

## **DOMESTIC SECURITY ENHANCEMENT ACT OF 2003**

### **SECTION-BY-SECTION ANALYSIS**

#### **Title I: Enhancing National Security Authorities**

##### **Subtitle A: Foreign Intelligence Surveillance Act Amendments**

###### **Section 101: Individual Terrorists as Foreign Powers.**

Under 50 U.S.C. § 1801(a)(4), the definition of "foreign power" includes groups that engage in international terrorism, but does not reach unaffiliated individuals who do so. As a result, investigations of "lone wolf" terrorists or "steeped cells" may not be authorized under FISA. Such investigations therefore must proceed under the stricter standards and shorter time periods set forth in Title III, potentially resulting in unnecessary and dangerous delays and greater administrative burden. This provision would expand FISA's definition of "foreign power" to include *all* persons, regardless of whether they are affiliated with an international terrorist group, who engage in international terrorism.

###### **Section 102: Clandestine Intelligence Activities by Agent of a Foreign Power.**

FISA currently defines "agent of a foreign power" to include a person who knowingly engages in clandestine intelligence gathering activities on behalf of a foreign power—but only if those activities "involve or may involve a violation of" federal criminal law. Requiring the additional showing that the intelligence gathering violates the laws of the United States is both unnecessary and counterproductive, as such activities threaten the national security regardless of whether they are illegal. This provision would expand the definitions contained in 50 U.S.C. § 1801(b)(2)(A) & (B). Any person who engages in clandestine intelligence gathering activities for a foreign power would qualify as an "agent of a foreign power," regardless of whether those activities are federal crimes.

###### **Section 103: Strengthening Wartime Authorities Under FISA.**

Under 50 U.S.C. §§ 1811, 1829 & 1844, the Attorney General may authorize, without the prior approval of the FISA Court, electronic surveillance, physical searches, or the use of pen registers for a period of 15 days following a congressional declaration of war. This wartime exception is unnecessarily narrow: it may be invoked only when Congress formally has declared war, a rare event in the nation's history and something that has not occurred in more than sixty years. This provision would expand FISA's wartime exception by allowing the wartime exception

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to be invoked after Congress authorizes the use of military force, or after the United States has suffered an attack creating an national emergency.

**Section 104: Strengthening FISA's Presidential Authorization Exception.**

50 U.S.C. § 1802 allows the Attorney General to authorize electronic surveillance for up to a year, without the FISA Court's prior approval, in two narrow circumstances: (1) if the surveillance is directed solely at communications between foreign powers, or (2) if the surveillance is directed solely at the acquisition of technical intelligence, other than spoken communications, from property under the exclusive control of a foreign power. In addition, the Attorney General must certify that there is no substantial likelihood that such surveillance will acquire the communications of U.S. persons. (In essence, § 1802 authorizes the surveillance of communications between foreign governments, and between a foreign government and its embassy.) Section 1802 is of limited use, however, because it explicitly prohibits efforts to acquire spoken communications. (No such limitation exists in the parallel exception for physical searches, 50 U.S.C. § 1822(a), under which agents presumably could infiltrate a foreign power's property for the purpose of overhearing conversations.) This provision would enhance the presidential authorization exception by eliminating the requirement that electronic surveillance cannot be directed at the spoken communications of foreign powers.

**Section 105: Law Enforcement Use of FISA Information.**

50 U.S.C. § 1806(b) currently prohibits the disclosure of information "for law enforcement purposes" unless the disclosure includes a statement that the information cannot be used in a criminal proceeding without the Attorney General's advance authorization. This provision would amend § 1806(b) to give federal investigators and prosecutors greater flexibility to use FISA-obtained information. Specifically, it would eliminate the requirement that the Attorney General personally approve the use of such information in the criminal context, and would substitute a requirement that such use be approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant Attorney General designated by the Attorney General.

**Section 106: Defense of Reliance on Authorization.**

50 U.S.C. §§ 1809(b) and 1827(b) create a defense for agents who engage in unauthorized surveillance or searches, or who disclose information without authorization, if they were relying on an order issued by the FISA Court. However, there does not appear to be a statutory defense for agents who engage in surveillance or searches pursuant to FISA authorities under which no prior court approval is required—e.g., pursuant to FISA's wartime exception (50 U.S.C. §§ 1811, 1829 & 1844), or FISA's presidential authorization exception (50 U.S.C. §§ 1802 & 1822(a)). This provision would clarify that the "good faith reliance" defense is available, not just when

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agents are acting pursuant to a FISA Court order, but also when they are acting pursuant to a lawful authorization from the President or the Attorney General.

**Section 107: Pen Registers in FISA Investigations.**

50 U.S.C. § 1842(a)(1) makes FISA pen registers available in investigations of non-U.S. persons to "obtain foreign intelligence information." But for U.S. persons, the standard is much higher—in cases involving U.S. persons, pen registers are only available "to protect against international terrorism or clandestine intelligence activities." Perversely, this appears to be *stricter* than the standard for pen registers under Title III, which requires only that it be shown that the information "is relevant to an ongoing criminal investigation." 18 U.S.C. § 3123(a)(1). This provision would amend § 1842(a)(1) by eliminating the stricter standard for U.S. persons. Specifically, FISA pen registers would be available in investigations of both U.S. persons and non-U.S. persons whenever they could be used "to obtain foreign intelligence information."

**Section 108: Appointed Counsel in Appeals to FISA Court of Review.**

Under FISA, proceedings before the FISA Court and the Court of Review are conducted *ex parte*. As a result, when the Court of Review meets to consider an appeal by the United States, there is no party to defend the judgment of the court below. The FISA Court of Review thus is obliged to interpret sensitive and complicated statutes without the benefit of the adversary process. This provision would amend FISA to permit the FISA Court of Review, in its discretion, to appoint a lawyer, with appropriate security credentials, to defend the judgment of the FISA Court, when the United States appeals a ruling to the FISA Court of Review. It would also provide for the compensation of a lawyer so appointed by the FISA Court of Review.

**Sec. 109: Enforcement of Foreign Intelligence Surveillance Court Orders.**

The Foreign Intelligence Surveillance Act does not specify the means for enforcement of orders issued by the Foreign Intelligence Surveillance Court. Thus, for example, if a person refuses to comply with an order of the court to cooperate in the installation of a pen register or tap and trace device under 50 U.S.C. § 1842(d), or an order to produce records under 50 U.S.C. § 1861, existing law provides no clearly defined recourse to secure compliance with the court's order. This section remedies this omission by providing that the Foreign Intelligence Surveillance Court has the same authority as a United States district court to enforce its orders, including the authority to impose contempt sanctions in case of disobedience.

**Sec. 110: Technical Correction Related to the USA PATRIOT Act.**

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Section 204 of the USA PATRIOT Act clarified that intelligence exceptions from the limitations on interception and disclosure of wire, oral, and electronic communications continue to apply, notwithstanding section 216 of the Act. Section 224 sunsetted several provisions of the Act on December 31, 2005. Although section 216 was not included in the sunset provision, section 204's clarifying language was sunsetted. If not corrected, this anomaly will result in the loss of valuable and necessary intelligence exemptions to the pen register and trap and trace provisions after December 31, 2005. This provision would eliminate this anomaly and treat the clarifying language of section 204 the same as section 216.

**Sec. 111. International Terrorist Organizations as Foreign Powers.**

Groups engaged in international terrorism are included under the definition of "foreign power" in FISA. See 50 U.S.C. § 1801(a)(4). However, for certain purposes—including the duration of surveillance orders and the definition of what constitutes a "United States person"—they are effectively excluded from the concept of foreign powers, and accorded the more protected treatment that FISA provides to other entities. This section amends FISA so that international terrorist organizations are consistently treated as foreign powers for these purposes.

More specifically, there are basically two sets within the FISA definition of "foreign power" under 50 U.S.C. § 1801(a): (i) A paragraph (1)-(3) set, which includes foreign governments, foreign factions, and entities that foreign governments openly acknowledge they direct and control. (ii) A paragraph (4)-(6) set, which includes groups engaged in international terrorism or preparations therefor, foreign-based political organizations not substantially composed of U.S. persons, and entities directed and controlled by foreign governments.

50 U.S.C. §§ 1805(e) and 1824(d) define the authorization periods for electronic surveillance and physical searches under FISA. The basic authorization and extension periods are 90 days, but longer for surveillance and searches relating to certain foreign powers. Specifically, the authorization and extension periods for foreign powers in the paragraph (1)-(3) set—foreign governments, foreign factions, and entities for which foreign governments openly acknowledge direction and control—are up to a year. In contrast, for foreign powers in the paragraph (4)-(6) set—international terrorist organizations, foreign-based political organizations not substantially composed of U.S. persons, and entities directed and controlled by foreign governments—the initial authorization period is no more than 90 days. The extension period for foreign powers in the paragraph (4)-(6) set is also no more than 90 days, unless certain restrictions and special finding requirements are satisfied. (Specifically, the extension period may be up to a year for an order relating to a foreign-based political organization not substantially composed of U.S. persons or an order relating to an entity directed and controlled by a foreign government, and up to a year for an order relating to an international terrorist organization that is not a U.S. person, if the judge finds probable cause to believe that no communication or property of any individual U.S. person will be acquired.)

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Another context in which different types of "foreign powers" are treated differently is the FISA definition of "United States person." United States persons have a more protected status under FISA for certain purposes, such as dissemination of information. The existing definition of "United States person" in 50 U.S.C. § 1801(i) categorically excludes a corporation or association which is a foreign power—but only if it falls in the paragraph (1)–(3) set.

The effect of the foregoing provisions is that, even if probable cause is established that a group is an international terrorist organization, it may be subject only to brief periods of surveillance absent renewal, and it may be accorded the protected status of a United States person. The amendments in this section will facilitate the investigation of threats to the national security posed by such groups by reassigning them to the less protected status now accorded to foreign powers in the paragraph (1)–(3) set. Thus, the normal authorization and extension periods for surveillance of international terrorist organizations would be up to a year, and corporations and associations which are international terrorist organizations would not be treated as United States persons under FISA.

**Subtitle B: Enhancement of Law Enforcement Investigative Tools**

**Section 121: Definition of Terrorist Activities.**

This section adds a definition of "terrorist activities" to the definitional section for the chapter of the criminal code governing electronic surveillance (chapter 119). The definition encompasses criminal acts of domestic and international terrorism as defined in 18 U.S.C. § 2381, together with related preparatory, material support, and criminal activities. The same definition of terrorist activities would also apply through cross-referencing provisions, see 18 U.S.C. § 2713(1) and 3127(1) (as amended), in the chapters of the criminal code that govern accessing stored communications and the use of pen registers and trap and trace devices (chapters 121 and 206).

The surveillance chapters of the criminal code contain many provisions which state that the authorized surveillance activities may be carried out as part of "criminal investigations." Section 121 also adds a provision to 18 U.S.C. § 2510 which specifies that "criminal investigations" include all investigations of criminal terrorist activities, to make it clear that the full range of authorized surveillance techniques are available in investigations of "terrorist activities" under the new definition.

**Section 122: Inclusion of Terrorist Activities as Surveillance Predicates.**

This section adds terrorist activities, as defined under the amendment of section 121, and four specific offenses that are likely to be committed by terrorists (the offenses defined by 18 U.S.C. §§ 37, 930(c), 956, and 1993), as explicit predicates for electronic surveillance and monitoring. It further adds an explicit reference to terrorist activities to the provision authorizing electronic

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surveillance without a court order in emergency situations – 18 U.S.C. § 2518(7)— and makes conforming changes in the corresponding provision (18 U.S.C. § 3125) for using pen registers and trap and trace devices without a court order in emergency situations.

The final subsection of this section modifies the definition of “court of competent jurisdiction” in 18 U.S.C. § 3127(2), to correct an unintended effect of amendments in sections 216(c)(1) and 220 of the USA PATRIOT Act. The purpose of the amendments was to authorize courts having jurisdiction over an offense to issue orders for pen registers and trap and trace devices, and search warrants for the disclosure of e-mails, which could be executed outside of their districts. However, the language utilized inadvertently created a lack of clarity concerning the continued validity of the pre-existing authority of the courts to issue such orders and warrants for execution within their own districts (regardless of whether they have “jurisdiction over the offense”).

This threatens to be a serious practical problem when information gathering in the United States is needed in response to requests by foreign law enforcement agencies to assist in foreign terrorism (or other criminal investigations) and to fulfill the United States’ obligations under mutual legal assistance treaties, and in the context of investigations relating to crimes committed on U.S. military bases abroad, because in those cases the U.S. courts generally do not have jurisdiction over the offense. This section corrects the problem in relation to pen register and trap and trace orders through definitional language that explicitly includes both a court with jurisdiction over the offense or activities being investigated, and a court in the district in which the order will be executed. A parallel correction for the problem relating to search warrants for e-mails appears in section 125(b) of this bill.

**Section 123: Extension of Authorized Periods Relating to Surveillance and Searches in Investigations of Terrorist Activities.**

In *Katz v. United States*, 389 U.S. 347 (1967), the Supreme Court held for the first time that government wiretapping was subject to the Fourth Amendment. In response, Congress enacted Title III of the 1968 Omnibus Crime Control and Safe Streets Act, 28 U.S.C. §§ 2510-2522, which governs electronic surveillance for all federal criminal offenses. Congress also subsequently enacted the Electronic Communications Privacy Act (ECPA), 18 U.S.C. §§ 2701-2712, which addresses government access to stored communications, and established statutory standards and procedures for the use of pen registers and trap and trace devices. 18 U.S.C. §§ 3121-3127. Further, because *Katz* and progeny specifically stated that the Court did not hold that the same Fourth Amendment restrictions applied with respect to the activities of foreign powers and their agents, in 1978 Congress enacted the Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1801-1862, which establishes standards applicable to surveillance of foreign powers and agents of foreign powers—including electronic surveillance, physical searches, and use of pen registers and trap and trace devices—in relation to the investigation of such matters as international terrorism and espionage.

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Congress has not provided separate statutory standards governing investigations of wholly domestic threats to the national security, particularly domestic terrorism. Thus, such investigations are subject to the time limits set forth in Title III. However, the Supreme Court in *United States v. United States District Court* ("Keith"), 407 U.S. 297 (1972), explicitly recognized that domestic security investigations would require different standards than those set forth in Title III:

"We recognize that domestic security surveillance may involve different policy and practical considerations from the surveillance of 'ordinary crime.' The gathering of security intelligence is often long range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify than in surveillance operations against many types of crime specified in Title III. Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the Government's preparedness for some possible future crisis or emergency. Thus, the focus of domestic surveillance may be less precise than that directed against more conventional types of crime."

*Id.* at 322. Because domestic security investigations were subject to Title III, despite these considerations, the Court invited Congress to legislate new and different standards for such investigations:

"Given [the] potential distinctions between Title III criminal surveillances and those involving the domestic security, Congress may wish to consider protective standards for the latter which differ from those already prescribed for specified crimes in Title III. Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of Government for intelligence information and the protected rights of our citizens."

*Id.*

In *Keith*, the court noted that, with respect to surveillance in domestic security cases, "the time and reporting requirements need not be so strict as those in § 2518." *Id.* at 323. This section accepts the Court's invitation and extends, in investigations of terrorist activities, a number of statutory time limits or periods relating to electronic surveillance or monitoring and searches. The specific changes are:

- (1) Amend 18 U.S.C. § 2518(5) to extend the normal duration of electronic surveillance orders in investigations of terrorist activities from 30 days to 90 days
- (2) Amend 18 U.S.C. § 2518(6), which provides that an electronic surveillance order may require periodic progress reports to the judge who issued the order "at such intervals as

the judge may require." As amended, the provision would not allow reports to be required at shorter intervals than 30 days in investigations of terrorist activities.

- (3) Amend 18 U.S.C. § 2705, which permits delaying notification concerning the accessing of a person's stored electronic communications where specified "adverse results" would result from the notification. As amended, the provision would include endangerment of the national security as a specified adverse result that permits delaying notification.
- (4) Amend 18 U.S.C. § 3123 to extend the normal authorization periods for pen registers and trap and trace devices in investigations of terrorist activities from 60 days to 120 days.

#### **Section 124: Multi-function Devices**

Electronic manufacturers increasingly are producing devices that are capable of performing multiple functions—e.g., cell phones that also can send e-mail like a Blackberry, and that include a calendar like a Palm Pilot. Multiple functions are also illustrated by ordinary home computers, which may, for example, be used to send and receive e-mail messages, to engage in oral communications through an Internet phone service, to store sent and received messages, and to store other information. Current law does not make it clear that the authorization (e.g., under an electronic surveillance order) to monitor one of a device's functions also entails the authority to monitor other functions.

This section accordingly amends 18 U.S.C. § 2518(4) to make it clear that authorization of electronic surveillance with respect to a device, unless otherwise specified, may be relied on to intercept and access communications through any of the device's functions. The section also effectively allows a search warrant for other information retrievable from the device (whether or not related to the intercepted communications) to be combined with the electronic surveillance order, and makes conforming changes in the chapters relating to accessing stored communications and pen registers and trap and trace devices.

The section further incorporates a correction for an unintended consequence of amendments in section 220 of the USA PATRIOT Act. As discussed in relation to section 122 of the bill above, amendments designed to authorize courts having jurisdiction over an offense to issue search warrants for the disclosure of e-mails outside of their districts have inadvertently clouded the pre-existing authority of the courts to issue such orders and warrants for execution within their own districts. This section corrects the problem by amending the pertinent language in 18 U.S.C. § 2703(h)(1)(A) and (c)(1)(A) to refer to a court in a district in which a provider of electronic communications service is located, as well as a court having jurisdiction over the offense or activities under investigation.



