the business of the Committee.

Are there further amendments?

Ms. WATERS. Would the gentleman yield? Will you yield, please, sir, before you move off of this point?

Chairman SENSENBRENNER. Well, the time belongs to the gentleman from Virginia.

Ms. WATERS. Who has the time?

Chairman SENSENBRENNER. Excuse me. The gentleman from Massachusetts, Mr. Frank, has the time.

Mr. FRANK. I have an amendment, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Massachusetts has an amendment at the desk. The Clerk will report the amendment.

Mr. FRANK. There is a pencilled change in the one that—have you got the one with the pencil change that says title I?

The CLERK. No, sir.

Chairman SENSENBRENNER. Without objection, the amendment will be designated as an amendment to title I. It was drafted as an amendment to various statutory sections, all of which are in the Criminal Code.

Mr. FRANK. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, so ordered. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 2975——

Mr. FRANK. I would ask that it be considered as read, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, so ordered. And the gentleman from Massachusetts is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT BY MR. FRANK

To provide increased civil liability for unlawful disclosures of information obtained by wiretap, access to electronically-stored communications, pen register and trap and trace, and FISA intelligence outside of criminal investigations or intelligence gathering; to provide administrative discipline for intentional violations; to provide procedures for actions against the United States; and other purposes.

TITLE I

An amendment to ~~Section 310~~ of the Patriot Act of 2001:

~~Strike Section 310 and~~ Insert the following as Section 161; on p. 31

[Chapter 119 of Title 18 -- WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS]

1. Redesignate 18 U.S.C § 2520(c)(2) as 18 U.S.C § 2520(c)(3).

2. Add (c)(2) to 18 U.S.C § 2520 as follows:

**(c)(2) In an action under this section by a citizen or long-term permanent resident of the United States of America against the United States or any Federal investigative or law enforcement officer (or against any state investigative or law enforcement officer for disclosure or unlawful use of information obtained from Federal investigative or law enforcement officers), the court may assess as damages whichever is the greater of --**

**(A) the sum of actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or**

**(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.**

3. Add (f) to 18 U.S.C § 2520 as follows:

**(f) IMPROPER DISCLOSURE IS VIOLATION. -- Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by Section 2517 is a violation of this chapter for purposes of Section 2520(a).**

4. Add (g) to 18 U.S.C § 2520 as follows:

**(g) ADMINISTRATIVE DISCIPLINE. -- If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.**

5. Add (h) to 18 U.S.C § 2520 as follows:
**(h) ACTIONS AGAINST THE UNITED STATES. -- Any action against the United States of America shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States of America shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.**

[CHAPTER 121 of Title 18 -- STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS]

6. Redesignate subsection (c) of 18 U.S.C § 2707 as (c)(1). Strike "$1,000" and insert "$10,000".

7. Add subsection (c)(2) to 18 U.S.C § 2707 as follows:
**(c)(2) In an action under this section by a citizen or long-term permanent resident of the United States of America against the United States or any Federal investigative or law enforcement officer (or against any state investigative or law enforcement officer for disclosure or unlawful use of information obtained from Federal investigative or law enforcement officers), the court may assess as damages whichever is the greater of --**
**(A) the sum of actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or**
**(B) statutory damages of $10,000.**

8. Add (f) to 18 U.S.C § 2707 as follows:
**(f) IMPROPER DISCLOSURE IS VIOLATION. -- Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of Section 2707(a).**

9. Add (g) to 18 U.S.C § 2707 as follows:
**(g) ADMINISTRATIVE DISCIPLINE. -- If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.**

10. Add (h) to 18 U.S.C § 2707 as follows:
**(h) ACTIONS AGAINST THE UNITED STATES. -- Any action against the United States of America shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States of America shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was**

**responsible for the violation.**

[Chapter 206 of Title 18 -- PEN REGISTERS AND TRAP AND TRACE DEVICES]

11. Add 18 U.S.C. § 3128(a), (b), (c) as follows:
**(a) CAUSE OF ACTION. -- Except as provided in section 3124(d), any person aggrieved by any violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.**

**(b) RELIEF.-- In any action under this section, appropriate relief includes--**
**(1) such preliminary and other equitable or declaratory relief as may be appropriate;**
**(2) damages under subsection (c) and punitive damages in appropriate cases; and**
**(3) a reasonable attorney's fee and other litigation costs reasonably incurred.**

**(c) DAMAGES. -- In any action under this section, the court may assess as damages whichever is the greater of--**
**(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or**
**(B) statutory damages of $10,000.**

12. Redesignate 18 U.S.C. § 3124(e) [DEFENSE] as 18 U.S.C. § 3128(d). Redesignate 18 U.S.C. § 3124(f) as 18 U.S.C. § 3124(e).

13. Add 18 U.S.C. § 3128(e), (f), (g), (h) as follows:
**(e) LIMITATION. -- A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.**

**(f) IMPROPER DISCLOSURE IS VIOLATION. -- Any disclosure or use by an investigative or law enforcement officer of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of Section 3128(a).**

**(g) ADMINISTRATIVE DISCIPLINE. -- If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.**

**(h) ACTIONS AGAINST THE UNITED STATES. -- Any action against the United States of America shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States of America shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.**

[CHAPTER 36 of Title 50 -- FOREIGN INTELLIGENCE SURVEILLANCE]

14. Modify 50 U.S.C. § 1810 by redesignating section as § 1810(1) and adding "or entity" following "cause of action against any person"

15. Modify 50 U.S.C. § 1810(1) (a) by striking "$1,000" and inserting $10,000".

16. Add 50 U.S.C. §1810 (2), (3), (4) as follows:
**(2) LIMITATION. -- A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.**

**(3) ADMINISTRATIVE DISCIPLINE. -- If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.**

**(4) ACTIONS AGAINST THE UNITED STATES. -- Any action against the United States of America shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States of America shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.**

17. Modify 50 U.S.C. § 1828 by redesignating section as § 1828(a) and adding "or entity" following "cause of action against any person"

18. Modify 50 U.S.C. § 1828 (a)(1) by striking "$1,000" and inserting $10,000".

19. Add 50 U.S.C. § 1828 (b), (c), (d) as follows:
**(b) LIMITATION. -- A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.**

**(c) ADMINISTRATIVE DISCIPLINE. -- If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.**

**(d) ACTIONS AGAINST THE UNITED STATES. -- Any action against the United States of America shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States of America shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.**

20. Add 50 U.S.C § 1847 as follows:

**(a) Prohibited activities**
**A person is guilty of an offense if he intentionally--**
**(1) installs or uses a pen register or trap and trace device under color of law except as authorized by statute; or**
**(2) discloses or uses information obtained under color of law by using a pen register or trap and trace device, knowing or having reason to know that the information was obtained through using a pen register or trap and trace device not authorized by statute.**

**(b) Defense**
**It is a defense to a prosecution under subsection (a) of this section that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the pen register or trap and trace device was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.**

**(c) Penalties**
**An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.**

**(d) Federal jurisdiction**
**There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.**

21. Add 50 U.S.C § 1848 as follows:

**(a) An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801(a) or (b)(1)(A) of this title, respectively, who has been subjected to a pen register or trap and trace device or about whom information obtained by a pen register or trap and trace device has been disclosed or used in violation of section 1847 of this title shall have a cause of action against any person or entity who committed such violation and shall be entitled to recover--**
**(1) actual damages, but not less than liquidated damages of $10,000, whichever is greater;**
**(2) punitive damages; and**
**(3) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.**

**(b) LIMITATION. -- A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.**

**(c) ADMINISTRATIVE DISCIPLINE. -- If a court determines that the United States or any agency or bureau thereof has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee thereof acted willfully or intentionally with respect to the violation, the agency or bureau shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation. In such case, if the head of the agency or bureau determines discipline is not appropriate, he or she shall report his or her conclusions and the reasons therefor to the Deputy Inspector General for Civil Rights, Civil Liberties, and the Federal Bureau of Investigation.**

**(d) ACTIONS AGAINST THE UNITED STATES. -- Any action against the United States of America shall be conducted under the procedures of the Federal Tort Claims Act. Any award against the United States of America shall be deducted from the budget of the appropriate agency or bureau employing or managing the officer or employee who was responsible for the violation.**

Mr. FRANK. Mr. Chairman, we have had some conversations about this and it is a subject I have talked about considerably. We will be in this bill enhancing surveillance authority. People are nervous about that. I am a supporter of enhanced surveillance authority properly used. Indeed, much of this bill is going to be an effort to give authority and then have safeguards to prevent abuses. I was struck this morning at a hearing in the Financial Services Committee when the Secretary of Treasury was asked what he thought about a money laundering bill sponsored by Mr. LaFalce and Senator Kerry. He said I am for it as soon as you put in the right due process provisions, and I think that is what we are trying to appropriately do here.

What this amendment does is to build on existing statutes, which give a remedy to an individual who has been the subject of surveillance and then has had that information inappropriately leaked. Obviously that information is to be used in intelligence. It is to be used in criminal proceedings. The statute authorizes uses. My amendment would not change or diminish in any way the authorized uses.

The current statute, as it has been pointed out by the Justice Department, also does allow you to sue if some of your information is released but not others. We gather information in various ways. There has also been some ambiguity indeed about whether or not someone whom that information has been appropriately released; i.e., outside the statutory scheme, can sue the government. Most of the courts have said yes. It has to do with an interpretation of the word "entity." I think we want to clear that up. We also want to make it explicit that inappropriate disclosure is a violation, not a criminal violation here but a civil violation.

Mr. FRANK. So what the amendment does is as follows: First, it says that wherever we gather information, whether it is pen register, trace and trap or wiretap or whatever, wiretap under one statute, wiretap under FISA, if information gained during the surveillance is inappropriately released, if it winds up on the White House desk and somebody leaks it, if J. Edgar Hoover tells bad stories about you, then you have a right to go in under the Federal Tort Claims Act as the aggrieved party and sue. If you can prove your case—and the statute has a minimum of statutory damages. It has been 1,000. This would raise it to 10,000, not a huge amount, but enough to make sure that it is worthwhile.

It also then says that if someone goes in and wins the lawsuit against the government, because surveilled information has been inappropriately leaked, the head of that bureau or agency either must initiate disciplinary proceedings against the leaker or explain in writing to the newly created Assistant Inspector General for Civil Liberties why that wasn't done. There is no perfect way, but I am trying to increase the negative incentive for this kind of leaking. We have had situations in the past—and by the way, when we think about it, that is what most people are afraid of was surveillance. In fact, if you are surveilled and nothing criminal comes out or nothing that leads you to law enforcement difficulty and the information is then appropriately totally kept secret, you are probably not going to be too upset.

The problem comes when the human beings, often politically motivated by either party who are in charge, will in some cases use this and will use embarrassing information. Embarrassing information was released about Martin Luther King.

Let me say, Mr. Chairman, if there is in fact anybody who could be totally surveilled and not be embarrassed by some of the information released, that person has my sympathy. That kind of is a dull life to live. I would think any of us would not want to say, hey, nothing about me could ever be released to my embarrassment. This is a way I think to reassure people about the surveillance. It is not perfect, but it does build on a basic scheme.

I yield to the Chairman.

Chairman SENSENBRENNER. We are prepared to accept this amendment. I think the gentleman's points are very well taken,

and maybe there ought to be quantified damages for embarrassment due to these leaks.

Mr. CONYERS. I thank the gentleman for the yielding and I would not want to disparage those who may be more virtuous than some of us on the Committee. But are lawyers compensated for this proposal, Mr. Frank?

Mr. FRANK. Yes, if you win. Also the damages, the 10,000 is a statutory minimum, if in fact you can show under the Federal Tort Claims Act, you can show other damages. Remember, under the Federal Tort Claims Act, punitive damages are not allowed because by definition, the Federal Government is never bad. But actual damages, if you were otherwise hurt, those would be allowed under the Federal Tort Claims Act.

Mr. NADLER. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired. Question is on the floor. Gentleman from New York, Mr. Nadler is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. I am glad to hear that this amendment is being accepted. I just have a question about it, Mr. Frank. You say in the first line of the amendment and actually under the section, "by a citizen or long term permanent citizen." what does long term mean?

Mr. FRANK. It is supposed to be legal. I would ask unanimous consent that somebody misinterpreted LPR, "legal permanent resident," not "long term.".

Chairman SENSENBRENNER. Without objection, the amendment is so modified.

Mr. NADLER. One other modification. I think you mean that the parentheses in that same section should be, "or against any State investigative or law enforcement officer," and the parentheses should be closed there.

Mr. FRANK. Yes. I ask unanimous consent to correct my parentheses.

Chairman SENSENBRENNER. Without objection, the second modification is agreed to. The question is on——

Ms. LOFGREN. Mr. Chairman, I have a question. I would move to strike the last word.

Chairman SENSENBRENNER. The time belongs to the gentleman from New York, Mr. Nadler.

Mr. NADLER. I yield.

Ms. LOFGREN. The question is this. If you are a permanent resident of the United States and you are identified in the media as the perpetrator of a violent terrorist act and you decide to sue under the statute—you believe it has been leaked—is there a procedure under the Federal Tort Claims Act that mirrors that which exists under the criminal law where the—if the defense involved disclosure of national security information, that that procedure could be done in camera?

Mr. FRANK. If the gentleman from New York would yield. I assume that would be information that was gathered under FISA and still be covered by FISA. I would make that explicit.

Ms. LOFGREN. In the amendment it says it shall be governed under the Federal Tort Claims Act—the procedures will all be under the Federal Tort Claims Act.

Mr. FRANK. I apologize. It was certainly my intention that anything gathered under FISA would be covered by all of the FISA rules. And I would ask unanimous consent that when we got to corrective changes, that we make that change.

Ms. LOFGREN. Thank you very much, and I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Massachusetts, Mr. Frank. Those in favor will signify by saying aye. Opposed no. The ayes appear to have it. The ayes have it and the amendment is agreed to.

Are there further amendments? The gentleman from California, Mr. Berman.

Mr. BERMAN. Mr. Chairman, I have an amendment, which is at the desk—I have several. This one is to make consistent the standards for disclosure of foreign intelligence information.

Chairman SENSENBRENNER. Clerk will report the amendment.

The CLERK. Amendment to H.R. 2975 offered by Mr. Berman, to make consistent the standards for disclosure of foreign intelligence information. A——

Mr. BERMAN. I ask unanimous consent.

Chairman SENSENBRENNER. If we can wait until the amendments are distributed.

The CLERK.—of the bill on page 10. On line 1, insert the following after parens—quotation, information, end quote, inside parentheses as defined in 50 U.S.——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and open for amendment at any point. The gentleman from California is recognized for 5 minutes.

[The amendment follows:]

**AMENDMENT TO H.R. 2975**
**OFFERED BY MR. BERMAN**

To make consistent the standards for disclosure of foreign intelligence information.

a) In section 103 of the bill, on page 10,

On line 1, insert the following after "information" inside parentheses:
"as defined in 50 U.S.C. 1801(e)",

On line 3, insert "or" before "immigration" and insert the following after "personnel":
"who are personally and directly engaged in the response to or investigation of terrorist incidents, threats, or activities"

b) At the end of section 103 of the bill, add the following:

"Section 2517(1) of Title 18, United States Code, is amended by inserting at the end,
'Any disclosure of foreign intelligence information pursuant to 2510(7) shall require court approval, and such information, if ordered disclosed by a court, shall be marked as required by this section.'"

c) In section 154 of the bill,

On page 23, line 23, strike the following:
"Not withstanding any other provision of law,"

On page 23, line 24, insert the following after "information":
"as defined in 50 U.S.C. 1801(e)"

On page 24, line 4, insert the following after "personnel":
"who are personally and directly engaged in the response to or investigation of terrorist incidents, threats, or activities"

d) In section 353 of the bill,

On page 92, line 3, insert "or" before "immigration" and insert the following after "personnel":
"who are personally and directly engaged in the response to or investigation of terrorist incidents, threats, or activities"

Mr. BERMAN. Thank you, Mr. Chairman. First, I do want to say how much I appreciate the efforts you and the Ranking Member and the Committee staff have made since this proposal first came over from the Justice Department and since the Committee hearing last week to make this a piece of legislation that I believe will be supported by most, if not all, both sides of the aisle. I am cosponsor of the bill and I intend to vote for it. But I do think there are still some issues that need to be fixed and this is one of them.

Very appropriately, the Justice Department has asked for the ability to allow information discovered in the context of a criminal investigation, whether it is a—through a grand jury testimony in a proceeding, whether it is through a regular criminal investigation, whether it is through an electronic wiretap or electronic surveillance or whether it is tax information to be shared where you are dealing with foreign intelligence information, to share that with the agencies involved in gathering, disseminating and acting on foreign intelligence information.

There is—particularly now and perhaps before, there is a compelling case for allowing that kind of information sharing. The proposal that was originally submitted I think was—in several respects was too loose. It allowed information sharing with any government employee and without any limits as to the purpose. The version now before us has made some significant changes. If it is grand jury information that is going to be shared, this has to be done through a court order. I don't think one needs a court order in the context of either the regular criminal investigation or in the context of the sharing of tax information. But I do think the bill is deficient in that where you are going with a Title III wiretap and information sharing under that electronic surveillance that the court that supervised and made the decision to grant permission for the electronic surveillance should be considered before the information is shared.

So one part of this amendment requires the court to intervene in that process. The second effort is to try and put some greater limit on the people who can get this foreign intelligence information. And we have taken language that was used by the Ways and Means Committee in limiting who can see this. The legislation now before us by virtue of the Chairman and the Ranking Member's efforts limits this information to people in the Department of Defense, the CIA, the Department of State, other protected agencies, including the Secret Service. I think that is the basic group of agencies that are allowed to see this, to people in their official performance of their official duties.

I agree with the limitation on the agencies, but I believe the limitation to people in the performance of their official duties is very vague and unclear and at least in theory could allow huge numbers of people in those agencies who have no business seeing this foreign intelligence information, allow them to get this information even though there is no relevance to anything that they are particularly doing. And I have substituted some different language used on the tax information that would limit the information from a grand jury, from a court ordered electronic surveillance or for a general criminal investigation. I understand there are concerns about that language, and perhaps we can have a colloquy on that.

The other two amendments I understand are acceptable to Chairman Sensenbrenner. One defines foreign intelligence information in the fashion in which it is defined in the Foreign Intelligence Surveillance Act, FISA. It picks up that definition and with respect to all of these floor information sharing provisions. And finally, it removes the provision under criminal investigations for notwithstanding any other provision of law which negates the obligations and limitations both for grand jury information sharing and electronic—court ordered electronic surveillance information sharing.

So we have tried to put all of these into one amendment and I am prepared to make—when I get a sense from the Chairman of his reaction to this amendment, I am prepared to seek unanimous consent to scale back this amendment.

Chairman SENSENBRENNER. The gentleman's time has expired. The Chair will recognize himself for 5 minutes and not take all of the time. I believe that the material on the gentleman's amendment, line 1 of section 103 and on page 23, lines 23 and 24 of section 154, is very meritorious, and I would hope that that would be split out of the rest of the amendment and be adopted.

The material on line 3 of section 103, at the end of section 103, the material that is added on page 24, line 4 and on page 92, line 3, I think needs a little bit more work, and I would pledge to work with the gentleman from California between now and the time this bill comes to the floor or in conference Committee to be able to attempt to fine-tune these items. I think the gentleman is going in the right direction.

Three of the points I think were across the goal line and the other ones I think we are getting there.

Mr. BERMAN. In that case, Mr. Chairman, with the understanding that we don't have any kind of agreement on this issue, I still would like to understand why it is not appropriate to seek a court order from the court that allowed the electronic surveillance for purposes of title III criminal investigations before you shared. Understanding that is something we will have to discuss further and accepting very much your indication of the willingness to try and more clearly limit the number of people in these agencies who will get this foreign intelligence information and that we will work on language between now and the Rules Committee, I would ask unanimous consent to——

Mr. CONYERS. Would the gentleman yield? Is it your intention, Mr. Berman, to modify your amendment here and move on with that part that might win the approval of the majority of the Committee or to shove the entire matter to work on it under the Sensenbrenner promise?

Mr. BERMAN. I don't want to test what part would win the majority of the Committee. And therefore I was going to take the guidance from the Chairman and simply scale back my amendment to include the—tying the definition under FISA and the removal of the language, notwithstanding any other provision of law, and leave the amendment with those provisions in and strike the other provisions and work out the limitation on people who get the information between now and the Rules Committee.

Mr. CONYERS. I hold my high compliment and praise for you until that takes place.

Chairman SENSENBRENNER. Just so that we are clear on what is agreed to and what is on the table for further discussion, without objection, the amendment is modified to include the language in section 103 on page 10, line 1. The language in section 154 of the bill on page 23, lines 23 and 24 and the rest of what is in the amendment will be deleted. Under that understanding, without objection, the amendment is so modified. The question is asked——

Ms. LOFGREN. Mr. Chairman.

Chairman SENSENBRENNER. Gentlewoman from California.

Ms. LOFGREN. I do have a concern and perhaps it could be alleviated through the discussion and reflection in the Committee report. But taking a look at the limitations in the immigration area where people would be responding to terrorist incidents, threats or activities, generally that is not a task of the Immigration Service. I can foresee, although a completely made-up hypothetical, let us say that we through intelligence sources find out that a particular country has—there has been birth record fraud and that was found through FISA means. But the promulgator of the student visa regulations needs to have an understanding of what is occurring in order to draft these regulations so that the fraud from that particular country is—gets, say, for example, special scrutiny or biometrics or something of that nature. I just think that—I agree with the gentleman's desire to limit this to people whose business it is to know about it, but I am fearful that the language in here may be too restrictive. And I am wondering if we could—I don't mind doing it today, but between now and the floor, work through and invite the Justice Department as well to come up with some further——

Mr. BERMAN. Will the gentlelady yield?

Ms. LOFGREN. Yes.

Mr. BERMAN. That is exactly the point I think the Chairman perhaps was making and, based on his recognition that the present bill doesn't adequately limit the number of people and that perhaps my proposal limits it too much, we are going to try and find an acceptable middle ground here.

Ms. LOFGREN. But we are going to vote on this right now?

Mr. BERMAN. No. I have withdrawn that part from the amendment.

Mr. DELAHUNT. Would the gentlelady yield?

Ms. LOFGREN. I will yield.

Mr. DELAHUNT. I suggest maybe that Mr. Berman and the Chair and appropriate staffs could work out language which would provide for special designations in terms of the officials who would have—would be privy to this particular information. I am sure there are ways to work it out, and I am confident.

Mr. BERMAN. I do think that is one way to skin this cat. You authorize each agency to develop a list of people appropriate or positions appropriate to receive this information.

Ms. LOFGREN. I thank the Chairman, and I think I had misunderstood which was coming in and which was going out, and I yield back.

Chairman SENSENBRENNER. The question is on the Berman amendment, as modified. Those in favor will signify by saying aye. Opposed, no. The ayes appear to have it. The ayes have it, and the amendment as modified is agreed to.

Are there further amendments? Gentleman from Michigan.

Mr. CONYERS. Might I strike the last word only to remind the Chair and the membership that at 4:00 o'clock we had a briefing classified with the Joint Chiefs of Staff, the State Department and the Defense Department, and a number of Members have indicated that they thought it in their interest to attend such a meeting. I offer this reluctantly because we are going at a nice clip, but at the same time we are under a—I don't think that these members of the executive branch have summoned us through our leadership to the

floor for a secret briefing for nothing, and I think that it may be more appropriate that we retire with the agreement and understanding that we will return as soon as that briefing is over.

Chairman SENSENBRENNER. The Chair announced at the beginning of this markup at 2:00 o'clock that it is important for preserving the jurisdiction of this Committee that this Committee report this bill out today so that the Committee report can be filed no later than Monday. It is the intention of the leadership to bring this bill up on the floor next week. We have a number of amendments that are left to be debated. I do not wish to keep Members of the Committee here until late at night.

At the time this markup was scheduled, the secret briefing had not been noticed. That happened earlier today. With all due respect, all of us have got conflicts on our time, and I believe that it is important that this Committee continue on with its markup.

Mr. CONYERS. May I point out, Mr. Chairman, that it was our leadership that scheduled the secret meeting. It wasn't the Committee, and I am sure that they had under contemplation that this Committee would be meeting at this time. That was also scheduled. So would it be too much to observe that the leadership apparently had taken that into consideration?

Chairman SENSENBRENNER. If the gentleman will yield, I don't believe that they did that, and the leadership has told me that we have to get this bill out today. This is particularly important, since I understand the mysterious terrorism bill might be on the full Senate floor tomorrow.

Mr. CHABOT. Would the gentleman yield?

Chairman SENSENBRENNER. I yield to the gentleman from Ohio.

Mr. CHABOT. I share some of the concerns with the gentleman from Michigan and could we perhaps hold votes or roll votes until after the hearing is over. That might be some middle ground that might make some sense.

Chairman SENSENBRENNER. The gentlelady from Texas.

Ms. JACKSON LEE. Mr. Chairman, I can't thank you enough for the persistence you have given to this bill and the bipartisan negotiations that have taken place. I would only suggest that a meeting called of this level warrants the full participation of the Members here, whether there can be a compromise that Members are able to go over for 30 minutes from 4:00 to 4:30 to hear whatever the presentations are——

Chairman SENSENBRENNER. Without objection, the Committee is recessed until 4:30. And again, we are going to finish this bill tonight.

Mr. CONYERS. May I thank the Chair for his indulgence.

[recess.]

Chairman SENSENBRENNER. I ask that a dragnet be set out into both conference rooms and ask the Members to return and so as not to prejudice anybody, it is my intention while people are coming back from the briefing to take up the two noncontroversial bills and dispose of them and then go back to the terrorism bill.

We will now return to the antiterrorism bill. When the Committee recessed, title I was considered as read and open for amendment at any point.

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts, Mr. Delahunt, seek recognition?

Mr. DELAHUNT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 2975, offered by Mr. Delahunt.

Mr. DELAHUNT. I ask unanimous consent that it be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

The gentleman is recognized for 5 minutes.

[The amendment follows:]

## AMENDMENT TO H.R. 2975

## OFFERED BY MR. DELAHUNT

Page 23, strike lines 17 through 20 and insert the following:

Sections 105(e)(2) and 304(d)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(e)(2), 1824(d)(2)) are each amended by inserting after ''except that'' the following: ''(A) in the case of an application for an extension, the certification required for the application shall state that a significant purpose of the surveillance is to obtain foreign intelligence information; and (B)''.

Mr. DELAHUNT. Thank you, Mr. Chairman. I intend to withdraw this amendment in recognition of the effort in terms of the consensus that has been developed between yourself and the Ranking Member and Members of the Committee to report out a bill that reflects a thoughtful consensus. Before I describe the amendment, however, which as I said I won't press, but I think it is important to raise a concern that I have and I know that others share.

Let me commend you, Mr. Chairman, and the Ranking Member for having followed regular order. We have had time to deliberate, to review, to assimilate and analyze, and as a result, we have a vastly improved product that was presented to us 2 weeks ago. I think this happens to be a very good moment in the history of this particular Committee and a good moment for the Nation, because clearly this is a far superior product than what was initially presented.

The amendment would modify section 153 of the bill to retain the current primary purpose standard for initial applications for electronic surveillance and physical search orders under FISA, the Foreign Intelligence Surveillance Act. But it would permit extensions of those orders to meet the lower significant purpose standard currently in—or in the bill that is before us now.

The FISA statute sets up a special judicial regime for considering surveillance and search recourse in the foreign intelligence context. Current law requires the Attorney General or certain other high officials to certify that the purpose of the wiretap or search is to obtain foreign intelligence information.

Now, this requirement has been interpreted by a court decision to mean that foreign intelligence gathering must be the primary purpose of the application, although that phrase does not occur in the statute. The proponents of the weaker significant purpose standard argue that the change is needed to enable Federal authorities to share foreign intelligence information with criminal investigators in complex terrorism cases without having to go back and get a so-called title III order, which has different standards, and it is reflective of what occurs in a traditional criminal investigation by Federal law enforcement agencies.

Now, civil liberties advocates argue, and appropriately so, that the weakest standard will enable the Federal authorities to obtain a FISA order where foreign intelligence gathering is not their real purpose, thus invading the probable cause requirements under title III. This amendment is an attempt to strike a balance, and I would hope that Members of the Committee would consider it as the legislation moves forward between those two competing concerns.

It would help allay fears of abuse by requiring that the initial application meet the current threshold, the primary purpose standard. But once the FISA court has made the determination that the applicants are engaged in legitimate bona fide intelligence gathering evidence, the amendment would remove the current disincentive to information sharing by authorizing the certifying authorities to meet the low standard that is embraced in this bill.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. DELAHUNT. Would you give me some additional time, max?

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts.

Mr. FRANK. I yield to my colleague from Massachusetts.

Chairman SENSENBRENNER. The gentleman from Massachusetts is recognized for 5 minutes and yields to the other gentleman from Massachusetts.

Mr. DELAHUNT. I thank the gentleman from Massachusetts. As I was saying, under current law an application to extend wiretap or search authority must meet the same standard as in the original application, yet the reality is, is that as terrorism investigations evolve and expand, the intelligence gathering purpose can become increasingly intertwined with ongoing criminal investigations, and it does create a risk a vital foreign intelligence gathering effort that has been properly authorized initially under FISA will be unable to continue because it no longer meets the purpose test that is required to be certified.

By minimizing that risk, this amendment would facilitate legitimate information sharing, and it would do so without creating a risk that criminal wiretaps and searches will be undertaken without a proper showing of probable cause.

Finally, it is my opinion that the amendment will increase the likelihood that section 153 will be upheld under the fourth amendment. I have reviewed the Justice Department's constitutional analysis of the significant purpose standard, and while it is well crafted, I think it fails. The bill fails constitutional muster. The bill is being taken up during a national emergency, when arguably judicial deference is at its highest point. No one can predict what the court will do months or years from now, and I think we would be wise to write a provision that has a greater chance of withstanding security.

With that, I understand that maybe one of my colleagues wishes to speak on the amendment, but otherwise I yield back to the gentleman, my friend from Massachusetts.

Chairman SENSENBRENNER. Does the gentleman from Massachusetts wish to withdraw his amendment?