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**Section 125: Nationwide Search Warrants in Terrorism Investigations.**

Federal Rule of Criminal Procedure 41(a)(3) currently authorizes judges in one district to issue search warrants that are valid in another district, if the crime being investigated is "domestic terrorism or international terrorism" as defined in 18 U.S.C. § 2331. But § 2331 sets forth an extremely narrow definition of terrorism, as it is limited to "violent acts or acts dangerous to human life." Thus section 2331 arguably does not include investigations into terrorist financing, or other crimes that terrorists are likely to commit. As a result, a federal judge sitting in New York would be able to issue a search warrant that is valid in California in an investigation of a plot to bomb a building, but arguably could not issue the same warrant if the investigation concerned the raising of money to support terrorist operations.

This provision would expand the types of terrorism crimes for which judges may issue search warrants that are valid nationwide. Specifically, it would authorize nationwide search warrants in investigations of the offenses listed in 18 U.S.C. § 2332b(g)(5)(B), including computer crimes, attacks on communications infrastructure, and providing material support to terrorists or terrorist organizations.

**Section 126: Equal Access to Consumer Credit Reports.**

In recent years, it has become increasingly apparent that law enforcement investigators need access to suspected terrorists' banking information to determine their connections to terrorist organizations, including financial ties. The current version of 15 U.S.C. § 1681b(a)(1) allows investigators to obtain a suspect's credit report—the first step in locating his banking records—only in response to a court order or a federal grand jury subpoena. As a result, law enforcement cannot obtain a suspect's banking information without issuing multiple time-consuming subpoenas. In some cases, it can take a series of three subpoenas—first to the credit reporting agency, then to the suspect's creditors, then to the suspect's banks— and a period of nine to 12 weeks to learn where a suspected terrorist keeps his accounts. Perversely, the law makes it far easier for private entities to obtain an individual's credit reports: under 15 U.S.C. § 1681b(a)(3)(F), a private entity can obtain—usually within minutes—a credit report on anyone in the United States so long as it has a "legitimate business need" for the information.

This provision would enable the government to obtain credit reports on virtually the same terms that private entities may. Specifically, it would amend § 1681b(a)(1) to allow law enforcement officers to obtain credit reports upon their certification that they will use the information only in connection with their duties to enforce federal law. This certification parallels the existing requirement that a private entity must have a "legitimate business need" before obtaining a credit report. In addition, to avoid alerting terrorists that they are under investigation, this provision would prohibit (absent court approval) disclosing to a consumer the fact that law enforcement has sought his credit report.

**Section 127: Autopsy Authority.**

Autopsies of the victims of terrorist attacks and other deadly crimes, as well as other persons, can be an effective way of obtaining information about the perpetrators. In addition to revealing the cause of death, autopsies sometimes enable law enforcement to retrieve forensic evidence (such as bomb fragments) from the deceased's body. The primary need for federal autopsy authority arises in the case of offenses, including acts of terrorism, outside the United States. At present, however, except in cases involving military personnel, the United States has no statutory authority to conduct autopsies. When a non-military United States national dies abroad as a result of a possible offense against the United States, the victim's body typically must be transported back to the United States before an autopsy can be performed, this may significantly delay both the return of the loved one's remains to family members, as well as cause significant delays in the criminal investigation.

This provision would create federal authority, in the Attorney General, to conduct autopsies when necessary or appropriate in the conduct of federal criminal investigations. This authority is not limited and may be delegated to other officers. This proposal is not intended to result in the hiring of medical examiners by federal law enforcement agencies. Rather, the autopsies will be performed by local coroners, private forensics investigators, or the Armed Forces Medical Examiner and his staff.

**Section 128: Administrative Subpoenas in Terrorism Investigations.**

The Department of Justice currently has the authority to issue administrative subpoenas in investigations of a wide variety of federal offenses, including health-care fraud<sup>see 18 U.S.C. § 3486(a)(1)(A)</sup>, immigration violations,<sup>see 8 U.S.C. § 1225(a)</sup>, and false claims against the United States, <sup>see 31 U.S.C. § 3733</sup>. But administrative subpoenas are not available in investigations of terrorism, even though the consequences of a terrorist attack are far more dire than committing simple fraud against the United States government. As a result, law-enforcement personnel are required to seek grand jury subpoenas before individuals who may have information relevant to a terrorism investigation can be compelled to testify or provide documents.

This provision would extend the existing administrative-subpoena authorities into investigations involving domestic or international terrorism. It also would prohibit a subpoena recipient from disclosing to any other person (except to a lawyer in order to obtain legal advice) the fact that he has received a subpoena. This proposal would not give the Justice Department a unilateral, unreviewable authority to compel production of documents relevant to a terrorism investigation. If recipients refuse to comply with subpoenas, the Justice Department would have to ask a court to enforce them. And subpoena recipients would retain the ability, as they do in other contexts, to ask a court to quash the subpoena. *See, e.g., In re Administrative Subpoena, John Doe, D.P.M.*, 253 F.3d 256 (6th Cir. 2001).

**Sec. 129: Strengthening Access to and Use of Information in National Security Investigations.**

This section is primarily concerned with correcting problems and weaknesses in provisions authorizing the use of "national security letters." In substance, national security letters are administrative subpoenas that may be issued by FBI officials—or in some instances, other authorized government officials—to obtain specified types of records or information for use in national security investigations. The existing national security letter provisions include the following:

- (1) 18 U.S.C. § 2709—Providing FBI access, in connection with investigations of international terrorism or espionage, to certain electronic communication transactional records maintained by communication service providers.
- (2) Section 625(a)-(b) of the Fair Credit Reporting Act (15 U.S.C. § 1681u(a)-(b))—Providing FBI access, in connection with investigations of international terrorism or espionage, to certain consumer information maintained by consumer reporting agencies.
- (3) Section 626 of the Fair Credit Reporting Act (15 U.S.C. § 1681v) - Providing access to consumer reports and other consumer information maintained by consumer reporting agencies, where needed by government agencies authorized to investigate or carry out intelligence or analysis activities related to international terrorism.
- (4) Section 1114(a)(5) of the Right to Financial Privacy Act (12 U.S.C. § 3414(a)(5))—Providing FBI access, in connection with investigations of international terrorism or espionage, to financial records maintained by financial institutions.
- (5) Section 802(a) of the National Security Act of 1947 (50 U.S.C. § 436(a))—Providing access by authorized investigative agencies to financial records and information, consumer reports, and travel records in relation to a person having access to classified information, based on indications that the person has disclosed or may disclose classified information to a foreign power.

Problems under these provisions include the following: (1) The statutes in which the national security letter provisions appear generally prohibit persons from disclosing that they have received these requests for information, to safeguard the integrity of the terrorism and espionage investigations in which national security letters are used. However, they specify no penalty for persons who make such unlawful disclosures. (2) While these statutes create a legal obligation for the recipient to provide the requested information, they do not specify any procedures for judicial enforcement in case the recipient refuses to comply with the request. (3) The scope of the national security letter provisions on the terrorism side is generally limited to international

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terrorism; however, the distinction between international and domestic terrorism is increasingly elusive in contemporary circumstances. (4) These provisions are restrictive regarding the sharing of information among federal agencies with relevant responsibilities. This is in conflict with current needs and with the broad principles favoring the sharing of intelligence among federal agencies under the USA PATRIOT Act.

Subsection (a) of this section provides appropriate penalties for violations of the non-disclosure provisions of the national security letter provisions. Currently, 18 U.S.C. § 1510(b) makes it an offense for an officer of a financial institution to notify other persons about a grand jury subpoena or an administrative subpoena issued by the Department of Justice for records of the financial institution. The offense is punishable by up to a year of imprisonment, or up to five years of imprisonment if the disclosure was made with the intent to obstruct a judicial proceeding. Similarly, 18 U.S.C. § 1510(d) makes it an offense, punishable by up to five years of imprisonment, for an insurance company employee to notify other persons about a grand jury subpoena for records with intent to obstruct a judicial proceeding.

Subsection (a) of this section adds a parallel offense (proposed 18 U.S.C. § 1510(c)) covering violations of the non-disclosure requirements of the national security letter provisions described above. As with current 18 U.S.C. § 1510(b), the offense would be a misdemeanor punishable by up to a year of imprisonment, but would be punishable by up to five years of imprisonment if the unlawful disclosure was committed with the intent to obstruct the terrorism or espionage investigation. In addition to providing appropriate penalties for unlawful disclosure of national security letter requests, the same penalties would apply to: (i) violation of the non-disclosure requirement under 50 U.S.C. § 1861(d) for orders of the Foreign Intelligence Surveillance Court requiring the production of records, documents, and other tangible things in connection with investigations to obtain foreign intelligence information about non-United States persons or to protect against international terrorism or espionage, and (ii) violation of the non-disclosure provision of proposed 18 U.S.C. § 2332f(d) in section 129 of this bill, relating to administrative subpoenas in terrorism investigations.

The national security letter provisions make compliance with the request for information mandatory. See 12 U.S.C. § 3414(a)(5)(A); 15 U.S.C. §§ 1681u(a)-(b), 1681v(a); 18 U.S.C. § 2709(a); 50 U.S.C. § 436(c). However, they make no provision for judicial enforcement in case this legal obligation is not met. Subsection (b) of this section authorizes the Attorney General to seek judicial enforcement in such cases. This is similar, for example, to the existing judicial enforcement provision in 18 U.S.C. § 3486(c) for administrative subpoenas under that section.

Subsection (c) of this section amends the national security letter provisions relating to electronic communication transactional records, consumer credit information, and financial institution records, so that they apply in investigations of all types of terrorist activities. The specific amendments involve substituting, for current references in these provisions to

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investigations relating to "international terrorism," references to investigations relating to "terrorist activities." The latter notion is defined in proposed 18 U.S.C. § 2510(20) in section 121 of this bill so as to include domestic, as well as international, terrorism. The limitation to international terrorism in existing law is an impediment to the effective use of national security letters because it may not be apparent in the early stages of a terrorism investigation—or even after it has continued for some time—whether domestic or international terrorism is involved. The Oklahoma City bombing and the anthrax letter incidents illustrate this point. Moreover, in the current circumstances, domestic terrorists who attempt to ally with or are inspired to emulate international terrorists are an increasing concern. The dangers posed to the national security by such persons may be comparable to those posed by international terrorists, and national security letters should likewise be an available tool in the investigation of their criminal activities.

Subsection (d) of this section deletes or modifies language in the national security letter provisions which unduly limits information sharing among federal agencies. For example, 18 U.S.C. § 2709 is the national security letter provision for electronic communication transactional records. Subsection (d) of § 2709 states that the FBI may disseminate information and records obtained pursuant to that section only as provided in guidelines approved by the Attorney General "for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency." The reference to guidelines that relate to "foreign intelligence collection and foreign counterintelligence investigations" is inconsistent with the amendment proposed in subsection (c) of this section to extend the scope of 18 U.S.C. § 2709 to include investigations of domestic terrorism, as well as international terrorism. The restrictive language regarding information sharing with other federal agencies is in conflict with the principles favoring broad sharing of intelligence among federal agencies under section 263 of the USA PATRIOT Act (Pub. L. 107-56).

Subsection (c) of this section accordingly deletes the restrictive language quoted above in 18 U.S.C. § 2709(d), so that it states simply that the FBI may disseminate information and records obtained under § 2709 only as provided in guidelines approved by the Attorney General. Subsection (c) also makes similar changes in the other national security letter provisions. The general effect of the amendments is to remove existing impediments to the sharing of information obtained by means of national security letters in terrorism and espionage investigations with other federal agencies having relevant responsibilities.

## **Title II: Protecting National Security Information**

### **Section 201: Prohibition of Disclosure of Terrorism Investigation Detainee Information.**

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In certain instances, the release of information about persons detained in connection with terrorism investigations could have a substantial adverse impact on the United States' security interests, as well as the detainee's privacy. *Cf. North Jersey Media Group, Inc. v. Ashcroft*, 308 F.3d 198, 217-19 (3d Cir. 2002). Publicizing the fact that a particular alien has been detained could alert his coconspirators about the extent of the federal investigation and the imminence of their own detention, thus provoking them to flee to avoid detention and prosecution or to accelerate their terrorist plans before they can be disrupted.

Although existing Freedom of Information Act (FOIA) exemptions 7(A), 7(C), and 7(F) (5 U.S.C. § 552(b)(7)) permit the government to protect information relating to detainees, defending this interpretation through litigation requires extensive Department of Justice resources, which would be better spent detecting and incapacitate terrorists. This provision thus establishes a specific authority under Exemption 3 of the FOIA to clarify what is already implicit in various FOIA exemptions: the government need not disclose information about individuals detained in investigations of terrorism until disclosure occurs routinely upon the initiation of criminal charges.

**Section 202: Distribution of "Worst Case Scenario" Information.**

Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), requires private companies that use potentially dangerous chemicals to submit to the Environmental Protection Agency a "worst case scenario" report detailing what would be the impact on the surrounding community of release of the specified chemicals. Such reports are a roadmap for terrorists, who could use the information to plan attacks on the facilities.

This provision would revise section 112(r)(7)(H) of the Clean Air Act to better manage access to information contained in "worst case scenario" reports. This revised section would continue to allow such information to be shared with federal and state officials who are responsible for preventing or responding to accidental or criminal releases. However, the revised section will require that public access be limited to "read-only" methods, and only to those persons who live or work in the geographical area likely to be affected by a worst-case release from a facility.

**Section 203: Information Relating to Capitol Buildings.**

The Congressional Accountability Act of 1995, 2 U.S.C. § 1301 et seq., establishes the Office of Compliance, a congressional office that has the power to enforce OSHA standards with respect to the working conditions of legislative branch employees. OSHA often assists the Office in its work, *see* 2 U.S.C. §§ 1382(e) & 1385(b), and therefore the agency sometimes obtains security sensitive information (e.g., the layout of government buildings, and the location of air circulation equipment and ventilation ducts). Terrorists may be able to obtain this information from OSHA via a FOIA request. To ensure that congressional officials can provide necessary information with

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the assurance that it will not be publicly released, this provision makes clear that such information is exempt from disclosure under FOIA Exemption 3

**Section 204: Ex Parte Authorizations Under Classified Information Procedures Act.**

Under the current version of the Classified Information Procedures Act, 18 U.S.C. App. 3 §§ 1-16, courts have discretion over whether to approve the government's request for a CIPA authorization—which enables the submission of sensitive evidence *ex parte* and *in camera*. See 18 U.S.C. App. 3 § 4 (“The court *may* permit the United States to make a request for such authorization [for a protective order] in the form of a written statement to be inspected by the court alone.” (emphasis added)). As a result, the government is forced to divert valuable resources to litigating this question. And even worse, a request for confidentiality itself can be a security breach: the government risks disclosing sensitive national-security information simply by explaining in open court why the information should be redacted. See, e.g., *United States v. Rezaq*, 899 F. Supp. 697, 707 (D.D.C. 1995) (government’s CIPA pleadings must be served “on the defendant and then litigated in an adversarial hearing”).

This provision would amend CIPA to provide that courts *shall* allow the United States to make a request for a CIPA authorization *ex parte* and *in camera*. This amendment would not affect the showing that the United States is required to make in order to obtain a protective order, but by replacing “may” with “shall,” the United States will be able to obtain the court’s guidance in every case in which classified information may potentially be discoverable, without risking disclosure of the very secrets that it seeks to protect. See *United States v. Klimavicius-Viloria*, 144 F.3d 1249, 1261 (9th Cir. 1998) (upholding the use under CIPA of *ex parte*, *in camera* hearings and written submissions by the government when the court is required to make discovery determinations).

**Section 205: Exclusion of United States Security Requirements from Gross Income of Protected Officials.**

Under current tax law, certain federal officials—those whose movements are restricted, or who are required to use specific facilities, for their physical protection in the interest of the United States’ national security—may be taxed on the value of these protective “services.” See 26 C.F.R. § 132-5(m) (describing the circumstances under which police protection and related transportation expenses may be deemed to be working condition fringe benefits). Due to the recent terrorist threats, an increasing and variable number of government officials—including Cabinet and subcabinet officers, congressional leaders, and Justices of the Supreme Court—have begun to receive protective services, and now find themselves taxed on the value of these services.

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Accordingly, this provision would add a provision to the Internal Revenue Code to clarify that required security measures jointly determined by the Secretary of the Treasury, the Attorney General, and the Director of Central Intelligence, are excludable from the gross income of the protected officials. This provision is limited to provisions from appropriate funds to be consistent with restrictions on the receipt of private funds for public purposes, and to ensure that the exclusion is limited to the public security purpose.

**Section 206: Grand Jury Information in Terrorism Cases.**

This section amends Rule 6(e)(2)(B) of the Federal Rules of Criminal Procedure to make witnesses and persons to whom subpoenas are directed subject to grand jury secrecy rules in cases where serious adverse consequences may otherwise result, including danger to the national security or to the life or physical safety of an individual, flight from prosecution, destruction of or tampering with evidence, intimidation of a potential witness, or other serious jeopardy to an investigation. The provision would permit witnesses and recipients of grand jury subpoenas to consult with counsel regarding the subpoena and any testimony, but would impose the same secrecy obligations on counsel.

**Title III: Enhancing Investigations of Terrorist Plots**

**Subtitle A: Terrorism Identification Database**

**Section 301: Short Title.**

This provision indicates that Title III, Subtitle B may be referred to as the "Terrorist Identification Database Act of 2003."