Mr. FRANK. Well, first, Mr. Chairman, I think I have said all I want to say on this subject. So I yield back.

Chairman SENSENBRENNER. Can we auction time? Going once.

Mr. SCOTT. Would the gentleman yield?

Mr. FRANK. Well, I will take back my time if the gentleman from Virginia doesn't have an objection.

Mr. SCOTT. Thank you. This is an important amendment, because without it, it would allow the foreign intelligence standard to be used for an initial investigation, when in fact the primary purpose is the criminal investigation, and you are doing this without the probable cause. In fact, the FISA standard, which is intelligence gathering, can be used, as the gentleman from Massachusetts said, as an excuse to evade the probable cause standard.

So the standard is—I mean, there is no standard. You basically are profiling to determine who is going to be investigated. Now, remember this is not just terrorism that we are investigating. You could have routine criminal investigations going on without a probable cause that a crime has been committed. You are just intelligence gathering. The gentleman from Massachusetts, by his amendment, would suggest at least the beginning of this thing ought to be, if it is primarily a criminal investigation, ought to be a criminal investigation with a criminal investigation standard. If you are going to evade that standard, the primary purpose ought

to have been at least the Foreign Intelligence Surveillance Act standard for a foreign intelligence investigation.

I would hope that the amendment would be adopted or at least the language or spirit of it be incorporated later on. I yield back.

Mr. DELAHUNT. Mr. Chairman.

Mr. FRANK. I would yield to my friend from Massachusetts.

Mr. DELAHUNT. At this time, Mr. Chairman, I move to withdraw my amendment.

Chairman SENSENBRENNER. The amendment is withdrawn.

The gentleman from Virginia, Mr. Scott. Do you have an amendment?

Mr. SCOTT. I have an amendment, Mr. Chairman. It is SEC 152.001.

Chairman SENSENBRENNER. The Clerk will first find the correct amendment and then report it.

The CLERK. Amendment to H.R. 2975 offered by Mr. Scott: Page 23, line 14, strike the second comma and insert "only for such periods of time when the target's presence at the location of the place where the electronic surveillance is to be conducted has been ascertained by the applicant and when the electronic surveillance is conducted on the target.".

[The amendment follows:]

**AMENDMENT TO H.R. 2975**

**OFFERED BY MR. SCOTT**

Page 23, line 14, strike the second comma and insert "only for such periods of time when the target's presence at the location of the place where the electronic surveillance is to be conducted has been ascertained by the applicant and when the electronic surveillance is conducted on the target,".

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes in support of his amendment.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, this amendment would clarify that when you have this roving wiretap being conducted under FISA, that you have to ascertain that the target is actually at the place where the tap is being conducted and actually the one using the phone. As is otherwise, the tapping apparatus should not be turned on, or if it is on, it should be turned off as clear—as soon as it is clear the target is not using the phone.

Now, the standard under FISA is less than the criminal side standard, in that you only have to show relevance to a foreign in-

telligence gathering information investigation rather than showing probable cause. When you have this roving wiretap, any phone that the target may be using can be bugged. So the phones of innocent citizens such as the next-door neighbor or other acquaintances of the target may be tapped as soon as it is ascertained that the person may be using that phone. We want to make sure that the target is the only one being listened in to, not the privacy of the next-door neighbor or others.

In fact, even pay phones will be tapped under this process, and people unrelated to the investigation who don't even know the target shouldn't have their private conversations listened in on.

In fact, under FISA, you are not necessarily doing terrorism. It is any foreign intelligence information gathering, and if this is not adopted, anybody using the corner pay phone might have their innocent conversations involving their health care, their psychiatric or marital problems or financial problems listened in on if we do not ascertain that it is the target using the phone, not some other innocent party.

It is my understanding, Mr. Chairman, that this is what we have been told they are trying to do, and we just want that in the statute so people will be comfortable that if they use the corner pay phone that some foreign—and agent of a foreign government might also use, that their private conversations are still private.

Chairman SENSENBRENNER. The gentleman yields back.

The gentleman from Tennessee, Mr. Bryant.

The gentleman from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. I oppose the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman. Very briefly, I am going to ask my colleagues to oppose the amendment. Current minimization requirements for FISA wiretaps are classified, and Mr. Scott's amendment adversely affects current law with respect to the FISA wiretaps. And in effect, as we have seen with many of the amendments today, unfortunately this amendment would roll back current law.

The Attorney General guidelines to the extent that they can be discussed in an unclassified meeting already require the government to verify that the agent of the foreign power is using the facility in question before they can intercept that facility, and, Mr. Chairman, if I could suggest that we work with Mr. Scott about his desire to draft legislative language dealing with the ascertainment issue between now and the floor, and if you will consider withdrawing the amendment, I know that you and I will work in good faith with him.

If the amendment is not withdrawn, I would urge my colleagues to oppose the amendment. Once again, we should not roll back existing law.

Mr. SCOTT. Would the gentleman yield?

Mr. SMITH. I will be happy to yield to the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I would ask the gentleman whether or not these FISA intelligence gathering taps can be done on people who are not involved in terrorism?

Mr. SMITH. Mr. Scott, to reclaim my time, I don't know that that can be guaranteed. Quite frankly, that gets into classified information I will be glad to discuss with you, but I know that that is the intent.

Mr. BERMAN. Would the gentleman yield?

Mr. SCOTT. I will yield to the gentleman from California——

Mr. SMITH. Excuse me. The gentleman from North Carolina, or to the gentleman from California? Mr. Berman, yes.

Mr. BERMAN. Well, my understanding, just from preparing for this markup, is that a FISA wiretap is directed against a foreign power or the agent of a foreign power where there is—they have satisfied the FISA court that there is relevant information on a foreign intelligence matter. It is not just simply focused on terrorism. It can be focused on espionage or any other foreign intelligence information. That is an existing law.

Mr. SMITH. That is my understanding, Mr. Berman. If that is the question.

Mr. SCOTT. Would the gentleman yield? Again?

Mr. SMITH. I will yield to Mr. Scott, yes.

Mr. SCOTT. I would ask whether or not this information gathering can be gathering information on things that aren't even crimes? It could be the political situation back at home of the foreign agent. That would be intelligence gathering. Can you get a wiretap for that kind of thing?

Mr. BERMAN. Would the gentleman yield?

Mr. SMITH. To my understanding, that is what FISA is all about. That is correct.

Mr. BERMAN. FISA has a definition of foreign intelligence information. We have in fact just adopted that definition on the information sharing amendment. If you would give me a moment, I can read it to you, but it covers—I mean, it covers matters within that definition on different kinds of foreign operations.

Chairman SENSENBRENNER. Will the gentleman from Texas yield? I do have the foreign intelligence information definition.

Mr. SMITH. Okay. I will be happy to yield to the Chairman.

Chairman SENSENBRENNER. The FISA act says, quote, foreign intelligence information means information that relates to and if concerning the United States person is necessary to the ability of the United States to protect against, A, actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, B, sabotage or international terrorism by a foreign power or an agent of a foreign power or, C, clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power, or information with respect to a foreign power or foreign territory that relates to and if concerning the United States person is necessary to the national defense or the security of the United States and the conduct of the foreign affairs of the United States, unquote.

Mr. WATT. Would the gentleman yield?

Mr. SMITH. I will be happy to yield to the gentleman from North Carolina.

Mr. WATT. I am concerned that you are inquiring about the wrong thing. I thought Mr. Scott's concern was not so much what FISA covers, what the roving wiretap would cover, but who it would cover. Is it limited solely to agents of a foreign government,

and if so, then you would—wouldn't there have to be some ascertainment that that agent of the foreign government was using the phone rather than—and wouldn't it be cut off if somebody other than the agent of the foreign government were using the phone?

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose the gentleman from North Carolina——

Mr. WATT. I move to strike the last word——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT.—and I will yield to Mr. Smith or Mr. Berman to perhaps answer the question.

Mr. SMITH. Mr. Watt, let me try to respond briefly to your point, and I think you did accurately describe Mr. Scott's concern. We are advised by the Department of Justice and I am a little constrained in what I can say, quite frankly, at their advice, but we are advised by the Department of Justice that their ability to impede the actions of terrorists would be constrained under the language in Mr. Scott's amendment.

Mr. DELAHUNT. Would the gentleman from Texas yield?

Mr. SMITH. Just a minute. And that is why I offered a while ago to sit down with Mr. Scott and with the Department of Justice between now and the floor to see if we couldn't satisfy their concerns, but I am afraid to some extent some of these concerns by the Department of Justice simply cannot be discussed in open court.

Mr. DELAHUNT. Does the gentleman yield?

Mr. WATT. I will yield to the gentleman Mr. Berman and then to Mr. Delahunt.

Mr. BERMAN. The one concern—I have no idea exactly what the classified guidelines are regarding what happens. It is limited to an agent not of a foreign government but of a foreign power, which can include a government. It can also include a foreign terrorist organization. I have no idea what the classified guidelines say, but the one question I have about the gentleman's amendment is it looks to me like this amendment would limit—might limit what is now given to them under existing law rather than simply—in other words, the amendment is dealing with the multipoint authority and the roving wiretap, but it looks to me like the language applies whether it is a roving wiretap or it is a traditional wiretap, and I just feel uncomfortable voting to restrict existing law without understanding—I would like to make sure that we are not doing that.

Mr. WATT. I yield to Mr. Delahunt.

Mr. DELAHUNT. I have before me a copy of the FISA act, and the object of a surveillance must be either a foreign power, which can include a foreign government or component thereof, whether or not recognized by the United States, a variety of other enumerated groups, including a group engaged in international terrorism or activities in preparation thereof, as well as an agent of a foreign power which can be any person other than the United States person, and activities have to be——

Mr. WATT. You are answering the wrong question. The question is can you monitor the phone conversations either with a roving wiretap or with a nonroving wiretap of somebody who is not the agent of a foreign power or a government. It doesn't help me to

know what a foreign power or government is defined as. This limits it to that person and to the target, and that may be already the case.

Mr. SCHIFF. Would the gentleman yield?

Mr. DELAHUNT. Just give me a moment. There is in the application for the surveillance, the wiretap under FISA, the need or the necessity in the application to outline so-called minimization procedures, and those, however, are classified.

Mr. WATT. Mr. Schiff.

Mr. SCHIFF. Thank you. I think as I read this, the amendment does not go beyond or limit existing law. Rather, it limits the new multipoint authority proposed in the bill, because under current law a court can order identified parties to assist in the installation of these wiretaps. The multipoint authority says where they are trying to thwart an investigation the court can order that specified persons or other such persons also have to assist and then law enforcement has the discretion to go to these other persons and say that they are bound by this order.

So I think that it limits the additional power in the bill. The question I think raises whether it places too great a limitation, because I think what is really at stake in the proposed amendment is the difficulty of knowing when to turn on and when to turn off the wiretap, and that involves——

Chairman SENSENBRENNER. The time of the gentleman from North Carolina has expired. For what purpose the gentleman from Alabama, Mr. Bachus, seek recognition?

Mr. BACHUS. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BACHUS. Let me say this. The conversation we are having I think goes even beyond this amendment, and I think it answers the question of the gentleman from North Carolina about how far the government can go in the surveillance, and that really the answer to the question is the Constitution gives the President the right to conduct foreign affairs, and every President since George Washington has exercised its duty to defend and protect our country.

Now, there have been people since our country began, since the first President, have questioned this constitutional right. There have been a lots said about it, but there—and some people don't like that, quite frankly. They don't think that ought to be the law, but the law is that the President has the authority to conduct foreign affairs and to protect and defend the country from all foreign powers, agents, operative, terrorists.

Mr. SCOTT. Would the gentleman yield?

Mr. BACHUS. And let me further say that under this power, and it is well established, they have the right to electronic surveillance. They have the right to conduct domestic covert searches, and they can do this without judicial authority. I mean, they don't——

Mr. BERMAN. Would the gentleman yield?

Mr. BACHUS. They don't have to have judicial approval for this. And they cannot—not only can they have surveillance of a foreign agent, but they can also have surveillance of a U.S. citizen suspected of giving aid or comfort to an enemy.

Mr. BERMAN. Would the gentleman yield?

Mr. BACHUS. And one thing about these amendments and one thing about anything in this bill that limits the ability of the President to do this is are we tying his hands of a constitutional right and really a duty and an obligation, not only a constitutional right but a duty and an obligation of the President to take these actions to defend the country? And if we had any doubt about whether he ought to have that right, it ought to have been resolved on September the 11th.

Mr. SCOTT. Would the gentleman yield?

Mr. BACHUS. I will yield.

Mr. SCOTT. Thank you. The problem is—if it was confined to foreign affairs, it wouldn't be a problem. What the problem is, is that you are using this as your criminal law, because you are going back and forth, and interrelationship between FISA and the criminal wiretap is the thing, and we just—and the gentleman from Massachusetts' amendment pointed out that you have eliminated the primary purpose, and so the primary purpose in these wiretaps could be a criminal investigation, and that is why we are trying to get some——

Mr. BACHUS. What I am saying, as long as any part of that surveillance, any part of that search is related to the conducting of foreign affairs; i.e., defending the country, protecting our national interests——

Mr. BERMAN. Would the gentleman yield?

Mr. BACHUS. To conduct that surveillance, and a lot of what I think the President is requesting and the Administration is requesting this body to do, well, they already have the power to do.

Mr. SCHIFF. Would the gentleman yield?

Mr. BACHUS. But I think we ought to support it as opposed to restrict it. But this is very basic. It is a constitutional——

Chairman SENSENBRENNER. The time belongs to the gentleman from Alabama.

Mr. SCHIFF. Mr. Chairman?

Mr. BACHUS. To conduct foreign affairs.

Chairman SENSENBRENNER. For what purpose does the gentleman from California, Mr. Berman, seek recognition?

Mr. BERMAN. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BERMAN. There is this funny other part of the Constitution about unreasonable searches and seizures, but—which does constrain——

Mr. BACHUS. If the gentleman will yield for that. That applies to U.S. citizens and to some——

Mr. BERMAN. First of all, we have to clarify a couple of things. You can be a U.S. citizen and be an agent of a foreign power and be subject to a FISA search surveillance order. Secondly, your notion that there has to be no judicial intervention, I don't know where you are getting that from. Even if it is from gathering from U.S. persons or—who are agents of foreign powers, in the United States my understanding is you have to go either to a court, a regular court of jurisdiction if it is a criminal investigation or to the FISA court if it is a foreign intelligence matter and get judicial approval. That is in the law. So I thought I——

Mr. BACHUS. We have created that court, but prior to that court's existence——

Chairman SENSENBRENNER. The time belongs to the gentleman from California.

Mr. BERMAN. So I just want to make those two points, but there are two different issues. Mr. Delahunt was raising the issue of the purpose. Now Mr. Scott is raising the issue in the context of the expansion of authority for the roving wiretap.

Mr. SCOTT. Who else you can listen in to under the excuse of going after the target?

Mr. BERMAN. But that is an issue—I mean, I think there is an answer to that issue. I just am not smart enough to know it, but I think that is an issue under existing authority and under this new authority, and my guess is, there is a—it is dealt with—I mean, I know the FISA law very specifically talks about this, but then I think there is—I yield to the gentleman from California who seems to actually know something about this law.

Mr. SCHIFF. I thank the gentleman for yielding. Under existing law if you think someone who is an agent of a foreign power is going to be using a certain electronic communication, you can go to third parties to get assistance to do a wiretap on that line, and if you think they are going to move from one line to the other, you can go back to court and get authority to go to another line. You don't have to make the showing that is requested in this amendment that they are only going to be there for the time, et cetera, which you only may be able to ascertain by listening in on the line. I am not sure how you will know in advance necessarily when they will be using that line.

Under the bill, I think the Sensenbrenner-Conyers bill, which has been narrowed from the Attorney General's proposal, the bill says that where a significant purpose is this foreign intelligence purpose and where there is—the court finds that the action of the target may have the effect of thwarting identification because they are going from line to line to line, where you have met those standards, you can get an order that doesn't specify just simply one custodian that you can go to for the wiretap but gives you the flexibility to move quickly, because when we are talking about an era where, as the Chairman refers to, uses disposable cell phones, they may only use that line for one conversation, and if you have to wait to ascertain that they are using that line out of a very legitimate concern that maybe someone else is using that line, the conversation may be there and gone before you have actually established the ability to do the intercept.

Mr. BERMAN. Can I just reclaim my time? Just to take what you said, if the guy is in a hotel, under this new authority that this bill would provide you don't have to just name the custodian of the phone lines at the hotel, because if he is going to go to another hotel the next night you can use that warrant, that order, to get the unnamed hotel that he ends up at on the next night to also enforce that order.

Mr. SCOTT. But can you also listen in to next night's guest at the last hotel?

Mr. BERMAN. My guess is you can't, but that is a guess. You know he has checked out. You can't be purposely listening to other people, but this is true whether it is a stationary wiretap or a rov-

ing wiretap. In other words, these are good questions, but they are about existing law, as well as about the new authority under the law. That is my only point.

Ms. WATERS. Mr. Chairman?

Mr. FRANK. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts—Mr. Frank, I think you have already been recognized, haven't you?

Mr. FRANK. No. That was on Mr. Delahunt's amendment.

Chairman SENSENBRENNER. Okay. Then the gentleman is recognized for 5 minutes.

Mr. FRANK. Thank you, Mr. Chairman. I ask to strike the requisite number of words to raise a question because I am not fully aware. This is an example of I think a problem many of us have in terms of the bill. Thanks to the collaboration of the Chairman and the Ranking Minority Member, the bill has been focused, and I find myself in this instance and in many others in agreement with the way it is conceptualized; that is, yes, clearly given the evolution of communications, wiretap authority should catch up with the mobility of communications.

The question I have here, as elsewhere, is have we done the best job of executing that agreed upon concept? The point that the gentleman from Virginia is raising is this, and I think he is not here objecting to the notion of the multiple wiretapping. What he is saying is that does, however—once you have gone from the one phone in one place to multiple phones, you have increased law enforcement's ability to catch up with the people you are surveilling, which is good, but you have also widened the net so that innocent people might get swept up in it. And that is the response to the gentleman from Alabama.

The gentleman from Virginia's concern is precisely American citizens or others whose conversations may be overheard because we now have this broader authority. And so the question is how do we do the best we can? We will never get it to perfection, so that you get the legitimate target of the surveillance listened to on this phone and that phone but not other people, and this—one of the things—I have been looking at it here and it does talk about the minimization procedures, and I would yield if anyone—I know my friend in the law enforcement—the experience of my friend. What are the minimization procedures? I would yield to the gentleman from Massachusetts.

Mr. DELAHUNT. Well, again they are different under the so-called FISA act but they exist. Let us presume that in the hypothetical—in a hypothetical situation where it is the target, it is not a roving wiretap but it is a phone, they still have to comply, the government does, with minimization procedures. For example, if the son or daughter gets on the phone and the conversation is overheard, then there will be, even though it is not the same as in a typical criminal investigation, minimization requirements.

Mr. FRANK. Would the gentleman yield?

Mr. DELAHUNT. Yes.

Mr. FRANK. Minimization procedure is what we might call in a more technical word hanging up. I mean, I guess——

Mr. DELAHUNT. Exactly.

Mr. FRANK. Let me ask my friend from Virginia——

Mr. SCHIFF. Would the gentleman yield?

Mr. FRANK. Yes, I will.

Mr. SCHIFF. I just want to clarify. It is not necessarily correct that minimization means hanging up. Depending whether or not it is FISA or criminal procedure, the procedure may actually mean leaving on the machine but not——

Mr. FRANK. Not listening.

Mr. SCHIFF. Not listening or——

Mr. FRANK. I have heard that. I know they are going to be tough. But it is a tough issue that we understand. But here is my question to the gentleman from Virginia and this may be alleviated. If in fact finding out that the target is there and ascertainment of the target, if those are conditions precedent, then I think there is a problem. The question is—I mean, if you require that before they can do this they have to know this with some degree of assuredness, that can be a problem. If in fact they can be told to try but if they find out that it wasn't the target, et cetera, then immediately they have to bring in the minimization procedures, then I think it is less of a problem.

So the question is, do they have to have—how clear do they have to be about this beforehand, or does this mean that once they have done some of this wiretapping, if in fact it turns out they don't meet these conditions, then they immediately have to get into the minimization. I yield to the gentleman from Virginia.

Mr. SCOTT. The intent is that if you have put a bug on a pay phone to track down a named target, that you don't listen in on everybody——

Mr. FRANK. Well, I think the gentleman has answered the question. It makes me feel better about the amendment; that is, it is not his intention to prevent putting the bug on the pay phone. It is the requirement that very strict minimization procedures be followed on any of these phones that are tapped or other communications, as soon as it becomes clear that it is not the right target. Is that—I would yield to the gentleman.

Mr. SCOTT. That is the point. Mr. Chairman, the gentleman from Texas has indicated a willingness to work on this, and I am willing to withdraw the amendment with that understanding. I prolonged the discussion for the purpose of venting what the various concerns were.

Mr. FRANK. I hope this is the model that is—on a lot of these we have conceptual agreement and a lot of work may be done to make sure we have it right.

Chairman SENSENBRENNER. The amendment is withdrawn. Are there further amendments to title I.

If not, the Chairman offers a manager's amendment on behalf of himself and the gentleman from Michigan, and the Clerk will report the amendment.

The CLERK. Technical amendment offered by Mr. Sensenbrenner and Mr. Conyers.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendments follow:]

Technical Amendment offered by Mr. Sensenbrenner and Mr. Conyers

On page 75, line 12, replace "792" with "791"; and

On page 87, line 4, replace "792" with "791".

**AMENDMENT TO H.R. 2975**

**OFFERED BY _____**

Section 101(b)(1) of the bill is amended at the end after ''execution of the order.'' by inserting the following new sentence: ''Whenever such an order is served on any person or entity not specifically named in the order, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the assistance of the person or entity being served is related to the order.''.

## AMENDMENT TO H.R. 2975

### OFFERED BY

Section 160 is amended by inserting ''106 (relating to technical amendment),'' after ''(other than sections'' and by inserting a comma after ''scope)''.

## AMENDMENT TO H.R. ____

## OFFERED BY MR. HYDE

At the appropriate place, insert the following:

**SEC. ___. AUTHORIZATION OF FUNDS FOR DEA POLICE TRAINING IN SOUTH AND CENTRAL ASIA.**

There is authorized to be appropriated not less than $5,000,000 for fiscal year 2002 for antidrug training for police in the South and Central Asia region by the Drug Enforcement Administration, as well as increased precursor chemical control efforts in such region.

## AMENDMENT TO H.R.

## OFFERED BY MR. HYDE

At the appropriate place, insert the following:

**SEC. XXX. FEASIBILITY STUDY ON USE OF BIOMETRIC IDENTIFIER SCANNING SYSTEM WITH ACCESS TO THE FBI INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM AT OVERSEAS CONSULAR POSTS AND POINTS OF ENTRY TO THE UNITED STATES.**

(a) IN GENERAL.—The Attorney General, in consultation with the Secretary of State and the Secretary of Transportation, shall conduct a study on the feasibility of utilizing a biometric identifier (fingerprint) scanning system, with access to the database of the Federal Bureau of Investigation Integrated Automated Fingerprint Identification System, at consular offices abroad and at points of entry into the United States to enhance the ability of State Department and immigration officials to identify aliens who may be wanted in connection with criminal or terrorist investigations in the United States or abroad prior to the issuance of visas or entry into the United States.

(b) REPORT TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Attorney

1 General shall submit a report summarizing the findings
2 of the study authorized under subsection (a) to the Com-
3 mittee on International Relations and the Committee on
4 the Judiciary of the House of Representatives and the
5 Committee on Foreign Relations and the Committee on
6 the Judiciary of the Senate.

Amendment offered by Chairman Sensenbrenner

In section 351 delete "any district in which activities related to the terrorism may have occurred" and insert "any district court of the United States (including a magistrate judge of such a court) or any United States Court of Appeals having jurisdiction over the offense being investigated."

**AMENDMENT TO H.R. ____**

**OFFERED BY MR. BERMAN**

In section 202 of the bill, before ''Section 219(a)'', insert ''(a) DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.—''.

In section 219(a)(2)(A)(i) of the Immigration and Nationality Act, as proposed to be amended by section 202(a)(2)(A) of the bill, strike ''making a designation'' and insert ''a designation is made''.

At the end of the section 202 of the bill, add the following:

(b) AUTHORITY TO INITIATE DESIGNATIONS, REDESIGNATIONS, AND REVOCATIONS.—Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), as amended by subsection (a), is further amended—

(1) by striking ''Secretary'' each place such term appears, excluding subsection (a)(2)(A), and inserting ''official specified under subsection (d)'';

(2) in subsection (c)—

(A) in paragraph (2), by adding ''and'' at the end;

(B) in paragraph (3), by striking ''; and'' at the end and inserting a period; and

(C) by striking paragraph (4); and

(3) by adding at the end the following:

"(d) IMPLEMENTATION OF DUTIES AND AUTHORITIES.—

"(1) BY SECRETARY OR ATTORNEY GENERAL.—Except as otherwise provided in this subsection, the duties under this section shall, and authorities under this section may, be exercised by—

"(A) the Secretary of State—

"(i) after consultation with the Secretary of the Treasury and with the concurrence of the Attorney General; or

"(ii) upon instruction by the President pursuant to paragraph (2); or

"(B) the Attorney General—

"(i) after consultation with the Secretary of the Treasury and with the concurrence of the Secretary of State; or

"(ii) upon instruction by the President pursuant to paragraph (2).

"(2) CONCURRENCE.—The Secretary of State and the Attorney General shall each seek the other's concurrence in accordance with paragraph (1). In any case in which such concurrence is denied or withheld, the official seeking the concurrence shall so notify the President and shall request the Presi-

dent to make a determination as to how the issue shall be resolved. Such notification and request of the President may not be made before the earlier of—

"(A) the date on which a denial of concurrence is received; or

"(B) the end of the 60-day period beginning on the date the concurrence was sought.

"(3) EXCEPTION.—It shall be the duty of the Secretary of State to carry out the procedural requirements of paragraphs (2)(A) and (6)(B) of subsection (a) in all cases, including cases in which a designation or revocation is initiated by the Attorney General.".

Chairman SENSENBRENNER. The Chair will recognize himself briefly to explain the amendment.

First, there are technical corrections which changes two numbers. Second, it includes provisions in that unanimously agreed to and amendments by the gentleman from Illinois, Mr. Hyde, and the gentleman from California, Mr. Berman, as previously agreed to.

The Chair yields back the balance of his time.

The question is on——

Ms. LOFGREN. Mr. Chairman, we don't even have a copy of this yet.

Chairman SENSENBRENNER. The gentleman from Michigan, do you have a statement? The gentleman from Michigan is recognized for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman. With reference to the manager's amendment, I want to begin by thanking you for including a number of Members' suggestions from our side that are involved in the manager's amendment, and I think that argues for wide support on the Committee for it.

First, we contain language requested by the gentleman from California, Mr. Berman, which would provide the Department of Justice with the authority to designate terrorist organizations concurrently with the Secretary of State to safeguard against wrongful designation. The Secretary and Attorney General would have mutual veto power over designations.

The second item I would bring to your attention would incorporate an amendment suggested by the gentlelady from California, Ms. Waters, which would help prevent forum shopping by law enforcement by ensuring that nationwide warrants are brought in a court with jurisdiction over the subject matter of the investigation relative to the amendment that she proposed earlier.

Third, we contain in the manager's provision a useful clarification that provides Internet service providers written certification when they are issued roving wiretap orders.

Finally, we contain authorizations for additional law enforcement funding, as well as the study of biometric identification at border checkpoints requested by the gentleman from Illinois, former Chairman Hyde.

I think those are important provisions that would make this a palatable manager's amendment for most of the Committee Members.

Mr. FRANK. Mr. Chairman.

Chairman SENSENBRENNER. Does the gentleman yield back his time?

Mr. CONYERS. Yes, sir.

Chairman SENSENBRENNER. For what purpose the gentleman from Massachusetts?

Mr. FRANK. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. I want to speak in support of this amendment. I want to thank the Chairman and the Ranking Minority Member for working so well together constructively, both substantively and procedurally, and I think if we—and I realize not everybody is going to be for this bill and there are going to be differences and

there are some amendments I would like to see, but if you go back to where we were a few weeks ago when we got the package and some people were expecting it done very rapidly, I think the procedure and the substance both held up very well, and as a Member of the minority, I want to particularly express what I think many of us on our side feel towards our Ranking Member.

This is a very difficult issue. It is a particularly difficult issue for him in a lot of ways, and his role in this has really been a model of responsibility, and even those who still have some disagreements on it I think now are much more on point, I think join me in expressing their very deep admiration for the leadership he has shown along with you, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman yields back his time.

Mr. BERMAN. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from California, Mr. Berman.

Mr. BERMAN. Yes, Mr. Chairman. I—perhaps this is just an inquiry—I want to speak to one section in title I, but it is just to strike the last word and make a point.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BERMAN. I would like to turn the Committee's attention to section 105 relating to computer trespassers and ask if the Chairman might with his staff take a look at this provision between now and the time this bill goes to the floor. The bill allows the government under this provision at the request of Internet service providers—this deals with the computer trespassers and cyber attacks, and there are some very important provisions in here, but I think it is drafted in a fashion that is too open-ended because it doesn't limit the intercepts that law enforcement can undertake at the request of an Internet service provider or other owner of a protected computer. It doesn't limit the intercepts to the user's—the authorized user's communications to or through the protected commuter in the course of an attack or a hacking.

This bill, I hope inadvertently—by the way it is drafted, this provision seems to allow a nonjudicially supervised tap of the home telephone of the unauthorized computer user, allows to read the e-mails of that unauthorized computer user or monitor their Web surfing. And by including the wire as well as the electronic communications, it makes it pretty clear that this allows telephone taps of somebody who happens to be a cyber attacker. I support the intercepting of the cyber attacker's communications through the unprotected computer, but the notion that in this situation and only in this situation we are going to let the owner of the unprotected computer get law enforcement to wiretap that person's phone without ever going to court I think is a terrible overreach.

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. BERMAN. I will be happy to.