**Section 302: Collection and Use of Identification Information from Suspected Terrorists and Other Sources.**

Current law permits the FBI to establish an index to collect DNA identification records of persons *convicted* of certain crimes, and DNA samples recovered from crime scenes and unidentified human remains. 42 U.S.C. § 14132. However, the law does not directly address the FBI's authority to collect and use DNA samples of terrorists or those *suspected* of terrorism. It would be extremely beneficial to clarify how DNA samples from suspects, such as samples taken from unlawful combatants at Guantanamo Bay, can be used as necessary for counterterrorism and law-enforcement purposes. Section 302 would allow the Attorney General or Secretary of Defense to collect, analyze, and maintain DNA samples and other identification information from "suspected terrorists"—i.e., (1) persons suspected of engaging in terrorism as defined in 18 U.S.C. § 2331(1) & (5), or committing an offense described in 18 U.S.C. § 2332b(g)(5)(B), or persons conspiring or attempting to do so, (2) enemy combatants or other battlefield detainees,



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(3) persons suspected of being members of a terrorist organization, and (4) certain classes of aliens including those engaged in activity that endangers national security

**Section 303: Establishment of Database to Facilitate Investigation and Prevention of Terrorist Activities.**

This provision would allow the Attorney General to establish databases of DNA records pertaining to the terrorists or suspected terrorists from whom DNA samples or other identification information have been collected. All federal agencies, including the Department of Defense and probation offices, would be required to give the Attorney General, for inclusion in the databases, any DNA records, fingerprints, or other identification information that can be collected under this Subtitle. This provision also allows the Attorney General to use the information to detect, investigate, prosecute, prevent, or respond to terrorist activities, or other unlawful activities by suspected terrorists. In addition, the Attorney General would be able to share the information with other federal, state, local, or foreign agencies for the same purposes.

**Section 304: Definitions.**

This section would establish definitions for the terms "DNA sample" and "DNA analysis." It also would define "suspected terrorist," which describes the class of individuals from whom the Attorney General may acquire DNA samples and other identification information, and whose information may be included in DNA databases.

**Section 305: Existing Authorities**

This provision would establish that the new authorities created by this Subtitle are in addition to any authorities that may exist under any other source of law. It also would provide that this Subtitle shall not construed to preclude the receipt, collection, analysis, maintenance, or dissemination of evidence or information pursuant to any other source of law

**Section 306: Conditions of Release.**

This provision would amend several portions of the United States Code to clarify that terrorists or suspected terrorists who are under any form of federal supervision or conditional release, including parole, are subject to this Subtitle's provisions. These individuals would be in the physical custody of the United States but for an act of governmental discretion. This section would require such individuals to cooperate in the collection of a DNA sample as a condition of supervision or conditional release

**Subtitle B: Facilitating Information Sharing and Cooperation**

**Section 311: State and Local Information Sharing.**

Section 203 and other provisions of the USA PATRIOT Act broadened authority to share information among federal agencies that may be relevant to the detection and prevention of terrorism, and to obtain otherwise confidential information for use in terrorism investigations. That Act, however, did not adequately address the need for enhanced information sharing authority in relation to state and local officials and foreign governments, who are the critical partners of the United States in investigating terrorist crimes and preventing future terrorist attacks. This section of the bill would provide further authority for sharing of consumer credit information, visa-related information, and educational records information with state and local law enforcement, thereby enacting the remainder of the information sharing proposals that have been proposed legislatively and endorsed by the Administration and the Department of Justice. See Letter of Assistant Attorney General Daniel J. Bryant to Honorable Patrick J. Leahy concerning S. 1615 (April 30, 2002).

**Section 312: Appropriate Remedies with Respect to Law Enforcement Surveillance Activities.**

During the 1970s and 1980s, some law enforcement agencies—e.g., the New York City Police Department—entered consent decrees that limit such agencies from gathering information about organizations and individuals that may be engaged in terrorist activities and other criminal wrongdoing. See, e.g., *Handschu v. Special Servs. Div.*, 605 F. Supp. 1384 (S.D.N.Y. 1985), *aff'd*, 787 F.2d 828 (2d Cir. 1985). As a result, they lack the ability to use the full range of investigative techniques that are lawful under the Constitution, and that are available to the FBI. (For example, the Attorney General's investigative guidelines authorize agents, subject to certain restrictions, to attend public places and events "on the same terms and conditions as members of the public generally.") The consent decrees also handicap officers in their efforts to share information with other law enforcement agencies, including federal law enforcement agencies such as the FBI. These problems threaten to frustrate the operations of the federal-state-local Joint Terrorism Task Forces, and could prevent effective cooperation at all levels of government in antiterrorism efforts. As the United States Court of Appeals for the Seventh Circuit explained (before September 11) in discussing one consent decree, as a result of such a decree "the public safety is insecure and the prerogatives of local government scorned. To continue federal judicial micromanagement of local investigations of domestic and international terrorist activities . . . is to undermine the federal system and to trifle with the public safety." *Alliance to End Repression v. City of Chicago*, 237 F.3d 799, 802 (7th Cir. 2001).

This proposal would discontinue most consent decrees that could impede terrorism investigations conducted by federal, state or local law enforcement agencies. It would immediately terminate most decrees that were enacted before September 11, 2001 (including New York City's). All surviving decrees would have to be necessary to correct a current and ongoing

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violation of a Federal right, extend no further than necessary to correct the violation of the Federal right, and be narrowly drawn and the least intrusive means to correct the violation. This provision is modeled on the Prison Litigation Reform Act, 18 U.S.C. § 3626, which terminated many prison-related consent decrees and which repeatedly has been upheld by the courts. Section 312 does not apply to consent decrees or injunctions remedying discrimination based on race, color, religion, sex, or national origin, and therefore would not affect decrees or injunctions involving allegations of racial profiling.

**Section 313: Disclosure of Information.**

This provision provides protection against civil liability for businesses and their personnel who voluntarily provide information to federal law enforcement agencies to assist in the investigation and prevention of terrorist activities. The purpose of the provision is to encourage voluntary cooperation and assistance in counterterrorism efforts by private entities and individuals.

**Subtitle C: Facilitating International Terrorism Investigations**

**Section 321: Authority to Seek Search Warrants and Orders to Assist Foreign States.**

28 U.S.C. § 1782 does not clearly authorize the United States to obtain search warrants in response to requests from foreign governments; it only clearly applies to subpoenas. Nor is it clear that federal law enforcement can obtain orders under the pen register/trap and trace statute at foreign governments' requests. As a result, the United States can seek search warrants only if we have entered into a treaty with the foreign government that contains a provision authorizing us to do so (and, naturally, only if the foreign government has set forth facts sufficient to establish probable cause). The same is true of pen/trap orders. The United States therefore may find itself in a situation where it cannot assist a foreign government in one of its criminal investigations, which is hardly an effective way of encouraging foreign allies to assist our own counterterrorism investigations.

This provision would modify federal law to clarify that the United States may seek search warrants, pen/trap orders, and ECPA orders, in response to the requests of foreign governments. Doing so will enhance our ability to assist foreign law enforcement investigations, as well as promote better cooperation from foreign allies when we seek evidence from within their borders.

**Section 322: Extradition Without Treaties and for Offenses Not Covered by an Existing Treaty.**

Many of the United States' older extradition treaties contain "lists" or "schedules" of extraditable offenses that reflect only those serious crimes in existence at the time the treaties

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were negotiated (For example, our treaty with Egypt dates from 1874, and our treaty with Great Britain which includes Pakistan dates from the 1930s.) As a result, these older treaties often fail to include more modern offenses, such as money laundering, computer crimes, and certain crimes against children. While some old treaties are supplemented by newer multilateral terrorism treaties, extradition is possible under these newer treaties only if the other country is also a party to the multinational treaty, leaving gaps in coverage. Additionally, absent a few narrow exceptions, U.S. law permits the extradition of offenders to a foreign nation only when there is a treaty or convention in force with that country or a statute conferring such authority upon the executive branch. *See Valentine v. United States*, 299 U.S. 5, 8 (1936). At present, there are close to seventy countries in the world with which the U.S. has no extradition treaty at all. This means that the U.S. can become a "safe haven" for some foreign criminals, and that we cannot take advantage of some countries' willingness to surrender fugitives to us in the absence of an extradition treaty these nations usually require at least the possibility of reciprocity.

This provision would amend current extradition law to: (1) authorize the U.S. to extradite offenders to treaty partners for modern crimes that may not be included in our older list treaties with those countries; and (2) provide for on a case-by-case basis and with the approval of the Attorney General and the Secretary of State extradition from the United States for serious crimes even in the absence of an extradition treaty.

**Title IV: Enhancing Prosecution and Prevention of Terrorist Crimes**

**Subtitle A: Increased Penalties and Protections Against Terrorist Acts**

**Section 401: Terrorism Hoaxes.**

In the wake of the anthrax attacks in the fall of 2001, a number of individuals chose to perpetrate terrorism hoaxes (e.g., sending unidentified white powder in a letter with the intent that the recipient believe it to be anthrax). Such hoaxes divert law-enforcement and emergency-services resources, and thus impede our ability to respond to actual terrorist events. Current federal law does not adequately address the problem of hoaxes relating to various weapons of mass destruction. At present, the primary way to prosecute terrorism hoaxes is to use "threat" statutes—e.g., 18 U.S.C. § 2382a, which criminalizes certain threats to use a weapon of mass destruction, and 18 U.S.C. § 876, which criminalizes the use of the mails to threaten injury to a person. But some terrorism hoaxes are simply false reports that cannot easily be characterized as outright threats.

This section would amend federal law to create a new prohibition on terrorism hoaxes. In particular, it would (1) make it unlawful to knowingly convey false or misleading information, where the information reasonably may be believed, and concerns criminal activity relating to

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weapons of mass destruction, (2) require criminal defendants to reimburse any person, including the United States, State and local first responders who incur expenses incident to an emergency or investigative response to the terrorism hoax, and (3) authorize a civil action for such expenses

**Section 402: Providing Material Support to Terrorism.**

18 U.S.C. § 2339A's prohibition on providing material support to terrorists is unnecessarily narrow; it currently does not reach all situations where material support or resources are provided to facilitate the commission of "international terrorism." Rather, § 2339A only encompasses those acts of international terrorism which are prohibited by some other federal statute. Because, unlike the existing underlying offenses in § 2339A(a), "international terrorism" per se is not an offense under Title 18, it is prudent to establish unassailable constitutional bases for prohibiting such support. The first basis is if the material support is in or affects interstate or foreign commerce. The second basis is the regulation and control over the activities of U.S. nationals and U.S. legal entities who are outside the United States. Such control is based on, among others, the United States' constitutional foreign affairs power. In addition, this section amends the definition of "international terrorism" to make it clear that it covers acts which by their nature appear to be intended for the stated purposes. Hence, there would be no requirement to show that the defendants actually had such an intent. (There is a conforming amendment to the definition of "domestic terrorism" to maintain the existing parallel between the two definitions.)

Second, one court of appeals recently has questioned whether the current prohibition in 18 U.S.C. § 2339B on providing "training" or "personnel" to terrorist organizations designated under section 219 of the Immigration and Nationality Act are unconstitutionally vague. See *Humanitarian Law Project v. Reno*, 265 F.3d 1130 (9th Cir. 2000), *cert. denied*, 121 S. Ct. 1226 (2001). But see *United States v. Lindh*, \_\_\_ F. Supp. 2d \_\_\_ (E.D. Va. 2002) (rejecting the holding of *Humanitarian Law Project*). Subsection (b) would amend the pertinent statutes to remove any possible doubts about the scope of the prohibition. In particular, "training" would now be defined as "instruction or teaching designed to impart a specific skill." And criminal liability for "personnel" would apply to "knowingly provid[ing], attempt[ing] to provide, or conspir[ing] to provide a terrorist organization with one or more individuals (including himself) to work in concert with it or under its direction or control."

**Section 403: Weapons of Mass Destruction.**

At present, the federal weapons of mass destruction statute, 18 U.S.C. § 2332a, contains only one of the several constitutional bases for asserting federal jurisdiction over a terrorist attack involving weapons of mass destruction in certain circumstances: if the attack is against a person or property and "affect[s] interstate commerce." *Id.* § 2332a(a)(2). This provision would amend the statute to specifically cover property and persons in three other circumstances where federal jurisdiction constitutionally can be asserted: (1) if the mail or any facility of interstate or foreign

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commerce is used in furtherance of the offense; (2) if the attacked property is used in interstate or foreign commerce, or in an activity that affects interstate or foreign commerce; or (3) if any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense.

Second, with respect to attacks on government buildings, the WMD statute only applies to attacks on property owned by the United States. It currently does not directly criminalize attacks on foreign governments' property in the United States. This section therefore amends the statute, in new Subsection 2332a(a)(4), to provide for jurisdiction where the property against which the weapon of mass destruction is directed is property within the United States that is owned, leased, or used by a foreign government. (The term "foreign government" is defined in 18 U.S.C. § 11.)

Third, the current version of the WMD statute does not prohibit the use of chemical weapons; in fact, it expressly states that it does not apply to attacks carried out with "a chemical weapon as that term is defined in section 229F." 18 U.S.C. § 2332a(a), (b). This restriction was added in the implementing legislation for the Chemical Weapons Convention on October 22, 1998. Removing "chemical weapons" from the ambit of the WMD statute has proven improvident, as it has created needless factual confusion in situations where the WMD contains explosive materials but no toxic chemicals, and where it contains toxic chemicals in addition to the explosive material. Since most chemical weapons will always contain some explosive material in order to cause the dispersal of the toxic chemical, it makes little sense to arbitrarily limit the scope of the use of WMD statute since the damage resulting from its use can be caused by either the explosive material, or the toxic chemicals, or a combination of both. Restoring "chemical weapons" to the scope of the WMD statute eliminates a defendant's ability to make technical arguments that the prosecutor has charged under the wrong statute.

In addition to making the foregoing changes in the WMD statute, this section includes a technical amendment to 18 U.S.C. 175b (relating to biological agents and toxins), to correct a cross-reference to a related regulation which has been modified.

**Section 404: Use of Encryption to Conceal Criminal Activity.**

In recent years, terrorists and other criminals have begun to use encryption technology to conceal their communications when planning and conducting criminal activity. Title 18 of the United States Code currently contains no prohibition on the use of encrypted communications to plan or facilitate crimes. This proposal would amend federal law to provide that any person who, during the commission of or the attempt to commit a federal felony, knowingly and willfully uses encryption technology to conceal any incriminating communication or information relating to that felony, be imprisoned for an additional period of not fewer than 5 years. These additional penalties are warranted to deter the use of encryption technology to conceal criminal activity. In addition, it does not address the issue of whether software companies and internet service

providers should give law enforcement access to “keys” for the purposes of decoding intercepted communications.

#### **Sec. 405. Presumption for Pretrial Detention in Cases Involving Terrorism**

Defendants in federal cases who are accused of certain crimes are presumptively denied pretrial release 18 U.S.C. § 3142(e). Specifically, for these crimes, there is a rebuttable presumption that “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community.” The list of crimes currently includes drug offenses carrying maximum prison terms of 10 years or more, but it does not include most terrorism offenses. Thus, persons accused of many drug offenses are presumptively to be detained before trial, but no comparable presumption exists for persons accused of most terrorist crimes.

This section would amend 18 U.S.C. § 3142(e) to presumptively deny release to persons charged with crimes listed in 18 U.S.C. § 2332b(g)(5)(B), which contains a standard list of offenses that are likely to be committed by terrorists. This presumption is warranted because of the unparalleled magnitude of the danger to the United States and its people posed by acts of terrorism, and because terrorism is typically engaged in by groups – many with international connections – that are often in a position to help their members flee or go into hiding.

In addition to adding terrorism offenses to those creating a presumption in favor of detention, this section makes conforming changes in a provision describing offenses for which pretrial detention may be considered (§ 3142(f)(1)) and in a provision identifying factors to be considered by the judicial officer in determining whether the defendant’s appearance and public safety can reasonably be assured through release conditions (§ 3142(g)(1)).

#### **Section 406: “Mass Transportation Vehicle” Technical Correction.**

Richard Colvin Reid has been charged with attempting to blow up American Airlines Flight 63 with bombs concealed in his shoes, while over the Atlantic Ocean en route from Paris to Miami. The plane was immediately diverted to Boston. A federal grand jury sitting in the District of Massachusetts promptly indicted Reid on a variety of federal charges, including 18 U.S.C. § 1993, which prohibits wrecking a “mass transportation vehicle.” (Section 1993 authorizes an aggravated penalty of up to life imprisonment when a passenger was on the mass transportation vehicle, whereas an ordinary charge under 18 U.S.C. § 32(b) permits only a 20-year prison term where no death resulted.)

The phrase “mass transportation” in section 1993 is defined by a cross-reference to 49 U.S.C. § 5302(a)(7) (the term also includes schoolbus, charter, and sightseeing transportation, 18 U.S.C. § 1993(c)(5)). In contrast to the phrase “mass transportation,” the word “vehicle” has no

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explicit definition in section 1993, nor is it defined in section 5302. Reid argued that an airplane is not a "vehicle" as that term is used in section 1993, and the district court dismissed that count of the indictment. See *United States v. Reid*, 206 F. Supp. 2d 132 (D. Mass. 2002) (citing *McBoyle v. United States*, 283 U.S. 25 (1931) (holding that an "aircraft" is not a "vehicle" under 18 U.S.C. § 4)). This proposal specifically provides a definition of "vehicle" for the purpose of 18 U.S.C. § 1993. This definition is broad, including any apparatus that may be used as a vehicle. This provision also would make technical amendments to the relevant chapter and section names.

**Section 407: Acts of Terrorism Transcending National Boundaries.**

18 U.S.C. § 2332b covers killings and other serious violent crimes against persons in the United States, where "conduct transcending national boundaries" is involved. Among other grounds, federal jurisdiction exists if "any facility of interstate or foreign commerce is used in furtherance of the offense," or if the offense affects interstate or foreign commerce. However, the statute's jurisdictional predicates are narrower than the limits contained in the Constitution. For example, the predicates do not include travel in interstate or foreign commerce in furtherance of the offense. This proposal would expand the bases for federal jurisdiction under § 2332b, including as a jurisdictional predicate travel in interstate or foreign commerce in furtherance of the offense.

The current version of § 2332b is deficient for the additional reason that it defines "facility of interstate or foreign commerce" to have the same meaning given that term in 18 U.S.C. § 1958(b)(2). But § 1958(b)(2) only defines "facility of *interstate* commerce" (to include "means of transportation and communication"), and makes no mention of *foreign* commerce. As a result, § 2332b is ambiguous on whether the same stipulation— that "means of transportation and communication" constitute a "facility of . . . commerce"—applies with respect to facilities of foreign commerce. This section therefore would correct 18 U.S.C. § 1958(b)(2) so that it refers to "facility of interstate or foreign commerce" rather than simply "facility of interstate commerce."

**Section 408: Postrelease Supervision of Terrorists.**

Section 812 of the USA PATRIOT Act added 18 U.S.C. § 3583(j), which authorizes up to lifetime postrelease supervision for the perpetrators of terrorist offenses. In contrast, the maximum supervision period for the most serious crimes under the general rule of 18 U.S.C. § 3583(b) is five years, and for most offenses it is three years or less. The reform adopted in the USA PATRIOT Act reflects the continuing danger to the United States and its people that convicted terrorists may pose even after completion of a term of imprisonment, and legislative recognition that involvement by offenders in terrorism may be the result of persistent (or lifelong) ideological commitments that will not simply disappear within a few years of release.



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This section of the bill makes conforming amendments needed to ensure the effectiveness of the USA PATRIOT Act reform. In part, it makes conforming amendments in provisions affecting re-imprisonment on revocation of supervised release based on violations of release conditions. Currently, 18 U.S.C. § 3583(e)(3) limits imprisonment following revocation to five years in case of a class A felony, three years in case of a class B felony, two years in case of a class C or D felony, and one year otherwise. The amendments in this section do not change these maximum periods of reimprisonment, but they amend § 3583(e)(3) to make it clear that they are limitations on reimprisonment based on a particular revocation, rather than limits on aggregate reimprisonment for an offender who persistently violates release conditions and is subject to multiple revocations on that basis.

The bill also makes a complementary change in 18 U.S.C. § 3583(h). Section 3583(h) currently provides that the court may impose a term of supervised release to follow reimprisonment based on revocation of release—but not if the maximum reimprisonment term allowed by § 3583(e)(3) was imposed. Thus, the court is barred from imposing the maximum reimprisonment term—even if the maximum term is fully warranted by the nature of the offender's violation of release conditions and resulting danger to the public—if the court wants to preserve the option of providing further supervision for the offender once the term of reimprisonment is over. Since this limitation works against the effective supervision of released terrorists and protection of the public, the bill proposes that it be eliminated.

In addition, this section provides that the sentence for a terrorist offense within the scope of 18 U.S.C. § 3583(j) must include a term of supervised release of at least 10 years. By way of comparison, provisions of the drug laws that authorize extended postrelease supervision periods for certain drug offenses mandate that the sentence impose supervision terms of at least 10 years, eight years, six years, five years, four years, three years, two years, or one year for various offenses and offenders. See 21 U.S.C. § 841. The corresponding proposal for terrorists in this bill reflects the judgment that persons convicted of terrorist crimes generally pose a sufficient public safety concern that they should uniformly be subject to observation for a substantial period of time following release. This does not curtail the court's normal authority to revisit the period of supervision imposed in the sentence at any time after one year of release, and to shorten or terminate supervision if appropriate. See 18 U.S.C. § 3583(e)(1). It does, however, reflect a judgment that the period of monitoring and oversight for offenders convicted of terrorist crimes should at least be 10 years following release, unless the court affirmatively determines thereafter that further supervision is unwarranted.

This section broadens the class of offenses subject to extended supervision periods under 18 U.S.C. § 3583(j) by deleting a limitation to offenses which result in, or create a foreseeable risk of, death or serious injury. With this amendment, the provision includes all offenses in the standard list of crimes likely to be committed by terrorists and supporters of terrorism (see 18 U.S.C. § 2332b(g)(5)(B)). The existing limitation could complicate or prevent the imposition of

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appropriate supervision periods on persons convicted of non-violent terrorist offenses — such as a cyberterrorism attack on the United States that results in tens of billions of dollars of economic damage—and on persons who provide the essential financial or other material support for the apparatus of terrorism, but do not directly engage themselves in violent terrorist acts. The continuing danger posed to the national security by such persons may be no less than that posed by the direct perpetrators of terrorist violence, and the courts should be afforded the same degree of discretion in prescribing postrelease supervision in their cases.

**Section 409: Suspension, Revocation, and Denial of Certificates for Civil Aviation or National Security Reasons.**

This section provides procedures for the suspension, revocation, and denial of pilot certificates in relation to persons who pose a threat to civil aviation or national security. There is an immediate practical need for clarification and confirmation of the authority of the Under Secretary of Transportation for Security and the Federal Aviation Administration (FAA) in this area because there are several pending challenges to FAA revocations by persons whose certificates were revoked following notification that they "were known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety" (49 U.S.C. § 114(h)(2)).

**Section 410: No Statute of Limitations for Terrorism Crimes.**

This section broadens the class of offenses that may be prosecuted without limitation of time under 18 U.S.C. § 3286(b) by deleting a limitation to offenses which result in, or create a foreseeable risk of, death or serious injury. With this amendment, the provision includes all offenses in the standard list of crimes likely to be committed by terrorists and supporters of terrorism (see 18 U.S.C. § 2332b(g)(5)(B)). The existing limitation could complicate or prevent the prosecution of persons convicted of non-violent terrorist offenses—such as a cyberterrorism attack on the United States that results in tens of billions of dollars of economic damage—and of persons who provide the essential financial or other material support for the apparatus of terrorism, but do not directly engage themselves in violent terrorist acts. The continuing danger posed to the national security by such persons may be no less than that posed by the direct perpetrators of terrorist violence, and they should not be entitled to permanent immunity from prosecution merely because they have succeeded in avoiding identification and apprehension for some period of time.

**Section 411: Penalties for terrorist murders.**

Existing law does not consistently provide adequate maximum penalties for fatal acts of terrorism. For example, in a case in which a terrorist caused massive loss of life by sabotaging a national defense installation in violation of 18 U.S.C. § 2155, sabotaging a nuclear facility in

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violation of 42 U.S.C. § 2284, or destroying an energy facility in violation of 18 U.S.C. § 1366, there would be no possibility of imposing the death penalty under the statutes defining these offenses because they contain no death penalty authorizations.

In contrast, dozens of other federal violent crime provisions authorize up to life imprisonment or the death penalty in cases where victims are killed. There are also cross-cutting provisions which authorize these sanctions for specified classes of offenses whenever death results, such as 18 U.S.C. § 2245, which provides that a person who, in the course of a sexual abuse offense, "engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life."

This section similarly authorizes uniformly up to life imprisonment or the death penalty for conduct resulting in death that occurs in the course of the offenses likely to be committed by terrorists that are listed in 18 U.S.C. § 2332b(g)(5)(B) or in the course of terrorist activities as defined in 18 U.S.C. § 2381 under the amendment in section 121 of this bill.

This section also adds the new provision covering terrorist offenses resulting in death (proposed 18 U.S.C. § 2339D) to the list of offenses in 18 U.S.C. § 3592(e)(1) whose commission permits the jury to consider imposition of the death penalty. This will make the option of capital punishment available more consistently in cases involving fatal terrorist crimes. The imposition of capital punishment in such cases will continue to be subject to the requirement under 18 U.S.C. § 3591 that the offender have a high degree of culpability with respect to the death of the victim or victims, and to the requirement that the jury conclude that the death penalty is warranted under the standards and procedures of 18 U.S.C. § 3593.

**Subtitle B: Incapacitating Terrorism Financing**

**Section 421: Increased Penalties for Terrorism Financing.**

At present, the maximum civil penalty for violations of the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., is only \$10,000 per violation, see 50 U.S.C. § 1705. This is a relatively mild maximum fine; the civil penalty for violations of the Clean Water Act, for example, is fully \$25,000 for each day the violation persists. See 33 U.S.C. § 1319(d). IEEPA's modest civil penalty may not adequately deter individuals who are considering engaging in economic transactions that finance terrorist organizations, or otherwise trading with prohibited persons. And given the severity of terrorist threats, and the consequences of a successful terrorist attack, the United States should be able to punish those who finance terrorism at least as severely as it can punish polluters. This proposal therefore would amend IEEPA to increase the maximum civil penalty amount from \$10,000 per violation to \$50,000 per violation.

**Section 422: Money Laundering Through Hawalas**

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Under federal law, a financial transaction constitutes a money laundering offense only if the funds involved in the transaction represent the proceeds of some criminal offense. See 18 U.S.C. § 1956(a)(1) ("represents the proceeds of some form of unlawful activity"); 18 U.S.C. § 1957(f)(2) ("property constituting, or derived from, proceeds obtained from a criminal offense"). There is some uncertainty, however, as to whether the "proceeds element" is satisfied as to all aspects of a money laundering scheme when two or more transactions are conducted in parallel. For example, consider the following transaction. A sends drug proceeds to B, who deposits the money in Bank Account 1. Simultaneously or subsequently, B takes an equal amount of money from Bank Account 2 and sends it to A, or to a person designated by A. The first transaction from A to B clearly satisfies the proceeds element of the money laundering statute, but there is some question as to whether second transaction—the one that involves only funds withdrawn from Bank Account 2—does so. The question has become increasingly important because such parallel transactions are the technique used to launder money through hawalas and the Black Market Peso Exchange.

Several courts have addressed related issues, holding that both parts of the parallel or later transaction (sometimes called a "dependent" transaction because it would not have occurred but for the first transaction) involve criminal proceeds for purposes of the money laundering statute. See *United States v. Covey*, 232 F.3d 641 (8th Cir. 2000) (where defendant receives cash from drug dealer, and gives drug dealer checks drawn on own funds in return, transfer of checks is a money laundering offense involving SUA proceeds); *United States v. Mankarious*, 151 F.3d 694 (7th Cir. 1998) (if check constituting SUA proceeds is deposited in bank account, and second check is written on that account, second check constitutes proceeds, even if first check has not yet cleared); *United States v. Farrington*, 2000 WL 1751996 (D.V.I. 2000) (if check constituting SUA proceeds is deposited into bank account, and second check is drawn on same account on same day, second check is SUA proceeds, even though first check has not yet cleared). This proposal is intended to remove all uncertainty on this point by providing that all constitute parts of a set of parallel or dependent transactions involve criminal proceeds if one such transaction does so.

**Section 423: Suspension of Tax-Exempt Status of Designated Foreign Terrorist Organizations.**

A group that the United States formally designates as a "terrorist organization" is liable, among many measures, to have their assets frozen and their members barred from entering the United States. However, under current law, "terrorist organizations" that have registered as tax-exempt organizations under section 501 of the Internal Revenue Code can retain their tax-exempt status. And individuals who contribute to these designated "terrorist organizations" still are able to deduct those contributions.

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This section amends section 501 of the Internal Revenue Code to suspend automatically the tax exempt status of any group upon its designation as a "terrorist organization" under the several authorities. It also denies deductions for any donations made to such organizations during the period of suspension.

**Section 424: Denial of Federal Benefits to Terrorists.**

Current law allows federal courts to deny federal benefits to persons who have been convicted of drug-trafficking or drug-possession crimes. 21 U.S.C. § 862. As a result, these convicts can be prohibited, for periods of up to life, from receiving grants, contracts, loans, professional licenses, or commercial licenses that are provided by a federal agency or out of appropriated funds. But despite the fact that terrorism is at least as dangerous to the United States' national security as drug offenses, there presently is no legal authority to deny federal benefits to persons who have been convicted of terrorism crimes. This section would eliminate this inconsistency, and ensure that the same disincentives that the law creates with respect to drug crimes are available in the terrorism context, as well. Specifically, it would give federal courts the authority to deny federal benefits to any person convicted of an offense listed in 18 U.S.C. § 2332b(g)(5)(B).

**Section 425: Corrections to Financing of Terrorism Statute.**

This section corrects a number of drafting errors in the recently enacted financing of terrorism statute, 18 U.S.C. § 2339C, and supplies a definition for the term "material support or resources" as used in that statute by cross-referencing the existing definition in 18 U.S.C. § 2339A(b).

**Section 426: Terrorism-related specified activities for money laundering.**

This section adds three terrorism-related provisions to the list of specified unlawful activities that serve as predicates for the money laundering statute, 18 U.S.C. § 1956. Subsection (a) adds as a RICO predicate the offense in 18 U.S.C. § 1960 (relating to illegal money transmitting businesses), which has the effect of making this offense a money laundering predicate through the cross reference in 18 U.S.C. § 1956(b)(7)(A). Subsection (b) directly adds as money laundering predicates the new terrorist-financing offense in 18 U.S.C. § 2339C and the offense of misusing social security numbers under 42 U.S.C. § 408.

**Section 427: Assets of Persons Committing Terrorist Acts Against Foreign Countries or International Organizations.**

The USA PATRIOT Act enacted a new forfeiture provision at 18 U.S.C. § 981(a)(1)(G) pertaining to the assets of any person planning or perpetrating an act of terrorism against the

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United States. This section adds a parallel provision pertaining to the assets of any person planning or perpetrating an act of terrorism against a foreign state or international organization while acting within the jurisdiction of the United States.

**Section 428: Technical and Conforming Amendments Relating to the USA PATRIOT Act.**

This section makes a number of corrections relating to provisions of the USA PATRIOT Act, mostly affecting money laundering or asset forfeiture. While essentially technical in nature, these amendments are critical, because typographical and other errors in the USA PATRIOT Act provisions are preventing prosecutors from fully utilizing that Act's tools. For example, certain new forfeiture authorities enacted by that Act refer to a non-existent statute, 31 U.S.C. § 5333, where 31 U.S.C. § 5331 is intended.

Subsection (a) makes technical corrections to a number of provisions in the USA PATRIOT Act. Subsection (b) codifies section 316(a)-(c) of that Act as 18 U.S.C. § 987. Subsection (c) adds explicit language covering conspiracies to two offenses likely to be committed by terrorists (18 U.S.C. §§ 33 and 1366), conforming to section 811 of the USA PATRIOT Act, which added conspiracy language to other terrorism offense provisions.

**Title V: Enhancing Immigration and Border Security**

**Section 501: Expatriation of Terrorists.**

Under 8 U.S.C. § 1481, an American can lose his citizenship by voluntarily, and with the intent to relinquish nationality, taking any of a number of actions, including: (1) obtaining Nationality in a foreign state; (2) taking an oath of allegiance to a foreign state; and, most importantly, (3) serving in the armed forces of a foreign state that are engaged in hostilities against the United States. The current expatriation statute does not, however, provide for the relinquishing of citizenship in cases where an American serves in a hostile foreign terrorist organization. It thus fails to take account of the myriad ways in which, in the modern world, war can be waged against the United States.

This provision would amend 8 U.S.C. § 1481 to make clear that, just as an American can relinquish his citizenship by serving in a hostile foreign army, so can he relinquish his citizenship by serving in a hostile terrorist organization. Specifically, an American could be expatriated if, with the intent to relinquish nationality, he becomes a member of, or provides material support to, a group that the United States has designated as a "terrorist organization," if that group is engaged in hostilities against the United States.

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This provision also would make explicit that the intent to relinquish nationality need not be manifested in words, but can be inferred from conduct. The Supreme Court already has recognized that intent can be inferred from conduct. *See, e.g., Vance v. Terrazus*, 444 U.S. 252, 260 (1980) (recognizing that the “intent to relinquish citizenship . . . [can be] expressed in words or . . . found as a fair inference from proved conduct”); *see also Kong v. Rogers*, 463 F.2d 1188, 1189 (9th Cir. 1972) (“[S]pecific subjective intent to renounce United States citizenship . . . may [be] prove[d] . . . by evidence of an explicit renunciation, acts inconsistent with United States citizenship, or by affirmative voluntary act[s] clearly manifesting a decision to accept [foreign] nationality.” (citations omitted)); *United States v. Schiffer*, 831 F. Supp. 1166, 1194 (E.D. Pa. 1993) (“Specific intent may . . . be proven by evidence of what steps the alleged expatriate did or did not take in connection with his expatriating acts.”), *aff’d without opinion*, 31 F.3d 1175 (3rd Cir. 1994). Specifically, this proposal would make service in a hostile army or terrorist group *prima facie* evidence of an intent to renounce citizenship.

**Section 502: Enhanced Criminal Penalties for Violations of Immigration and Nationality Act.**

Aliens all too frequently flaunt the requirements of the Immigration and Nationality Act because that statute does not include effective criminal deterrence. There are minimal criminal penalties directly attached to fundamental violations, or there is no effective prosecution of fraudulent documents, marriage fraud, or unlawful employment of aliens. Criminal penalties in some cases are misdemeanors or require that a pattern and practice of violations be shown to warrant felony punishment. This provision would amend the INA to increase the penalties for a number of immigration crimes, including unlawful entries, alien-smuggling crimes, crimes involving fraud, and failures to depart.

**Section 503: Inadmissibility and Removability of National Security Aliens or Criminally Charged Aliens**

The Attorney General does not have sufficient authority to bar an alien from the United States, or to remove an alien from the United States, on the basis of national security. The direct authority for barring admission or removing an alien does not provide sufficient authority for action based strictly on national security grounds. This provision would give the Attorney General sufficient authority to deny admission to the United States, or to remove from the United States, those individuals whom the Attorney General has reason to believe would pose a danger to the national security of the United States, based on the statutory definition of “national security” under the Act in connection with the designation of foreign terrorist organizations. The new ground of inadmissibility, and the new ground of removal, would parallel the authority currently granted to the Secretary of State in INA § 212(a)(3)(C)(i) to determine that an alien’s entry or activities the Secretary has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States, thereby making the alien excludable.

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In this case, the Attorney General must have reason to believe that the alien poses a danger to the national security of the United States and may deny admission. In addition, this provision would give the Attorney General the authority to bar from the United States aliens who have been convicted of, or charged with, serious crimes in other countries.