Chairman SENSENBRENNER. I think the gentleman makes a good point. We will take a look at it between now and going to the floor.

Mr. CONYERS. Would the gentleman yield?

Mr. BERMAN. Be happy to.

Mr. CONYERS. I want to commend him for raising this, because it is an important thing that I know you and your staff have been

working on and that we might be able to get some of the rough edges off of it, and I will join the Chairman in that undertaking.

Mr. BERMAN. I appreciate that, and with that I yield back the balance of my time, except I want to thank you for including one of my amendments in your manager's amendment.

Mr. WEINER. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia, Mr. Scott, seek recognition?

Mr. SCOTT. Strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I have two questions, one on the amendment involving the jurisdiction over the offense being investigated. The jurisdiction and venue are sometimes used interchangeably. Is it the legislative intent, Mr. Chairman, that the word "jurisdiction" would include venue? I mean, you could have an armed robbery at a location—Federal location in Virginia. You could try it in California if the defendant didn't object. You have jurisdiction, but that wouldn't be the venue, and my question is whether jurisdiction includes the idea of venue in addition to just subject matter jurisdiction.

Chairman SENSENBRENNER. What was the question?

Mr. SCOTT. On your amendment it says jurisdiction over the offense being investigated, whether the——

Chairman SENSENBRENNER. The gentleman from Texas I believe has the answer.

Mr. SCOTT. Whether the term "jurisdiction" would include venue as well as jurisdiction, because if you are investigating an armed robbery at Fort Monroe in Virginia, you could actually try it in California if the defendant didn't object. You have subject matter jurisdiction, but I think the idea is that you are trying to find a judge in the venue where the offense is being investigated and whether the legislative intent of the word "jurisdiction" includes venue. And I will yield to the gentleman from Texas.

Mr. SMITH. Thank you, Mr. Scott. I will try to provide an answer to you. First of all, I am looking at the language under definitions C-1, court of competent jurisdiction, A, where it says any District Court in the United States, including the Magistrate Court or any United States Court of Appeals having jurisdiction over the offense being investigated. That is a narrowing of the definition of venue just to the jurisdiction of the offense, and so in other words venue is not as broad as I think you may think it is.

Mr. SCOTT. Well, let me ask it specifically. If the offense is at Fort Monroe in Virginia, can a California judge issue a search warrant, because they would have jurisdiction but not venue?

Mr. SMITH. Right, if the gentleman would yield, I think in most cases the answer is no but it depends on where it is investigated. If it happens to be investigated in California, yes, but that is not likely. I think it is typically going to be the place where the offense occurred or close to it.

Mr. SCOTT. Well, maybe if I just ask that someone look at that issue to make sure the words are—mean what they appear to mean.

Mr. SMITH. I assume the words mean what they say, but if not, we will take a look at it and discuss it between now and the floor.

Mr. SCOTT. Reclaiming my time, Mr. Chairman, I would ask either you or the Ranking Member on the—or Mr. Berman or on the Berman amendment where you are talking about designation of foreign terrorist organizations. I am seeing this for the first time. If you are designated, do you ever have an opportunity to be heard, and how does that work?

Mr. BERMAN. That is a very good question. My colleague from New York seems to be clear with the—no, he is just raising his. All right. He is gesturing. It is not a judicial or quasi-judicial process. It is an executive branch function where you put the organization on the list, and then this is the law we passed in 1996 and a whole lot of things happen when you are on that list. The manager's amendment, that portion of it that involves this, right now the Secretary of State has the sole power to do it. This would give the Secretary of State the power under existing definitions. It doesn't change any of the definitions. It doesn't change any of the definitions, but it allows—it says the Attorney General has to concur, and if he refuses—and then gives the Attorney General to name options and gives the Secretary of State the obligation to concur, and if there is no concurrence it forces the decision to the White House and to the President.

But I do have—I do have an answer now to—there is a process. Once the organization is placed on the list, not later than 30—an organization not later than 30 days after the publication of that designation, an organization designated as a foreign terrorist organization may seek judicial review of the designation in the U.S. Court of Appeals for the D.C. Circuit. And the——

Chairman SENSENBRENNER. Time of the gentleman has expired.

Is the preference of the Committee to stay here until 2:00 o'clock in the morning or not?

This is a manager's amendment, which presumably was agreed to. For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. Mr. Chairman, I just want to clarify the point of this amendment. As I understand it, I would like Mr. Berman to—just to tell me if I am understanding this correctly. As I understand it, the point of this amendment is to narrow the existing law. It doesn't change the method of designation at all, except to say that whereas the Secretary of State designates a foreign terrorist organization now under current law, he could only do it under future law if he also got the agreement of the Attorney General, the theory being that the Secretary of State may do it more on a political level, given foreign policy considerations. The Attorney General's concurrence hopefully will be based more on some legal considerations.

So this doesn't change the process other than by saying that you need two people's concurrence, whereas under current law only one person can do it. So it in effect makes it a little harder to designate—I don't know about harder, but it makes it—it gives a little check on it, a little check that we don't have now.

Mr. BERMAN. Would the gentleman yield?

Mr. NADLER. Yes.

Mr. BERMAN. That is one effect. The other effect, though, I have to tell you is part of why I introduced the amendment. In some cases the Secretary of State for all kinds of sophisticated diplomatic

reasons will decide not to name an organization which meets the definition as a foreign terrorist organization, and your reasons are compelling or perhaps they are because the desk officer for the particular country where that organization is based says that will screw up some commercial deal that we are having with that country, and so I wanted the Attorney General to be empowered to name organizations, and then if the Secretary of State refuses to concur with that, let the President decide whether the—that organization—whether the diplomatic reasons not to name that organization are so compelling that the Attorney General's request should be denied. So it both narrows in one sense and broadens in another sense.

Mr. NADLER. Reclaiming my time, I think it is a very good amendment, because essentially what it does is make it a little more based on legal criterion rather than on political or commercial criterion which may hold too much sway now. So I commend the gentleman and I support the amendment.

Chairman SENSENBRENNER. For what purpose does the gentleman from Georgia seek recognition?

Mr. BARR. To strike the last word just for purposes of clarifying.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BARR. It is my understanding, Mr. Chairman, that the intent of that portion of your manager's amendment that relates to section 351 is intended to ensure conformity with other similar provisions regarding the obtaining of search warrants, and it is not the intent of the Chairman to broaden beyond the language in the draft bill the courts that could issue the search warrants?

Chairman SENSENBRENNER. If the gentleman will yield, the answer to the question is yes.

Mr. BARR. I think then, reclaiming my time, Mr. Chairman, the only thing I would urge is when we come up with a final draft here to—I think grammatically that could be made absolutely clear, which is not the case in the current language, but I appreciate the gentleman's recognition to that fact. I think it just was—it is lacking a couple of commas.

Chairman SENSENBRENNER. For what purpose does the gentleman from New York, Mr. Weiner, seek recognition?

Mr. WEINER. For the purpose of just asking—to strike the last.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEINER. I note in the Berman portion of the manager's amendment the reference to section 202, 8 U.S.C., is that notions and groups that will be targeted by this added enforcement ability, and I just want to clarify, because it was a question that came up when the President spoke to Congress. He listed many organizations, and he left out Hamas and Hezbollah. When he issued an executive order freezing assets, he listed organizations that would be frozen, left out Hamas and Hezbollah, two organizations, the only two I know of, that have actually engaged in terrorist activity since September 11th, including yesterday. And I just want to make sure that my understanding is correct, that despite the President taking that position, this bill includes all of the organizations that were included in the immigration law as of 1996 that include Hamas and Hezbollah. Is that your understanding, Mr. Berman?

Mr. BERMAN. This amendment doesn't affect any organizations that have been put on the list. Both of those organizations are on the list.

Mr. WEINER. Then Mr. Chairman, it is your understanding that the entire bill refers to that same universe of organizations that were delineated in 1996?

Chairman SENSENBRENNER. If they are on the list, this bill applies to those that are on the list.

Mr. WEINER. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentlelady from California, Ms. Waters, seek recognition?

Ms. WATERS. Thank you very much, Mr. Chairman. I have an amendment that—it is an easy amendment, and——

Chairman SENSENBRENNER. The question is on the manager's amendment, which is pending.

Ms. WATERS. Yes. I have an amendment to the manager's amendment.

Chairman SENSENBRENNER. The Clerk will report the amendment to the manager's amendment.

The CLERK. Amendment to the manager's amendment to H.R. 2975 offered by Ms. Waters. Insert in line 7 after the period the following: It shall be unlawful for any memorandum of understanding between law enforcement agencies to provide that there is no requirement to report any drug trafficking activities.

[The amendment follows:]

**Amendment to Manager's Amendment to H.R. 2975**

**Offered by Ms. Waters**

Insert in line 7 after the period the following:

It shall be unlawful for any memorandum of understanding between law-enforcement agencies to provide that there is no requirement to report any drug trafficking activities.

Ms. WATERS. Mr. Chairman——

Chairman SENSENBRENNER. The gentlelady is recognized for 5 minutes.

Ms. WATERS. Mr. Chairman and Members, this amendment is prompted based on information that I learned about memorandums

of understanding between the Justice Department and the CIA as it related to their involvement with the Contras. During the time that our Administration was supporting the Contras in the Nicaragua, where there was a war going on between the Contras and the Sandinistas, it is well known now that our intelligence agencies turned a blind eye toward drug trafficking, and they had an actual memorandum of understanding that they did not have to report drug trafficking.

The reason for that was the Contras were trafficking drugs as one way of paying for their war activities, but what we discovered during that conflict was both the Sandinistas and the Contras were trafficking in drugs, and everybody turned a blind eye.

We are dealing now with Afghanistan, where we know the Taliban, for example, is dealing in poppies and trafficking in drugs. I also suspect that the opposition may also start to do that if they are not already doing it. And since you have an amendment in this amendment that would put some money in for the DEA agency supposedly to deal with training in antidrug information, I want to make sure that never again will our government have a memorandum of understanding that our CIA or the DEA or the DIA or anybody else does not have to report drug trafficking when they encounter it and when they experience it and when they see it.

I would ask for an aye vote.

Chairman SENSENBRENNER. I recognize myself in opposition to the amendment. First of all, this is a question of oversight that this Committee should be doing. It should not be statutory.

But secondly, I don't know if the gentlewoman from California heard about the speech that British Prime Minister Blair gave yesterday to the Labor Party Annual Conference somewhere in the United Kingdom. I watched part of it on CNN, and one of the things the Prime Minister Blair said is that 90 percent of the heroin that is sold on the streets of Great Britain is furnished by Osama bin Laden's al Qaeda organization, and the Brits who are buying heroin on the street are helping Osama bin Laden's terrorist activity.

Chairman SENSENBRENNER. Now what the gentlewoman's amendment says is that there can't be a memorandum of understanding between law enforcement agencies to deal with this question. And not only is the heroin that the——

Ms. WATERS. That is not true, Mr. Chairman.

Chairman SENSENBRENNER. I have the floor. This is what the Prime Minister of Great Britain had to say to his party's annual conference. And he said—and I saw it on TV and others could have seen it on TV—that anybody who bought heroin in Great Britain had a good chance of helping finance what the bin Laden organization was doing. What the gentlewoman's amendment does is hamstring the ability of law enforcement to be able to enter into memorandums of understanding to deal with this issue.

Ms. WATERS. Will the gentleman yield? Because he is misrepresenting what my amendment does.

Chairman SENSENBRENNER. No, I will not yield. I could have got the amendment on a point of order on nongermaneness.

I would urge the Members to vote against the amendment and yield back the balance of my time.

Ms. WATERS. Mr. Chairman, that is patently unfair. You have misrepresented what my amendment does.

Chairman SENSENBRENNER. The gentleman from Michigan, for what purpose do you——

Mr. CONYERS. To strike the requisite number——

Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.

Mr. CONYERS. Mr. Chairman, gentlelady from California and Members of the Committee, my comment, without going to the efficacy of the Waters' amendment is that a manager's amendment is purportedly agreed to by the Committee. And if we are to open it up to many very excellent proposals that could be offered, we have just voided the whole reason for having a manager's amendment.

The reason I make this point now is that we currently have asked staffs to begin preparing a second manager's amendment to expedite the process which we will vent through to all of the Members that, where there is concurrence, we can move ahead more quickly. And that is the purpose.

So my request, before I yield to the gentlelady, is that we begin by withdrawing this amendment; and if there is some appropriate other place in our procedure to deal with it, we ought to do it. But I would urge the Members not to assume that there is some reason to reopen the manager's amendment. Because I concede quickly that there are many other modifications that we could make, but the whole idea is to get this package through so we can get to other amendments.

Ms. WATERS. Will you give me some time?

Mr. CONYERS. So if the gentlelady—I thought she wanted me to yield. Well, then, I yield.

Ms. WATERS. Mr. Conyers, I could withdraw it, but I refuse to do it until it is clarified, until my amendment is defined and understood. There is no way of misunderstanding what this amendment does. This amendment simply says that you cannot have law enforcement agencies agreeing that they are not going to report drug trafficking. Now the Chairman misrepresented what this amendment does. I will not withdraw it——

Mr. NADLER. Would the gentleman yield?

Mr. CONYERS. I will let the gentlelady finish her statement.

Ms. WATERS. I will not withdraw it as long as the Chairman is misrepresenting what it is. This is designed to do exactly what the Prime Minister and others were talking about. This business of going in and taking sides and allowing the side that you are supporting to deal in drugs and turning your head must stop. We have discovered that this is what was done with the Contras, and we should not allow it to be done under any circumstances.

Mr. CONYERS. I thank the gentlelady for making clear the terms under which she would require a withdrawal, and I urge the Chairman to proffer the necessary statement that would allow us to withdraw this so that we could move forward.

Chairman SENSENBRENNER. Gentleman yield? So proffered.

Mr. CONYERS. With pleasure.

Ms. WATERS. I am sorry. I didn't hear you.

Mr. CONYERS. It was directed to the Chairman.

Ms. WATERS. Did he say something?

Mr. CONYERS. Not yet—he did——

Chairman SENSENBRENNER. I said, so proffered.

Mr. CONYERS.—in interpretation, he apologized profusely for his misunderstanding and total misinterpretation of this one-sentence amendment.

Ms. WATERS. I accept the stingy apology.

Chairman SENSENBRENNER. The amendment is withdrawn.

The question is on the manager's amendment. Those in favor will signify by saying aye. Opposed, no.

The ayes appear to have it. The ayes have it. The manager's amendment is agreed to.

Are there further amendments to title I? If not, title I is closed.

Title II, labeled Aliens Engaging in Terrorist Activity, is now considered as read and open for amendment at any point pursuant to the unanimous consent agreement.

Are there amendments to title II?

The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment. I believe this is Hyde 104 relating to money laundering—110 relating to money laundering.

The CLERK. Amendment to H.R. 2975 offered by Mr. Hyde.

At the——

Mr. HYDE. Mr. Speaker, I ask unanimous consent that further reading of the reading be dispensed with.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

## AMENDMENT TO H.R.

## OFFERED BY MR. HYDE

At the appropriate place in the bill insert the following:

**SEC. XXX. INADMISSIBILITY OF ALIENS ENGAGED IN MONEY LAUNDERING.**

(a) AMENDMENT TO IMMIGRATION AND NATIONALITY ACT.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding after subparagraph (H) the following:

"(I) MONEY LAUNDERING.—Any alien—

"(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments), or

"(ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described under such section,

is inadmissible.''.

(b) MONEY-LAUNDERING WATCHLIST.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall develop, implement, and certify to the Congress that there has been established a money-laundering watchlist, which identifies individuals worldwide who are known or suspected of money laundering, which is readily accessible to, and shall be checked by, a consular or other Federal official prior to the issuance of a visa or admission to the United States. The Secretary of State shall develop and continually update the watchlist in cooperation with the Attorney General, the Secretary of the Treasury, and the Director of Central Intelligence.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. HYDE. Mr. Chairman, the practice of money laundering has long been used by drug dealers, rogue governments and other criminals to hide their ill-gotten assets and to finance their illegal activities. International terrorists like those who high-jacked four airliners and attacked the World Trade Center and the Pentagon on September 11 engaged in money laundering to finance their organizations and carry out their terrorist acts.

Money laundering is prevalent in countries with weak or underdeveloped banking systems such as those in the Caribbean, Latin America, Asia and Africa. Mr. Ballenger, a Member of our House, initially brought these issues to light after his travels to Latin America and has worked diligently in finding ways to fight money laundering.

This amendment is a cumulative effort of Mr. Ballenger, Mr. Tom Lantos, the Ranking Member of the International Relations Committee, and myself. The purpose of this amendment is very simple. It is to provide consular officers of the United States with specific authority to deny a U.S. Visa to individuals who are known to be or suspected of engaging in money laundering. It is intended to make it more difficult for those who engage in money laundering to gain legal entrance into the United States and to gain access to U.S. Financial institutions. It is modeled after the authority of consular offices to deny entry to drug traffickers.

The Secretary of State, after consultation with the Attorney General, the Secretary of the Treasury and the Director of Central Intelligence, will develop a money laundering watch list from which the consular office may check prior to issuing a visa.

I respectfully request the Committee adopt——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. HYDE. I am happy to yield.

Chairman SENSENBRENNER. I believe this amendment is very constructive and am prepared to accept it and urge the Committee to adopt it.

Mr. FRANK. Would the gentleman yield?

I also agree to the amendment being a worthy one. But I just wanted to note the gentleman from California and I spent the morning in a hearing of the Financial Services Committee on the whole subject of money laundering; and it was represented by Secretary of the Treasury O'Neil and then some law enforcement people, including from the Treasury and the FBI and Justice, that money laundering—I admit that the gentleman from Alabama was there and presided over the hearing—and it reminded me there is an important piece of this that hasn't yet really come forward.

I gather we as the Judiciary Committee have the main part of the jurisdiction. The gentleman from Illinois has made a good step forward. But I would hope, Mr. Chairman, that—I gather the Administration is just in the process of sending up its bill; and I would just inquire, because the fact that that was left out kind of raised some questions, where are we? If the gentleman from Illinois would yield.

Chairman SENSENBRENNER. Would the gentleman from Illinois yield to me?

Mr. HYDE. I yield.

Chairman SENSENBRENNER. This amendment is drafted specifically as an amendment to the Immigration and Nationality Act so as to avoid a sequential referral to the Financial Services Committee. I believe there has to be a separate anti-money laundering bill which I think most of us will support here, but that is not in the jurisdiction of our Committee but in the jurisdiction——

Mr. FRANK. If the gentleman from Illinois would yield again. What they tell me is some of the way the Administration is drafting it, we may have jurisdiction. So I would hope that maybe pretty soon we would sit with the people at Financial Services and work out a plan. They said they would talk about amending title XVIII.

I thought, as the gentleman from Wisconsin did, that it wouldn't be the jurisdiction here. But apparently there was some sense from the Financial Services that it might come here.

I would note that it should be something we should moving on quickly.

Mr. HYDE. Sheila Jackson Lee, would you like to be recognized?

Ms. JACKSON LEE. Mr. Chairman—and two Mr. Chairmans sitting next to each other—frankly, I think the present state of immigration laws of which this particular amendment is amending doesn't specifically have language prohibiting a person from entering the country if they are laundering money. But it is clear that the financing of terrorism is a key concern, both in terms of the investigation and in terms of prohibiting further terrorism.

I would only say that I want us to be very concerned about broadening the criteria for inadmissibility. But I believe that this particular prohibition in light of what we are trying to do is reasonable and it may provide an incentive. The word may go out, if you are money laundering, don't come here, which will be helpful to us. So I would support this amendment.

I know that you and Mr. Lantos have worked on it, and I support it. My only caveat is that we are cautioned for broadening the basis of inadmissibility as it may impact immigrants who are coming here on nothing but legal terms.

I yield to the gentlelady from California.

Ms. LOFGREN. Strike the last word.

Chairman SENSENBRENNER. Recognize the gentlewoman for 5 minutes.

Ms. LOFGREN. I think clearly, under the current act, the consular officer or the Attorney General has the ability to exclude individuals who engage in money laundering activities anyhow. So I don't mind being duplicative in this amendment. I plan to vote for it.

But what I am particularly concerned about and the reason why I wanted to mention this is the state of the technology to actually implement this plan, which is a good one, along with some of the other things we are doing, is simply not there in many of the consular offices as well as the immigration service. I am, therefore, particularly glad that this amendment is before us and highlighting once again the need to put in technology tools to make sure that what we pass actually works.

And I yield back.

Chairman SENSENBRENNER. The question is on the——

Mr. BACHUS. Mr. Chairman——

Chairman SENSENBRENNER. For what purpose is Mr. Bachus seeking recognition?

Mr. BACHUS. Mr. Chairman, I am going to support this amendment.

Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.

Mr. BACHUS. Thank you. I do think—one of the things that we in our money laundering hearings that we have had in Financial Services is that there needs to be better coordination between the agencies and between our immigration agencies and our law enforcement agencies. I think this is consistent with what we have seen is necessary. I do. I think maybe the Financial Services Committee will look at it. But I do not believe—I think they will obviously look at it because it does deal with some sections that they also exercise jurisdiction over, but I can't speak for them. But I would think that it is consistent with what we are doing.

Chairman SENSENBRENNER. Gentleman yield back?

Question is—gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I move to strike the last word.

Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.

Mr. SCOTT. I ask whether or not someone whose name is put on this list ever has an opportunity to be heard to suggest that the one who is money laundering is actually somebody with the same name and it is not them. Do they have an opportunity to be heard to get off the list?

Mr. HYDE. Yes. The answer is yes. If you are wrongfully included on any list, I should think that you could go to where the list originates and plead your case, because—and if they kept you on, you would have a cause for litigation. So I think these are practically worked out.

There is judicial review, I am advised, of a removal order. So there is judicial review.

Mr. FRANK. Gentleman would yield to me?

Mr. SCOTT. Gentleman from Massachusetts.

Mr. FRANK. I can support this amendment. But part of the problem is on removal there would be judicial review. But if we are talking about denial of a visa, American consuls who are being asked to grant a visa are, as far as I know, the only officials of the American government who make an absolutely and completely totally unreviewable decision. A consul's decision to say no to a visa to someone who is not an American, to someone who is overseas—the ambassador cannot technically and legally overrule them. Those of us who have intervened have been told that, and it is simply not paper. So in removal, it is true.

As I said, I still support the amendment, but it is one thing I hope this Committee will address. I tried to raise it before. But we ought to be clear. The decision of an American consular officer to deny a visa is absolutely unreviewable by any other official or judicial or executive branch official.

Chairman SENSENBRENNER. The time belongs to the gentleman from Virginia.

Mr. SCOTT. Yield back.

Chairman SENSENBRENNER. Question is on the Hyde amendment. Those in favor will signify by saying aye. Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Further amendments to title II?

Gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. NADLER. The amendment offered by Nadler and Jackson Lee.

Chairman SENSENBRENNER. Which amendment specifically?

Mr. NADLER. Page 52, strike line 15.

The CLERK. Amendment offered by Mr. Nadler and Ms. Jackson Lee to H.R. 2975.

On page 52, strike line 15 and all that——

Mr. NADLER. Mr. Chairman, I ask unanimous consent to waive the reading of the amendment.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

Amendment offered by Nadler and Jackson Lee

On page 52, strike line 15 and all that follows through page 53, line 20, and insert the following:

(e) Confidentiality of Information.--

(1) In General.--Information contained in or pertaining to any asylum application, records pertaining to any credible fear determination conducted pursuant to section 235)b( of this Act, and records pertaining to any reasonable fear determination involving an alien ordered removed under section 238)b( or whose removal is reinstated under section 241)a()5( of this Act, are confidential and shall not be disclosed without the written consent of the applicant, subject to the exceptions set forth in section 208.6 of title 8, Code of Federal Regulations )as in effect on the date of the enactment of the PATRIOT act.

(2) Confidentiality does not preclude investigation.-- The requirement of confidentiality set forth in paragraph (1) does not prohibit the Attorney General from requesting or receiving information from other governments as part of an investigation to determine whether an alien is described in section 212(a)(3)(B)(i) or 237(a)(4)(B) of this Act, provided the Attorney General does not disclose to any unauthorized person---

(a) the fact that the alien is an applicant for asylum; or

(b) information, including but not limited to specific facts or allegations in the asylum claim, sufficient to give rise to an inference that the applicant has applied for asylum or similar relief.

Chairman SENSENBRENNER. The gentleman from New York is recognized for 5 minutes subject to the gentleman from Pennsylvania's reservation.

Mr. NADLER. Thank you, Mr. Chairman.

This amendment, which I am offering along with the gentlewoman from Texas, the gentleman from California and the gentlewoman from California, Ms. Lofgren, is very simple. As currently drafted the bill would allow the government to communicate with a foreign government with respect—with the country of origin of an applicant for asylum—political asylum in this country for the purpose of obtaining information about whether the asylum applicant

perhaps is really a terrorist or terrorist agent. And it is perfectly fine.

Unfortunately, the provision has been drafted so broadly that legitimate applicants for political asylum who are in fact fleeing persecution in a foreign country could be rewarded for their yearning to be free in the United States by having Uncle Sam in effect inform on them to the secret police of the foreign country, possibly resulting in their families back home getting murdered by the foreign government secret police.

This power was not sought by the Department of Justice. It wasn't even in the Attorney General's bill. Giving it to the government without drafting it properly so that we don't endanger the lives of the families of applicants for political asylum would be an outrageous abuse of our laws and of our belief that people are entitled to seek freedom for themselves and their families on our shores.

How many times have political dissidents been punished by totalitarian regimes by being separated for life from their families or by finding out that a parent is in the gulag or perhaps murdered? We do not want to place our government on the side of these terrible practices by telling a murderous foreign government whom to murder.

I don't think that is the intent of this bill. But, unfortunately, it could be the effect of this provision if it is not amended.

What this amendment proposes is straightforward. The amendment would limit the information that our government could give to a foreign government while seeking information from that government so as to bar the foreign government from figuring out which of its citizens is seeking asylum in the United States. The U.S. Government is—would be perfectly free to seek and obtain information from foreign governments to properly identify potential terrorist threats, but it must not, in so doing, reveal information that would enable that foreign government to figure out which of its citizens are subject to seeking political asylum here. We must not reveal, in effect, to the secret police of a foreign government who is defecting—who is defecting from that tyranny and seeking political asylum here.

This amendment would leave the government free to obtain whatever information it needed to determine the bona fides of the asylum application, to decide whether there is a genuine freedom seeker or perhaps a terrorist or foreign agent. But, in so doing, the amendment would protect the genuine, sincere asylum seeker from being identified to the secret police or some nasty foreign government and him—not him, but his family left behind suffering the consequences. I would hope—it is simply protection that I would hope everyone would agree to.

Chairman SENSENBRENNER. The gentleman from Pennsylvania insist upon his point of order?

Mr. GEKAS. We do not.

Chairman SENSENBRENNER. The gentleman from Pennsylvania seek recognition?

Mr. GEKAS. I do. I thank the Chair.

We oppose the amendment and ask the Members to vote no. The current language in the bill effectively removes a bar on the disclosure of information that the alien is a terrorist. In other words,

what this language does in the bill, which now the gentleman from New York wants to change, is to allow our government to disclose that the alien is or is a potential terrorist. The gentleman's amendment puts back the bar and prevents our government from disclosing that the alien is a terrorist. We oppose the amendment.

Mr. NADLER. Would the gentleman yield?

Mr. GEKAS. Yeah.

Mr. NADLER. I don't think you are reading the amendment correctly. The amendment says, information contained in or pertaining to an asylum application, records pertaining to any credible feared determination conducted pursuant to section so and so and records pertaining to any reasonable feared determination are confidential and shall not be disclosed without the written consent of the applicant. But section 2 of the amendment says, the requirement of confidentiality set forth in paragraph 1 does not prohibit the Attorney General from requesting or receiving information from other governments as parts of an investigation to determine whether an alien is described in section 2, et cetera, of this act provided the Attorney General does not disclose to an unauthorized person, A, the fact that the alien is an applicant for asylum or, B, information, including but not limited to specific facts sufficient to give rise to an inference that the applicant has applied for asylum or similar relief.

In other words, it allows the government to get whatever information it requires. It simply says you cannot tell a foreign government information that would lead the foreign government to conclude that so and so is requesting political asylum in the United States.

I don't know to whom you are talking about disclosing. If our government concludes that an applicant for asylum is a terrorist, it simply excludes him. We don't want to disclose this to the foreign government, which presumably knows it. What we don't want to disclose to the foreign government is who is seeking asylum. If the foreign government is sending a terrorist here, they know it. All that is necessary for our government to do is to determine whether he is a terrorist or not.

The amendment specifically says they can get whatever information they need to make that determination. If our government determines that an asylum applicant is a terrorist, foreign agent or whatever, they simply say, no, you can't come into this country.

Chairman SENSENBRENNER. Would the gentleman yield to the gentleman from Pennsylvania?

Mr. GEKAS. I yield to the lady from Texas.

Ms. JACKSON LEE. I will wait to strike the last word.

Mr. GEKAS. Well, let the lady proceed, and I will set my own time.

Chairman SENSENBRENNER. You already have your time.

Mr. GEKAS. I will ask somebody to yield time.

Chairman SENSENBRENNER. Gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. I thank the gentleman very much.

I would like to ask my colleagues to consider this amendment and determine that we are not putting a bar or block in the midst of information that may be exchanged on the grounds that an individual is a terrorist. The issue of this particular amendment is to

avoid the broadness of interfering or putting in jeopardy an innocent asylum seeker.

I think the interesting point that was made is that the Attorney General himself did not ask for this information or did not ask for this provision. We do not at this point know under what conditions a number of the perpetrators, the 19 perpetrators, came into this country. So we don't have a basis as to whether or not you could attribute that they were here on the seeking of asylum. Therefore, we are leaping to any conclusions that we would be helping to thwart terrorism by providing this broad depth of giving information, therefore jeopardizing lives not only of the seeker but of the family members as well.

I think the exception in the section allows for exchange of information if information is either found out or if someone is so designated as a terrorist, section 2 on page 53. What we are simply trying to do is to limit the transfer of information that would be detrimental to an innocent asylum seeker.