**Section 504: Expedited Removal of Criminal Aliens.**

Current law provides for the expedited removal of aliens in very limited circumstances. Expedited removal enables the government to quickly remove from the United States certain aliens who have been convicted of certain crimes, and renders the aliens ineligible for "discretionary relief." The expedited removal authorities (set forth in section 238(b) of the Immigration and Nationality Act, 8 U.S.C. § 1228(b)) only apply to nonpermanent resident aliens. In addition, only "aggravated felonies" can trigger expedited removal. But once an alien has been convicted of a criminal offense, any additional administrative process is unnecessary: a court has already found, beyond a reasonable doubt, that the alien has committed the acts which render him removable. Nor is there any reason to distinguish between aliens who are permanent residents and aliens who are not: for both types of aliens, the fact of a criminal conviction suffices to establish that a person is removable.

This provision would strengthen the existing expedited removal authorities in several ways. First, it would expand the individuals subject to expedited removal to include all aliens, not just nonpermanent residents. Second, it would expand the expedited-removal-triggering crimes to include some of the offenses listed in INA § 237(a)(2)(A), (B), (C) & (D), including possession of controlled substances, firearms offenses, espionage, sabotage, treason, threats against the President, violations of the Trading with the Enemy Act, draft evasion, and certain alien smuggling crimes. Perversely, many of these offenses are far more serious than "aggravated felonies," and yet at present do not trigger expedited removal.

In addition, this provision would curtail the authorities for contested judicial removal currently codified at INA § 238(c) (8 U.S.C. § 1228(c)). Contested judicial removal has been seldom utilized because its procedures are unduly cumbersome. They require the prosecutor and district judge to try immigration relief issues which are outside their areas of expertise—issues that particularly in the criminal context are properly committed to the Attorney General's discretion. The existing process also requires the INS Commissioner to make multiple submissions, once in presenting the immigration charges and basis, and then in responding to any relief request the aliens might make in the proceeding. The entire process significantly expands the scope of the criminal trial. The proposal to expand the streamlined administrative process to cover more aliens and more crimes would render contested judicial removal largely superfluous. This amendment would, however, preserve stipulated judicial orders as under existing subsection (c)(5). The amendment also would correct a technical error in the section numbering.



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**Section 505: Clarification of Continuing Nature of Failure-to-Depart Offense, and Deletion of Provisions on Suspension of Sentence.**

The existing offense of failing to depart is defined in section 243(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. § 1253(a)(1)(A)). The statute applies to an alien's failure to depart "within a period of 90 days from the date of the final order." While this provision reasonably can be interpreted as a continuing offense, it is conceivable that aliens who have willfully remained in the United States for several years after a final order of removal might claim that prosecution is barred by the 5 year period of limitations (18 U.S.C. § 3282).

This amendment would clarify existing law by making it explicit that a willful failure to depart is a continuing offense. Specifically, it would amend section 243(a)(1)(A) to expressly state that it is unlawful for any alien against whom a final order of removal is outstanding willfully to remain in the United States more than 90 days after the date of the final order of removal under administrative processes, or if judicial review is had, then more than 90 days after the final order of the court.

Subsection (b) of this proposal eliminates the authority of courts under 8 U.S.C. § 1253(a) to suspend for good cause the sentence of an alien convicted of failure to depart. This authority is inconsistent with the general principles of federal sentencing law, including the 1984 Sentencing Reform Act which, among other things, abolished suspension of sentence generally for federal offenses. The ability of courts to suspend sentences for failure to depart renders the potential criminal penalties for this offense ineffective. The Department does not expect that subsection (b) would be applied retroactively to offenders whose offenses occurred prior to the date of enactment.

**Section 506: Additional Removal Authorities.**

This section augments the specification of places to which aliens may be removed under 8 U.S.C. § 1231(h), to provide additional options where the alien cannot be removed to any country currently specified in the statute.

**A BILL**

To enhance the domestic security of the United States of America, and for other purposes.

1       *Be it enacted by the Senate and House of Representatives of the United States of*  
2       *America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE** – This Act may be cited as the “Domestic Security Enhancement Act  
5       of 2003.”

6       (b) **TABLE OF CONTENTS.** The table of contents of this Act is as follows.

7       Sec. 1. Short Title; Table of Contents

8               **TITLE I – ENHANCING NATIONAL SECURITY AUTHORITIES**

9                       **Subtitle A: Foreign Intelligence Surveillance Act Amendments**

10       Sec. 101. Individual Terrorists as Foreign Powers.

11       Sec. 102. Clandestine Intelligence Activities by Agent of a Foreign Power

12       Sec. 103. Strengthening Wartime Authorities Under FISA

13       Sec. 104. Strengthening FISA’s Presidential Authorization Exception.

14       Sec. 105. Law Enforcement Use of FISA Information.

15       Sec. 106. Defense of Reliance on Authorization.

16       Sec. 107. Pen Registers in FISA Investigations.

17       Sec. 108. Appointed Counsel in Appeals to FISA Court of Review.

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- 1    Sec. 109    Enforcement of Foreign Intelligence Surveillance Court Orders
- 2    Sec. 110    Technical Correction Related to the USA PATRIOT Act.
- 3    Sec. 111    International Terrorist Organizations as Foreign Powers.
- 4                Subtitle B. Enhancement of Law Enforcement Investigative Tools
- 5    Sec. 121    Definition of Terrorist Activities.
- 6    Sec. 122    Inclusion of Terrorist Activities as Surveillance Predicates
- 7    Sec. 123    Extension of Authorized Periods Relating to Surveillance and Searches in
- 8                Investigations of Terrorist Activities.
- 9    Sec. 124    Multi-function Devices
- 10   Sec. 125    Nationwide Search Warrants in Terrorism Investigations.
- 11   Sec. 126    Equal Access to Consumer Credit Reports
- 12   Sec. 127    Autopsy Authority.
- 13   Sec. 128    Administrative Subpoenas in Terrorism Investigations.
- 14   Sec. 129    Strengthening Access to and Use of Information in National Security
- 15                Investigations

16                **TITLE II – PROTECTING NATIONAL SECURITY INFORMATION**

- 17   Sec. 201.    Prohibition of Disclosure of Terrorism Investigation Detainee Information
- 18   Sec. 202.    Distribution of "Worst Case Scenario" Information
- 19   Sec. 203.    Information Relating to Capitol Buildings
- 20   Sec. 204    Ex Parte Authorizations Under Classified Information Procedures Act.

1    Sec. 205. Exclusion of United States Security Requirements from Gross Income of  
2        Protected Officials.

3    Sec. 206. Grand Jury Information in Terrorism Cases.

4                    **TITLE III – ENHANCING INVESTIGATIONS OF TERRORIST PLOTS**

5                                    Subtitle A: Terrorism Identification Database

6    Sec. 301. Short Title.

7    Sec. 302. Collection and Use of Identification Information from Suspected Terrorists and  
8        Other Sources

9    Sec. 303. Establishment of Database to Facilitate Investigation and Prevention of Terrorist  
10       Activities.

11   Sec. 304. Definitions

12   Sec. 305. Existing Authorities

13   Sec. 306. Conditions of Release.

14                                    Subtitle B: Facilitating Information Sharing and Cooperation

15   Sec. 311. State and Local Information Sharing

16   Sec. 312. Appropriate Remedies with Respect to Law Enforcement Surveillance Activities

17   Sec. 313. Disclosure of Information.

18                                    Subtitle C: Facilitating International Terrorism Investigations

19   Sec. 321. Authority to Seek Search Warrants and Orders to Assist Foreign States

20   Sec. 322. Extradition Without Treaties and for Offenses Not Covered by an Existing Treaty.

**TITLE IV    ENHANCING PROSECUTION AND PREVENTION OF TERRORIST  
CRIMES**

**Subtitle A: Increased Penalties and Protections Against Terrorist Acts**

**Sec. 401. Terrorism Hoaxes.**

**Sec. 402. Providing Material Support to Terrorism.**

**Sec. 403. Weapons of Mass Destruction.**

**Sec. 404. Use of Encryption to Conceal Criminal Activity.**

**Sec. 405. Presumption for Pretrial Detention in Cases Involving Terrorism, Firearms,  
Explosives, or Serious Violent Felonies.**

**Sec. 406. "Mass Transportation Vehicle" Technical Correction**

**Sec. 407. Acts of Terrorism Transcending National Boundaries.**

**Sec. 408. Postrelease Supervision of Terrorists**

**Sec. 409. Suspension, revocation, and denial of certificates for civil aviation or national  
security reasons**

**Sec. 410. No Statute of Limitations for Terrorism Offenses.**

**Sec. 411. Penalties for Terrorist Murders**

**Subtitle B. Incapacitating Terrorism Financing**

**Sec. 421. Increased Penalties for Terrorism Financing**

**Sec. 422. Money Laundering Through Hawalas**

**Sec. 423. Suspension of Tax-Exempt Status of Designated Terrorist Organizations**

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- 1     Sec. 424. **Denial of Federal Benefits to Terrorists.**
- 2     Sec. 425. **Corrections to Financing of Terrorism Statute.**
- 3     Sec. 426. **Terrorism Related Specified Activities for Money Laundering.**
- 4     Sec. 427. **Assets of Persons Committing Terrorist Acts Against Foreign Countries or**
- 5         **International Organizations.**
- 6     Sec. 428. **Technical and Conforming Amendments Relating to the USA PATRIOT ACT.**

7             **TITLE V – ENHANCING IMMIGRATION AND BORDER SECURITY**

- 8     Sec. 501. **Expatriation of Terrorists.**
- 9     Sec. 502. **Enhanced Criminal Penalties for Violations of Immigration and Nationality Act.**
- 10    Sec. 503. **Inadmissibility and Removability of National Security Aliens or Criminally Charged**
- 11         **Aliens.**
- 12    Sec. 504. **Expedited Removal of Criminal Aliens.**
- 13    Sec. 505. **Clarification of Continuing Nature of Failure-to-Depart Offense, and Deletion of**
- 14         **Provisions on Suspension of Sentence.**
- 15    Sec. 506. **Additional Countries of Removal.**

16             **Title I: Enhancing National Security Authorities**

17             **Subtitle A: Foreign Intelligence Surveillance Act Amendments**

- 18    Sec. 101. **Individual Terrorists as Foreign Powers.**

Section 101(a)(4) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)(4)) is amended by inserting "or individual" after "group".

**Sec. 102: Clandestine Intelligence Activities by Agent of a Foreign Power.**

Section 101(b)(2)(A) and (B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(2)(A) and (B)) are each amended by striking ", which" and all that follows through "States".

**Sec. 103: Strengthening Wartime Authorities Under FISA.**

Sections 111, 309, and 404 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1811, 1829, and 1844) are each amended by inserting after "Congress" the following " , the enactment of legislation authorizing the use of military force, or an attack on the United States, its territories or possessions, or its armed forces creating a national emergency"

**Sec. 104: Strengthening FISA's Presidential Authorization Exception.**

Section 102(a)(1)(A)(ii) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)(1)(A)(ii)) is amended by striking ", other than the spoken communications of individuals,".

**Sec. 105: Law Enforcement Use of FISA Information.**

Sections 106(b), 305(c), and 405(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(b), 1825(c), and 1845(b)) are each amended by striking "the Attorney General" and inserting "the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant Attorney General designated by the Attorney General"

**Sec. 106: Defense of Reliance on Authorization.**

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(a) Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(b)) is amended by inserting after "jurisdiction" the following: "or was authorized by and conducted pursuant to the authorization of the President or the Attorney General".

(b) Section 107(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1827(b)) is amended by inserting after "jurisdiction" the following: "or was authorized by and conducted pursuant to the authorization of the President or the Attorney General".

**Sec. 107: Pen Registers in FISA Investigations.**

Section 402(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(a)(1)) is amended by striking "not concerning" and all that follows through "intelligence activities".

**Sec. 108: Appointed Counsel in Appeals to FISA Court of Review.**

Section 103(h) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(b)) is amended by inserting after the first sentence the following: "The court of review in its discretion may appoint counsel, with appropriate security clearance, to defend the denial of the application, and such counsel shall be compensated as provided for representation in an appellate court case under section 3006A(d) of title 18, United States Code."

**Sec. 109: Enforcement of Foreign Intelligence Surveillance Court Orders.**

Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by –

(1) redesignating subsection (d) as subsection (e), and

(2) inserting after subsection (c) the following:

**"(d) Enforcement of court's orders.**



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1       “The court established by subsection (a) shall have the same authority as a United States  
2       district court to enforce its orders, including the authority to punish any disobedience of such  
3       orders as contempt of court.”

4       **Sec. 110: Technical Correction Related to the USA PATRIOT Act.**

5       Section 224(a) of Pub. L. 107-56 is amended by inserting “204,” before “205”.

6       **Sec. 111: International Terrorist Organizations as Foreign Powers.**

7       (a) Section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
8       1801(i)) is amended by striking “or (3)” and inserting “(3), or (4)”.

9       (b) Section 105(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
10      1805(e)) is amended –

11          (1) in paragraph (1), by striking “or (3)” and inserting “(3), or (4)”, and

12          (2) in paragraph (2), by striking “or against a foreign power as defined in section  
13          101(a)(4) that is not a United States person,”.

14      (c) Section 304(d) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
15      1824(d)) is amended –

16          (1) in paragraph (1), by striking “or (3)” and inserting “(3), or (4)”, and

17          (2) in paragraph (2), by striking “or against a foreign power, as defined in section  
18          101(a)(4), that is not a United States person,”.

19               **Subtitle B: Enhancement of Law Enforcement Surveillance Tools**

20      **Sec. 121: Definition of Terrorist Activities.**

21      (a) Section 2510 of title 18, United States Code, is amended

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(1) by redesignating paragraphs (20) and (21) as paragraphs (22) and (23) respectively, and

(2) by inserting after paragraph (19) the following:

“(20) ‘terrorist activities’ means an offense described in section 2332b(g)(5)(B), an offense involved in or related to domestic or international terrorism as defined in section 2331, or a conspiracy or attempt to engage in such conduct,

“(21) ‘criminal investigation’ includes any investigation of terrorist activities;”.

(h) Section 3127(1) of title 18, United States Code, is amended by inserting “‘terrorist activities’, ‘criminal investigation’,” after “‘service’;”.

**Sec. 122: Inclusion of Terrorist Activities as Surveillance Predicates.**

(a) Section 2516 of title 18, United States Code, is amended –

(1) in subsection (1) –

(A) in paragraph (c) –

(i) by inserting before “section 1992 (relating to wrecking trains)” the following: “section 37 (relating to violence at international airports), section 930(c) (relating to attack on federal facility with firearm), section 956 (conspiracy to harm persons or property overseas),”, and

(ii) by inserting before “a felony violation of section 1028” the following “section 1993 (relating to mass transportation systems),”

(B) in paragraph (q), by striking all that follows the semicolon;

(C) by redesignating paragraph (r) as paragraph (s), and

(D) by inserting after paragraph (q) the following

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“(r) terrorist activities; or”; and

(2) in subsection (2) –

(A) by inserting “or activities” before “as to which”; and

(B) by inserting “terrorist activities or” before “the commission”

(b) Section 2518(7)(a) of title 18, United States Code, is amended –

(1) by redesignating subparagraphs (ii) and (iii) as subparagraphs (iii) and (iv) respectively, and

(2) by inserting after subparagraph (i) the following:

“(ii) terrorist activities,”

(c) Section 3123(b)(1)(D) of title 18, United States Code, is amended by inserting “or activities” after “offense”

(d) Section 3125(a)(1) of title 18, United States Code, is amended –

(1) in subparagraph (A), by striking “or” at the end,

(2) by redesignating subparagraph (H) as subparagraph (D), and

(3) by inserting after subparagraph (A) the following:

“(B) terrorist activities;

“(C) conspiratorial activities threatening the national security interest; or”

(f) Section 3127(2)(A) of title 18, United States Code, is amended to read as follows:

“(A) any district court of the United States (including a magistrate judge of such a court) or any United States court of appeals that

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1           “(i) has jurisdiction over the offense or activities being investigated;

2           “(ii) is in or for a district in which the provider of wire or electronic  
3           communication service is located, or

4           “(iii) is in or for a district in which a landlord, custodian, or other person  
5           subject to section 3124(a) or (b) is located, or”.

6       **Sec. 123: Extension of Authorized Periods Relating to Surveillance and Searches in**  
7       **Investigations of Terrorist Activities.**

8       (a) Section 2518 of title 18, United States Code, is amended –

9       (1) in subsection (5) –

10       (A) in the first sentence, by inserting “or, in the case of an interception relating to  
11       terrorist activities, ninety days” after “thirty days”.

12       (B) in the second sentence, by striking “Such thirty-day period begins” and  
13       inserting “These periods begin”;

14       (C) in the fourth sentence, by inserting “or, in the case of an interception relating  
15       to terrorist activities, ninety days” after “thirty days”, and

16       (D) in the fifth sentence

17       (i) by striking “practicable,” and inserting “practicable and”; and

18       (ii) by striking “, and must terminate” and all that follows through “thirty  
19       days”, and

20       (2) in subsection (6), by inserting in the second sentence after “require” the following:

21       “so long as no interval is less than thirty days in the case of an interception relating to  
22       terrorist activities”.

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1       (b) Section 2705(a)(2)(A) and (b)(1) of title 18, United States Code, are amended by  
2       inserting "or the national security" after "individual".

3       (c) Section 3123(c)(1) and (2) of title 18, United States Code, are amended by inserting  
4       after "or, in an investigation of terrorist activities, 120 days" after "sixty days"

5       **Sec. 124: Multi-function Devices**

6       (a) Section 2518(4) of title 18, United States Code, is amended by inserting at the end the  
7       following "Where a communication device to be monitored under an order authorizing the  
8       interception of a wire, oral, or electronic communication is capable of performing multiple  
9       functions, communications transmitted or received through any function performed by the  
10      device may be intercepted and accessed unless the order specifies otherwise and, upon a  
11      showing as for a search warrant, the order may authorize the retrieval of other information  
12      (whether or not constituting or derived from a communication whose interception the order  
13      authorizes) from the device".