I again emphasize to my colleagues that the immigration section is a very delicate section because it draws a lot of attention. Let us immediately close our doors, let us immediately attribute terrorism to all of those who are under the immigration laws, and I suggest that that should not be the case. Immigration does not equate to terrorism, and the only thing we are trying to do is to eliminate the unwiseness of sharing this information that would be detrimental to innocent individuals warranting asylum and warranting the protection of this country. I would ask my colleagues to support this amendment offered by Mr. Nadler and several others of my colleagues and myself.

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia, Mr. Goodlatte, seek recognition?

Mr. GOODLATTE. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOODLATTE. I am pleased to yield to the gentleman from Pennsylvania.

Mr. GEKAS. I thank the gentleman for yielding.

I stand on the first statement that I made, in effect that this amendment calls for the prohibition of disclosure by the Attorney General to any unauthorized person in the language of the amendment itself, the fact that the alien is an applicant for asylum. That goes against—directly against the language in the bill which does authorize the government in its discretion to disclose the fact that the alien is an applicant for asylum. And from what we have gleaned in determining this language, it does not do harm to the relatives or the other rationale that the gentleman gave for his amendment. So I ask——

Mr. DELAHUNT. Would the gentleman yield for a question? What would be the purpose of the provision in the bill to disclose to a foreign government that an individual had applied for an asylum? In your original statement, you mention terrorism. I don't see where there is any nexus at all between the information that an individual has applied for asylum and terrorism. Explain that, if you would.

Mr. GOODLATTE. I yield further to the gentleman from Pennsylvania.

Mr. GEKAS. This would permit the government or our side to—knowing this is a potential terrorist or for other reasons that it would not be appropriate to grant asylum to disclose that information.

Mr. BERMAN. Would the gentleman yield?

Mr. GEKAS. Let us do a triple yield.

Mr. CONYERS. Would the gentleman yield to me?

It could be that the government would want the applicant's family bumped off. That is the only reason I can think of.

Mr. BERMAN. Would you yield further?

Ms. JACKSON LEE. Would the gentleman yield?

Mr. BERMAN. This has no constraint whatsoever on the ability of our government to get information about the asylum seeker. The Nadler amendment makes no constraint. It just says, don't—when you are going, don't tell unauthorized people he is seeking asylum. Try and get information. When they say why do you want the information, say maybe because we want to put him on the watch list. Because we want to indict him. Because we are concerned. We heard that he might be a terrorist, and we want to know about it. Don't tell that person—don't tell the unauthorized person, meaning the foreign government, that this person who is fleeing from that government is seeking asylum because then that government in certain situations might well go to family or close friends of that person who are in the country and do harm to them.

That is all he says, is don't tell him that he is seeking asylum. It doesn't constrain what we can get. It only limits quite narrowly what we can tell the foreign government.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. GEKAS. Double yield.

Mr. NADLER. I just don't understand one thing. The government—yes, Mr. Gekas is correct. The amendment would say that the government can't disclose the information that so and so is seeking political asylum. My question is, who has business to know that? The government knows it is seeking political asylum. The government has to decide whether to grant it. The government has to find out if his political asylum claim is valid, if he is a terrorist or narcotics seller or whatever. It has to gather information. It doesn't have to give anybody information.

Mr. GOODLATTE. Reclaim my time to give the gentleman from Pennsylvania an opportunity to respond.

Mr. GEKAS. I am confused by the assertions that are being made here. The main language in our bill prohibits the granting—the information from—bars the asking of this information or giving this information.

Excuse me. Here we go.

Your amendment, does it not say that the Attorney General does not—shall not disclose to any unauthorized person the fact that an alien is an applicant for asylum?

Mr. NADLER. Yes. But it also says he can ask anybody for information he needs to determine if the guy is a terrorist or should get asylum or anything else.

Mr. GEKAS. Why is it important to you then to force the Attorney General not to disclose the fact that the alien is an applicant for asylum?

Chairman SENSENBRENNER. The time of the gentleman from Virginia, who has been very blissfully silent, to the appreciation of everybody, has expired.

The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. I would implore my friend from Pennsylvania to look at this. I don't think he has a problem with this amendment.

Let me put it this way. We have a policy part in this government known as "don't ask, don't tell", which I don't like. What the gentleman from New York is now proposing is a different policy. It is, "ask, don't tell".

We have an asylum process. The gentleman from Pennsylvania says, well, you have got to be able to tell the person deciding on the asylum whether he is a terrorist or not. That is not affected by the amendment.

It is, after all, the American government—we are talking about a potential asylee who is in America or somewhere where he has access to the American government. All this amendment says is that the American government may ask of that host government or any other government in the world, do you know anything bad about this person? Do you know anything that I should know about him? All the amendment says in that process, do not disclose to other people, presumably the host government where the person is fleeing, that he is trying to get asylum here.

No one who is empowered to make the decision on whether or not the person is eligible for asylum is denied any of the necessary information by this amendment. This amendment doesn't say that the Justice Department can't talk to Treasury, et cetera, et cetera. The decisionmaker about whether or not the individual gets asylum in the U.S. Is not in any way constrained from information here.

All this amendment says is—I realize it is worded in a complex way, but all it says is, get whatever information you need about this individual from any source anywhere, but please don't—don't give away the fact that he or she is an applicant for asylum. Because in case the person isn't a terrorist and we do grant them asylum, you may not want to tip that government off.

It does not prevent the United States government decisionmakers from getting one iota of the information they need to turn down the asylum. All it says is, in the process of gathering information from foreign governments from anybody you want to, go ahead and find out if this person should be turned down and make the decision. Just don't tell the government that might have an animus against that person where he still might have family that he has applied for asylum.

Mr. GEKAS. Doesn't it come down to a policy decision as to whether we owe the foreign government the——

Mr. FRANK. That is the policy decision. And here is the question——

Mr. GEKAS. It is inherent in the main act.

Mr. FRANK. First of all, be very clear, this does not affect the information we get to decide whether or not the person is a terrorist. So the gentleman says, do we owe it to the government? Well, it

depends on which government. Do we owe the government of Iraq anything or the government of Iran?

Mr. GEKAS. That is what the Attorney General has to decide.

Mr. FRANK. What we are saying is, as a matter of policy, if someone is applying for asylum, we do not think you should give that away. If in fact the person turns out to be eligible for asylum—after all, this comes at an early point before we know—and the gentleman believes and we all have worked—if someone applies for the asylum procedure, they ask, as they are entitled to under this amendment, whether or not there is anything bad. Nothing bad comes forward, and we grant the person asylum.

Wouldn't it have been a good idea to have told his host government in advance that he was applying for the asylum? If he is turned down for asylum, then there is no problem. But the question is, pending the application, pending the decision, should we put that person or people close to him or her at risk by disclosing to the host government the individual has applied for asylum?

I would yield.

Mr. GEKAS. I am bound a little bit by the thrust of the Administration's offer here on the proposed bill that the Attorney General should have——

Mr. FRANK. Let me say that I think binding yourself to somebody else's thrust is not always a good idea. I mean, the point is, I understand the Administration asked that——

Mr. GEKAS. They didn't ask for it.

Mr. FRANK. The point is this——

Chairman SENSENBRENNER. The time belongs to the gentleman from Massachusetts, and he has our undivided attention.

Mr. FRANK. The gentleman from Pennsylvania would say—and we are working with the Administration, but it is not a good idea to say that until the Administration signs off on something we can't accept it. My guess is I don't think they anticipated this. They were, I think, interested in making sure they got all the information they needed. I don't believe that this Administration feels that it is important for them to be able to tell a host government from which someone is applying for asylum that that person is applying for asylum.

I yield to the gentleman from New York.

Mr. NADLER. A number of years ago——

Chairman SENSENBRENNER. For what purpose does the gentleman from Texas seek recognition?

Mr. SMITH. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman—and I will be very brief. To me, the biggest problem with this amendment—and I am looking at the words under section (E)(2) that provide the Attorney General does not disclose to any unauthorized person that the alien is an applicant for asylum. The problem here is there are going to be many foreign countries who, unless you tell them that the individual has applied for asylum, are simply not going to be willing to give us the information the Attorney General needs as to whether the individual who has applied is a terrorist or has terrorist connections or not.

The reason for that is that many foreign countries have very strict privacy codes, and they would be prohibited from giving us that information. So the whole rationale is to allow the foreign countries to have us a reason to give us the information that we need, and that is a major flaw in this amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia, Mr. Scott, seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. I yield to the gentlelady from Texas.

Ms. JACKSON LEE. I thank the gentleman from Virginia.

There are two major points here—probably several major points. First of all, Barney had ask and tell. This is fishers of men and women. This is throwing a vast net to get every single person that is applying for asylum. And so the—and that is what the bill does as presently written.

At the same time, in contrast, where we are trying to go, which is to give law enforcement additional tools, it gives the Attorney General no enhanced investigatory tools. The Attorney General can get all of the information that he or she desires in the present—without this particular expansion. But what it does do is the sacredness that we hold to asylum seekers in general, which is that they are coming here out of a—both impression and reality of oppression and the need for safety, we are now throwing this vast net to say that you have the option of doing this for every single asylum seeker. We don't even have a criteria.

What we are suggesting is that that is too broad, and you do nothing to enhance the investigation that we are attempting to do which is to find terrorists and bring them to justice. Find terrorists and bring them to justice. So I am not sure, Mr. Gekas, and I would be willing to yield, what we get out of this particular amendment. Who is to say that any foreign country is going to want to give you information for someone who is seeking asylum or is going to be advantaged to you in your investigation?

What we are trying to do here, as I understand it, is give tools to be able to weed out terrorists and to prevent terrorists' acts. I cannot see where this might do so in jeopardizing those innocent individuals, vast numbers of individuals and their families who may be seeking asylum.

My time——

Chairman SENSENBRENNER. Gentleman from Virginia.

Mr. SCOTT. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. All I am trying to do here is to give the benefit of the doubt to the Attorney General where this Nadler amendment prevents him from disclosing that the alien is an applicant for asylum. I am giving the Attorney General the benefit of the doubt to make that judgment in his discretion. That is what I am upholding here, and that is why I asked the Members to vote no on this amendment.

Mr. SCOTT. I yield to the gentleman from New York.

Mr. NADLER. Thank you.

Mr. Chairman and Members of the Committee, certain things ought to be protected. In the 1960's, Simas Kudirka, a Lithuanian

seaman, defected from the Soviet Union in the port of New York or Boston; and because of rather shameful actions by our government, he was handed back to the Soviet Union. And I think he died in the gulag, as a result of which a future Secretary of State, Henry Kissinger, said we would never do that again.

What this amendment attempts to do is very analogous to that situation. You cannot always trust every future Attorney General or Deputy Attorney General or consul to make the right decision. What this says is, get whatever information you need to make the decisions with respect to political asylum, but don't tell the Soviet Union, don't tell the Ayatollahs who from their country is seeking to defect to the United States so they can arrange the murder or torture of his relatives. That doesn't make sense.

We have—the United States Government has to make the decision, is this a real, sincere, bona fide applicant for asylum to whom we will grant asylum or is this someone we don't trust, to whom we won't grant asylum? If we make that decision, we will go back. But we shouldn't tell.

This amendment inhibiting in any way the ability of the Secretary of State or whoever to get whatever information he needs, all we are saying is you can't tell the secret police of that foreign government that so and so is applying for political asylum, just as we should not have—not only return, we should never have informed the Soviet Union who was applying for a political asylum so that their relatives went to the gulag.

Ms. LOFGREN. Would the gentleman yield for a question?

Mr. GEKAS. The only question I ask, are there no circumstances under which the Attorney General should give the information that you would bar?

Mr. NADLER. The problem is this. No, there aren't; and I will tell you why. If someone is seeking to move to the United States from England and we want to ask England if this guy is a terrorist, he is not going to be applying for political asylum. He is going to be applying for regular immigration.

Mr. BACHUS. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. BACHUS. Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. Mr. Chairman, where did 205(B) come from? I mean, it hasn't been in any earlier drafts. I don't know if anybody has asked that question.

Ms. JACKSON LEE. Would the gentleman from Alabama yield?

Mr. BACHUS. I don't know if this was something the Administration requested.

Ms. JACKSON LEE. Would the gentleman yield?

Chairman SENSENBRENNER. If the gentleman will yield, the Administration did not request 205(B).

Mr. BACHUS. What I am suggesting, we can take care of the whole problem by striking 205(B).

Chairman SENSENBRENNER. The question is on the Nadler amendment. Before——

Ms. JACKSON LEE. Would the gentleman yield?

Chairman SENSENBRENNER. The time belongs the gentleman from Alabama.

Mr. BACHUS. I will yield.

Ms. JACKSON LEE. Your question, is what we were trying to answer? And, as I said, I think our point is here we want to give the kind of investigatory needs that the Attorney General has. But let me refer you to 8 CFR 208.6. The Attorney General has those powers if he or she needs them—emergency powers and that can be utilized. So my colleagues, without them asking for it——

Mr. NADLER. Would the gentlelady yield?

Mr. BACHUS. I am just going to suggest striking 205(B). Anybody opposed to striking 205(B)?

Chairman SENSENBRENNER. Does the gentleman want to offer that as an amendment to this amendment?

Mr. BACHUS. I offer that as an amendment to this amendment.

Ms. JACKSON LEE. I would accept it as——

Chairman SENSENBRENNER. Without objection, the amendment to the amendment is agreed to. So now the amendment is striking section 205(B). The question is on the Nadler amendment as modified by the Bachus modification. Those in favor will signify by saying aye. Those opposed, no.

The ayes appear to have it. The ayes have it, and the amendment as modified is agreed to.

Further amendments to title II? The Chair, on behalf of himself and Mr. Conyers, now offers a manager's amendment; and the clerk will report the amendment.

The CLERK. Manager's amendment to H.R. 2975.

Mr. CONYERS. Mr. Chairman, I ask that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendments follow:]

Scott

Proposed DOJ Amdt to
18 U.S.C. 7 (9) (add at end):

This paragraph does not apply with respect to an offense committed by a person described in Section 3261(a) of this title."

3261 (a):

(1) Person accompanying or employed by Armed Forces outside of the U.S.

(2) Member of Armed Forces (Covered by the Uniform Code of Military Justice.

**Amendment to H.R. 2975**

**Offered by Mr. Weiner and Mr. Issa**

On Page 115, after line 14, insert:

**SEC. 505. PUBLIC SAFETY OFFICER BENEFITS.**

(a) Section 1201(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3796) is amended by striking "$100,000" and inserting "$250,000".

(b) The amendment made by subsection (a) shall apply to any death or disability occurring on or after January 1, 2001.

## AMENDMENT TO H.R. 2975
## OFFERED BY MR. KELLER

Add at the end the following:

**SEC. . STUDY OF ACCESS.**

(a) IN GENERAL.—Not later than December 31, 2002, the Federal Bureau of Investigation shall study and report to Congress on the feasibility of providing to airlines access via computer to the names of passengers who are suspected of terrorist activity by Federal officials.

(b) AUTHORIZATION.—There are authorized to be appropriated for fiscal years 2002 though 2003 not more than $250,000 to carry out subsection (a).

## AMENDMENT TO H.R. 2975
## OFFERED BY MR. BARR OF GEORGIA

In section 236A(a)(4) of the Immigration and Nationality Act, as proposed to be inserted by section 203 of the bill, strike ''Commissioner'' each place such term appears and insert ''Deputy Attorney General''.

**AMENDMENT TO H.R. _____**

**OFFERED BY MR. BARR OF GEORGIA**

Add at the end the following:

# TITLE ____—PRIVATE SECURITY OFFICER QUALITY ASSURANCE

**SEC. ___01. SHORT TITLE.**

This title may be cited as the ''Private Security Officer Quality Assurance Act of 2001''.

**SEC. ___02. FINDINGS.**

Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) the private security industry provides numerous opportunities for entry-level job applicants, including individuals suffering from unemployment due to economic conditions or dislocations;

(3) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are only supplemented by private security officers who provide prevention and reporting services in support of, but not in place of, regular sworn police;

(4) given the growth of large private shopping malls, and the consequent reduction in the number

of public shopping streets, the American public is more likely to have contact with private security personnel in the course of a day than with sworn law enforcement officers;

(5) regardless of the differences in their duties, skill, and responsibilities, the public has difficulty in discerning the difference between sworn law enforcement officers and private security personnel; and

(6) the American public demands the employment of qualified, well-trained private security personnel as an adjunct, but not a replacement for sworn law enforcement officers.

**SEC. ___03. BACKGROUND CHECKS.**

(a) IN GENERAL.—An association of employers of private security officers, designated for the purpose of this section by the Attorney General, may submit fingerprints or other methods of positive identification approved by the Attorney General, to the Attorney General on behalf of any applicant for a State license or certificate of registration as a private security officer or employer of private security officers. In response to such a submission, the Attorney General may, to the extent provided by State law conforming to the requirements of the second paragraph under the heading ''Federal Bureau of Investigation'' and the subheading ''Salaries and Expenses'' in title II of Pub-

lic Law 92–544 (86 Stat. 1115), exchange, for licensing and employment purposes, identification and criminal history records with the State governmental agencies to which such applicant has applied.

(b) REGULATIONS.—The Attorney General may prescribe such regulations as may be necessary to carry out this section, including measures relating to the security, confidentiality, accuracy, use, and dissemination of information and audits and recordkeeping and the imposition of fees necessary for the recovery of costs.

(c) REPORT.—The Attorney General shall report to the Senate and House Committees on the Judiciary 2 years after the date of enactment of this bill on the number of inquiries made by the association of employers under this section and their disposition.

**SEC. ___04. SENSE OF CONGRESS.**

It is the sense of Congress that States should participate in the background check system established under section 3.

**SEC. ___05. DEFINITIONS.**

As used in this title—

(1) the term ''employee'' includes an applicant for employment;

(2) the term ''employer'' means any person that—

(A) employs one or more private security officers; or

(B) provides, as an independent contractor, for consideration, the services of one or more private security officers (possibly including oneself);

(3) the term ''private security officer''—

(A) means—

(i) an individual who performs security services, full or part time, for consideration as an independent contractor or an employee, whether armed or unarmed and in uniform or plain clothes whose primary duty is to perform security services, or

(ii) an individual who is an employee of an electronic security system company who is engaged in one or more of the following activities in the State: burglar alarm technician, fire alarm technician, closed circuit television technician, access control technician, or security system monitor; but

(B) does not include—

(i) sworn police officers who have law enforcement powers in the State,

(ii) attorneys, accountants, and other professionals who are otherwise licensed in the State,

(iii) employees whose duties are primarily internal audit or credit functions,

(iv) persons whose duties may incidentally include the reporting or apprehension of shoplifters or trespassers, or

(v) an individual on active duty in the military service;

(4) the term ''certificate of registration'' means a license, permit, certificate, registration card, or other formal written permission from the State for the person to engage in providing security services;

(5) the term ''security services'' means the performance of one or more of the following:

(A) the observation or reporting of intrusion, larceny, vandalism, fire or trespass;

(B) the deterrence of theft or misappropriation of any goods, money, or other item of value;

(C) the observation or reporting of any unlawful activity;

(D) the protection of individuals or property, including proprietary information, from harm or misappropriation;

(E) the control of access to premises being protected;

(F) the secure movement of prisoners;

(G) the maintenance of order and safety at athletic, entertainment, or other public activities;

(H) the provision of canine services for protecting premises or for the detection of any unlawful device or substance; and

(I) the transportation of money or other valuables by armored vehicle; and

(6) the term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

**AMENDMENT TO H.R. ____**

**OFFERED BY _____**

Add at the end the following:

**SEC. ___. ENFORCEMENT OF CERTAIN ANTI-TERRORISM JUDGMENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Justice for Victims of Terrorism Act''.

(b) DEFINITION.—

(1) IN GENERAL.—Section 1603(b) of title 28, United States Code, is amended—

(A) in paragraph (3) by striking the period and inserting ''; and'';

(B) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(C) by striking ''(b)'' through ''entity—'' and inserting the following:

''(b) An 'agency or instrumentality of a foreign state' means—

''(1) any entity—''; and

(D) by adding at the end the following:

''(2) for purposes of sections 1605(a)(7) and 1610(a)(7) and (f), any entity as defined under sub-

paragraphs (A) and (B) of paragraph (1), and subparagraph (C) of paragraph (1) shall not apply.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 1391(f)(3) of title 28, United States Code, is amended by striking ''1603(b)'' and inserting ''1603(b)(1)''.

(c) ENFORCEMENT OF JUDGMENTS.—Section 1610(f) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A) by striking ''(including any agency or instrumentality or such state)'' and inserting ''(including any agency or instrumentality of such state), except to the extent of any punitive damages awarded''; and

(B) by adding at the end the following:

''(C) Notwithstanding any other provision of law, moneys due from or payable by the United States (including any agency or instrumentality thereof) to any state against which a judgment is pending under section 1605(a)(7) shall be subject to attachment and execution with respect to that judgment, in like manner and to the same extent as if the United States were a private person, except to the extent of any punitive damages awarded.''; and

(2) by striking paragraph (3) and adding the following:

"(3)(A) Subject to subparagraph (B), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive this subsection in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

"(B) A waiver under this paragraph shall not apply to—

"(i) if property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations has been used for any nondiplomatic purpose (including use as rental property), the proceeds of such use; or

"(ii) if any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations is sold or otherwise transferred for value to a third party, the proceeds of such sale or transfer.

"(C) In this paragraph, the term 'property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations' and the term

'asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations' mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

''(4) For purposes of this subsection, all assets of any agency or instrumentality of a foreign state shall be treated as assets of that foreign state.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any claim for which a foreign state is not immune under section 1605(a)(7) of title 28, United States Code, arising before, on, or after the date of the enactment of this Act.

**SEC. 2. PAYGO ADJUSTMENT.**

The Director of the Office of Management and Budget shall not make any estimates of changes in direct spending outlays and receipts under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902(d)) for any fiscal year resulting from the enactment of this Act.

## AMENDMENT TO H.R. ____

## OFFERED BY MR. NADLER AND MS. JACKSON-LEE OF TEXAS

In section 236A(a)(2) of the Immigration and Nationality Act, as proposed to be inserted by section 203 of the bill—

(1) strike "paragraph (5)," and insert "paragraphs (5) and (6),"; and

(2) strike "States. Such" and insert "States or found not to be inadmissible or deportable, as the case may be. Except as provided in paragraph (6), such".

In section 236A(a) of the Immigration and Nationality Act, as proposed to be inserted by section 203 of the bill, add at the end the following:

1 "(6) LIMITATION ON INDEFINITE DETEN-
2 TION.—An alien detained under paragraph (1) who
3 has been ordered removed based on one or more of the
4 grounds of inadmissibility or deportability referred
5 to in paragraph (3)(A), who has not been removed
6 within the removal period specified under section
7 241(a)(1)(A), and whose removal is unlikely in the
8 reasonably foreseeable future, may be detained for
9 additional periods of up to six months if the Attor-

1 ney General demonstrates that the release of the
2 alien will not protect the national security of the
3 United States or adequately ensure the safety of the
4 community or any person.

In section 236A(b) of the Immigration and Nationality Act, as proposed to be inserted by section 203 of the bill, strike "(a)(3))" and insert "(a)(3) or (a)(6))".

In section 236A(b) of the Immigration and Nationality Act, as proposed to be inserted by section 203 of the bill, insert "initiated" before "in the United States District Court".

Chairman SENSENBRENNER. The Chair will yield to the gentleman from Michigan to discuss what is in the manager's amendment.

Mr. CONYERS. Ladies and gentlemen of the Committee, I want to thank the Chairman, both our staffs and you for considering seven additional proposals that will shorten our work for this evening considerably.

The first consideration in the second manager's amendment has been a provision worked out between ourselves and the Department of Justice to craft an amendment to the bill's extraterritoriality provision to ensure that it contains safeguards passed by this Committee last year. So we continue these provisions into the present legislation.

Second is the amendment that deals with survivor benefits for public safety officers, which is increased from $100,000 per family to $250,000 per family is included.

Third, the Keller amendment, which would study the feasibility of sharing law enforcement information about terrorists with airlines, is included therein.

Fourth, the gentleman from Georgia Mr. Barr's amendment limits decisionmaking to high-ranking Department of Justice officials for the purpose of ensuring public accountability.

Number five, another Barr amendment, which is entitled Public Safety Officers Quality Assurance Provision, which enhances the ability of private security companies to conduct background checks

on prospective employees, this has already passed the Committee and the House unanimously in previous Congresses.

Six, the Cannon of Utah provision entitled Justice for Victims of Terrorism, which would enhance the ability of victims of terrorism to collect money from states that sponsor terrorism. This provision also passed the Committee and the House unanimously last year.

Finally, the Nadler-Jackson Lee amendment on indefinite detention, which would require the Attorney General to demonstrate every 6 months that a person being detained after removal proceedings are completed is being detained to protect the national security of the United States or the safety of our communities.

This, ladies and gentlemen, contains the essential seven provisions in the second manager's amendment; and I implore your considered support.

Chairman SENSENBRENNER. Reclaiming my time, let me say that is as a result of a bipartisan effort that has been worked out by the staffs on both sides. One of the purposes of this is to shorten the time that we are all here, and I would urge the Members to speedily adopt this amendment and yield back the balance of my time.

For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I would like to ask Mr. Cannon, on his amendment involving terrorist judgments, is that similar to the bill we had allowing victims to sue foreign governments in the United States and get a judgment last year?

Mr. CANNON. I think what the gentleman is referring to is the bill we passed out of this Committee last year, and I believe this is virtually identical to that bill.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, to save time, I would just announce that if a separate vote were taken, I would oppose this particular amendment. And yield back the balance of my time.

Chairman SENSENBRENNER. Okay. The question is on the——

Ms. JACKSON LEE. Mr. Chairman——

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas seeks recognition?

Ms. JACKSON LEE. To make an inquiry as well.

First of all, to Mr. Cannon, I believe this is an initiative that is impacting some constituents in my district. This will allow that if there is an action that you have against or a judgment that you may have received in a foreign country, you get to enforce it here or a foreign country?

Mr. CANNON. This bill allows you to enforce it here against assets that are frozen by the United States.

Ms. JACKSON LEE. Against assets that——

Mr. CANNON. Have been frozen by the United States.

Ms. JACKSON LEE. You have access as a United States citizen for an injury caused by a foreign government in a foreign land? You have access to assets here in the United States?

Mr. CANNON. That are assets frozen of the terrorist state which are not currently available for execution.

Ms. JACKSON LEE. And so if you have been injured by that terrorist state and have a judgment or a proceeding in our courts, you have access to those assets?

Mr. CANNON. That is correct.

[The prepared statement of Mr. Cannon follows:]

PREPARED STATEMENT OF THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. Chairman,

Let me first thank you and the ranking member for all your hard work on the legislation before us. The Sensenbrenner-Conyers "PATRIOT Act" is the product of much bi-partisan discussion and compromise over the last two weeks, and I am pleased to be an original co-sponsor.

However, one important change in the law to fight terrorism and compensate its victims was not included.

I am offering an amendment today to allow access to the frozen assets of terrorist sponsor states for American victims of international terrorism who obtain judgments against those terrorist sponsor states.

This Committee and Congress have passed virtually identical legislation three times that would allow Americans who are victims of terrorist acts to sue the state-sponsors of terrorism for compensation from their frozen assets. Most recently in the 106th Congress we passed this legislation, then known as H.R. 3485 by Rep. McCollum, on voice vote in June of 2000. The legislation passed the House floor on suspension of the rules in July, 2000. I would be happy to provide a more lengthy legislative history of this provision to any Members who are interested.

Congress has repeatedly stated its intent that victims of terrorist activities should be compensated from the blocked assets of terrorist sponsoring states. However, despite that intent, a few lower-level bureaucrats at the State Department have refused to release these funds to victims' families even after they have been awarded compensation.

Under current law, Americans who have been victimized by state-subsidized terrorism and are eligible to enforce court judgments against the assets of a terrorist state have had to essentially hire lobbyists and write special legislation to receive their awarded funds.

Some victims have gotten compensated. Many have not.

*That is bad policy. American victims deserve better.*

Now we are faced with the specter of thousands of family members whose loved ones died in the September 11th attacks being unable to get just compensation. *Congress must act again to fix this situation permanently.*

*Under My Amendment:*

(1) *American victims of state-sponsored international terrorism will all have equal access to the courts and to blocked assets.* A small but important token of justice. Nobody will be entitled to mandatory payments—the President's discretion is preserved. On an asset by asset basis the President can continue to hold certain assets from judgment if necessary for national security or diplomatic purposes.

(2) *We impose immediate financial costs on states that sponsor terrorism.* Freezing assets for 20 years and giving them back to terrorist states does not impose such costs. At present, terrorism is a cheap way to pursue war against Americans. Unless the US finds ways to make it more costly, terrorists (and states which sponsor terrorism) have no economic incentive to stop. By imposing a direct and immediate cost, this amendment represents one effective financial tool against terrorists and also helps their victims.

(3) *Terrorist sponsor states will no longer be able to use their diplomatic and intelligence agencies* and *state owned enterprises to support terrorists with financial impunity.* Currently, terrorism sponsoring states use their wholly owned and controlled agencies and instrumentalities to raise, launder and distribute funds to terrorist cells, sometimes even within the US! Ironically, these agencies and instrumentalities can claim "foreign sovereign immunity" against victims and US courts because of their relationship with the terrorist sponsoring states. By exposing these agencies and instrumentalities to liability, the US can further increase the cost of sponsoring terrorism and go after the sources of funding for these organizations and cells.

Let me say in closing, the United States will most certainly make the terrorists responsible for the attacks of September 11th pay for their acts.

By passing our amendment, we will also make states that sponsor terrorists pay a financial price for their actions—and that price will be paid to their victims.

I yield back my time.

Ms. JACKSON LEE. Let me thank you very much. And let me finally conclude by thanking the bipartisan effort for helping us to eliminate the indefinite suspension, which was something that none of us would want to support.

I yield back.

Chairman SENSENBRENNER. The question is on the second manager's amendment. Those in favor will signify by saying aye. Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Further amendments to title II? The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 2975 offered by Ms. Lofgren.

Ms. LOFGREN. I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

## AMENDMENT TO H.R. ____

## OFFERED BY MS. LOFGREN

At the end of subtitle A of title II of the bill, insert the following (and amend the table of contents accordingly):

**SEC. 208. SUBTITLE SUNSET.**

This subtitle (other than section 206) and the amendments made by this subtitle shall take effect on the date of the enactment of this Act and shall cease to have any effect on December 31, 2003.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. Mr. Chairman, although this is hard work for us all, I think we have achieved a lot, not only today but in the last week. And I want to thank not only Mr. Conyers but yourself for the leadership that you have shown in putting a team together to work through these very difficult issues.

I also wanted to take a moment to thank the staffs, both the majority and the minority staff, as well as the Justice Department and White House and others. I think they have worked so hard and really done a good job, and I just wanted to take a chance to thank them and appreciate them.

This bill does make some changes that we are prepared to make. I am a cosponsor of the bill. And part of the fail-safe, if you will, is that we have put sunset provisions in title I. Now that doesn't mean that we are going to let these provisions go away, but it is going to force the Congress to review how it is worked and to see if there are problems and to fix the problems if we discover them. I think all of us feel good about that mechanism to make us really look at this if something turns out in a way that is unanticipated. We don't need a sunset clause in order to do that, but I think it is probably useful to make us do it. And, therefore, this amendment would put the same sunset clause on title II as was in place in title I with the exception of 206, which is the protection of the northern border provisions that obviously doesn't need the same kind of review.

I hope we can adopt this so it will help us with the discipline we will need to review this section of the act along with the others, although, as I discussed with some Members, we don't have to have this adopted in order to review this in 2 years time.

I will not proceed further. I think it is a simple amendment, and I yield back the balance of my time.

Chairman SENSENBRENNER. The Chair will recognize himself in opposition to the amendment.

I believe that there is an essential difference between the sunset that is contained in title I, which largely involves electronic surveillance and all that we have talked about during our debate on title I, and the changes in title II relative to the immigration status of persons who are affiliated with terrorist organizations.

Chairman SENSENBRENNER. The sunset title I allows the Congress and this Committee and our counterpart in the other body specifically to review whether Federal agencies have complied with the law and whether they have had appropriate disciplinary action for rogue agents that may have strayed from the guarantees contained in the Constitution, in the laws; and I think that it is important that there be a review outside the Justice Department on whether the Justice Department has fulfilled the mandates under the law.

With aliens who are allegedly or are suspected to be affiliated with terrorist organizations, there really isn't a review that we can do on that, and they aren't going to change their inclination and what type of terroristic acts they plan on committing in the United States at the stroke of 12:00 on December 31th in the year 2003. So I believe that there is justification for having these changes

made permanent, because as the President has said, we are in this for the long haul.

Terrorism is not going to go away. We are not dealing with the behavior, or alleged misbehavior, of employees and agents at the Federal Government. Here, we are dealing with who is admissible to the country, who can stay in the country, and if they are affiliated with terrorist organizations. I don't think we want them here, and we should not allow the clock to run out on that.

So I would urge the Members of the Committee to reject this amendment, even though it is very well intentioned, and I yield back the balance of my time.

The question is on the Lofgren amendment. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it. The Lofgren amendment is not agreed to.

Are there further amendments?

The gentleman from New York, Mr. Weiner.

Mr. WEINER. Thank you, Mr. Chairman. I have an amendment at the desk.

[The amendment follows:]

**AMENDMENT TO H.R. 2175**

**OFFERED BY MR. WEINER**

At the end of subtitle A of title II of the bill, insert the following (and amend the table of contents accordingly):

1 **SEC. 208. PROGRAM TO COLLECT INFORMATION RELATING**
2 **TO NONIMMIGRANT FOREIGN STUDENTS AND**
3 **OTHER EXCHANGE PROGRAM PARTICIPANTS.**

4 (a) CHANGES IN DEADLINES.—Section 641 of the Il-
5 legal Immigration Reform and Immigrant Responsibility
6 Act of 1996 (8 U.S.C. 1372) is amended—

7 (1) in subsection (f), by striking "Not later
8 than 4 years after the commencement of the pro-
9 gram established under subsection (a)," and insert-
10 ing "Not later than 120 days after the date of the
11 enactment of the PATRIOT Act of 2001,"; and

12 (2) in subsection (g)(1), by striking "12
13 months" and inserting "120 days".

14 (b) INCREASED FEE FOR CERTAIN STUDENTS.—Sec-
15 tion 641(e)(4)(A) of the Illegal Immigration Reform and
16 Immigrant Responsibility Act of 1996 (8 U.S.C.
17 1372(e)(4)(A)) is amended by adding at the end the fol-
18 lowing: "In the case of an alien who is a national of a
19 country, the government of which the Secretary of State

1 has determined, for purposes of section 6(j)(1) of the Ex-
2 port Administration Act of 1979 (50 U.S.C. App.
3 2405(j)(1)), has repeatedly provided support for acts of
4 international terrorism, the Attorney General may impose
5 on, and collect from, the alien a fee that is greater than
6 that imposed on other aliens described in paragraph (1).".
7 (c) DATA EXCHANGE.—Section 641 of the Illegal Im-
8 migration Reform and Immigrant Responsibility Act of
9 1996 (8 U.S.C. 1372) is amended—
10 (1) by redesignating subsection (h) as sub-
11 section (i); and
12 (2) by inserting after subsection (g) the fol-
13 lowing:
14 "(h) DATA EXCHANGE.—Notwithstanding any other
15 provision of law, the Attorney General shall provide to the
16 Secretary of State and the Director of the Federal Bureau
17 of Investigation the information collected under subsection
18 (a)(1).".

Chairman SENSENBRENNER. The Clerk will report the amendment.

A point of order is reserved by the gentleman from Texas, Mr. Smith.

The CLERK. Mr. Chairman, there are two—Weiner 01.

Chairman SENSENBRENNER. Weiner 01, and the clerks will distribute Weiner 01.

The CLERK. Amendment to H.R. 2975 offered by Mr. Weiner. At the end of subtitle A of title——

Mr. WEINER. I ask that it be considered as read, Mr. Chairman.

The CLERK.—insert the following and amend the——

Mr. WEINER. Mr. Chairman, I move the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered. And the gentleman is recognized for 5 minutes, subject to the reservation of the gentleman from Texas.

Mr. WEINER. Thank you, Mr. Chairman.

Mr. Chairman, we had a real problem in this country with the student exchange visitor system that we have. Between 1999 and 2000, the State Department issued more than 3,300—almost 3,400 student visas from countries that are on the U.S. terrorism watch list, and we have seen the results of the fact that we have no way of knowing where many of those—where many of those students are, what movement they have had within or without the country, any change of academic status that they might have had, any disciplinary action that might have been against them, any crimes that they might have committed while here in the United States.

In 1996, this Congress tried to get a handle on this by creating a system, the Student and Exchange Visitor Information System, to track this information. It has been implemented at a woefully slow rate of speed; and unfortunately, on September 11th, we saw that the gaps in the system exist. Hani Hanjour, believed to be one of the hijackers on the flight that hit the Pentagon, was in the country on a student visa that allowed him to study English at Holy Names College in Oakland, California.

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. WEINER. Certainly I will, sir.

Chairman SENSENBRENNER. This amendment is a winner, and I would urge the Committee to adopt it and would urge the gentleman from Texas to withdraw his reservation. If he makes a point of order, it will be overruled.

Mr. SMITH. Mr. Chairman, I just withdrew my point of order.

Chairman SENSENBRENNER. Point of order is withdrawn.

Mr. WEINER. Well, Weiner can spot a winner, so he yields back the balance of his time.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California seek recognition?

Ms. LOFGREN. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. On the amendment that—for Mr. Weiner, we—as we all know, we have a provision in this, and Mr. Weiner has referenced, in current law that has not been implemented. It has gotten extensions.

There is no way we would ever extend it again, but I also think we need to draw the attention of the appropriators of this issue, because part of the problem on this implementation is that there hasn't been financing to implement it. And I am not opposed to fee-driven implementation, but I have no idea whether that is actually adequate to implement it.

So I just wanted to raise that issue and to see whether we couldn't get some action from the Appropriations—to the appropriator for this purpose, which is enormously important. I yield back the balance of my time.

Mr. FRANK. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose——

Mr. FRANK. Strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. Mr. Chairman, we work long hours and sometimes our attention is bad, and I apologize, but I would like to go back to the amendment of the gentleman from New York because I have read it and I do have some questions about it.

It says, "In the case of an alien who is a national of a country, the government of which" . . . "has repeatedly provided support for acts of international terrorism, the Attorney General may impose on, and collect from, the alien a fee greater than imposed other aliens.".

I apologize if we raised this before, but what if—if there is no nexus between the alien, the student and the policies of the government, are we impugning every student from a particular country?

So I would yield to the gentleman from New York.

Mr. WEINER. I think what my amendment seeks to acknowledge is that there is heightened attention paid to students that come here from places like Iran, whether we think that is a good thing or bad thing—and I think it is a good thing—that added attention and added reporting requirements that might be necessary and added enforcement activities warrant having higher fees coming from the——

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. WEINER. I will.

Chairman SENSENBRENNER. I note that the gentleman from New York's amendment is permissive. It says the Attorney General may impose a higher fee. That means that if you have a student from Afghanistan who is anti-Taliban, the Attorney General can impose a lower fee, but if you have a pro-Taliban student, the Attorney General can sock it to him.

Mr. FRANK. Mr. Chairman, I must say I think I probably would have voted against this if I hadn't not been paying attention, which is partly my fault—mostly my fault; but I would hope that at least we would make a record of what the Chairman had said and that it would be in the report that there is no automatic imputation of the sins of the government to the student and that——

Chairman SENSENBRENNER. The gentleman will further yield?

Mr. FRANK. Let me finish.

—in that absence, some showing that there was some predisposition that we wouldn't be doing that.

Now I would yield.

Chairman SENSENBRENNER. The staff is directed to have the report so state, should this amendment be adopted.

Mr. FRANK. I thought it was already adopted.

Chairman SENSENBRENNER. No.

Mr. WEINER. You really weren't paying attention, were you, Barney?

Mr. FRANK. I thought that you had adopted it. Well, then, I take most of what I said back that was procedural, nothing substantive, and even—I would speak against it, the problem of penalizing the student, that this is discretionary.

It may well be, but when we are talking about students who are coming from governments that are pretty unattractive governments and requiring the student to speak out against it, it could be a problem.

I understand, looking at visas and looking at why people come here, but literally what this does is it gives discretion to the Attorney General to visit the sins of the government on the students.

I know we say it may cost a little more money, but obviously we are not doing this because of the fiscal impact, and I think it has an unfortunate effect. Many of these students are being twice victimized. They are being victimized by living in the country——

Mr. WEINER. Would the gentleman yield? In fact, I would say to the gentleman that it was partially a fiscal analysis on figuring out a way to pay for the fact that I think the program should be accelerated, and that is the basis of what the amendment does. And what we are seeking to do is exactly what the Chairman said, offer as a possibility of the way to fund this, to say that, look, if you had added expenses tracking down countries because of the nation that they came from, which is a reasonable thing, that the Attorney General has the ability——

Mr. FRANK. But here is the problem with that, and that is, the cost is incurred—when you are checking on a student, what if you find out that this is not a student who is a problem. They still have incurred the cost, and if the rationale is cost recovery, then an innocent student could be the occasion for cost recovery, because you have got to look at them.

It seems to me we are singling out individuals from countries because they are bad countries, and I wish we would stick to the bad countries. If the individual shouldn't be let in, that is a visa issue; but if the individual passes muster and he is not in money laundering and these other things, I really don't see any reason why we should single him or her out for a higher fee. Then when you say we are telling the FBI——

Ms. LOFGREN. Would the gentleman yield?

Mr. FRANK. I would yield.

Ms. LOFGREN. I can understand the—Mr. Weiner's rationale that if there is additional scrutiny, you need to pay for it, but as I am listening to this debate, singling out student visas, what about B-1 visas? What about J visas?

I think we should work on this between now and the floor to make sure that we have got a system that works. And I yield back.

Chairman SENSENBRENNER. The question is on the Weiner amendment. Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it.

Mr. WEINER. I ask for a recorded vote, reluctantly.

Chairman SENSENBRENNER. A recorded vote is requested.

Mr. FRANK. You are going to have to pay the stenographer's fee for this recorded vote.

Mr. CANNON. Would the Chairman consider another oral vote so we can have more clarity?

Chairman SENSENBRENNER. Okay. Without objection, the previous vote is vitiated.

Hearing none, so ordered.

Mr. FRANK. I reserve the right to object, Mr. Chairman. Let us have the record vote.

Chairman SENSENBRENNER. We will have a record vote if the gentleman from Massachusetts insists. Those in favor will as your names are called answer aye. Those opposed will vote no.

The question is on adoption of the Weiner amendment, and the Clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. Aye.

The CLERK. Mr. Hyde votes aye.

Mr. Gekas?

[No response.]

The CLERK. Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble votes aye.

Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith votes aye.

Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Bryant.

Mr. BRYANT. Aye.

The CLERK. Mr. Bryant votes aye.

Mr. Chabot?

[No response.]

The CLERK. Mr. Barr.

Mr. BARR. Aye.

The CLERK. Mr. Barr votes aye.

Mr. Jenkins.

Mr. JENKINS. Yes.

The CLERK. Mr. Jenkins votes aye.

Mr. Cannon.

Mr. CANNON. Aye.

The CLERK. Mr. Cannon votes aye.

Mr. Graham?

[No response.]

The CLERK. Mr. Bachus.

Mr. BACHUS. Pass.

The CLERK. Mr. Bachus passes.

Mr. Hostettler.

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler votes aye.

Mr. Green.

Mr. GREEN. Aye.

The CLERK. Mr. Green votes aye.

Mr. Keller.

Mr. KELLER. Aye.

The CLERK. Mr. Keller votes aye.

Mr. Issa.

Mr. ISSA. Aye.

The CLERK. Mr. Issa votes aye.

Ms. Hart.

Ms. HART. Aye.

The CLERK. Ms. Hart votes ayes.

Mr. Flake.

Mr. FLAKE. Aye.

The CLERK. Mr. Flake votes aye.

Mr. Pence.

Mr. PENCE. Aye.
The CLERK. Mr. Pence votes aye.
Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Conyers votes no.
Mr. Frank.
Mr. FRANK. No.
The CLERK. Mr. Frank votes no.
Mr. Berman.
Mr. BERMAN. No.
The CLERK. Mr. Berman votes no.
Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler.
Mr. NADLER. Pass.
The CLERK. Mr. Nadler passes.
Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott votes no.
Mr. Watt.
Mr. WATT. No.
The CLERK. Mr. Watt votes no.
Ms. Lofgren.
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren votes aye.
Ms. Jackson Lee? Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters.
Ms. WATERS. No.
The CLERK. Ms. Waters votes no.
Mr. Meehan.
Mr. MEEHAN. No.
The CLERK. Mr. Meehan votes no.
Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler votes aye.
Ms. Baldwin.
Ms. BALDWIN. No.
The CLERK. Ms. Baldwin votes no.
Mr. Weiner.
Mr. WEINER. Aye.
The CLERK. Mr. Weiner votes aye.
Mr. Schiff.
Mr. SCHIFF. Pass.
The CLERK. Mr. Schiff passes.
Mr. Chairman.
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Are there additional Members who wish to record or change their votes?
The gentleman from California?
Mr. GALLEGLY. Aye.
The CLERK. Mr. Gallegly, aye.

Chairman SENSENBRENNER. The gentleman from Ohio.
Mr. CHABOT. Aye.
Chairman SENSENBRENNER. The gentleman from Virginia.
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte, aye.
Chairman SENSENBRENNER. The gentleman from New York.
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.
Mr. SCHIFF. Aye, Mr. Chairman.
Chairman SENSENBRENNER. Mr. Schiff was that an aye?
Mr. SCHIFF. Yes.
The CLERK. Mr. Schiff, aye.
Chairman SENSENBRENNER. Further Members—the gentleman from Tennessee.
Mr. JENKINS. Am I recorded?
Chairman SENSENBRENNER. Is the House Member from Tennessee, Mr. Jenkins, recorded?
The CLERK. I don't have Mr. Jenkins recorded.
Mr. JENKINS. Yes.
The CLERK. Aye. Mr. Jenkins, aye.
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye.
Chairman SENSENBRENNER. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Chairman SENSENBRENNER. Are all Members recorded correctly? If so, the Clerk will report.
The CLERK. Mr. Chairman, there are 25 ayes and 8 nays.
Chairman SENSENBRENNER. The amendment is agreed to.
Further amendments to title II?
Ms. JACKSON LEE. I have an amendment at the desk.
Chairman SENSENBRENNER. The Clerk will report the amendment, and could the gentlewoman designate which of her many amendments she is offering now?
Ms. JACKSON LEE. Thank you. I am not sure how to designate, but it deals with the Federal courts and the ability to file in Federal courts.
Chairman SENSENBRENNER. The Clerk will report the amendment.
Ms. JACKSON LEE. Judicial review.
Chairman SENSENBRENNER. If the gentlewoman from Texas can inform the Clerk what the number in the top left-hand corner is, the Clerk will be able to correctly report her amendment.
Ms. JACKSON LEE. 003.
The CLERK. Thank you.
Mr. Chairman, I don't have 003.
Chairman SENSENBRENNER. None of the clerks have amendment 003. Would the gentlewoman from Texas like to try again with another amendment?
Ms. JACKSON LEE. No. I am going to wait until they find it.
Chairman SENSENBRENNER. Okay. Further amendments to title II? Are there further amendments to title II? If not, title II is closed.

Ms. JACKSON LEE. Mr. Chairman, there are further amendments to title II.

Chairman SENSENBRENNER. Well, nobody offered amendments to title II.

Ms. JACKSON LEE. I cannot—I am trying to get the Clerk—I have a number of them there. What am I supposed to do?

I can read them out and they can find them. 007.

Chairman SENSENBRENNER. Would the gentlewoman yield? Do you have a copy of your amendment?

Ms. JACKSON LEE. I would be happy to yield, and I have copies here for them to review if they would desire to do so.

Chairman SENSENBRENNER. The Clerk does not have 003. I offered to allow the gentlewoman from Texas to——

Ms. JACKSON LEE. 007.

Chairman SENSENBRENNER. Okay. Without objection, the closure of title II will be vitiated.

For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. I have an amendment 007. I have a number of amendments.

Chairman SENSENBRENNER. The Clerk will report Ms. Jackson Lee's 007.

Ms. JACKSON LEE. I thank the Chairman.

[The amendment follows:]

## AMENDMENT TO H.R. _____

## OFFERED BY MS. JACKSON-LEE OF TEXAS

In section 206(3) of the bill, strike ''making improvements in technology for monitoring the northern border and acquiring additional equipment at the northern border.'' and insert ''enhancing technology for security and enforcement at the northern border, such as infrared technology and technology that enhances coordination between the Governments of Canada and the United States generally and specifically between Canadian police and the Federal Bureau of Investigation.''.

The CLERK. Amendment to H.R. 2975 offered by Ms. Jackson Lee of Texas.

In section 206(3) of the bill, strike "making"——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentlewoman from Texas will be recognized for 5 minutes.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I hope I will not take the full 5 minutes.

This is an important step that this legislation has taken, and that is to recognize the importance of strengthening the law enforcement responsibilities, as well as the law enforcement tools at the Canadian border.

Certainly we have been friends of both our——

Chairman SENSENBRENNER. Would the gentlewoman yield?

Ms. JACKSON LEE. I would be happy to yield.

Chairman SENSENBRENNER. We are prepared to accept this amendment.

Mr. CONYERS. Would the gentlewoman yield?

Ms. JACKSON LEE. I will be happy to yield.

Mr. CONYERS. We feel this is a very important amendment, and we would accept it.

Ms. JACKSON LEE. Well, I thank you very much, and if I could just conclude, I thank the both the Chairman and the Ranking Member.

This is to give more detail and more direction to the kind of technology and the kind of coordination that should go on between Canada and the United States, between the Canadian police, the Federal Bureau of Investigation and the kind of technology that should be used. And I thank the gentleman for accepting it, and I yield back my time.

Chairman SENSENBRENNER. Okay. The question is on Jackson Lee 007. Those in favor will signify by saying aye.

Those opposed, no.

The ayes appear to have it. The ayes have it and the amendment is agreed to.

Ms. JACKSON LEE. I have another amendment, Mr. Chairman.

Chairman SENSENBRENNER. Are there further amendments to title II?

Ms. JACKSON LEE. 003.

Chairman SENSENBRENNER. Does the Clerk have 003?

The CLERK. No, Mr. Chairman. We don't have 003.

Chairman SENSENBRENNER. The Clerk does not have 003.

I am informed that the Democratic photocopier is broke because it has blown a fuse, burnt too many amendments.

Would you like to use ours?

Okay. Mr. Conyers will be writing them out in longhand.

Without 003, does the gentlewoman from Texas have another amendment?

Ms. JACKSON LEE. Yes, 174

[The amendment follows:]

## AMENDMENT TO H.R. _____

## OFFERED BY MS. JACKSON-LEE OF TEXAS

At the end of subtitle A of title II of the bill, insert the following:

**SEC. ___. STUDY ON TARGETING INDIVIDUALS FOR IMMIGRATION INSPECTIONS BASED ON RACE, ETHNICITY, OR GENDER.**

(a) STUDY.—Not later than January 1, 2004, the Comptroller General of the United States shall complete a study to determine the extent to which immigration officers conducting inspections under section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) are targeting individuals based on race, ethnicity, or gender because of a suspicion that the individual may be inadmissible under section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(3)(B)).

(b) REPORT.—Not later than 120 days after the completion of such study, the Comptroller General of the United States shall report its results to the Congress.

Chairman SENSENBRENNER. Does the Clerk have 174?

The CLERK. Yes, sir.

Chairman SENSENBRENNER. The Clerk will report amendment 174.

The CLERK. Amendment to H.R. 2975 offered from—offered by Ms. Jackson Lee of Texas. "at the end of subtitle A of title II of the bill, insert the following: Section" blank, "Study on Targeting Individuals for"——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

This has been a trying couple of weeks for all of us who have tried to balance the respect for diversity, the respect for the recognition of the contributions that immigrants who come from all parts of the world make to the United States.

The President has been uniquely forthright in indicating that this effort and tragedy is not an attack on the Islamic faith. It is not an attack on Muslims. It is not an attack on people of certain parts of the world.

As we ensure that our borders are safe and as we ensure that our communities are safe, I believe it is extremely important for us to turn words into action to ensure that there is no special emphasis on those of a particular heritage in terms of being stopped at places where there is enhanced security.

This is a simple request for there to be a study at the point of inspections under section 235 of the Immigration and Nationality Act and to determine whether there is targeting based on race ethnicity or gender because of suspicion that the individual may be inadmissible under our Immigration and Nationality Act and to provide a report. This is to give credence to the comments being made by our President.

We all know that there have been terrible incidents that don't relate particularly to targeting, but we do know that there have been stoppings and that we found that individuals have been completely innocent. We want to give the tools to the Attorney General to be able to enforce the tools that he has or to enforce against those who are involved in terrorist activities, but we also want to protect the innocent; and I would ask my colleagues to support this amendment.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

While we in the Congress want to eliminate all forms of terrorism, and give law enforcement officers the appropriate tools to accomplish this goal, it is vitally necessary that it be done in a fair, thoughtful and equitable manner without violating the basic tenants of our democratic principles; which are freedom, due process, and civil rights.

It is imperative that we eliminate as well as prevent all forms of targeting by law enforcement officers along the border and throughout the United States that could solely be based on race, ethnic origin, gender, or sexual orientation. Therefore, it is imperative that the Civil Rights Division of the U.S. Department of Justice conduct a study for the collection and reporting of nationwide data on traffic stops along the borders and throughout the United States.

Last April, the 9th Circuit Court of Appeals ruled that Border Patrol Agents may not consider an individual's "Hispanic appearance" as a fact deciding whether to stop motorists for questions near the U.S.-Mexico border. The Court held that,

"Stops based on race or ethnic appearance send the underlying message to all our citizens that those who are not white are judged by the color of their skin alone . . . that they are in effect assumed to be potential criminals first and individuals second." While the Court has spoken, it is time that the Congress get involved in this issue.

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Ms. JACKSON LEE. I yield back at this time, yes.

Chairman SENSENBRENNER. For what purpose does the gentleman from Michigan, Mr. Conyers, seek recognition?

Mr. CONYERS. I rise in reluctant opposition.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CONYERS. I will explain why.

First of all, we have a racial profiling bill that the gentlelady is a—she is a very strong supporter of, and we are in negotiations that have begun in the Department of Justice that are ongoing, and we are in the process of coming up with a much larger bill.

My recommendation to my friend in Texas is that we include the particularities of immigration and profiling, which is a very important part of our racial profiling bill—include this and then accompanying examination of it, because all of this has been, I think, pretty well documented. But we can go into it with greater particularity, because doing it this way could give way to several different kinds of examinations on other levels.

The bill that we are all on—almost all of the Members, many of the Members in the Committee—has successfully passed the entire House in one session. It passed the Committee twice last year.

So it is for these reasons that we want to keep all this together. And I would urge that we either withdraw this amendment with the appreciation——

Ms. JACKSON LEE. Would the gentleman yield?

Mr. CONYERS.—that we would incorporate it into our larger study or that we would—if it is not withdrawn, that we would probably have to oppose it.

And I yield to my friend.

Ms. JACKSON LEE. I thank the gentleman.

The gentleman knows the great respect I have for him. Let me raise my concerns as to why I propose this amendment at this time, and that is, of course, not to be caught up in the moment of what we are trying to do. But this bill is moving with all due and deliberate speed to be on the floor of the House next week.

My concern is—and I would be delighted to work with the gentleman. My concern is that as we implement this legislation, as it is passed, as the President signs it, will we have difficulty in the enhanced inspections and security processes at the border; and at the border, will we then have a troubling circumstance of—while we are attempting to thwart terroristic activities and those who would come into our country on the basis of terroristic activities, would we also be hampering the innocent?

I would be happy to work with the gentleman in any compromise that we have in terms of how the bill that I so enthusiastically support. Would we be able to move that quickly now for a markup or a hearing in the very near future?

Mr. CONYERS. Well, let me agree with the gentlelady that these are important considerations in a bill that is moving quite rapidly; and I would point out that we are now creating within this bill a

Deputy Attorney General for Civil Rights and Civil Liberties to really get on top of this. So I don't think that we are going to lose any of the support, especially for a study.

I think we can go beyond that in the present bill that is moving with such rapidity.

Ms. JACKSON LEE. Would the gentleman yield just for a moment?

Is there a possibility to have report language or some comment about the unfair targeting of——

Mr. CONYERS. Absolutely. No question about it.

Ms. JACKSON LEE. And let me add, then, if language precisely could be written that has report language in it, or is in the report language frankly, that emphasizes this problem that I see coming, and if we can work together with this language in the larger bill, I would be happy to withdraw it at this time.

Mr. CONYERS. Can I ask the gentlelady to join with me in drawing up the language?

Ms. JACKSON LEE. I yield back to the gentleman. It is his time.

Mr. CONYERS. Well, does the gentlelady withdraw her amendment?

Ms. JACKSON LEE. I will withdraw the amendment, working with you on the report language.

Chairman SENSENBRENNER. The amendment is withdrawn.

Further amendments to title——

Ms. JACKSON LEE. 003, has that been found? Thank you very much.

[The amendment follows:]

## AMENDMENT TO H.R. _____

## OFFERED BY MS. JACKSON-LEE OF TEXAS

In section 236A(b) of the Immigration and Nationality Act, as proposed to be inserted by section 203 of the bill, strike ''in the United States District Court for the District of Columbia.'' and insert ''initiated in any district court of the United States.''.

Chairman SENSENBRENNER. The Clerk will report the long-lost 003.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

The CLERK. "amendment to H.R. 2975, offered by Ms. Jackson Lee of Texas. In section 236A(b) of the Immigration and Nationality Act, as proposed to be inserted by section 203 of the bill, strike 'in the United States District Court for the District of Columbia' and insert 'initiated in any district court of the United States.'"

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. I do recognize, Mr. Chairman, that the rights of legal aliens and, of course, undocumented individuals are different from those of American citizens, but I would offer to say that this is a simplistic and not detrimental amendment, and that is to allow the appeal of a person's detention in any district court in the United States.

I make note that restricting this review to the District Court of the District of Columbia would be rendering the review almost meaningless to those who may need it and who are in different parts of the country. If a detainee is a resident of my home State of Texas, for instance, we would be in fact ensuring that previously retained counsel, witnesses in that person's defense, their family, other resources which might be available to the person close to home would have no possibility of participating in the proceedings.

We do realize that this legislation will capture or incorporate the guilty, and it will also help the innocent, meaning those who are innocent of terroristic activities. They may have other violations, but they certainly would not be defined as terrorists. To take them away from their jurisdictions in their particular State diminishes their ability to present a defense; and do we actually believe that it is possible to respect the concerns of due process for this person if we have allowed for a review, no matter how great the scope, limited to a particular court, thereby limiting the resources that they have to present their case?

I would ask my colleagues to view this as a technical change allowing the courts of other areas to review these cases. It is atypical to find much diversion in immigration case law, and if there is a question that the Ninth Circuit would be different from the D.C. Circuit and the Fifth Circuit, I think that there is a consistency under the laws; and I would ask that the amendment be accepted.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, my amendment would strike the portion of section 203 that limits judicial review of detention decisions to the U.S. District Court in the District of Columbia. Instead, my amendment would permit review in any district court.

It is my concern, Mr. Chairman, that by restricting this review to the District Court in the District of Columbia we would be rendering the review almost meaningless to those who need it most. If a detainee is a resident of my home state of Texas, for instance, we would in fact be ensuring that previously retained counsel, witnesses in his defense, family, and other resources which might be made available to him closer to home, would have no possibility of participating in the proceedings.

Do we actually believe that it is possible to respect the concerns for due process for this person if we have allowed for a review, no matter how great the scope, which by its technical structure does not allow for appropriate access to every avail-

able resource? This endangers our most cherished constitutional protections for judicial review in an entirely unreasonable way.