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

15          (1) in subsection (a), by striking "court with jurisdiction over the offense under  
16          investigation or equivalent State warrant" and inserting "court in a district in which the  
17          provider is located or that has jurisdiction over the offense or activities under  
18          investigation or equivalent State warrant or pursuant to a court order issued under  
19          section 2518", and

20          (2) in subsections (b)(1)(A) and (c)(1)(A), by striking "court with jurisdiction over  
21          the offense under investigation or equivalent State warrant" and inserting "court in a  
22          district in which the provider is located or that has jurisdiction over the offense or

activities under investigation or equivalent State warrant or a court order issued under section 2518".

(c) Section 3123(b) of title 18, United States Code, is amended by inserting at the end the following as a flush last sentence: "Where the order relates to a communication device capable of performing multiple functions, a pen register or trap and trace device may be used with respect to communications transmitted or received through any function of the device unless the order specifies otherwise."

**Sec. 125: Nationwide Search Warrants in Terrorism Investigations.**

Rule 41(a)(3) of the Federal Rules of Criminal Procedure is amended

(1) by inserting "or of an offense listed in 18 U.S.C. § 2332b(g)(5)(B))" after "2331)"; and

(2) by inserting "or offense" after "the terrorism".

**Sec. 126: Equal Access to Consumer Credit Reports.**

Section 1681b(a)(1) of title 15, United States Code is amended by striking "grand jury" and inserting "grand jury, or the request of a law enforcement officer upon his certification that the information will be used only in connection with his duties to enforce federal law, in which case the disclosure to such law enforcement officer will not be disclosed to the consumer to whom such report relates without further order of a federal court"

**Sec. 127: Autopsy Authority.**

(a) Chapter 31 of title 28, United States Code, is amended by adding at the end the following

"§ 510C. Autopsy authority in criminal investigations

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1           “Notwithstanding any other provision of law, ~~the~~ Attorney General may, when  
2           deemed necessary or appropriate in the conduct of a criminal investigation, take  
3           custody of, and order an autopsy and related scientific or medical tests to be  
4           performed on the body of, a deceased person. To the extent consistent with the needs  
5           of the autopsy or of specific scientific or medical tests, the Attorney General shall  
6           take such steps as necessary to respect the provisions of any applicable law protecting  
7           religious beliefs of ~~the deceased person or the deceased persons family~~. Before  
8           ordering an autopsy or related tests under ~~this~~ section, the Attorney General shall  
9           endeavor to inform the family of the deceased person, if known, that the autopsy shall  
10          be performed. After ~~the~~ autopsy and any related tests have been performed, the  
11          remains of the deceased person shall be returned as soon as practicable to that  
12          deceased person’s family, if known.”.

13          (b) The table of sections for chapter 31 of title 28, United States Code, is amended by  
14          inserting at the end: “530C Autopsy authority in criminal investigations.”.

15          **Sec. 128. Administrative Subpoenas In Terrorism Investigations.**

16          (a) IN GENERAL- Chapter 113B of title 18, United States Code, is amended by inserting  
17          after section 2332e the following

18          “Sec. 2332f Administrative subpoenas in terrorism investigations.

19          “(a) AUTHORIZATION OF USE--In any investigation with respect an offense listed in  
20          section 2332b(g)(5)(B) or an offense involved in or related to international or domestic  
21          terrorism as defined in section 2331, the Attorney General may subpoena witnesses, compel  
22          the attendance and testimony of witnesses, and require the production of any records  
23          (including books, papers, documents, electronic data, and other tangible things that constitute  
24          or contain evidence) that he finds relevant or material to the investigation. A subpoena under

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1 this section shall describe the records or items required to be produced and prescribe a return  
2 date within a reasonable period of time within which the records or items can be assembled  
3 and made available. The attendance of witnesses and the production of records may be  
4 required from any place in any State or in any territory or other place subject to the  
5 jurisdiction of the United States at any designated place of hearing; except that a witness shall  
6 not be required to appear at any hearing more than 500 miles distant from the place where he  
7 was served with a subpoena. Witnesses summoned under this section shall be paid the same  
8 fees and mileage that are paid to witnesses in the courts of the United States.

9 “(b) SERVICE--A subpoena issued under this section may be served by any person  
10 designated in the subpoena as the agent of service. Service upon a natural person may be  
11 made by personal delivery of the subpoena to him or by certified mail with return receipt  
12 requested. Service may be made upon a domestic or foreign corporation or upon a  
13 partnership or other unincorporated association that is subject to suit under a common name,  
14 by delivering the subpoena to an officer, to a managing or general agent, or to any other  
15 agent authorized by appointment or by law to receive service of process. The affidavit of the  
16 person serving the subpoena entered by him on a true copy thereof shall be sufficient proof of  
17 service.

18 “(c) ENFORCEMENT--In the case of the contumacy by, or refusal to obey a subpoena  
19 issued to, any person, the Attorney General may invoke the aid of any court of the United  
20 States within whose jurisdiction the investigation is carried on or the subpoenaed person  
21 resides, carries on business, or may be found, to compel compliance with the subpoena. The  
22 court may issue an order requiring the subpoenaed person, in accordance with the subpoena,  
23 to appear, to produce records, or to give testimony touching the matter under investigation.  
24 Any failure to obey the order of the court may be punished by the court as contempt thereof.



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Any process under this subsection may be served in any judicial district in which the person may be found.

“(d) **NON-DISCLOSURE REQUIREMENTS** No person shall disclose to any other person that a subpoena was received or records provided pursuant to this section, other than to (i) those persons to whom such disclosure is necessary in order to comply with the subpoena, (ii) an attorney to obtain legal advice with respect to testimony or the production of records in response to the subpoena, and (iii) other persons as permitted by the Attorney General. Any person who receives a disclosure under this subsection shall be subject to the same prohibition of disclosure.

“(e) **IMMUNITY FROM CIVIL LIABILITY** Any person, including officers, agents, and employees, who in good faith produce the records or items requested in a subpoena shall not be liable in any court of any State or the United States to any customer or other person for such production or for non-disclosure of that production to the customer or other person, in compliance with the terms of a court order for non disclosure.”

(b) **TECHNICAL AND CONFORMING AMENDMENT-** The analysis for chapter 113B of title 18, United States Code, is amended by inserting after the item relating to section 2332e the following.

“Sec. 2332f. Administrative subpoenas in terrorism investigations”

**Sec. 129: Strengthening Access to and Use of Information in National Security Investigations.**

(a) **VIOLATION OF NONDISCLOSURE PROVISIONS FOR NATIONAL SECURITY LETTERS AND COURT ORDERS** – Section 1510 of title 18, United States Code, is amended by adding at the end the following:

“(e) Whoever violates section 2709(c) or 2332f(d) of this title, section 625(d) or 626(c) of the Fair Credit Reporting Act, section 1114(a)(3) or (5)(D) of the Right to Financial Privacy Act, section 802(b) of the National Security Act of 1947, or section 501(d) of the Foreign Intelligence Surveillance Act of 1978, shall be imprisoned for not more than one year, and if the violation is committed with the intent to obstruct an investigation or judicial proceeding, shall be imprisoned for not more than five years.”

(b) JUDICIAL ENFORCEMENT OF NATIONAL SECURITY LETTERS. – Chapter 113B of title 18, United States Code, is amended

(1) in the chapter analysis, by inserting before the item relating to section 2333 the following.

“2332g. Enforcement of requests for information.”; and

(2) by inserting before section 2333 the following:

“§ 2332g. Enforcement of requests for information

“ In the case of a refusal to comply with a request for records, a report, or other information made to any person under section 2709(b) of this title, section 625(a) or (b) or 626(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the Attorney General may invoke the aid of any court of the United States within whose jurisdiction the investigation is carried on or the person resides, carries on business, or may be found, to compel compliance with the request. The court may issue an order requiring the person to comply with the request. Any failure to obey the order of the court may be punished by the court as contempt thereof. Any process under this section may be served in any judicial district in which the person may be found.”.

1       (c) **USE OF NATIONAL SECURITY LETTERS IN THE INVESTIGATION OF**  
2 **TERRORIST ACTIVITIES.** – (1) Section 2709(b)(1) and (2) of title 18, United States  
3 Code, are each amended by striking “international terrorism” and inserting “terrorist activities  
4 (as defined in section 2510)”.

5       (2) Sections 625(a), (b), and (c) and 626(a) of the Fair Credit Reporting Act (15  
6 U.S.C. 1681u(a), (b), and (c) and 1681v(a)) are each amended by striking “international  
7 terrorism” and inserting “terrorist activities (as defined in section 2510 of title 18, United  
8 States Code)”.

9       (3) Section 1114(a) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)) is  
10 amended

11           (A) in paragraph (1)(C), by striking “international terrorism” and inserting  
12 “terrorist activities (as defined in section 2510 of title 18, United States Code)”, and

13           (B) in paragraph (5)(A), by striking “for foreign counter intelligence purposes to  
14 protect against international terrorism” and inserting “to protect against terrorist  
15 activities”.

16       (d) **SHARING OF INTELLIGENCE AMONG FEDERAL AGENCIES.** – (1) Section  
17 2709(d) of title 18, United States Code, is amended by striking “for foreign” and all that  
18 follows through “such agency”

19       (2) Section 625(f) of the Fair Credit Reporting Act (15 U.S.C. 1681v(f)) is amended  
20 by striking “not” and all that follows through “investigation” and inserting the following:  
21 “disseminate information obtained pursuant to this section only as provided in guidelines  
22 approved by the Attorney General”

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(3) Section 626(a) of the Fair Credit Reporting Act (15 U.S.C. 1681v(a)) is amended by striking “conduct or such investigation, activity or analysis” and inserting the following: “conduct of such investigation, activity or analysis, and such government agency may disclose the contents of that report or information to another government agency authorized to engage in such investigation, activity or analysis”.

(4) Section 1114(a)(5)(B) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)(B)) is amended by striking “for foreign” and all that follows through “such agency”.

(5) Section 802(e)(3) of the National Security Act of 1947 (50 U.S.C. 436(e)(3)) is amended by striking “clearly”.

**Title II: Protecting National Security Information**

**Sec. 201: Prohibition of Disclosure of Terrorism Investigation Detainee Information.**

Notwithstanding section 552 of title 5, United States Code, or any other provision of law, no officer, employee, or agency of the United States shall disclose, without the prior determination of the Attorney General or the Director of Central Intelligence that such disclosure will not adversely impact the national security interests of the United States, the names or other identifying information relating to any alien who is detained within the United States, or any individual who is detained outside the United States, in the course of any investigation of international terrorism until such time as such individual is served with a criminal indictment or information.

**Sec. 202: Distribution of “Worst Case Scenario” Information.**

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(a) **SHORT TITLE.** This section may be cited as the “Community Protection from Chemical Terrorism Act.”

(b) **FINDINGS.** Congress finds that –

(1) the nationwide threat of terrorist attacks has greatly increased since September 11, 2001,

(2) government-mandated publicly available information on worst-case scenario accidents at chemical facilities provides a blueprint that terrorists may use to plan and carry out terrorist attacks;

(3) improved protections are necessary to prevent terrorists from using information described in paragraph (2) to target and attack local communities, and

(4) while communities have a right to know about the use of chemicals in their communities, communities also have the right not to allow terrorists to use such information to destroy the communities.

(c) **SAFE USAGE OF CHEMICAL INFORMATION.** Section 112(r)(7) of the Clean Air Act (42 U.S.C. 7412(r)(7)) is amended by deleting subparagraph (H) and inserting in lieu thereof

“(H) **ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS INFORMATION**

–

“(i) **DEFINITIONS.** – In this subparagraph:

“(I) **CRIMINAL RELEASE.** The term ‘criminal release’ means an emission of a regulated substance into the ambient air from a stationary source that is caused, in whole or in part, by a criminal act

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1           “(II) **DISTANCE TO ENDPOINT** - The term ‘distance to endpoint’  
2 means the radius of the area of an accidental release or a criminal release

3           “(III) **MEMBER OF THE PUBLIC** - The term ‘member of the public’  
4 means

5                   “(aa) an individual who is not an official user, and

6                   “(bb) an official user who is not carrying out an official use

7           “(IV) **OFFICIAL USE** - The term ‘official use’ means an action of a  
8 Federal, State, or local government agency, or an entity referred to in  
9 subclause (V)(ee), that is intended to carry out a function necessary to  
10 prevent, plan for, or respond to an accidental release or a criminal release.

11           “(V) **OFFICIAL USER** - The term ‘official user’ means -

12                   “(aa) an officer or employee of the United States,

13                   “(bb) an officer or employee of an agent or contractor of the United  
14 States;

15                   “(cc) an officer or employee of a State or local government;

16                   “(dd) an officer or employee of an agent or contractor of a State or  
17 local government, and

18                   “(ee) an officer or employee or an agent or contractor of an entity that  
19 has been given, by a State or local government, responsibility for  
20 preventing, planning for, or responding to accidental releases or criminal  
21 releases.

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1           “(VI) OFF-SITE CONSEQUENCE ANALYSIS INFORMATION – The  
2           term ‘off-site consequence analysis information’ means –

3                   “(aa) any information in a risk management plan, including in the  
4                   executive summary of the plan, that consists of, identifies, or describes or  
5                   identifies, with respect to a worst-case or alternative release scenario for a  
6                   toxic release or flammable release –

7                           “(AA) the name, physical state, or concentration of a chemical,

8                           “(BB) the quantity released, release rate, or duration of the release;

9                           “(CC) the topography, whether urban or rural;

10                          “(DD) the distance to endpoint,

11                          “(EE) the estimated residential population, public receptors, or  
12                          environmental receptors within the distance to endpoint,

13                          “(FF) any map or other graphic depiction used to illustrate a  
14                          scenario; and

15                          “(GG) the prevention program designed to prevent or mitigate the  
16                          release, and

17                          “(bb) any information derived from the information described in item  
18                          (aa) (including any statewide or national ranking of stationary sources  
19                          derived from the information described in item (aa)) that is not publicly  
20                          available from a source other than a risk management plan

21           “(VII) READ-ONLY ACCESS – The term ‘read only access’ means  
22           access that –

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“(aa) allows the reading of information; but

“(bb) does not allow removal, mechanical reproduction, or other  
duplication (including notetaking) of information.

“(VIII) **RISK MANAGEMENT PLAN** – The term ‘risk management  
plan’ means a risk management plan registered with the Administrator by an  
owner or operator of a stationary source under subparagraph (B)(iii).

“(IX) **STATE OR LOCAL OFFICIAL USER**– The term ‘State or local  
official user’ means an official user described in any of items (cc) through (ee)  
of subclause (V).

“(ii) **AVAILABILITY UNDER FREEDOM OF INFORMATION ACT** -

“(I) **IN GENERAL** – Off site consequence analysis information shall not  
be made available under section 552 of title 5, United States Code.

“(II) **APPLICABILITY** Subclause (I) applies to off-site consequence  
analysis information obtained or developed by the Administrator before, on, or  
after the date of enactment of this subparagraph.

“(iii) **ACCESS BY MEMBERS OF THE PUBLIC TO OFF-SITE  
CONSEQUENCE ANALYSIS INFORMATION** – Except as provided in this  
clause, notwithstanding any other provision of law, no member of the public shall  
have access to off-site consequence analysis information. The Administrator, in  
consultation with the Attorney General, shall establish procedures to allow a  
member of the public read-only access to off site consequence analysis  
information that does not disclose the identity or location of any facility or any  
information from which the identity or location of any facility could be deduced.



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1           “(iv) **ACCESS BY STATE OR LOCAL OFFICIAL USERS TO OFF-SITE**  
2 **CONSEQUENCE ANALYSIS INFORMATION** – The Administrator shall allow  
3 access by a State or local official user, for official use, to off-site consequence  
4 analysis information relating to stationary sources located in the State or local  
5 official user’s State or in a contiguous State, or in any case where the off-site  
6 consequence analysis indicates that release would require, under existing mutual  
7 aid agreements, a response by that State or local jurisdiction.

8           “(v) **PROHIBITION ON DISCLOSURE BY OFFICIAL USERS** –

9           “(I) **IN GENERAL** –

10           “(aa) **PROHIBITION** – No official user shall knowingly disclose  
11 off-site consequence analysis information in any form to any member of  
12 the public, except to the extent that such disclosure is for official use or is  
13 otherwise authorized under this subparagraph.

14           “(bb) **EXTENT OF DISCLOSURE FOR OFFICIAL USE** – Under  
15 item (aa), an official user may disclose for official use only the quantity of  
16 off site consequence analysis information that is necessary for the purpose  
17 of preventing, planning for, or responding to accidental releases or  
18 criminal releases.

19           “(II) **CRIMINAL PENALTIES** – Notwithstanding section 113, a violation  
20 of subclause (I) shall be punished as a Class A misdemeanor under section  
21 3539 of title 18, United States Code

22           “(III) **NOTICE** – The Administrator shall provide to each official user  
23 who receives off site consequence analysis information

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“(aa) notice of the definition of official use and examples of actions  
that do and actions that do not fall within that definition, and

“(bb) notice of the prohibition established by subclause (I) and the  
penalties established by subclause (II).

“(vi) EFFECT ON STATE OR LOCAL LAW –

“(1) IN GENERAL – Subject to subclause (II), this subparagraph  
supersedes any provision of State or local law that is inconsistent with this  
subparagraph.

“(II) AVAILABILITY OF INFORMATION UNDER STATE LAW –

Nothing in this subparagraph precludes a State from making available data on  
the off-site consequences of chemical releases collected in accordance with  
State law.