The provision of section 203 that limits review to the District Court of the District of Columbia so minimizes the potential to affect change on the alien's behalf that it the virtually eliminates the protections afforded by review, and should therefore be amended as I have proposed.

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Mr. SMITH. I am trying to find out where you are amending the bill.

Ms. JACKSON LEE. It is 48, line 15 in the bill.

Thank you.

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Ms. JACKSON LEE. I assume that I have to yield back. I can't reserve my time.

Chairman SENSENBRENNER. No, you can't.

Ms. JACKSON LEE. Thank you.

Chairman SENSENBRENNER. For what purpose does the gentleman from Texas, Mr. Smith, seek recognition?

Mr. SMITH. Mr. Chairman, I oppose the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, first of all, let me say that the Chairman of the Immigration Subcommittee, Mr. Gekas, has left for a long-standing commitment and will be gone for another 15 minutes or so; and in his absence, he has asked me to fill in for him, which I am happy to do.

Mr. Chairman, actually the reason to oppose this amendment is provided by the author of the amendment in one of the last statements that she just made, where she expressed concern about, quote, "much diversity in immigration case law.".

Under the base bill, mandating exclusive jurisdiction for judicial review of any action or decision to detain a suspected terrorist under proposed section 236A of the INA will lead to consistent application of the law. That is why we need to oppose this amendment. We don't want to make it inconsistent, as the gentlewoman mentioned a while ago.

There is no procedural value to a district court decision, and therefore no district court judge is required to follow the decision of any other district court judge. While there is no Presidential value to a decision of a judge of the D.C. District Court, decisions of the D.C. District Court are binding on all D.C. District Court judges. The circuit court decision, unless reviewed by the Supreme Court, is the law with respect to this provision.

While other circuit court decisions are binding on the district courts within their jurisdiction, allowing venue in any district court, as this amendment would do, could result in 11 different rules for application review of section 236A from the 11 different circuit courts.

Venue in the District Court for the District of Columbia is consistent with other mandatory venue provisions in the act. The act provides that judicial review of determinations under the expedited removal provisions and implementation of the expedited removal provision is available only in the D.C. District Court. Most importantly, the decision of the judge after a hearing before the alien terrorist removal court may only be appealed to the D.C. District Court.

So, Mr. Chairman, again the reason to oppose the amendment is because it would allow for so many inconsistent rulings and determinations of immigration law; and I, like the gentleman from Texas, would like to avoid that diversity in immigration case law.

So I urge my colleagues to oppose the amendment and vote for the consistent application of the law as is found in the underlying bill.

Mr. HYDE. Would the gentleman yield?

Mr. SMITH. I will be more than happy to yield to the gentleman from Illinois.

Mr. HYDE. I just would like to remind the Committee that in the 1964 Voting Rights Act we had quite a battle over the requirement by the drafters and the perpetrators of the bill requiring that any litigation be brought in the Circuit Court of the District of Columbia.

I felt that was an imposition. If you had a litigation to correct circumstances having to do with the voting rights act in Greenville, South Carolina, or Memphis, Tennessee, there was a U.S. District Court nearby perfectly qualified to hear that case, but no you had to get on the Greyhound bus and come to Washington and file it in the district court here.

So the notion that you have one court to file these types of litigation in is not new. It has been around at least——

Mr. FRANK. Would the gentleman yield?

Mr. HYDE.—in the Voting Rights Act.

Mr. SMITH. I thank the gentleman from Illinois for his comments, and now I will be happy to yield to the gentleman from Massachusetts.

Mr. FRANK. The gentleman from Illinois didn't finish his sentence. Has he changed his mind on that position that he wants opposed? Is that the punch line?

Mr. HYDE. I am not comfortable with forcing people into a particular court.

Mr. FRANK. So the gentleman will vote for the amendment?

Mr. HYDE. I think we have a court system that is spread out over the country to accommodate the people.

On the other hand, there is something to be said for consistency in a particularly technical area of the law, and they are talking about immigration; but I frankly come down on the side of supporting the amendment and deploring the rigidity of the Voting Rights Act requiring you to go to that court.

Mr. BARR. Would the gentleman yield?

Chairman SENSENBRENNER. The time belongs to the gentleman from Texas.

Mr. BARR. Would the gentleman yield?

Mr. SMITH. I will be happy to yield to the gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you. I just wanted to associate myself with the remarks of the distinguished former Chairman and current Chairman of the International Relations Committee in support of this amendment.

Mr. SMITH. Mr. Chairman, I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on——

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan Mr. Conyers.

Mr. CONYERS. Mr. Chairman, as one of the people that was around when the original Voter Rights Act was enacted, maybe not the only person but one of the people, I think our former Chairman, his memory has—he was getting ready to come on board, but at any rate, I want to express the concerns articulated by the gentlemen from Illinois and Georgia that there is merit in reconsidering this proposal. I would not like at this hour for anything untoward to happen to this idea, and I would implore the gentlelady from Texas to withdraw this so that we can all examine this without it having met some untimely demise at this hour at night, and I assure you we will give it our considered and concerned examination, because it may not have gotten this in the consideration of 57 other amendments to this bill and I would yield to her now if it is her inclination.

Ms. JACKSON LEE. First of all, let me thank the Ranking Member, because he above all has a great history, and let me thank both Mr. Barr and Mr. Hyde. I would imagine there may be others that appreciate the position that the particular individual is put in, but if I might qualify the distinction on the Voter Rights Act, though, I don't want to discourage my supporters. This probably has even more weight because these individuals are detained, and so they are not even able to get on the Greyhound bus and get to the D.C. Courts.

This is troubling for me, Mr. Conyers. This is I think an important change in this legislation, and I would be interested as to whether there is a procedure or a new way to determine what our support is on this legislation, on this particular amendment, because I don't want to lose the opportunity to have it in, and I don't want to jeopardize it, as you have mentioned, and the Chairman is being very kind in his indulging us on this.

Mr. CONYERS. It is a legitimate concern on your part. So I will assure you that I will vote for it and we will dispose of this amendment tonight.

Mr. DELAHUNT. Would the gentleman from Michigan yield?

Mr. CONYERS. With pleasure.

Mr. DELAHUNT. I think probably we should just go and have a vote on it at this point in time, but I can't just let the remarks of the gentleman from Texas go without a response in terms of consistency. Well, presumably the substantive law is not be inconsistent throughout the entire United States. The standards hopefully are the same. I mean, when you talk about inconsistency, if I could ask my friend from Texas what he means specifically, I would be interested in an answer.

Chairman SENSENBRENNER. The time belongs to the gentleman from Michigan.

Mr. CONYERS. Well, I have no further comments. I will yield to the gentleman.

Mr. BERMAN. I just hope that if we are going to have a rollcall vote, we know it is going to be a rollcall vote that prevails in favor of the amendment, because otherwise I would take the gentleman from Michigan's suggestion that in the spirit of the way a number of things have been worked out up to tonight and which I anticipate can be worked out between now and the time this bill comes

to the floor, we—a record vote losing an important issue like this could be more damaging than the gentleman from Michigan suggested.

Ms. JACKSON LEE. Would the gentleman yield? I don't know whose time it is.

Mr. CONYERS. Of course.

Ms. JACKSON LEE. This is a very important issue, as several are to me. And obviously I do not—I do hear from Mr. Hyde and Mr. Barr, and I thank them. I am not hearing from a number of other Members. But I would say this to my colleagues on the other side of the aisle. This is an issue that would warrant bipartisanship. This is an issue simply that gives access to courts who have done it before.

If there are no further Members on the other side willing to indicate by their public acknowledgment that they would vote for this, it is of such value and importance to me that I will at this time withdraw it so that we can be sure that it is in the language of the bill. That is more important to me than to——

Chairman SENSENBRENNER. The amendment is withdrawn.

Ms. JACKSON LEE.—jeopardize this not passing.

Chairman SENSENBRENNER. The amendment is withdrawn. You don't need unanimous consent for the author to withdraw an amendment.

For what purpose does the gentleman from Massachusetts——

Mr. FRANK. To strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. I want to express my appreciation to the gentleman from Texas. It is clear this is an issue about which there is legitimate division, and I just wanted to urge the gentleman from Texas—I know we want to do this—to work with the Chairman and the Ranking Member. There are potential compromises. Forcing people to come to Washington imposes some hardships on them. There could be some alleviation. There are questions of counsel. There are questions of compensation. I think this is something that could be worked out and perhaps even wind up with some beneficial approach that would compensate people for this, because I just want to say I appreciate what the gentleman did, and many of us who intend ultimately to support the bill at this stage want to express this is not the last we hear of this and think there is room for some kinds of compromise that will preserve the legal requirements that we are trying to get at but alleviate the hardships that would be caused.

Mr. WATT. Would the gentleman yield just briefly?

Mr. FRANK. Yes, I will yield to my friend from North Carolina.

Mr. WATT. In the process of doing that, I would like to point out that there was a very strong basis for doing what was done under the Voting Rights Act at the time it was done, because to have judges deciding voting rights issues sitting on district courts in the South at that time was just not a practical thing to do.

Mr. FRANK. As I said, I think we will take note that this is a very important issue and it is one of the ones that I hope we will be able to work out before we come to the floor next week.

Chairman SENSENBRENNER. Further amendments to title II?

Ms. JACKSON LEE. Yes, Mr. Chairman. I have an amendment at the desk, Line 961.

Chairman SENSENBRENNER. The Clerk will report Jackson Lee 961.

The CLERK. Mr. Chairman, I don't have 961.

Chairman SENSENBRENNER. The Clerk does not have 961. Are there further amendments——

Ms. JACKSON LEE. Mr. Chairman, I would be happy to have it Xeroxed. I am not sure—all of our amendments were in. They were in. We would like to have the opportunity to have——

Chairman SENSENBRENNER. The Clerk will look again to see if Jackson Lee 961 is in the pile of any of the three of you up there.

The CLERK. Mr. Chairman, there is an amendment here 961, with no name.

Chairman SENSENBRENNER. Does the gentlewoman from Texas wish to claim maternity to no-name 961?

Ms. JACKSON LEE. It is the Jackson Lee amendment, thank you. Yes, thank you, Mr. Chairman.

Chairman SENSENBRENNER. The Clerk will report the newly found amendment.

The CLERK. Amendment to H.R. 2975 offered by Ms. Jackson Lee. Add at the end the following: Title, blank, hate crimes section, prohibition of certain acts of violence. Section 245 of title 18, United States Code, as amended.

Mr. SMITH. Mr. Chairman, I reserve a point of order.

Chairman SENSENBRENNER. Point of order is reserved. Without objection, the amendment will be considered as read, and the gentlewoman from Texas, Ms. Jackson Lee, will be recognized for 5 minutes, subject to the reservation of the point of order.

[The amendment follows:]

**AMENDMENT TO H.R. 2975**

**OFFERED BY ____**

Add at the end the following:

# TITLE ____—HATE CRIMES

**SEC. ___. PROHIBITION OF CERTAIN ACTS OF VIOLENCE.**

Section 245 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

''(c)(1) Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

''(A) shall be imprisoned not more than 10 years, or fined in accordance with this title, or both; and

''(B) shall be imprisoned for any term of years or for life, or fined in accordance with this title, or both if—

"(i) death results from the acts committed in violation of this paragraph; or

"(ii) the acts committed in violation of this paragraph include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

"(2)(A) Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive device, attempts to cause bodily injury to any person, because of the actual or perceived religion, gender, sexual orientation, or disability of any person—

"(i) shall be imprisoned not more than 10 years, or fined in accordance with this title, or both; and

"(ii) shall be imprisoned for any term of years or for life, or fined in accordance with this title, or both, if—

"(I) death results from the acts committed in violation of this paragraph; or

"(II) the acts committed in violation of this paragraph include kidnapping or an attempt to kidnap, aggravated sexual abuse or an

attempt to commit aggravated sexual abuse, or an attempt to kill.

''(B) For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

''(i) in connection with the offense, the defendant or the victim travels in interstate or foreign commerce, uses a facility or instrumentality of interstate or foreign commerce, or engages in any activity affecting interstate or foreign commerce; or

''(ii) the offense is in or affects interstate or foreign commerce.''.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I would ask that my entire statement be put in the record.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman:

I offer this amendment to establish enhanced penalties for persons who commit acts of violence against other persons because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of any person.

Under my amendment, a perpetrator who willfully commits a crime motivated by hate shall be imprisoned a minimum of 10 years or fined, or both; or imprisoned up to life and fined, or both, if the crime results in death, kidnapping, or aggravated sexual abuse, or an attempt of any of these crimes.

Hate crimes are not new; they have been around for as long as civilizations have existed.

Today, we know that hate crimes still exist and that they are not like any other type of crime. They are committed only because the victim is different from the victimizer.

On September 11, 2001, United States citizens were brutally terrorized in New York City and Washington, D.C. But the effects rippled across our entire nation and beyond. Thousands of lives perished as a result of these unthinkable terrorist acts allegedly carried out by members of the extremist Islamic group led by Osama bin Laden.

The backlash of these attacks has put American against American. Murders and attacks against citizens resembling Middle Easterners have occurred. Innocent people died because they looked like the Islamic extremists allegedly responsible for the September 11th tragedies.

The FBI and Justice Department were investigating 40 alleged hate crimes across the country involving reported attacks on citizens and religious institutions.

In Mesa, Arizona, Balbir Singh Sodhi, a Sikh Indian immigrant, was shot to death because he was dark-skinned, bearded, and wore a turban. Frank Silva Roque executed shootings at two Mesa gas stations, one of which Sodhi owned, and a house Roque had sold to an Afghan couple.

Roque, who allegedly killed Sodhi as part of a multiple-incident shooting rampage, was charged with first-degree murder, three counts of drive-by shooting, three counts of attempted first-degree murder, and three counts of endangerment.

According to police reports, Roque pulled up to a Chevron station on the afternoon of September 15 and fired at Sodhi. Roque then headed to a Mobile station 10 miles away, where he fired several shots at the back of a Lebanese-American clerk but missed.

In the third incident, police believe Roque drove to a home he once owned and fired at the front door. One victim, who is of Afghan descent, was about to open the front door to leave when he heard the shots.

Sergeant Mike Goulet said the police were not classifying the shootings as hate crimes.

However, Special Assistant County Attorney Barnett Lotstein is alleging the motive behind these heinous crimes is hate. Arizona does not have a hate-crimes criminal charge per se, but the law does allow the court to consider the motivation as an aggravating factor in sentencing. It could make the difference between a 25-year to life sentence and life in prison without parole.

Because Sikh attire bears a superficial resemblance to bin Laden's, attackers in the United States have targeted Sikh men as well as Muslims and Arabs in an apparent racial and religious backlash since the attacks. Male Sikhs, who are neither Arab nor Muslim, wear untrimmed beards and turbans that cover their uncut hair as a vestige of the centuries of battles they fought against Muslim conquerors of the Punjab, a region now divided between India and Pakistan.

In Dallas, police have been investigating the death of Waqar Hasan, a 46-year old Pakistani Muslim. In Irving, a mosque was covered in bullets. In Denton, a mosque was firebombed.

Personal attacks based on religion and appearances represent the kind of oppression that Americans have opposed all around the world.

This isn't the first time hate motivated crimes have taken the lives of innocent people. When are we going to act? Are we going to continue to sit around and pray that it'll go away? Or are we just waiting until someone we love is taken away from us by an act of hate?

Now, more than ever, we need legislation to punish crimes motivated by hate against ethnicity, religion, and gender. These crimes cannot be tolerated. It is our

responsibility as elected lawmakers to ensure that our citizens are able to live their lives without fear of how they look, who they worship, and who they love. Many Sikhs fear attacks by their neighbors, stay in their homes, only go out in groups, and try not to travel after dark. We must ensure that we feel safe where we are.

The strength of our country lies in the differences of its citizens. We must work together to make stronger anti-hate crime laws in order to preserve our values of freedom and tolerance.

Chairman SENSENBRENNER. Without objection.

Ms. JACKSON LEE. I will speak to the intent of this particular legislation, and I want to recognize that there is an existing hate crimes initiative that is going through this House. I am disappointed that we have not had an opportunity to have hearings in this session or to have a markup.

Mr. Chairman, there is no order in this room.

Chairman SENSENBRENNER. The gentlewoman from Texas is correct. The Committee will be in order. That includes the staff. The gentlewoman may proceed.

Ms. JACKSON LEE. We are facing some enormous cliffs to climb starting from September 11th, 2001. We have to in our heart find the values that we cherish of a quality and democracy, respect for the individual, and at the same time have the strength of character to respond to the tragedy and the devastation that happened to our fellow Americans and many others.

This legislation is to ensure that we hold true to our values. It is legislation to acknowledge a Sikh Indian in Mesa, Arizona, an immigrant, shot to death because he was dark skinned, bearded, and wore a turban. The individual who executed the shootings at two Mesa gas stations, one of which the deceased owned and a house that the perpetrator had sold to an Afghan couple. The individual who killed Mr. Saw as part of a multiple incident shooting rampage was charged with first degree murder, three counts of drive-by shooting, three counts of attempted first degree murder and three counts of endangerment, but he made the point that he was happy to have shot them and that clearly he would have done it again.

He fired several shots at a Lebanese American Clerk but missed. He was clearly on a rampage. He was clearly acting out of hate. He was clearly seeking to intimidate a large group of individuals.

I think this terrorist bill would be that much more enhanced if we added legislation that would condemn any acts of individuals that would believe that they could be in place of law enforcement and go about our community shooting and maiming those who did not look like them, whether they wore a turban, whether they did prayer 6 days a week, whether they dressed in the full regalia of the many Muslim women or they covered their faces. I think it is important that a statement about hate crimes be included in this legislation.

What it does is it says Americans will not be intimidated to become like the perpetrators. We will not be hateful. We will not undermine our values. We will not be frightened into undermining our values. What we will do is that we will stand for what is right, and that is prevent the heinous acts against innocent individuals. The acts on September 11th were heinous. They were outrageous. We must Sikh and bring to justice the terrorists. We must respond. But we also must deal a blow to those who would hatefully go about injuring the innocent.

With that, I yield back my time and ask my colleagues to support this amendment.

Chairman SENSENBRENNER. Does the gentleman from Texas insist upon his point of order?

Mr. SMITH. Mr. Chairman, on the way to insisting on my point of order let me also make the point that no noncitizen outside the United States has the constitutional right to free speech, but I do press my point of order simply because the amendment does not meet the fundamental purpose test and, more specifically, this is title II dealing with immigration. The amendment deals with criminal law, particularly hate crime, and so I do insist on my point of order.

Chairman SENSENBRENNER. For the reasons stated the point of order is sustained.

Are there further amendments to title II? If not, title II is closed.

Title III, entitled Criminal Justice, is now open for amendment. Are there amendments to title III? For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk Scott 021.

Chairman SENSENBRENNER. The Clerk will report Scott 021.

The CLERK. Amendment to H.R. 2975 offered by Mr. Scott. In the matter proposed to be added to section 3559 of title 18, United States Code by section 302, strike "federal terrorism offense" and insert "offense listed in section 3286."

Mr. SCOTT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I would like to handle en bloc this amendment and the amendment designated Scott No. 4, en bloc. They are very similar.

Chairman SENSENBRENNER. The Clerk will report Scott 4.

The CLERK. Amendment to H.R. 2975 offered by Mr. Scott. In the matter proposed to be added to section 3583 of title 18, United States Code by section 308, strike "Federal terrorism offense" and insert "offense listed in Section 3286."

Chairman SENSENBRENNER. Without objection, the amendments will be considered en bloc. Hearing none, so ordered and the gentleman from Virginia is recognized for 5 minutes.

[The amendments follow:]

## AMENDMENT TO H.R. 2975
## OFFERED BY MR. SCOTT

In the matter proposed to be added to section 3559 of title 18, United States Code, by section 302, strike ''Federal terrorism offense'' and insert ''offense listed in section 3286''.

## AMENDMENT TO H.R. 2975
## OFFERED BY MR. SCOTT

In the matter proposed to be added to section 3583 of title 18, United States Code, by section 308, strike ''Federal terrorism offense'' and insert ''offense listed in section 3286''.

Mr. SCOTT. Mr. Chairman, this amendment would limit the application of these sections to the same types of crime to which we limited RICO and total removal of statute of limitations. Under section 302, in several courtrooms of terrorism for which the maximum penalty is now only 5 years would suddenly be subject to a life sentence even though they do not involve any threat to human safety and only involve relatively minor property damage or sometimes not at all. They are offenses which clearly are not the kinds of offenses that we think of when we talk about antiterrorism offenses, and so on both sections we want to strike "Federal terrorism offense," which includes some fairly minor offenses and use the same language we used in other sections to restrict this to actual terrorism offenses.

I yield back.

Chairman SENSENBRENNER. The Chair recognizes himself in opposition to the amendments en bloc. Section 302 allows a judge to impose a life sentence only if the crime is listed as a Federal terrorism offense and it is shown to have the intent to influence, coerce or retaliate against the government. Section 308 allows a judge to impose lifetime supervision on a criminal after release from prison, only if the person who is convicted of one of the offenses listed in section 309 and the intent element is met. These amendments would have the result of limiting the possibility of a life sentence only to crimes of Federal terrorism that are not subject to any statute of limitations. The amendment would have the effect of limiting supervision of a criminal act or prison for any term of years up to life, as the judge deems necessary, only to crimes of Federal terrorism that are not subject to this statute of limitations. The alternative maximum penalty section does not create a mandatory life sentence. The post release supervision section does not mandate that the judge impose a lifetime supervision of a convicted criminal. A judge may only impose the life sentence if the jury makes a finding beyond a reasonable doubt that the crime was calculated to effect government conduct or retaliate against the

government. A judge may only impose lifetime supervision of a criminal after finding beyond a reasonable doubt that the crime was calculated to affect government conduct or retaliate against the government. The judge would still have the discretion to impose lesser sentences if he feels the crime does not warrant a life sentence. The judge would still have the discretion to impose less than lifetime supervision if he feels the criminal does not pose a threat to society or national security.

This is a matter to be determined in the courtroom. The two Scott amendments take it away from the judge.

Certain crimes such as computer-related crimes may not be seen as serious enough to warrant a life sentence or lifetime supervision, but if someone damages 911 or the air traffic control system, it could result in serious injury or death to many people. Federal terrorism offenses have been narrowed already from the Administration request to get at only the most serious offenses.

This amendment would not allow a life sentence for crimes such as train wrecking, destruction of a hazardous liquid pipeline facility, possession of biological agents such as anthrax, bringing in explosives on an aircraft or destruction or sabotage of national defense materials, even when those crimes are shown to be done with an intent to commit terrorism. The amendment would not allow a judge to impose lifetime supervision for someone convicted for serious crimes such as assault on a flight crew with a dangerous weapon, train wrecking, destruction of a hazardous liquid pipeline facility, possession of biological agents, bringing in explosives on an aircraft or destruction or sabotage of national defense materials even when those crimes are shown with the intent to commit terrorism.

I ask the Committee to reject the amendment and yield back.

Mr. CONYERS. Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I rise with the feeling that underneath the two Scott amendments is the consideration that a lifetime supervision sentence should be reserved for the most heinous offenses and that it is antithetical to an effective criminal justice system that we have this created into our criminal justice penalties to be perhaps used widely, but perhaps not used widely, and so I wanted to commend the gentleman from Virginia for what I consider to be the reasoning behind that and assure him that this discussion is very important, and I think that more and more people will study this and recognize that it is a very reasonable way of putting some restrictions around what is a very strong punishment.

[7:50 p.m.]

Mr. SCOTT. Would the gentleman yield?

Mr. CONYERS. Of course.

Mr. SCOTT. Under the definition of any Federal terrorism offense and affecting governmental actions, would that actually cover student demonstrations where you have—where someone gets in a fight when you are trying to get your college to divest from investments in South Africa?

Mr. CONYERS. Theoretically, it is possible. We would hope that the judiciary would be as rational in their understanding of this provision as I think the membership of this Committee is.

Mr. SCOTT. Would the gentleman yield? And that is why we limited it to just those offenses listed in section 3286, which are the serious offenses and would exclude student demonstrations, violence at—getting into a fight during a demonstration, which are not the kinds of crimes for which a life sentence would be appropriate.

Mr. CONYERS. Well, the gentleman is merely drawing this a little bit more carefully with the recognition that if it is not written in with these limitations, it could be misused. And there is no reason for us to be putting something—proposing something into law when we know very well that the limiting amendments that you have offered would help make it clear. And I think it would be a more effective instrument of punishment were it prescribed by the parameters that are suggested in the amendments.

Chairman SENSENBRENNER. The time of the gentleman has expired. The question is on the adoption of the Scott amendments en bloc. Those in favor will signify by saying aye. Opposed, no. The ayes appear to have it. The ayes have it, and the amendment is agreed to. Further amendments to title III?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose the gentleman from Virginia seek recognition?

Mr. SCOTT. I have an amendment at the desk. Number 3.

Chairman SENSENBRENNER. Clerk will report Scott 3.

The CLERK. Amendment to H.R. 2975 offered by Mr. Scott. Page 83, line 10, before "crime," insert "Federal terrorism.".

[The amendment follows:]

## AMENDMENT TO H.R. 2975

## OFFERED BY MR. SCOTT

Page 83, line 10, before "crime" insert "Federal terrorism".

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this involves people who cannot possess biological agents or toxins. Section 305 lists the kinds of people that cannot—that are called restrictive persons and people who have been, for example, convicted of a crime—convicted of a felony, adjudicated mentally defective or been committed to a mental institution, an alien who is a national of a country which has been certified by the Secretary of State. But it also—a person who is a fugitive from justice. But it also includes, Mr. Chairman, one is who is under indictment for a crime punishable by imprisonment to a term of more than 1 year.

Now the person hasn't been convicted of anything, just accused of something. It is important that we maintain a principle that people are presumed innocent until proven guilty. This amendment

would restrict those people who are under indictment to those who are under indictment for a Federal terrorism offense. If you are indicted for that, you could be a restricted person. Without this amendment, Mr. Chairman, a pharmacist could be charged with Medicare fraud or a scientist who otherwise could possess such material could be charged with writing a bad check. And during the pendency of the trial at which they may even be found innocent, they would not be able to continue in their normal professional duties.

I think this would allow those who are actual terrorists not to possess those materials, but it would not be so broad as to cover people who are charged and may in fact be innocent of crimes that have nothing to do with terrorism. I yield back.

Chairman SENSENBRENNER. Gentleman yields back. What purpose does the gentleman from Texas seek recognition?

Mr. SMITH OF TEXAS. I oppose the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman. I just want my colleagues to be aware that section 305 provides for a list of persons who are prohibited from having access to a biological agent or toxin. This list was based on prohibitions on who can own handguns, but it has been limited further from that list. The list, in fact, has been narrowed from the Administration bill. Biological agents in the hands of someone accused of a felony such as murder, kidnapping or assault with a deadly weapon could be extremely dangerous.

This amendment would amend the list of persons who are prohibited from access to biological agents to those who have been indicted for a felony that was also a Federal terrorism offense. The list of persons restricted from access is based on the list of persons who are unable to use a gun with one exception. It has been narrowed from these provisions to eliminate persons convicted of domestic violence offenses.

Mr. Chairman, a person whom the law does not recognize as safe enough to possess a handgun should not be given access to something even more lethal. Mr. Chairman, I urge my colleagues——

Mr. SCOTT. Would the gentleman yield?

Mr. SMITH. Mr. Chairman, I will yield to the gentleman from Virginia.

Mr. SCOTT. Did I understand you to say that if you are under indictment for any felony, you cannot possess a handgun?

Mr. SMITH. Reclaiming my time, the amendment would amend the list of persons who are prohibited from access to biological agents to those who have been indicted for a felony that was also a Federal terrorism offense.

Mr. SCOTT. Well, would the gentleman yield?

Mr. SMITH. Yes.

Mr. SCOTT. That would be the effect of the amendment. The bill would restrict people from possessing biological agents if they have been indicted for any felony. I thought I heard you say that if you are under indictment, you cannot—for a felony you cannot possess a handgun.

Mr. SMITH. Let me reclaim my time. I am not sure the gentleman understands. And the point is that anybody who has been indicted

for a felony is not going to be allowed to handle or have access to the biological agent or toxin.

Mr. SCOTT. Mr. Chairman, I thought I heard the gentleman say that if you have been indicted for a felony, you could not possess a handgun. That is where the list came from. It is my understanding that you have to be convicted of a felony to lose your right to possess a handgun.

Mr. SMITH. Well, the underlying bill—to reclaim my time—says that if you have been prohibited from owning a handgun with the one exception of domestic violence, you cannot, under the underlying bill, you cannot then handle the toxin or the biological agent.

Mr. SCOTT. Again, I don't mean to press the point, but if you are under indictment, can you possess—if you are under indictment for a felony, can you possess a handgun? I thought I heard you say——

Mr. SMITH. That is a separate question, and I don't know the answer to it.

Chairman SENSENBRENNER. The gentleman from Texas yield back?

Mr. SMITH. Let me respond to the gentleman's question. You can apparently possess a handgun if you are under indictment, and that is all. However, if you are under indictment, you cannot possess the biological agent or toxin. Does that——

Mr. SCOTT. Under the bill. And my amendment would say if you are under an indictment for a terrorism offense, you can't possess them. But if you are a pharmacist under indictment for Medicare fraud, you ought not be prevented during the pendency of that indictment from continuing being a pharmacist, especially if he be found not guilty.

Chairman SENSENBRENNER. Gentleman from Texas has a minute left.

Mr. SMITH. I am getting some help, Mr. Chairman. It is my understanding that, for instance, the example given by Mr. Scott, if you are under indictment for Medicare fraud, you would not be able to possess the biological agent or toxin.

Mr. SCOTT. Under the bill. What about a handgun?

Mr. SMITH. I am told that that would not prevent you from owning or possessing a handgun as well.

Chairman SENSENBRENNER. The time of the gentleman from Texas has expired.

Mr. FRANK. Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from Massachusetts.

Mr. FRANK. Move to strike the last word.

Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.