“(IV) AVAILABILITY OF INFORMATION – Information that is  
developed by the Attorney General, or requested by the Attorney General and  
received from a covered stationary source, for the purpose of preparing the  
report or conducting the review under this clause, shall not be disclosed or  
released under the Freedom of Information Act (5 U.S.C. 552).

“(vii) AUTHORIZATION OF APPROPRIATIONS – There are authorized to  
be appropriated to the Administrator and the Attorney General such sums as are  
necessary to carry out this subparagraph, to remain available until expended.”.

**Sec. 203: Information Relating to Capitol Buildings**

Notwithstanding section 552 of title 5, United States Code, or any other provision of law,  
information provided by the Office of Compliance or the Architect of the Capitol to any

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1 officer, employee or agency of the Executive Branch of government relating to the United  
2 States Capitol and related buildings, shall not be disclosed under section 552(a) of title 5  
3 United States Code, by such Executive Branch officer, employee or agency

4 **Sec. 204: Ex Parte Authorizations Under Classified Information Procedures Act**

5 Section 4 of the Classified Information Procedures Act (18 U.S.C. App. 3) is hereby  
6 amended by deleting the "may" in the second sentence and inserting "shall".

7 **Sec. 205: Exclusion of United States Security Requirements from Gross Income of**  
8 **Protected Officials**

9 The Internal Revenue Code of 1986 is amended –

10 (a) by redesignating section 140 as section 141, and

11 (b) by inserting after section 139 the following:

12 "§ 140 Personnel security interests of the United States

13 "Gross income shall not include any amount expended from appropriated funds

14 that the Secretary of the Treasury, the Attorney General, and the Director of Central

15 Intelligence, or their designers, shall jointly determine is required to provide for the

16 security of officers or employees of the United States and otherwise in the interests of

17 the United States. The Secretary of the Treasury, the Attorney General and the

18 Director of Central Intelligence, acting jointly, may determine the scope of protective

19 services required by class of official or otherwise, and such determinations shall not

20 be publicly disclosed."

21 **Sec. 206. Grand Jury Information in Terrorism Cases.**

22 Rule 6(e)(2)(B) of the Federal Rules of Criminal Procedure is amended

(1) in clause (vi), by striking “or” at the end,

(2) in clause (vii), by striking the period at the end and inserting “; or”; and

(3) by inserting at the end the following:

“(viii) a witness or a person to whom a subpoena is directed, if there is reason to believe that otherwise there may result a danger to the national security or to the life or physical safety of an individual, flight from prosecution, destruction of or tampering with evidence, intimidation of a potential witness, or other serious jeopardy to an investigation and if the witness or person is notified of the prohibition of disclosure. Such a witness or person may consult with counsel prior to testifying before the grand jury or responding to the subpoena and shall notify such counsel of the prohibition of disclosure, and such counsel shall be subject to the same prohibition of disclosure.”.

### **Title III: Enhancing Investigations of Terrorist Plots**

#### **Subtitle A: Terrorism Identification Database**

##### **Sec. 301: Short Title.**

This Subtitle may be cited as the “Terrorist Identification Database Act of 2003.”

##### **Sec. 302: Collection and Use of Identification Information from Suspected Terrorists and Other Sources.**

(a) COLLECTION AND RECEIPT OF DNA SAMPLES, FINGERPRINTS, AND OTHER INFORMATION –

**(I) COLLECTION FROM SUSPECTED TERRORISTS IN CUSTODY OR  
UNDER SUPERVISION OR ON CONDITIONAL RELEASE. –**

**(A) DEPARTMENT OF JUSTICE. –** The Attorney General, and any other official or agency designated by the Attorney General, shall have the authority to collect DNA samples, fingerprints, and other identification information from any suspected terrorist who is in the custody of the Attorney General, the United States Marshal Service, the Bureau of Prisons, or the Immigration and Naturalization Service. A Federal official or agency so designated by the Attorney General shall collect DNA samples, fingerprints, and other identification information from any such person as directed by the Attorney General.

**(B) PROBATION OFFICERS –** Upon the request of the Attorney General, the probation office responsible for the supervision under Federal law of an individual on probation, parole, or supervised release shall collect DNA samples, fingerprints, and other identification information from any suspected terrorist.

**(C) DEPARTMENT OF DEFENSE –** The Secretary of Defense, and any other official or agency within the Department of Defense designated by the Secretary, shall have the authority to collect DNA samples, fingerprints, and other identification information from any suspected terrorist who is in the custody of, or being detained by, the Department of Defense. A Federal official or agency so designated by the Secretary shall collect DNA samples, fingerprints, and other identification information from any such person as directed by the Secretary.

**(D) COLLECTION PROCEDURES. –** Any official authorized under paragraph (A), (B), or (C) to collect a DNA sample from a suspected terrorist may use or authorize the use of such means as are reasonably necessary to collect a DNA sample

1 from any such suspected terrorist who refuses to cooperate in the collection of the  
2 sample.

3 (E) CRIMINAL PENALTY. – An individual from whom the collection of a  
4 DNA sample is authorized under subsection (a)(1) who fails to cooperate in the  
5 collection of that sample shall be

6 (i) guilty of a class A misdemeanor, and

7 (ii) punished in accordance with title 18, United States Code.

8 (2) COLLECTION OR RECEIPT OF OTHER IDENTIFICATION

9 INFORMATION. The Attorney General, the Secretary of Defense, or other  
10 designated official or agency, may also collect and receive, either directly or from another  
11 Federal, State, local, or foreign government agency, or other appropriate source –

12 (A) DNA samples, fingerprints, and other identification information of any  
13 suspected terrorist, regardless of whether he or she is in custody or under supervision,  
14 where such samples or information are voluntarily provided by the suspected terrorist  
15 or otherwise lawfully acquired from any source,

16 (B) DNA samples, fingerprints, and other identification information that have  
17 been recovered from the scenes of terrorist activities, including unidentified human  
18 remains, or that have been recovered from any item that may have been handled by a  
19 suspected terrorist; and

20 (C) DNA samples, fingerprints, and other identification information of any  
21 person, where such samples or information are voluntarily provided by the person and  
22 may assist in the investigation and identification of terrorists and the prevention of  
23 terrorism.

**(b) COLLECTION, ANALYSIS, STORAGE, AND MAINTENANCE OF DNA  
SAMPLES, FINGERPRINTS, AND OTHER INFORMATION.**

(1) ANALYSIS AND USE OF SAMPLES. The Attorney General shall have the authority to analyze DNA samples, fingerprints, and other information collected or received under subsection (a) or that has been lawfully acquired under any other source of law. Any such analysis of DNA samples shall be conducted in conformity with the quality assurance standards issued by the Director of the Federal Bureau of Investigation under section 210303 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14131).

**(2) AGREEMENTS WITH OTHER ENTITIES CONCERNING DNA SAMPLES**

The Attorney General may enter into agreements with Federal agencies, with units of State or local government, or with private entities, to assist in the collection, analysis, storage, or maintenance of the DNA samples described in paragraph (1).

**Sec. 303: Establishment of Database to Facilitate Investigation and Prevention of  
Terrorist Activities.**

**(a) DATABASES –**

(1) The Attorney General may establish one or more databases of DNA records, fingerprints, and other identification information—

(A) that was collected or received under section 2(a);

(B) that was obtained as a result of any analysis conducted under section 2(b),

and

(C) that is information of the kind described in section 2(a) or 2(b), but which may have been collected or received before the effective date of this Act.

(2) Any federal agency, including the Department of Defense and any probation office, shall provide to the Attorney General, for inclusion in such databases as may be established, any DNA records, fingerprints, and other identification information described in paragraph (1). As directed by the Attorney General, any DNA records, fingerprints, and other identification information described in paragraph (1) shall be included in the databases authorized by this section.

(b) USES. –

(1) **GENERALLY** – The Attorney General may use DNA records, fingerprints, and other identification information contained in the databases described in subsection (a) for the purposes of detecting, investigating, prosecuting, preventing, or responding to terrorist activities, or other criminal or unlawful activities by suspected terrorists, and may share the information with other Federal, State, local, or foreign agencies only for these purposes. In addition, the Attorney General may use and disclose the information for other purposes and to other entities and persons to the extent permitted by law.

(2) **DATABASE SEARCHES** – The Attorney General may search information in the databases described in subsection (a) against the national DNA index established by section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132), the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation, other databases maintained by Federal, State, or local law enforcement agencies, and other appropriate databases as determined by the Attorney General. Authorized searches of any such DNA, fingerprint, law enforcement, or other appropriate database as determined by the Attorney General may also be made against the databases described in subsection (a).



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(3) **POPULATION STATISTICS DATABASE** – If personally identifiable information is removed, the DNA records maintained in the databases described in subsection (a) may be used and disclosed for quality control and protocol development purposes and for a population statistics database

(c) **RELATION TO OTHER LAWS** –

(1) **IN GENERAL.** – Except as provided in paragraph (2), DNA samples and records and other information described in this section may be used and disclosed in conformity with this section, notwithstanding any limitation on the use or disclosure of such samples, records, or information under the DNA Identification Act of 1994 (42 U.S.C. 14131-14134), the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135-14135e), or any other law

(2) **RELATION TO THE PRIVACY ACT** –

(A) The databases established under this section shall be deemed to be systems of records within the full scope of the exemption in subsection (j)(2) of section 552a of title 5, United States Code (the Privacy Act), and therefore exempt from any provisions of such section other than those specifically enumerated in such subsection (j)(2)

(B) Section 552a of title 5, United States Code, is amended –

(i) in subsection (a)(8)(B)

(I) by striking “or” at the end of subparagraph (vii),

(II) by adding “or” at the end of subparagraph (viii); and

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

“(ix) matches performed pursuant to section 3 of the Terrorist Identification Database Act of 2002;”, and

(ii) in subsection (b)(7)–

(I) by striking “to another” and inserting “(A) to another”;

(II) by striking “sought;” and inserting “sought; or”; and

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

“(B) pursuant to section 3 of the Terrorist Identification Database Act of 2002;”

**Sec. 304: Definitions.**

As used in this Act.

(1) The term “DNA sample” means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out

(2) The term “DNA analysis” means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample

(3) The term “suspected terrorist” means any person as to whom the Attorney General or the Secretary of Defense, as appropriate, has determined that there is reason to believe

(A) has engaged in terrorism as defined in section 2331(1) or 2331(5) of title 18, United States Code, or has committed an offense described in section 2332b(g)(5)(B) of such title, or who has conspired or attempted to do so;

(B) is an enemy combatant, a prisoner of war, or other battlefield detainee,

(C) is a member of a terrorist organization designated as such pursuant to section 219 of the Immigration and Nationality Act;

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(D) is an alien who is described in section 212(a)(3)(A)(i), 212(a)(3)(A)(iii), 212(a)(3)(B), 212(a)(3)(F), 237(A)(4)(a)(i), 237(a)(4)(iii), or 237(a)(4)(B) of the Immigration and Nationality Act, or who is engaged in any other activity that endangers the national security of the United States.

**Sec. 305: Existing Authorities.**

The authorities granted under this Act are in addition to any authorities that may exist under any other source of law. Nothing in this Act shall be construed to preclude the receipt, collection, analysis, maintenance, or dissemination of evidence or information pursuant to any other source of law.

**Sec. 306: Conditions of Release.**

(a) **CONDITIONS OF PROBATION.** Section 3563(a)(9) of title 18, United States Code, is amended by striking the period at the end and inserting “or section 3 of the Terrorist Identification Database Act of 2002.”

(b) **CONDITIONS OF SUPERVISED RELEASE.** Section 3583(d) of title 18, United States Code, is amended by striking the period after “the DNA Analysis Backlog Elimination Act of 2000” and inserting “or section 3 of the Terrorist Identification Database Act of 2002.”

(c) **CONDITIONS OF PAROLE.** Section 4209 of title 18, United States Code, insofar as such section remains in effect with respect to certain individuals, is amended by inserting before “or section 1565 of title 10” the following “, section 3 of the Terrorist Identification Database Act of 2002,”.

(d) **CONDITIONS OF RELEASE GENERALLY.** If the collection of a DNA sample from an individual under any form of supervision or conditional release is authorized pursuant

1 to section 2(a) of this Act, the individual shall cooperate in the collection of a DNA sample as  
2 a condition of that supervision or conditional release

3 **Subtitle B: Facilitating Information Sharing and Cooperation**

4 **Sec. 311: State and Local Information Sharing**

5 (a) **CONSUMER INFORMATION** - Section 626(a) of the Fair Credit Reporting Act  
6 (15 U.S.C. 1681v(a)) is amended by adding at the end the following: "The recipient of that  
7 consumer report or information may further disclose the contents of that report or  
8 information to law enforcement personnel of a State or political subdivision of a State  
9 (including the chief executive officer of that State or political subdivision who has the  
10 authority to appoint or direct the chief law enforcement officer of that State or political  
11 subdivision) to assist the official receiving that information in the performance of the official  
12 duties of that official. Any chief executive officer or law enforcement personnel of a State or  
13 political subdivision of a State who receives information pursuant to this subsection shall only  
14 use that information consistent with such guidelines as the Attorney General shall issue to  
15 protect confidentiality."

16 (b) **VISA INFORMATION.** Section 222(f) of the Immigration and Nationality Act (8  
17 U.S.C. 1202 (f)) is amended -

18 (1) in paragraph (1), by striking the period at the end and inserting a semicolon;

19 (2) by redesignating paragraph (2) as paragraph (3), and

20 (3) by inserting after paragraph (1) the following

21 "(2) the Secretary of State may provide copies of any record of the  
22 Department of State and of diplomatic and consular offices of the United States  
23 pertaining to the issuance or refusal of visas or permits to enter the United States,

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1           or any information contained in those records, to law enforcement personnel of a  
2           State or political subdivision of a State (including the chief executive officer of  
3           that State or political subdivision who has the authority to appoint or direct the  
4           chief law enforcement officer of that State or political subdivision) to assist the  
5           official receiving that information in the performance of the official duties of that  
6           official, and any chief executive officer or law enforcement personnel of a State or  
7           political subdivision of a State who receives information pursuant to this  
8           paragraph shall only use that information consistent with such guidelines as the  
9           Attorney General shall issue to protect confidentiality, and”.

10           (c) **EDUCATIONAL RECORDS INFORMATION**   Section 444(j)(1)(B) of the  
11           General Education Provisions Act (20 U.S.C. 1232g(j)(1)(B)) and section 408(c)(1)(B) of  
12           the National Education Statistics Act of 1994 (20 U.S.C. 9007(c)(1)(B)) are each amended

13           (1) by inserting after “disseminate” the following, “(including disclosure of such  
14           reports, records, and information to law enforcement personnel of a State or political  
15           subdivision of a State, including the chief executive officer of that State or political  
16           subdivision who has the authority to appoint or direct the chief law enforcement officer of  
17           that State or political subdivision, to assist the official receiving that information in the  
18           performance of the official duties of that official)”; and

19           (2) by adding at the end the following: “Any chief executive officer or law  
20           enforcement personnel of a State or political subdivision of a State who receives  
21           information pursuant to this paragraph shall only use that information consistent with  
22           these guidelines.”.

23           **Sec. 312: Appropriate Remedies with Respect to Law Enforcement Surveillance**  
24           **Activities**

1 (a) Requirements for relief. ....

2 (1) Prospective relief. —

3 (A) Prospective relief in any civil action with respect to law enforcement  
4 surveillance activities shall extend no further than necessary to correct the current and  
5 ongoing violation of the Federal right of a particular plaintiff or plaintiffs. The court  
6 shall not grant or approve any prospective relief unless the court finds that such relief  
7 is narrowly drawn, extends no further than necessary to correct the violation of the  
8 Federal right, and is the least intrusive means necessary to correct the violation of the  
9 Federal right. The court shall give substantial weight to any adverse impact on  
10 national security, public safety, or the operation of a criminal justice system caused by  
11 the relief.

12 (B) The court shall not order any prospective relief that requires a government  
13 official to refrain from exercising his authority under applicable law, unless —

14 (i) Federal law requires such relief to be ordered,

15 (ii) the relief is necessary to correct the violation of a Federal right; and

16 (iii) no other relief will correct the violation of the Federal right.

17 (C) Nothing in this section shall be construed to authorize the courts, in  
18 exercising their remedial powers, to repeal or detract from otherwise applicable  
19 limitations on the remedial powers of the courts.

20 (2) Preliminary injunctive relief — In any civil action with respect to law  
21 enforcement surveillance activities, to the extent otherwise authorized by law, the court  
22 may enter a temporary restraining order or an order for preliminary injunctive relief.  
23 Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to

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correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

**(b) Termination of relief —**

**(1) Termination of prospective relief .**

(A) In any civil action with respect to law enforcement surveillance activities in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervenor -

(i) 2 years after the date the court granted or approved the prospective relief,

(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph, or

(iii) in the case of an order issued before September 11, 2001, immediately

(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

(2) Immediate termination of prospective relief — In any civil action with respect to law enforcement surveillance activities, a defendant or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further

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1       than necessary to correct a current and ongoing violation of the Federal right, and is the  
2       least intrusive means necessary to correct the violation of the Federal right

3       (3) Limitation. — Prospective relief shall not terminate if the court makes written  
4       findings based on the record that prospective relief remains necessary to correct a current  
5       and ongoing violation of the Federal right, extends no further than necessary to correct  
6       the violation of the Federal right, and that the prospective relief is narrowly drawn and the  
7       least intrusive means to correct the violation.

8       (4) Termination or modification of relief. — Nothing in this section shall prevent any  
9       party or intervener from seeking modification or termination before the relief is  
10      terminable under paragraph (1) or (2), to the extent that modification or termination  
11      would otherwise be legally permissible.