Mr. FRANK. I want to ask a question of my friend from Virginia. Originally, I must say I would be inclined not to support his amendment, but I think I may not have fully understood the definition of biological agent or toxin, because his question leads me to think that there was a misunderstanding. I would ask the gentleman from Virginia, part of the question, I think, may be what the definition—some of us may not be fully familiar with the definition of biological agent or toxin. In other words, what you are saying is forbidding someone from possessing a biological agent or toxin would keep the person from being a pharmacist or perhaps a physician's assistant.

I yield to the gentleman to describe the substance that you couldn't use. I presume we are not only talking about terribly dangerous things.

Mr. SCOTT. I don't have the definition of "agents" in front of me, but they exempt toxins naturally occurring in the environment if the biological agent has not been cultivated, or collected——

Mr. FRANK. If it were to keep you from being a pharmacist, that is one thing. But I am reluctant without having a better understanding. If anyone else understands that and could define the biological agent or toxin, I would be glad to yield. But I think that is what my vote turns on, how dangerous do you have to be to meet this if it is listed as a select agent? Do we have a list of what these are? Are there such substances that are really in normal daily use?

Mr. SCOTT. If the gentleman would yield, anybody can possess them unless you are a restricted person.

Mr. FRANK. I understand that. But the question is whether or not that is a real hardship or whether we should or shouldn't restrict people. I understand what it says. But I was looking at what—how dangerous—I guess the answer is how dangerous these are and, in the alternative, what legitimate uses are there to these things that you would have people—where people would be at such a disadvantage.

Well, I am being handed a definition, which I am not going to be able to read in time. The definition is if it is something dangerous. But I guess I am really not in a position and unless—I would need some more reassurance that these were not dangerous and harmful and that they had a lot of very good and beneficial use and effects.

I yield to the gentleman.

Mr. SCOTT. If anybody can possess them, they can't be that dangerous. Any run of the mill person off the street who is not under indictment can possess them. I mean they can't——

Mr. FRANK. That is not necessarily the case. There may be some other qualifications. You talk about a pharmacist. A pharmacist can have a lot of things that I can't have. So the fact——

Mr. SCOTT. I don't have the section in front of me.

Mr. FRANK. I yield to the gentleman.

Mr. SCOTT. I said I can't answer the question.

Mr. FRANK. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The question is on Scott 20. Those in favor will signify by saying aye. Opposed, no. No. The noes appear to have it. The noes have it. The amendment is not agreed to.

Further amendments to title III? If not, title III is closed.

Mr. SCOTT. Mr. Chairman, I am sorry. I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

Mr. SCOTT. Number 6.

Chairman SENSENBRENNER. Does the Clerk have anything to say about what little gems are in her pile?

The CLERK. Amendment to H.R. 2975 offered by Mr. Scott. Page 90, beginning on line 6, strike "appear to be intended or have the effect" and insert "are intended.".

Chairman SENSENBRENNER. Gentleman from Virginia is recognized for 5 minutes.

[The amendment follows:]

# Amendment #6 To H.R. 2975
# Offered By Mr. Scott

Page 90, beginning on line 6, strike "appear to be intended (or have the effect)" and insert "are intended"

Mr. SCOTT. Mr. Chairman, this will tighten up the definition of domestic terrorism in the bill. All of us are intent on preventing terrorism and providing law enforcement the tools they need to do their work. My concern is that this bill's present definition of domestic terrorism is too broad and unclear and would include activities that few of us would define as domestic terrorism. The present wording of quote, appear to be intended or have the effect, unquote, will allow someone to be accused of an act of domestic terrorism based on appearances or effects without the traditional intent required. And it will kick in the bill's provisions for a single jurisdiction search warrant, seizing of assets, sharing of grand jury information. And those who are prosecuted under the "appear to be intended or to have the effect" definition of domestic terrorism is subject to application of the RICO statute, elimination of statute of limitations, use of enhanced penalties without proving intent.

This amendment would make certain that only those individuals who had the traditional means to do a terrorist act are investigated and prosecuted as terrorists, not the protester at an abortion, not the student protester who is sitting out in the dean's office.

I would ask that you support the amendment, and I yield back.

Chairman SENSENBRENNER. I recognize myself in opposition to the amendment. The language in the bill is based upon the current law definition of international terrorism, which is included in 18 U.S.C. 2331, with a significant exception, and that is that the violent act is more precisely defined so as to exclude from the definition of domestic terrorism student protest. That is excluded.

What the amendment of the gentleman from Virginia proposes to do is to require a tougher standard of proof for domestic terrorism than for international terrorism. So if the people who crashed the plane into the Pentagon and the World Trade Center were home grown terrorists rather than those who came from overseas and lived, the prosecutors would have had a much tougher standard of

proof, and I don't think that is really what he want because terrorism is terrorism and the people who die and are maimed, or dead or who have been maimed. The question is really a question for the trier of fact, whether it be the court or the jury, to determine. And it is difficult to prove exactly what is on someone's mind. That is the subjective standard that is best determined not legislatively, but by the jury that hears the case or, if it is a court trial, by the judge himself.

So I would ask that the amendment be rejected and yield back my time.

The question is on the Scott amendment No. 6. Those in favor will signify by saying aye. Opposed, no. The noes appear to have it. The noes have it. The amendment is not agreed to.

Further amendments to title III? If there are none, title III is closed.

Mr. SCOTT. Mr. Chairman.

Chairman SENSENBRENNER. Mr. Scott?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I just learned that there may be a technical amendment with the amendment we adopted about lifetime supervision and penalties. And I would like to reconsider—move to reconsider the vote we took on amendments 2 and 4. Unanimous consent to vitiate the vote.

Chairman SENSENBRENNER. The question is unanimous consent to vitiate the Scott amendments en bloc adopted earlier. Without objection, the vote on adoption has been vitiated. The question now is on adoption of the amendments. The gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, I would ask to withdraw the amendment so that the technical problem can be addressed between here and the floor.

Chairman SENSENBRENNER. The amendment is withdrawn. The amendments en bloc are withdrawn. Are there further amendments to title III? Hearing none, title III is closed at last.

Title IV, relating to financial infrastructure, is now open for amendment at any point. Are there amendments to title IV? Are there amendments to title IV? If not, title IV is closed.

Next, title V, emergency authorization, is open for amendments at any point. Are there amendments to title V? Are there amendments to title V? If not, title V is closed. Next open for amendment is title VI, relating to dam security, which is not in the jurisdiction of this Committee, but on the Committee on Resources. Are there amendments to title VI? If not, title VI is closed.

Finally, title VII, miscellaneous, is now open for amendment at any point. Are there amendments to title VII? For what purpose does the gentlewoman from California, Ms. Waters, seek recognition?

Ms. WATERS. I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

Mr. SMITH. Mr. Chairman, I reserve a point of order.

Chairman SENSENBRENNER. The point of order is reserved by the gentleman from Texas.

The CLERK. Amendment offered by Ms. Waters to H.R. 2975, the PATRIOT Act of 2001. Add to the end the following: From the 50 million in funds made available for obligation annually from the Fund for Victims of International Terrorism (section 2003, Public Law 106–386, Oct. 2000), compensation of $1.5 million shall be paid in FY 2002 to each survivor of the 12 American citizens killed in the 1998 terrorist bombings of the American embassies in Kenya and Tanzania; in addition this Fund shall be available for——

Ms. WATERS. Unanimous consent to dispense with the reading of the bill.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentlewoman from California is recognized for 5 minutes subject to the reservation of the point of order.

[The amendment follows:]

**Amendment Offered by Ms. Waters**

**To H.R. 2975, the "PATRIOT Act of 2001"**

**Add to the end the following:**

From the $50 million in funds made available for obligation

annually from the Fund for Victims of International Terrorism

(Sec. 2003, Public Law 106-386, Oct. 2000), compensation of $1.5 for each survivor victim

is authorized to be appropriated

million shall be paid in FY 2002 to each survivor of the 12

American citizens killed in the 1998 terrorist bombings of the

American embassies in Kenya and Tanzania; in addition this Fund

shall be available for compensatory payments to U.S. citizens and

national embassy personnel who have been killed or severely

injured by acts of international terrorism.

it is auth to be comp. 1.5 for each terrorist bombings of the American citizens

Ms. WATERS. Thank you very much. Mr. Chairman and Members, in 1998, two United States embassies were bombed in Africa, one in Kenya and one in Tanzania. It was where I first heard the name of Osama bin Laden, who was indicted for the bombing of these embassies. Twelve American citizens were killed in those bombings. These attacks represent attacks against America and need our attention.

As we all know, embassy personnel are often targeted because they represent the United States in a foreign country. The families of those victims have never been compensated. The brother and father of a young woman who worked for the United States Congress died in those bombings. Ms. Edith Barkley is a heartbroken woman who believes that her country has turned its back on her.

While Foreign Service officers assume a reasonable level of risk in accepting a foreign assignment, they should not have to bear the burden of murder at the hands of terrorists without compensation for their surviving families. The fact that those families to date have received no compensation is even more alarming in light of the fact that the families of those that were killed in the accidental bombing of the Chinese Embassy in Serbia in 1999 received 1.5 million each. I agree with the U.S. Decision to provide compensation for those families, but we must not neglect the families of Americans who were lost in Kenya and Tanzania.

At this time, when we are working on an antiterrorism bill, I think it is appropriate to fully provide compensation for the 1998 victims' families.

I think it is worth mentioning that the State Department failed to comply with its own regulations to warn embassy personnel that intelligence information confirmed the existence of active terrorist activity in East Africa. The State Department also disregarded the repeated request of the Kenyan Ambassador for greater security to protect the embassy and its personnel.

It is a travesty that these disregards of policy may have contributed to a loss of American life. It is a shame that we have not acted sooner to compensate the families, but it would be improper for us to address the needs arising out of the September 11 attacks while ignoring what happened in 1998.

My amendment does not allocate new funds. It simply provides for the distribution of funds already allocated in the Fund for Victims of International Terrorism to the families of the 1998 bombing victims.

I seek your support for this amendment that will finally address the need that we in Congress have overlooked for too long. If Osama bin Laden is responsible for those bombings and those murders, we should compensate those victims the same way we are doing for these victims who were killed or were harmed September 11. It is the same terrorists committing acts against Americans, whether they be on American soil or foreign soil. I think it is time that we took care of this. It is just a small amount of money, and I would ask my colleagues to please support this amendment.

Chairman SENSENBRENNER. Gentlewoman yield back the balance of her time?

Ms. WATERS. I yield back the balance of my time.

Chairman SENSENBRENNER. Gentleman from Texas insists upon his point of order.

Mr. SMITH. Mr. Chairman, I do, but I also might offer a suggestion to the gentlewoman from California, and that is that the fund from which she wants to obtain these payments is $50 million. If you total up the compensation that is suggested by this amendment, it would be over $7 billion, so I don't think the $50 million would cover it.

Ms. WATERS. I beg your pardon? What did you say?

Mr. SMITH. I don't want to go into any detail, but the amendment that you offered says compensation of 1.5 million for each of the individuals involved in the terrorist attacks.

Chairman SENSENBRENNER. The question was, does the gentleman insist upon his point of order?

Mr. SMITH. Yes, I do insist on my point of order.

Chairman SENSENBRENNER. Gentleman please state his point of order. The gentleman is recognized to make his point of order.

Ms. WATERS. Will the gentleman yield?

Chairman SENSENBRENNER. The gentleman has to make his point of order for the Chair to rule on it. The regular order is for the gentleman who has reserved a point of order, when he is called upon, to either make his point of order or forever hold his peace.

Mr. SMITH. Mr. Chairman, the amendment is out of order because it is an appropriation and I will insist on the point of order.

Chairman SENSENBRENNER. The gentleman from Texas makes his point of order. Does the gentlewoman wish to speak on the point of order?

Ms. WATERS. Yes. I would like to speak on the point of order. First of all, I wanted to correct him about the amount that is involved. We are talking about 12 Americans that were killed, which comes to about $18 million. In addition to that, I would like unanimous consent——

Chairman SENSENBRENNER. Would the gentlewoman please speak to the point of order that this is an appropriation on an authorization bill? That is what the point of order is and that is what the Chair has to decide.

Ms. WATERS. Recognizing that that may be a problem, I ask unanimous consent to authorize rather than appropriate. Unanimous consent.

Chairman SENSENBRENNER. The Chair has to rule on the point of order. It is an appropriation, which is not in the jurisdiction of the Committee. The Chair sustains the point of order.

Ms. WATERS. Unanimous consent.

Mr. FRANK. Mr. Chairman, parliamentary inquiry.

Chairman SENSENBRENNER. The gentleman from Massachusetts will state his inquiry.

Mr. FRANK. If the gentlewoman were now to offer a fresh amendment which says compensation of 1.5 million is authorized to be appropriated for each of the 12 survivors, would that be in order?

Chairman SENSENBRENNER. Under the unanimous consent agreement on how this bill is to be considered, the answer is no, because we have gone past the title on emergency authorizations.

Mr. FRANK. I thought we were talking about—what is the definition of "miscellaneous"? Miscellaneous did not seem to be me to be an exclusive——

Chairman SENSENBRENNER. Title V specifically related to emergency authorizations. Without objection, title V is reopened so that the gentlewoman from California can offer a properly drafted emergency authorization amendment. Does the gentlewoman from California have an amendment?

Mr. FRANK. I think she may not be able to read it.

Ms. WATERS. I have an amendment that has been roughly drawn up that would be an appropriate amendment, that would do the authorization, and I do not have——

Chairman SENSENBRENNER. The Clerk will report the amendment.

Mr. FRANK. If the gentlewoman gives it to me, I could read it.

Chairman SENSENBRENNER. The gentleman from Massachusetts wish to become the Clerk of the Committee?

Mr. FRANK. No, Mr. Chairman. I wish to be the Assistant Clerk for purpose of reading something that might be hard to read and then hand it to the Clerk.

Chairman SENSENBRENNER. Well, we will count the minority's salary allocation as the result of the new duties of the gentleman from Massachusetts.

Mr. FRANK. The amendment—as I worked on the drafting with the guidance of the Parliamentarian, the amendment would say "compensation of 1.5 million is authorized to be appropriated in fiscal year 2002 for each survivor of the 12 American citizens killed in the 1998 terrorist bombing," through the semicolon after "Tanzania.".

Chairman SENSENBRENNER. If everybody will cool it, I think we will get this right if we have a little bit of time and people do not jump into the breach. Will the gentleman from Massachusetts like to try?

Mr. FRANK. Let me ask a parliamentary inquiry. The intention was that there would be 1.5 million for each survivor family and it would be divided among those—for each victim.

Chairman SENSENBRENNER. We are talking about a million-and-a-half for each victim divided among the survivors.

Mr. FRANK. I would ask unanimous consent to offer orally an amendment that would say, it is authorized to be appropriated compensation of $1.5 million for each victim of the 1998 terrorist bombings of the American embassies in Kenya and Tanzania to be divided equally among the survivors of those victims—to the estate of each victim.

Mr. SMITH. Mr. Chairman, I am still going to reserve a point of order.

Chairman SENSENBRENNER. Point of order is reserved.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent to make this suggestion, that, namely, we do have the gist of an excellent idea for which there seems to be a fair amount of support. Could this be added to the list of matters that you and I and staff ought to repair to tomorrow?

Chairman SENSENBRENNER. That is an excellent suggestion. And let me say that personally, I have a problem with a million-and-a-half compensation when we are only giving $152,000 in compensation to the deceased firefighters and emergency personnel who died at the collapse of the World Trade Center. I think there has to be some type of proportionality involved in this. And to give 10 times more to these victims than we are giving to our own public safety personnel, I just don't think is fair.

Mr. CONYERS. Mr. Chairman, could we invite the gentlelady from California to join with our staff in these considerations?

Chairman SENSENBRENNER. Absolutely.

Mr. CONYERS. I thank you very much.

Mr. FRANK. Either me or the Clerk is going to come to that meeting.

Chairman SENSENBRENNER. Are there further amendments to title VII, Miscellaneous? Hearing none, title VII is closed. And the question now occurs on the motion to report the bill favorably, as amended. The Chair will order a rollcall. Those in favor of reporting the bill favorably as amended will as your names are called answer aye. Those opposed, no. And the Clerk will call the roll.

The CLERK. Mr. Hyde.
Mr. HYDE. Aye.
The CLERK. Mr. Hyde votes aye.
Mr. Gekas.
Mr. GEKAS. Aye.
The CLERK. Mr. Gekas votes aye.
Mr. Coble.
Mr. COBLE. Aye.
The CLERK. Mr. Coble votes aye.
Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Smith votes aye.
Mr. Gallegly.
Mr. GALLEGLY. Aye.
The CLERK. Mr. Gallegly votes aye.
Mr. Goodlatte.
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte votes aye.
Mr. Bryant.
Mr. BRYANT. Aye.
The CLERK. Mr. Bryant votes aye.
Mr. Chabot.
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot votes aye.
Mr. Barr.
Mr. BARR. Aye.
The CLERK. Mr. Barr votes aye.
Mr. Jenkins.
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins votes aye.
Mr. Cannon.
Mr. CANNON. Aye.
The CLERK. Mr. Cannon votes aye.
Mr. Graham.
Mr. GRAHAM. Aye.
The CLERK. Mr. Graham votes aye.
Mr. Bachus.
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus votes aye.
Mr. Hostettler.
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler votes aye.
Mr. Green.
Mr. GREEN. Aye.
The CLERK. Mr. Green votes aye.
Mr. Keller.
Mr. KELLER. Aye.
The CLERK. Mr. Keller votes aye.
Mr. Issa.

Mr. ISSA. Aye.
The CLERK. Mr. Issa votes aye.
Ms. Hart.
Ms. HART. Aye.
The CLERK. Ms. Hart votes aye.
Mr. Flake.
Mr. FLAKE. Aye.
The CLERK. Mr. Flake votes aye.
Mr. Pence.
Mr. PENCE. Aye.
The CLERK. Mr. Pence votes aye.
Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers votes aye.
Mr. Frank.
Mr. FRANK. Aye.
The CLERK. Mr. Frank votes aye.
Mr. Berman.
Mr. BERMAN. Aye.
The CLERK. Mr. Berman votes aye.
Mr. Boucher.
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher votes aye.
Mr. Nadler.
Mr. NADLER. Aye.
The CLERK. Mr. Nadler votes aye.
Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott votes aye.
Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt votes aye.
Ms. Lofgren.
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren votes aye.
Ms. Jackson Lee.
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee votes aye.
Ms. Waters.
Ms. WATERS. Pass.
The CLERK. Ms. Waters passes.
Mr. Meehan.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan votes aye.
Mr. Delahunt.
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt votes aye.
Mr. Wexler.
[no response.]
The CLERK. Ms. Baldwin.
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin votes aye.
Mr. Weiner.
Mr. WEINER. Aye.
The CLERK. Mr. Weiner votes aye.

Mr. Schiff.

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff votes aye.

Mr. Sensenbrenner.

Chairman SENSENBRENNER. Aye.

The CLERK. Mr. Sensenbrenner votes aye.

Chairman SENSENBRENNER. Are there additional Members in the room who desire to cast or change their votes?

The CLERK. Ms. Waters, you passed?

Ms. WATERS. I better vote for something. Miscellaneous section, VII, that caused me to vote aye.

The CLERK. Ms. Waters votes aye.

Chairman SENSENBRENNER. Are there additional Members who desire to cast or change their votes? The gentleman from South Carolina—if not, the Clerk will report.

Chairman SENSENBRENNER. The gentlewoman from Texas.

The CLERK. Ms. Jackson Lee, you are recorded as an aye.

Chairman SENSENBRENNER. Clerk will report.

The CLERK. Mr. Chairman, there is 36 ayes and zero nays.

Chairman SENSENBRENNER. And the bill is favorably reported. Without objection, the bill will be reported in the form of it was a single amendment in the nature of a substitute, reflecting the amendments that were agreed to today.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes. And all Members will be given 2 days, as provided by the House rules, in which to submit additional dissenting, supplemental or minority views.

Now if I may have everybody's attention for a minute, the Chair wants to make a statement. I would like to congratulate everybody who has worked on this project for a job well done. There have been many hours that have been put in by the Members and staff on both sides of the aisle. The Justice Department has been extremely cooperative in giving information on very short notice and has participated in these negotiations.

When I first announced that I wanted the regular order to prevail in Committee consideration of this bill, Columnist Robert Novak took a shot at me, saying that all I wanted to do was slow it down and to goof it up. Mr. Novak, we have shown that you are wrong, and I think that this shows that with respect to conflicting viewpoints and a bipartisan approach, the legislative process works, and everybody who has participated in this deserves the credit. We are all the winners. The terrorists are the losers.

And the Committee is adjourned.

[Whereupon, at 8:30 p.m., the Committee was adjourned.]

## ADDITIONAL VIEWS OF THE HONORABLE BARNEY FRANK

I do not remember in my 21 years in the House of Representatives an issue that was more difficult to deal with than the subject matter of this bill. The terrible fact, made so tragically clear on September 11, that we are menaced by a group of fiendish, technically skilled, suicidal mass murderers, obviously requires us to respond by enhancing our ability to defend ourselves. Doing this in a manner that is fully consistent with our liberties, our privacy, and the right to be free from arbitrary mistreatment that is so important to Americans requires a great deal of thought, and even after working together on it thoroughly, no one should be sure that we have achieved the appropriate balance. That is why I am pleased that the bill worked out by Chairman Sensenbrenner and Ranking Minority Member Conyers included a sunset provision. We have in this bill entrusted law enforcement officials with enhanced ability to monitor our lives. They now have the responsibility to do this in a manner that will allay the fears of those who think the bill goes too far, and these powers will be renewed 2 years from now, I believe, only if those entrusted with them demonstrate that this trust was entirely well placed.

I write here to comment particularly on one part of the bill—unfortunately, a part not subject to the 2 year expiration date—which related directly to work I have done in my service in the House, and which I agreed to with some reluctance. When I arrived in Congress in 1981, we had on our statute books a law dating from the McCarthy era, known as the McCarran-Walter Act, which, among other things, severely restricted entry into the United States of foreigners whose political views various Americans found objectionable. Throughout the period from the 50's up to the 80's, America was frequently embarrassed when State Department or Justice Department officials acting under this authority excluded from America distinguished literary and political figures, lest they utter words too upsetting for what some people apparently considered to be our tender ears. Indeed, those who are today critical of what they deride as "political correctness" should reflect that at no point in our history have we ever done more to enact a binding legal code of "political correctness" then during the period when the McCarran-Walter Act was in effect.

Fortunately, in 1990, Congress as part of an overall immigration bill largely obliterated this set of restrictions on what Americans can hear, and President Bush signed the bill. I was privileged at that time to work with then Republican Senator Alan Simpson to reinstate freedom of expression as part of American immigration law.

And I stress here that we are talking about freedom of expression and debate within our own country when we deal with the exclusion of people with unpopular political views. Some of my col-

leagues have correctly pointed out that residents of foreign countries who have no legal connection to America do not have constitutional rights, including those of freedom of expression. But Americans have such rights, and it is the right of Americans to hear, debate with, and learn from others that is impinged when we exclude people because we find their political views unpopular, unsettling or dangerous.

One of the concerns I had with the original draft of the bill submitted to us by the Justice Department was its effect on the work done by Senator Simpson, myself and others in 1990 to establish freedom of expression as a principle in American immigration law.

The bill would have allowed the exclusion of visa applicants who had "endorsed or espoused terrorist activity." Obviously we have not just the right but the obligation to keep out of our country people who would come here to organize acts of violence, and we have a right to exclude those who have engaged in such activity overseas. But the mere "espousal or endorsement" of terrorist activity casts far too wide a net of exclusion. This is after all a grant of authority to American immigration officials in an area that is unchecked by judicial power—since there is no judicial review of any decision to deny a visa. Given our history, it is entirely likely that such a grant of authority would have led to the exclusion of people who had written about the right of oppressed people to respond with violence against their oppressors, and in specific cases, it almost certainly would at various points in our fairly recent history have been used to exclude supporters of the African National Congress, or the Irish Republican Army. Indeed, former Israeli Prime Minister Menachem Begin was once considered a terrorist because of his leadership of an anti-British organization in pre-independence Israel; Nelson Mandela was similarly characterized as a terrorist by his own government and by, sadly, some in our own; and Gerry Adams was excluded from the U.S. as a terrorist for years until Bill Clinton wisely reversed that and invited him to the U.S. in a move that helped move forward serious peace efforts in the north of Ireland. And it should be noted that the exclusion of Gerry Adams came even after we had changed the law, which indicates that no amendment to the law was necessary for administration officials to be able to act—again without any judicial recourse from those excluded—to take steps that they thought necessary to protect our internal security.

Given this history, I was very concerned that the "endorsed or espoused" language could lead to a renewal of some restriction on people whom Americans should continue to have the right to hear if they so choose. For this reason, I was very pleased that one of the amendments to the Justice Department bill added by the House Committee's consideration affected this exclusion section. Specifically, the exclusion now applies not to anyone who endorses or espouses, but rather to anyone who "has used the alien's prominence within a foreign state or the United States to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines the efforts of the United States to reduce or eliminate terrorist activities".

Thus, the exclusion is not a blanket one on people who "endorse or espouse" activity that some might classify as terrorist, but rather can only be invoked if the Secretary of State finds that this is more than mere expression of opinion, but in fact affects our efforts to prevent terrorist activity. This is for those who believe firmly in freedom of expression a crucial distinction, between the expression of opinion and general advocacy, which a free society should protect, and on the other hand efforts which are part of organized activity that result in actual terrorism.

As in many other areas of this particular bill, this difference is easier to conceptualize than it may be to carry out in practice. So I write these additional views to stress that for me and others on the committee, our acceptance of this particular phrase is based on our understanding that it is not an effort to exclude people whose advocacy of particular ideas might be unpopular at a given time in America—justly or not—but rather is an effort to empower our officials to exclude people whose efforts have in fact facilitated to "terrorist activities". Again, I wish that this had been one of the sunsetted provisions, but even though it is not, I hope that those entrusted with enforcing it understand that if it is used in an abusive fashion, the way in which exclusionary provisions were used in the 50's, 60's, 70's and 80's, many of us will launch an effort to undo it when Congress returns in 2 years or so to this general subject.

Finally, while on the subject of the power of words, I want also to express my disagreement with the decision to construct an awkward title for this bill so that it yields the acronym "PATRIOT." Only my strong commitment to freedom of expression in general keeps me from filing legislation to ban the use of acronyms in general in legislative work. But I think that the use of this particular one is especially unfortunate. The outburst of very vocal patriotism on the part of virtually all of us that has been part of our national response to the September 11 mass murders is a source of pride to me and others. It is entirely legitimate for those of us who are proud of America to reaffirm our patriotism at a time when enemies of freedom attack us. But invoking the word PATRIOT in the context of this bill gives the unfortunate impression that those who disagree with it are not patriots. I voted for the bill, and I am pleased with the work that we did collectively to provide for enhanced law enforcement powers in a way that I believe is consistent with American liberty and privacy. But I fully respect those who disagree with our work, and I wish we had not chosen a title for the bill that in any way reflects on their good faith in expressing that disagreement.

BARNEY FRANK.

## ADDITIONAL VIEWS OF THE HONORABLE ROBERT C. SCOTT

The amendment to H.R. 2975 offered by, Mr. Cannon and adopted by the Committee in a manager amendment to the bill, is essentially the same as H.R. 3485, passed by the Committee in the 106th Congress. I have the same concerns with this part of H.R. 2975 as I expressed with H.R. 3485. Accordingly, I incorporate below as additional views to H.R. 2975, the relevant parts of my questions and comments during the Committee markup of H.R. 3485, along with the relevant parts of the Agency Views in a joint letter submitted by the Federal Departments of State and Treasury expressing their concerns during the consideration of H.R. 3485:

*Scott Comments from the Transcript of the 6/21/2000 Judiciary Committee Markup of H.R. 3485:*

Mr. SCOTT. Mr. Chairman, would the gentleman yield for another question or two?

Mr. MCCOLLUM. Certainly.

Mr. SCOTT. You said there is escape for diplomatic property. Is there an escape if the President views the attachment of foreign property inconsistent with national security? Is there a national security interest exception where the President can override this?

Mr. MCCOLLUM. Initially, in the language that was there, it was a broad override of national security. Now we are narrowing this bill and saying that commercial assets, he cannot override if it is commercial in the United States. But he can for diplomatic.

Mr. SCOTT. Would this allow attachment of assets of the foreign government outside of the United States?

Mr. MCCOLLUM. No, it would not.

Mr. SCOTT. So you could not execute a judgement if the property of the terrorist state were in Canada, for example?

Mr. MCCOLLUM. That is correct.

Mr. SCOTT. Could you give us a little sense of this would work if the shoe were on the other foot and an Iraqi who was bombed on the Persian Gulf got a judgement in Iraq and wanted to attach assets that the government might have in Iraq.

Mr. MCCOLLUM. First of all, if the gentleman will yield, the bill does not pertain to that. We would not provide any opportunity for that to occur in this bill.

Mr. SCOTT. No. If the shoe were on the other foot and Iraq were to pass a similar bill and accuse us in Iraq of terrorism.

Mr. MCCOLLUM. Sure. If the gentleman will yield. That is an argument diplomatically made by our State Department and a concern you and I have heard I am sure, Mr. Scott, many times when we get into these situations where State Department never wants us to do anything that might encourage another

state to respond in like kind. The terrorist, by very nature, would potentially do that, and certainly that is possible. But I do not believe that we have business assets or property assets in jeopardy in Iraq. And we compensate those who are injured in those situations anyway. The problem is that there is no compensation for those who have been injured on our side, and we do compensate those who are injured abroad if we injure them.

Mr. SCOTT. Thank you.

*Joint Agency Views of the Departments of State and Treasury from House Report No. 106–733*

AGENCY VIEWS

TREASURY DEPUTY SECRETARY STUART E. EIZENSTAT,
DEFENSE DEPARTMENT;
UNDER SECRETARY FOR POLICY WALTER SLOCOMBE;
AND STATE DEPARTMENT UNDER SECRETARY FOR POLICY THOMAS PICKERING TESTIMONY BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

Mr. Chairman and Members of the Committee:

We are submitting this joint testimony as envisaged by the letters of Deputy Secretary Eizenstat of April 12 to Committee Chairman Hyde and Subcommittee Chairman Smith in response to letters to Secretary Summers and Secretary Albright from Chairman Hyde, inviting them or their designees to testify before this subcommittee on April 13 concerning H.R. 3485, the "Justice for Victims of Terrorism Act." Deputy Secretary Eizenstat has worked extensively on this issue for the Administration over the past 18 months, and we, on behalf of our Departments, join him in presenting our views on this proposed legislation. We share your goal that U.S. victims of terrorism and their families receive justice and compensation for their suffering. We are actively engaged with the Congress in ongoing discussions to resolve the complex issues identified and to address the needs of victims of terrorism. We also appreciate the opportunity to submit this statement into the record.

Let us begin by expressing the Administration's and our own genuine and personal sympathy to victims of international terrorism—an evil that this administration has led the world in combating. It is the responsibility of the United States Government to do everything possible to protect American lives from international terrorism and other heinous acts. People like Mr. Flatow, Mr. Anderson, Mr. Cicippio, Mr. Jacobsen, and Mr. Reed and their families, and the families of the Brothers to the Rescue pilots, deserve support in their goal of finding fair and just compensation for their grievous losses and unimaginable experiences. Those of us who have met with them have been touched by their suffering and impressed with their strength and determination to seek justice. We understand their frustrations and the frustrations that have led the sponsors of this legislation to introduce it. We are dedicated to working with the Congress to achieve the goal of obtaining compensation for the victims and their families. But we feel strongly

that this must be done in a way that is consistent with the broad national interests and international obligations of the United States.

It is obvious that the states involved here—states that we have publicly branded as sponsors of terrorism—do not view the United States as a friendly environment in which to conduct financial transactions. As part of our efforts to combat terrorism, we impose a wide range of economic sanctions against state sponsors of terrorism in order to deprive them of the resources to fund acts of terrorism and to affect their conduct. Because of these measures, terrorism list states engage in minimal economic activity in the United States. In many cases, the only assets that states which sponsor terrorism have in the United States are either blocked or diplomatic property. Such property should not be available for attachment and execution of judgments, for very good reasons involving the interests of the entire nation, which are described in detail below. As much as we join the sponsors of this bill in desiring to have victims of international terrorism and the heinous acts of the Cuban Air Force compensated, it would be unwise to ignore these reasons and prejudice the interests of all our citizens for this purpose.

This question is complex and fraught with difficulties. For this reason, last year, we proposed, among other things, that a commission be established to review all aspects of the problems presented by acts of international terrorism. Such a commission would have specifically studied the issue of compensation with the goal of recommending proposals to the President and to the Congress to help the victims and their families receive compensation in a manner that would not impinge upon important U.S. national interests. While this proposal was not taken up, we believe this approach still has merit.

H.R. 3485, though born of good intentions, is fundamentally flawed. The legislation would have five principal negative effects, all of which would be seriously damaging to important U.S. interests, and would, at the end of the day, result in substantial U.S. taxpayer liability.

*First,* blocking of assets of terrorist states is one of the most significant economic sanctions tools available to the President. The proposed legislation would undermine the President's ability to combat international terrorism and other threats to national security by permitting the wholesale attachment of blocked property, thereby depleting the pool of blocked assets and depriving the U.S. of a source of leverage in ongoing and future sanctions programs, such as was used to gain the release of our citizens held hostage in Iran in 1981 or in gaining information about POW's and MIA's as part of the normalization process with Vietnam.

*Second,* it would cause the U.S. to violate its international treaty obligations to protect and respect the immunity of diplomatic and consular property of other nations, and would put our own diplomatic and consular property around the world at risk of copycat attachment, with all that such implies for the ability of the United States to conduct diplomatic and consular relations and protect personnel and facilities.

*Third,* it would create a race to the courthouse benefitting one small, though deserving, group of Americans over a far larger group of deserving Americans. For example, in the case of Cuba, many Americans have waited decades to be compensated for both the loss of property and the loss of the lives of their loved ones. This would leave no assets for their claims and others that may follow. Even with regard to current judgment holders, it would result in their competing for the same limited pool of assets, which would be exhausted very quickly and might not be sufficient to satisfy all judgments.

*Fourth,* it would breach the longstanding principle that the United States Government has sovereign immunity from attachment, thereby preventing the U.S. Government from making good on its debts and international obligations and potentially causing the U.S. taxpayer to incur substantial financial liability, rather than achieving the stated goal of forcing Iran to bear the burden of paying these judgments. The Congressional Budget Office ("CBO") has recognized this by scoring the legislation at $420 million, the bulk of which is associated with the Foreign Military Sales ("FMS") Trust Fund. Such a waiver of sovereign immunity would expose the Trust Fund to writs of attachment, which would inject an unprecedented and major element of uncertainty and unreliability into the FMS program by creating an exception to the processes and principles under which the program operates.

*Fifth,* it would direct courts to ignore the separate legal status of states and their agencies and instrumentalities, overturning Supreme Court precedent and basic principles of corporate law and international practice by making state majority owned corporations liable for the debts of the state and establishing a dangerous precedent for government-owned enterprises like the U.S. Overseas Private Investment Corporation ("OPIC"). As the Washington Post observed in a fall 1999 editorial, "Victims of terrorism certainly should be compensated, but a mechanism that permits individual recovery to take precedence over significant foreign policy interests is flawed." The proposed legislation would indeed seriously compromise important national security, foreign policy, and other clear national interests, and discriminate among and between past and future U.S. claimants.

For all these reasons, explained in more detail below, the Administration strongly opposes the proposed legislation.

*(1) Attachment of Blocked and Diplomatic Property and the Elimination of the Effectiveness of Our Blocking Programs*

The Administration has grave concerns with the provisions of the proposed legislation that seek to nullify the President's waiver of the 1998 FSIA amendments and thereby permit attachment of blocked and diplomatic property. The ability to block assets represents one of the primary tools available to the United States to deter aggression and discourage or end hostile actions against U.S. citizens abroad. Our efforts to combat threats to our national security posed by terrorism list countries such as Iraq, Libya, Cuba, and Sudan rely in significant part upon our ability to block the assets of those countries.

Blocking assets permits the United States to deprive those countries of resources that they could use to harm our interests, and to disrupt their ability to carry out international financial transactions. By placing the assets of such countries in the sole control of the President, blocking programs permit the President at anytime to withhold substantial benefits from countries whose conduct we abhor, and to offer a potential incentive to such countries to reform their conduct. Our blocking programs thus provide the United States with a unique and flexible form of leverage over countries that engage in threatening conduct.

The Congress has recognized the need for the President to be able to regulate the assets of foreign states to meet threats to the U.S. national security, foreign policy, and economy. In both the International Emergency Economic Powers Act and the Trading with the Enemy Act, the Congress has provided the President with statutory authority for regulating foreign assets. On the basis of this authority and foreign policy powers under the Constitution, Presidents have blocked property and interests in property of foreign states and foreign nationals that today amount to over $3.5billion.

The Supreme Court has also recognized the importance of the President's blocking authority, stating that such blocking orders "permit the President to maintain the foreign assets at his disposal for use in negotiating the resolution of a declared national emergency. The frozen assets serve as a 'bargaining chip' to be used by the President when dealing with a hostile country." *Dames & Moore v. Regan,* 453 U.S. 654, 673 (1981).

The leverage provided by blocked assets has proved central to our ability to protect important U.S. national security and foreign policy interests. The most striking example is the Iran Hostage Crisis. The critical bargaining chip the United States had to bring to the table in an effort to resolve the crisis was the almost $10 billion in Iranian Government assets that the President had blocked shortly after the taking of our embassy. Because the return of the blocked assets was one of Iran's principal conditions for the release of the hostages, we would not have been able to secure the safe release of the hostages and to settle thousands of claims of U.S. nationals if those blocked assets had not been available. This settlement with Iran also resulted in the eventual payment of $7.5 billion in claims to or for the benefit of U.S. nationals against Iran.

In the case of Vietnam, the leverage provided by approximately $350 million in blocked assets, combined with Vietnam's inability to gain access to U.S. technology and trade, played an important role in persuading Vietnam's leadership to address important U.S. concerns in the normalization process. These concerns included assistance in accounting for POWs and MIAs from the Vietnam War, accepting responsibility for over $200 million in U.S. claims which had been adjudicated by the Foreign Claims Settlement Commission, and moderating Vietnamese actions in Cambodia.

In addition, blocked assets have helped us to secure equitable settlements of claims of U.S. nationals against such countries as Romania, Bulgaria, and Cambodia in the context of normalization of relations. These results could not have been achieved without effective blocking programs.

However, our blocking programs simply cannot function, and cannot serve to protect these important interests, if blocked assets are subject to attachment and execution by private parties, as the proposed legislation would permit. The need to deal with the increasing demands for information on assets, blocked and unblocked, of these terrorism list governments as monetary judgments are awarded would seriously disrupt the operations of the treasury Department in administering the blocking programs. These demands would greatly impair Treasury's investigative functions through the release of deliberative process and enforcement related materials thereby divulging sensitive operational details and raising important issues of confidentiality with U.S. banks and others who provide information on assets. Additionally, the ability to use blocked assets as leverage against foreign states that threaten U.S. interest is essentially eliminated if the President is unable to preserve and control the disposition of such assets. Private rights of execution against blocked assets would permanently rob the President of the leverage blocking provides by depleting the pool of blocked assets.

In the Cuban and Iranian contexts, for example, the value of judgments (including both compensatory and punitive damages) won by the Brothers to the Rescue families exceeds the total known value of the blocked assets of Cuba in the United States, and the value of the judgment won by the Flatow family, or the former Beirut Hostages, exceeds the total known value of the blocked assets of the Government of Iran in the United States. Attachment of these blocked assets to satisfy private judgments in these and similar cases would leave no remaining assets of terrorism list governments in the President's control, denying the President an important source of leverage and seriously weakening his hand in dealing with threats to our national security.

In addition, the prospect of future attachments by private parties would place a perpetual cloud over the President's ongoing control of all blocked assets programs. This would further undermine the President's ability to use such assets as leverage in negotiations, even where attachments had not yet occurred.

Put simply, permitting attachment of blocked assets would likely seriously undermine the use of our blocking programs as a key tool for combating threats against our national security and, in the Iranian context, would not even achieve the goal of full payment of the compensatory damages of all existing judgments against Iran.

*(2) Our Obligation and Interest in Protecting Diplomatic Property*

The proposed legislation also could cause the United States to violate our obligations under international law to protect diplomatic and consular property, and would undermine the legal protections for such property on which we rely every day to protect the safety of our diplomatic and consular property and personnel abroad. Even though the current legislation arguably provides protection for a slightly broader range of diplomatic property than previous legislative proposals, it is still fundamentally flawed in its failure to permit the President to protect properties, including consular properties, some diplomatic bank accounts, diplomatic resi-

dences, and properties of foreign missions to international organizations, which international law obligates us to protect.

The United States' legal obligation to prevent the attachment of diplomatic and consular property could not be clearer. Protection of diplomatic property is required by the Vienna Convention on Diplomatic Relations, to which the United States and all of the states against which suits presently may be brought under the 1996 amendments to the FSIA are parties. Under Article 45 of the Vienna Convention on Diplomatic Relations we are obligated to protect the premises of diplomatic missions, together with their real and personal property and archives, of countries with which we have severed diplomatic relations or are in armed conflict. This would include diplomatic residences owned by the foreign state.

Likewise, under Article 27 of the Vienna Convention on Consular Relations, the same protection is required for consular premises, property, and archives. Attachment of any of the types of property covered by the Vienna Conventions on Diplomatic and Consular Relations could place the United States in violation of our obligations under international law.

The proposed legislation would only permit the President to ensure the protection of a narrow portion of the property covered by the Vienna Conventions, and would thereby place the United States in violation of our legal obligations. In addition, the proposed legislation as drafted could cause us to breach our obligations to ensure the inviolability of missions to the United Nations, pursuant to the UN Headquarters Agreement and the General Convention on Privileges and Immunities.

*Our national interest in the protection of diplomatic property could not be clearer or more important.* [Italic for emphasis] The United States owns over 3,000 buildings and other structures abroad that it uses as embassies, consulates, missions to international organizations, and residences for our diplomats. The total value of this property is between $12 and $15 billion.

*Because we have more diplomatic property and personnel abroad than any other country, we are more at risk than any other country if the protections for diplomatic and consular property are eroded.* [Italic for emphasis] If we flout our obligations to protect the diplomatic and consular property of other countries, then we can expect other countries to target our diplomatic property when they disagree strongly with our policies or actions. Defending our national interests abroad at times makes the United States unpopular with some foreign governments. We should not give those states who wish the United States ill an easy means to strike at us by declaring diplomatic property fair game.

In the specific case of Iran, attachment of Iran's diplomatic and consular properties could also result in substantial U.S. taxpayer liability. Iran's diplomatic and consular properties in the United States are the subject of a claim brought by Iran against the United States before the Iran U.S. Claims Tribunal. The Iran U.S. Claims Tribunal is an arbitration court located at The Hague in the Netherlands. It was established as part of the agreement between Iran and the United States that freed the U.S. hostages in Iran and resolved outstanding claims that were then pending between the United States and Iran. Pursuant to this agreement and

awards of the Tribunal, Iran has paid $7.5 billion in compensation to or for the benefit of U.S. nationals. The Tribunal also has jurisdiction over certain claims between the two governments.

Although we are contesting Iran's claim vigorously, the Tribunal could find that the United States should have transferred Iran's diplomatic and consular property to it in 1981. If it does so and the properties are not available because they have been liquidated to pay private judgments, the U.S. taxpayer would have to bear the cost of compensating Iran for the value of the properties. Under the Algiers Accords, Tribunal awards against the governments are enforceable in the courts of any country, under the laws of that country.

*(3) Equity Among Claimants*

We are also deeply concerned that the proposed legislation would frustrate equity among U.S. nationals with claims against terrorism list states. It would create a winner take all race to the courthouse, arbitrarily permitting recovery for the first, or first few, claimants from limited available assets, leaving other similarly situated claimants with no recovery at all. In fact, it wouldtake away assets potentially available to them.

However, the Alejandre, Flatow, and Anderson cases do not represent the only claims of U.S. nationals against Cuba and Iran. No other claimants would benefit at all from the proposed legislation; indeed this legislation would seriously prejudice their interests.

In the case of Cuba, the U.S. Foreign Claims Settlement Commission ("FCSC") has certified 5,911 claims of U.S. nationals against the Government of Cuba, totaling approximately $6 billion with interest, dating back to the early 1960's. Contrary to statements made at the April 13 hearing, these include not just expropriation claims, but also the wrongful death claims of family members of two individuals whom the Cuban Government executed after summary trial for alleged crimes against the Cuban state. Other claims relate to the Castro Government's seizure of homes and businesses from U.S. nationals. These claimants have waited over 35 years without receiving compensation for their losses. This bill will not help them at all.

The same situation applies with respect to Iran. In addition to the Flatow and Anderson plaintiffs, who have judgments for compensatory and punitive damages totaling $589 million, former hostages who were held captive in Lebanon—David Jacobsen, Joseph Cicippio, Frank Reed, and their families—collectively have won a judgment against Iran totaling $65 million. Additional suits against Iran are currently pending in the Federal District courts.

Moreover, given the nature of these regimes, it remains possible that in spite of our substantial efforts to combat terrorism, foreign terrorist states will commit future acts in violation of the rights of U.S. nationals, which may give rise to claims against them. If such incidents occur, these claimants will also have an interest in being compensated.

Against this background, in which outstanding judgments for compensatory and substantial punitive damages far exceed available funds, the proposed legislation would permit the first claimants to reach the courthouse to deplete all the available assets of

terrorism list governments, leaving nothing for other similarly situated claimants to satisfy even compensatory damages they are awarded. Satisfaction of the judgments in the Alejandre, Flatow, and Anderson cases would come at the expense of all other claimants against Cuba and Iran, both past and future.

In sum, permitting the attachment of blocked and diplomatic properties in individual cases, as the proposed legislation would do, would undermine our ability to combat threats to our national security, violate our obligations under international law, place our diplomatic and consular properties and personnel abroad at risk, and lead to arbitrary inequities in the treatment of similarly situated U.S. nationals with claims against foreign governments.

*(4) Breaching the Sovereign Immunity of the United States*

We are equally concerned about the provision of the proposed legislation that would permit garnishment of debts of the United States. Not only would this provision breach the long established principle that the United States Government has sovereign immunity from garnishment actions, it would seriously undermine our Foreign Military Sales program, which is an important tool supporting U.S. national security policy and strategy, by creating an exception to the processes and principles under which the program operates that has not existed in the program's 40year history.

By allowing plaintiffs to attempt to tap the FMS Trust Fund to satisfy their judgments, the entire FMS program would be jeopardized as foreign customers question whether funds they are required to pay under the FMS program might be at risk of diversion or attachment. H.R. 3485 would therefore inject a major element of uncertainty and unreliability into the FMS program.

Additionally, foreign governments make prepayments into the FMS Trust Fund to ensure payment of U.S. suppliers for products and services provided to foreign governments in USG approved sales of defense products and services. Under section 37 of the Arms Export Control Act, these funds are available solely for payments to U.S. suppliers, and for refunds to foreign purchasers in connection with such sales. If the FMS Trust Fund can be exposed to attachment through an act of Congress for purposes other than ensuring payment for arms sales, not only may foreign governments simply question the wisdom of engaging in such transactions with the United States, but payments to U.S. suppliers would be threatened.

The proposed legislation also will negatively affect our defense industrial base. If passed as currently written, not only will U.S. defense firms be uncertain about whether and when they will be paid, but our ability to maintain open production lines needed to support the U.S. military, which the FMS program greatly facilitates, also would be disrupted.

We have heard that the intent of the proposed legislation is to "make terrorist states pay." However, exposing the Iranian FMS Trust Fund account ("Iran FMS account") to attachment will not cause Iran to pay. Here too, at the end of the day, the U.S. taxpayer will bear this burden if this fund is tapped. The United States will have to pay Iran whatever amount in the Iran FMS account is held by the Iran U.S. Claims Tribunal to be owed to Iran.

The current balance of the Iran FMS account, which is approximately$400 million, is the subject of Iran's multibillion dollar claim against the United States before the Tribunal, arising out of the Iran FMS program. Depleting Iran's FMS account through attachment by the plaintiffs in no way discharges any obligation to Iran the U.S. Government may ultimately be determined to have by the Tribunal. And if Iran prevails on its claims, it can seek to enforce its award against U.S. property anywhere in the world, since the awards of the Iran U.S. Claims Tribunal are enforceable in the courts of any country. Any Tribunal award that cannot be satisfied from the Iranian FMS account will have to be satisfied with U.S. government funds. Thus American taxpayers, rather than Iran, would actually pay under H.R. 3485. CBO's cost estimate for the bill has been confirmed that the legislation would cost the Treasury, and hence the taxpayer, $420 million, most of which is associated with the FMS Trust Fund.

This provision is also of particular concern because it would prevent the United States from meeting its obligations to make payments in satisfaction of awards the Tribunal renders against the United States. Instead, the proposed legislation would permit private parties to garnish the funds of the U.S. Government in order to collect such payments before they reach Iran. Even without this change in the law, there have been efforts in the Flatow case to garnish the payment of a $6 million Tribunal award in Iran's favor. It is important to understand that allowing private litigants to garnish amounts we owe Iran under Tribunal awards would not discharge the U.S. Government's liability to Iran to pay such money. For example, if the efforts in the Flatow case had succeeded, the Flatow family would have received $6 million, but the United States still would have owed Iran $6 million under the unpaid award. *And again because the awards of the Iran U.S. Claims Tribunal are enforceable in the courts of any country, Iran can seek to enforce awards against U.S. property in other countries if we do not pay them voluntarily.* [Italic for emphasis]

Permitting garnishment of the payment of such awards could thus result in the U.S. taxpayer paying twice: once when a private claimant garnishes the payment, and a second time upon Iran's successful enforcement of the still unsatisfied award against us abroad. Because the judgments against Iran received by these plaintiffs total in the hundreds of millions of dollars, permitting garnishment of debts owed by the United States to Iran as a means of satisfying these judgments could cost the U.S. taxpayer hundreds of millions of dollars.

Finally, while we are vigorously contesting all of Iran's claims at the Tribunal, if we are unable to pay even the smallest awards against us, our position before the Tribunal in all other claims will clearly be undermined.

*(5) Eliminating Legal Separateness of Agencies and Instrumentalities*

There are also significant problems with the provision of the proposed legislation that would change the way the FSIA defines a foreign state's agencies and majority owned or controlled instrumentalities for terrorism list countries where there is a terrorism re-

lated judgment against it. This provision would overturn the Congress's own considered judgment when it passed the FSIA in1976, as well as existing Supreme Court case law and basic principles of corporate and international law. In addition, it would prejudice the interests of U.S. citizens and corporations who invest abroad.

This provision would make corporations that are majority owned or controlled by a terrorism list foreign government liable for terrorism related judgments awarded against that government. The Congress recognized the danger of this position when it passed the FSIA in 1976. The Conference Report to that bill observed that "[i]f U.S. law did not respect the separate juridical identities of different agencies or instrumentalities, it might encourage foreign jurisdictions to disregard the juridical divisions between different U.S. corporations or between a U.S. corporation and its independent subsidiary."

We are concerned that this proposal to disregard separate legal personality, although limited in the bill to terrorism list states and their majority owned entities, could create the perception that the United States is unreliable as a location for banking or investment. Especially for companies with linkages to foreign governments, such a provision could be viewed as an expansion of U.S. economic sanctions. It could raise concerns about the United States as a safe financial center and about the likelihood of possible legal actions against their assets in the United States. This perception could undermine the competitive ability of U.S. financial firms to lead privatizations abroad and to attract banking business and investments to the United States.

In addition, if the United States were to "pierce the corporate veil" in this manner, there could well be similar actions in foreign countries. Foreign countries may enact similar changes to their law or foreign courts might disregard the separate status of private, U.S. owned companies in cases where a litigant had a judgment against the U.S. Government.

Compared to the billions of dollars the United States Government and private U.S. interests have invested abroad, the blocked assets of terrorism list state entities, agencies, and instrumentalities located in the United States are small. In the case of Iran, we do not have a comprehensive picture of Iranian assets in the United States that might be affected by this proposed legislation. There is currently no blocking of Iranian assets in the United States (other than the residual of property blocked during the Hostage Crisis), and thus no obligation on the part of U.S. persons to report specific information on them.

*U.S. citizens, corporations, the United States Government, and taxpayers have far more money invested abroad than those of any other country, and thus have more to lose if investment protections such as those provided by the presumption of separate status is eroded.* [Italic for emphasis] If we saddle the investors of other countries with the debts of foreign governments with which they are co-investors, as the proposed legislation would do, then we can expect U.S. investors and taxpayers to pay a considerably higher price when other governments follow our example.

Finally, disregarding separate legal personality as provided for in this proposal could possibly lead to substantial U.S. taxpayer liability for takings claims in U.S. courts and possibly before international fora.

We are grateful for this opportunity to address a very important subject involving the fight against terrorism, compensation for victims, and critical national interests. Unfortunately, however, the concerns raised here indicate that the 1996 amendment waiving sovereign immunity and creating a judicial cause of action for damages arising from acts of terrorism has not met its goals of providing compensation to victims and deterring terrorism. In fact, if blocked assets were exhausted to compensate the families, which would be the result of this bill, the leverage to affect the conduct of the terrorism list states would be lost along with the blocked assets. We are not happy that these suits have not led to recovery for families who have brought cases under the 1996 amendment. A system that has to date left no recovery option other than one that conflicts with U.S. national interests and would result in substantial U.S. taxpayer liability is not an acceptable system.

We have been giving this a very hard look and have been working with several Members of Congress to address this difficult problem. We are anxious to continue doing so. Together, we hope to formulate immediate and longer term approaches that will address the concerns—of compensation for terrorist acts and the U.S. national interests and international obligations—that we all share in a much more satisfactory way. Most importantly, we believe that, for a workable and effective solution, we need a careful and deliberative review of the issues, informed by our experience since the1996 amendment.

As mentioned earlier, we suggested last year that the Administration and Congress commit to a joint commission to review all aspects of the problem, and to recommend to the President and the Congress proposals to find ways to help these families receive compensation, in a way consistent with our overall national interests and international obligations. We believe that this is the best way to deal with these issues and that it therefore merits further consideration. We believe that such a commission should be one of stature and with the right expertise to confront all the hard issues we have discussed today—including the lack of effective remedies in these cases because of sanctions against terrorism list countries under U.S. law, which are absolutely necessary to maintain.

A fundamental principle for this joint commission—by definition—would be the need to inventory outstanding claims and develop an effective and fair mechanism for compensation of victims of terrorism. The commission should be encouraged to think broadly, including consideration of avenues other than the judicial one created by the 1996 amendment.

We hope discussions on the Commission and the broader issue of compensation for victims of terrorism will yield a solution that best addresses all parties' respective interests. Again, we are committed to working together with you, members of this Subcommittee, and others to find nonlegislative and legislative means to achieve our shared goal of fair and just compensation for victims of terrorism.

ROBERT C. SCOTT.

## ADDITIONAL VIEWS OF THE HONORABLE SHEILA JACKSON LEE

I was gratified to participate in the bi-partisan effort that led to a unanimous vote of the full House Committee on the Judiciary to favorably report H.R. 2975, the PATRIOT Act of 2001 to the full House for floor consideration. However, I would like to share my additional views on this bill since some of the issues that are of paramount concern to me were not addressed at the mark-up.

I am concerned that although there is language in the bill that allocates $50 Million for technology to improve security along the Northern Border, that there was no language in the bill that specifically made clear what it is the Congress is trying to do.

The most effective way to prevent the admission of terrorists is to develop the ability to identify them and deny them access, ideally at the visa post and as a last resort at the port of entry. There should be language that enhances technology for security and enforcement at the northern border, such as infrared technology and technology that enhances coordination between the Governments of Canada and the United States generally and specifically between Canadian police and the Federal Bureau of Investigation.

The best enforcement strategy should be a regional one that will ultimately focus key screening efforts at the two countries' external borders through the use of joint intelligence and harmonized lookouts.

If each of the law enforcement agencies work together: the D.E.A., the U.S. Customs Service, the INS, the Department of Justice and the Royal Canadian Mounted Police (RCMP), this will be an effective way of increasing public safety than spending billions of dollars (in infrastructure costs alone) to develop an entry-exit control system that offers no added enforcement value.

Secondly, while we in the Congress want to eliminate all forms of terrorism, and give law enforcement officers the appropriate tools to accomplish this goal, it is vitally necessary that it be done in a fair, thoughtful and equitable manner without violating the basic tenants of our democratic principles; which are freedom, due process, and civil rights.

It is imperative that we eliminate as well as prevent all forms of targeting by law enforcement officers along the border and throughout the United States interior that could solely be based on race, ethnic origin, gender, or sexual orientation. Therefore, it is imperative that the Civil Rights Division of the U.S. Department of Justice conduct a study for the collection and reporting of nationwide data on traffic stops along the borders and throughout the United States.

Last April, the 9th Circuit Court of Appeals ruled that Border Patrol Agents may not consider an individual's "Hispanic appearance" as a fact deciding whether to stop motorists for questions near the U.S.-Mexico border. The Court held that, "Stops based on

race or ethnic appearance send the underlying message to all our citizens that those who are not white are judged by the color of their skin alone . . . that they are in effect assumed to be potential criminals first and individuals second. While the Court has spoken, it is time that the Congress get involved in this issue.

Lastly, another issue that is of paramount concern to me is the issue of Hate Crimes. The PATRIOT bill should contain language that establishes enhanced penalties for persons who commit acts of violence against other persons because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of any person.

A perpetrator who willfully commits a crime motivated by hate shall be imprisoned a minimum of 10 years or fined, or both; or imprisoned up to life and fined, or both, if the crime results in death, kidnaping, or aggravated sexual abuse, or an attempt of any of these crimes.

Hate crimes are not new; they have been around for as long as civilizations have existed.

Today, we know that hate crimes still exist and that they are not like any other type of crime. They are committed only because the victim is different from the victimizer.

On September 11, 2001, United States citizens were brutally terrorized in New York City and Washington, D.C. But the effects rippled across our entire nation and beyond. Thousands of lives perished as a result of these unthinkable terrorist acts allegedly carried out by members of the extremist Islamic group led by Osama bin Laden.

The backlash of these attacks has put American against American. Murders and attacks against citizens resembling Middle Easterners have occurred. Innocent people died because they looked like the Islamic extremists allegedly responsible for the September 11th tragedies.

Personal attacks based on religion and appearances represent the kind of oppression that Americans have opposed all around the world.

Now, more than ever, we need legislation to punish crimes motivated by hate against ethnicity, religion, and gender. These crimes cannot be tolerated. It is our responsibility as elected lawmakers to ensure that our citizens are able to live their lives without fear of how they look, who they worship, and who they love.

The strength of our country lies in the differences of its citizens. We must work together to make stronger anti-hate crime laws in order to preserve our values of freedom and tolerance.

SHEILA JACKSON LEE.

## ADDITIONAL VIEWS OF THE HONORABLE MAXINE WATERS

I am pleased that the Judiciary Committee spoke in support of my amendment to H.R. 2975 that will provide authorization for funds to compensate the 12 U.S. citizens who were victims of the 1998 bombings of the U.S. embassies in Kenya and Tanzania. Osama bin Laden was indicted in those bombings, but those victims have never received compensation for the level of pain and suffering they have endured. The amendment will authorize the appropriation of $1.5 million for each victim of those bombings, for a total of $18 million. The amount requested was based on the compensation we provided to the 1999 victims of the accidental bombing of the Chinese embassy in Serbia, which was also $1.5 million per victim.

As we are considering a bill to deal with terrorism and its effects, it is very appropriate that the bill direct funding to compensate previous terrorism victims who have not yet received any compensation. I am heartened that the Committee agreed to develop language to include in H.R. 2975 that will provide that compensation.

I continue to have concerns about several aspects of H.R. 2975 that threaten to erode our civil liberties. However, I believe that we have improved the bill dramatically from the one that was originally presented to Congress 2 weeks ago.

MAXINE WATERS.