12      (c) Settlements. —

13      (1) Consent decrees. — In any civil action with respect to law enforcement  
14      surveillance activities, the court shall not enter or approve a consent decree unless it  
15      complies with the limitations on relief set forth in subsection (a)

16      (2) Private settlement agreements. —

17          (A) Nothing in this section shall preclude parties from entering into a private  
18          settlement agreement that does not comply with the limitations on relief set forth in  
19          subsection (a), if the terms of that agreement are not subject to court enforcement  
20          other than the reinstatement of the civil proceeding that the agreement settled.

21          (B) Nothing in this section shall preclude any party claiming that a private  
22          settlement agreement has been breached from seeking in State court any remedy  
23          available under State law



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(d) State law remedies — The limitations on remedies in this section shall not apply to relief entered by a State court based solely upon claims arising under State law.

(e) Procedure for motions affecting prospective relief.

(1) Generally. — The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to law enforcement surveillance activities. Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.

(2) Automatic stay. — Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period —

(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b), or

(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and

(B) ending on the date the court enters a final order ruling on the motion.

(3) Postponement of automatic stay — The court may postpone the effective date of an automatic stay specified in subsection (e)(2)(A) for not more than 60 days for good cause. No postponement shall be permissible because of general congestion of the court's calendar.

(4) Order blocking the automatic stay — Any order staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2) (other than an order to postpone the effective date of the automatic stay under paragraph (3)) shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28, United States Code, regardless of how the order is styled or whether the order is termed a preliminary or a final ruling.

(f) **Definitions** — As used in this section —

(1) the term “consent decree” means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements;

(2) the term “civil action with respect to law enforcement surveillance activities” means any civil proceeding arising under Federal law with respect to the use of investigative methods by Federal, State, and local law enforcement officials, including (but not limited to) overt surveillance, covert surveillance, electronic surveillance, intelligence gathering, undercover operations, the use of informants, and the recording, filing, retention, indexing or dissemination of information obtained through these methods, including the dissemination of such information to other Federal, state, or local law enforcement officials.

(3) the term “private settlement agreement” means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled;

(4) the term “prospective relief” means all relief other than compensatory monetary damages (but not including relief necessary to remedy discrimination based on race, color, religion, sex, or national origin in violation of a Federal right),

(5) the term “relief” means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements;

(6) “State” means a State, the District of Columbia, and any commonwealth, territory, or possession of the United States

1     **Sec. 313: Disclosure of Information.**

2             Notwithstanding any other law, a commercial or business entity, and any employee or  
3     agent of such a commercial or business entity, shall not be subject to civil liability in any court  
4     for the voluntary provision or disclosure of information to a Federal law enforcement agency,  
5     based on a reasonable belief that the information may assist in the investigation or prevention  
6     of terrorist activities (as defined in section 2510 of title 18, United States Code).

7                     **Subtitle C: Facilitating International Terrorism Investigations**

8     **Sec. 321: Authority to Seek Search Warrants and Orders to Assist Foreign States**

9             Section 1782 of title 28, United States Code, is amended

10            (1) in the first sentence, by deleting "thing" and inserting in lieu thereof "thing, or may  
11     issue a warrant for the seizure of evidence under Federal Rule of criminal Procedure 41 or an  
12     order permitting the use of a trap and trace or pen register technology under 18 U.S.C. 3121,  
13     et seq.", and

14            (2) by adding at the end thereof, "An order authorizing a search or the use of trap and  
15     trace or pen register technology may be issued only in accordance with the procedures  
16     established by the statutes and rules applicable to United States criminal prosecutions "

17     **Sec. 322: Extradition Without Treaties and for Offenses Not Covered by an Existing**  
18     **Treaty.**

19            (a) Chapter 209 of title 18, United States Code, is amended by adding at the end the  
20     following

21            "Sec. 3197 Extradition for Offenses Not Covered by an Existing Treaty

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1           “(a) The provisions of this Chapter shall also be construed to permit the  
2 extradition of any person, regardless of nationality, to any country with which an  
3 extradition treaty or convention remains in force, and the procedures set forth in this  
4 Chapter and in the treaty or convention shall apply, even if the offense for which  
5 extradition is requested is not expressly included in a list of extraditable crimes in such  
6 treaty or convention, if

7                   “(1) the offense for which extradition is sought is punishable by more than one  
8 year’s imprisonment in the requesting state,

9                   “(2) the conduct with which the person is charged or convicted, had it  
10 occurred in the United States, would constitute an offense punishable by more  
11 than one year’s imprisonment; and

12                   “(3) the requesting state affirms, through the diplomatic channel, that it would  
13 grant reciprocal extradition for similar conduct in response to a request made by  
14 the United States.”

15           (b) Chapter 209 of title 18, United States Code, is amended by adding at the end the  
16 following:

17           “Sec. 3198 Extradition absent a treaty

18                   “(a) **SERIOUS OFFENSE DEFINED** – In this section, the term ‘serious offense’  
19 means conduct that would be –

20                   “(1) an offense described in any multilateral treaty to which the United States  
21 is a party that obligates parties --

22                   “(A) to extradite alleged offenders found in the territory of the parties, or

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1                   “(B) submit the case to the competent authorities of the parties for  
2                   prosecution; or

3                   “(2) conduct that, if that conduct occurred in the United States, would  
4                   constitute

5                   “(A) a crime of violence (as defined in section 16);

6                   “(B) the distribution, manufacture, importation or exportation of a  
7                   controlled substance (as defined in section 201 of the Controlled Substances  
8                   Act (21 U.S.C. 802),

9                   “(C) bribery of a public official; misappropriation, embezzlement or theft  
10                  of public funds by or for the benefit of a public official,

11                  “(D) obstruction of justice, including payment of bribes to jurors or  
12                  witnesses;

13                  “(E) the laundering of monetary instruments, as described in section 1956,  
14                  if the value of the monetary instruments involved exceeds \$100,000;

15                  “(F) fraud, theft, embezzlement, or commercial bribery if the aggregate  
16                  value of property that is the object of all of the offenses related to the conduct  
17                  exceeds \$100,000,

18                  “(G) counterfeiting, if the obligations, securities or other items  
19                  counterfeited, have an apparent value that exceeds \$100,000;

20                  “(H) a crime against children under chapter 109A or section 2251, 2251A,  
21                  2252, or 2252A; or

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"(1) a conspiracy or attempt to commit any of the offenses described in any of subparagraphs (A) through (H), or aiding and abetting a person who commits any such offense.

**"(b) AUTHORIZATION OF FILING**

**"(1) IN GENERAL.** If a foreign government makes a request for the extradition of a person who is charged with or has been convicted of an offense within the jurisdiction of that foreign government, and no extradition treaty is in force between the United States and the foreign government, the Attorney General may authorize the filing of a complaint for extradition pursuant to subsections (c) and (d).

**"(2) FILING AND TREATMENT OF COMPLAINTS –**

**"(A) IN GENERAL.** – A complaint authorized under paragraph (1) shall be filed pursuant to section 3184.

**"(B) PROCEDURES—** With respect to a complaint filed under paragraph (1), procedures of sections 3184 and 3186 shall be followed as if the offense were a 'crime provided for by such treaty' as described in section 3184.

**"(c) CRITERIA FOR AUTHORIZATION OF COMPLAINTS –** The Attorney General may authorize the filing of a complaint described in subsection (b) only upon a certification

**"(1) by the Attorney General, that in the judgment of the Attorney General—**

**"(A) the offense for which extradition is sought is a serious offense, and**

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“(B) submission of the extradition request would be important to the law enforcement interests of the United States or otherwise in the interests of justice; and

“(2) by the Secretary of State, that in the judgment of the certifying official, based on information then known -

“(A) submission of the request would be consistent with the foreign policy interests of the United States;

“(H) the facts and circumstances of the request, including humanitarian considerations, do not appear likely to present a significant impediment to the ultimate surrender of the person if found extraditable; and

“(C) the foreign government submitting the request is not submitting the request in order to try or punish the person sought for extradition primarily on the basis of the race, religion, nationality, or political opinions of that person

“(d) LIMITATIONS ON DELEGATION AND JUDICIAL REVIEW -

“(1) DELEGATION BY ATTORNEY GENERAL, JUDICIAL REVIEW -

The authorities and responsibilities of the Attorney General under subsection (c) may be delegated only to the Deputy Attorney General

“(2) DELEGATION - The authorities and responsibilities of the Secretary of State set forth in this subsection may be delegated only to the Deputy Secretary of State.

1           “(3) **LIMITATION ON JUDICIAL REVIEW** – The authorities and  
2 responsibilities set forth in this subsection are not subject to judicial review.

3           “(e) **CASES OF URGENCY** –

4           “(1) **IN GENERAL** – In any case of urgency, the Attorney General may, with  
5 the concurrence of the Secretary of State and before any formal certification  
6 under subsection (c), authorize the filing of a complaint seeking the provisional  
7 arrest and detention of the person sought before the receipt of documents or other  
8 proof in support of a formal request for extradition

9           “(2) **FILING OF COMPLAINTS, ORDER BY JUDICIAL OFFICER** –

10           “(A) **FILING** – A complaint filed under this subsection shall be filed in the  
11 same manner as provided in section 3184.

12           “(B) **ORDERS** – Upon the filing of a complaint under subparagraph (A)  
13 and a finding that the facts recited in the complaint constitutes probable cause  
14 to believe that a serious crime was committed by the person sought, the  
15 appropriate judicial officer may issue an order for the provisional arrest and  
16 detention of the person.

17           “(C) **RELEASES** – If, not later than 45 days after the arrest, the formal  
18 request for extradition and documents in support of that are not received by  
19 the Department of State, the appropriate judicial officer may order that a  
20 person detained pursuant to this subsection be released from custody

21           “(f) **HEARINGS** --



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1           “(1) IN GENERAL Subject to subsection (h), upon the filing of a complaint  
2 for extradition and receipt of documents or other proof in support of the request  
3 of a foreign government for extradition, the appropriate judicial officer shall hold  
4 a hearing to determine whether the person sought for extradition is extraditable.

5           “(2) CRITERIA FOR EXTRADITION – Subject to subsection (g) in a  
6 hearing conducted under paragraph (1), the judicial officer shall find a person  
7 extraditable if the officer finds –

8               “(A) probable cause to believe that the person before the judicial officer is  
9 the person sought in the foreign country of the requesting foreign  
10 government,

11               “(B) probable cause to believe that the person before the judicial officer  
12 committed the offense for which that person is sought, or was duly convicted  
13 of that offense in the foreign country of the requesting foreign government,

14               “(C) that the conduct upon which the request for extradition is based, if  
15 that conduct occurred within the United States, would be a serious offense  
16 punishable by imprisonment for more than 10 years under the laws of –

17                       “(i) the United States;

18                       “(ii) the majority of the States in the United States; or

19                       “(iii) of the State in which the fugitive is found; and

20               “(D) no defense to extradition under subsection (f) has been established.

21           “(g) LIMITATION OF EXTRADITION –

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“(1) **IN GENERAL** – A judicial officer shall not find a person extraditable under this section if the person has established that the offense for which extradition is sought is –

“(A) an offense for which the person is being proceeded against, or has been tried or punished, in the United States; or

“(B) a political offense.

“(2) **POLITICAL OFFENSES** – For purposes of this section, a political offense does not include –

“(A) a murder or other violent crime against the person of a head of state of a foreign state, or of a member of the family of the head of state;

“(B) an offense for which both the United States and the requesting foreign government have the obligation pursuant to a multilateral international agreement to –

“(i) extradite the person sought; or

“(ii) submit the case to the competent authorities for decision as to prosecution, or

“(C) a conspiracy or attempt to commit any of the offenses referred to in subparagraph (A) or (B), or aiding or abetting a person who commits or attempts to commit any such offenses.

“(h) **LIMITATIONS ON FACTORS FOR CONSIDERATION AT HEARINGS**

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“(1) **IN GENERAL** At a hearing conducted under subsection (a), the judicial officer conducting the hearing shall not consider issues regarding

“(A) humanitarian concerns;

“(B) the nature of the judicial system of the requesting foreign government; and

“(C) whether the foreign government is seeking extradition of a person for the purpose of prosecuting or punishing the person because of the race, religion, nationality or political opinions of that person.

“(2) **CONSIDERATION BY SECRETARY OF STATE** – The issues referred to in paragraph (1) shall be reserved for consideration exclusively by the Secretary of State as described in subsection (c)(2).

“(3) **ADDITIONAL CONSIDERATION** – Notwithstanding the certification requirements described in subsection (c)(2), the Secretary of State may, within the sole discretion of the Secretary –

“(A) in addition to considering the issues referred to in paragraph (1) for purposes of certifying the filing of a complaint under this section, consider those issues again in exercising authority to surrender the person sought for extradition in carrying out the procedures under section 3184 and 3186, and

“(B) impose conditions on surrender including those provided in subsection (i).

“(i) **CONDITIONS OF SURRENDER, ASSURANCES** –

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1           “(1) **IN GENERAL** – The Secretary of State may –

2                   “(A) impose conditions upon the surrender of a person sought for  
3                   extradition under this section; and

4                   “(B) require such assurances of compliance with those conditions, as the  
5                   Secretary determines to be appropriate.

6           “(2) **ADDITIONAL ASSURANCES** – In addition to imposing conditions and  
7           requiring assurances under paragraph (1), the Secretary shall demand, as a  
8           condition of the extradition of the person that is sought for extradition –

9                   “(A) in every case, an assurance the Secretary determines to be  
10                  satisfactory that the person shall not be tried or punished for an offense other  
11                  than the offense for which the person has been extradited, absent the consent  
12                  of the United States, and

13                  “(B) in a case in which the offense for which extradition is sought is  
14                  punishable by death in the foreign country of the requesting foreign  
15                  government and is not so punishable under the applicable laws in the United  
16                  States, an assurance the Secretary determines to be satisfactory that the death  
17                  penalty –

18                          “(i) shall not be imposed; or

19                          “(ii) if imposed, shall not be carried out.”.

20           (c) Chapter 309 of title 18, United States Code, is amended –

(1) in section 3181, by inserting ", other than sections 3197 and 3198," after "The provisions of this chapter" each place that term appears; and

(2) in section 3186, by striking "or 3185" and inserting ", 3185, 3197 or 3198".

(d) The table of sections for chapter 209 of title 28, United States Code, is amended by inserting at the end the following:

"3197. Extradition for offenses not covered by an existing treaty."

"3198. Extradition absent a treaty".

#### **Title IV: Enhancing Prosecution and Prevention of Terrorist Crimes**

##### **Subtitle A: Increased Penalties and Protections Against Terrorist Acts**

###### **Sec. 401: Terrorism Hoaxes.**

(a) PROHIBITION ON HOAXES – Chapter 47 of title 18, United States Code, is amended by inserting after section 1036 the following.

"Sec. 1037. False information and hoaxes

"(a) CRIMINAL VIOLATION – Whoever engages in any conduct,

with intent to convey false or misleading information, under circumstances

where such information may reasonably be believed and where such

information concerns an activity which would constitute a violation of section

175, 229, 831, or 2332a, shall be fined under this title or imprisoned not more

than 5 years, or both.

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1           “(b) CIVIL ACTION – Whoever engages in any conduct, with intent  
2           to convey false or misleading information, under circumstances where such  
3           information concerns an activity which would constitute a violation of section  
4           175, 229, 831, or 2332a, is liable in a civil action to any party incurring  
5           expenses incident to any emergency or investigative response to that conduct,  
6           for those expenses.

7           “(c) REIMBURSEMENT – The court, in imposing a sentence on a  
8           defendant who has been convicted of an offense under subsection (a), shall  
9           order the defendant to reimburse any person or entity incurring any expenses  
10          incident to any emergency or investigative response to that conduct, for those  
11          expenses. For the purpose of this provision, a State or local government, or  
12          private not-for-profit organization that provides fire or rescue services that is  
13          dispatched and responds to such an emergency shall be entitled to the greater  
14          of actual costs of response or \$1,000. A person ordered to make  
15          reimbursement under this subsection shall be jointly and severally liable for  
16          such expenses with each other person, if any, who is ordered to make  
17          reimbursement under this subsection for the same expenses. An order of  
18          reimbursement under this subsection shall, for the purposes of enforcement, be  
19          treated as a civil judgment.”.

(b) CLERICAL AMENDMENT The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by adding after the item for section 1036 the following: “1037. **False information and hoaxes**”

**Sec. 402: Providing Material Support to Terrorism**

(a) Section 2339A(a) of title 18, United States Code, is amended by –

(1) designating the first sentence as paragraph (1);

(2) designating the second sentence as paragraph (3);

(3) inserting after “for life” the following:

“(2) Whoever, in or affecting interstate or foreign commerce, or while outside the United States and a national of the United States (as defined in section 1203(c)) or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealth, territories or possessions), 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, an act of international or domestic terrorism (as defined in section 2331), or in the preparation for, or in carrying out, the concealment or escape from the commission of any such act, or attempts or conspires to do so, shall be punished as provided under paragraph (1)”, and

(4) by inserting “act or” after “underlying”

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(b) Section 2331(1)(B) and (5)(B) of title 18, United States Code, are each amended by inserting “by their nature or context” after “appear”.

(c) Section 2339A(b) of title 18, United States Code, is amended by adding at the end the following: “The term ‘training’ means instruction or teaching designed to impart a specific skill.”

(d) Section 2339B(g)(4) of title 18, United States Code, is amended to read as follows:

“(4) the term ‘material support or resources’ has the same meaning as in section 2339A (including the definition of ‘training’ in that section), except that no person may be prosecuted under this section in connection with the term ‘personnel’ unless that person has knowingly provided, attempted to provide, or conspired to provide a terrorist organization with one or more individuals (which may be or include himself) to work in concert with the organization or under its direction or control.”.

**Sec. 403: Weapons of Mass Destruction.**

(a) **EXPANSION OF JURISDICTIONAL BASES AND SCOPE.** Section 2332a of title 18, United States Code, is amended by

(1) amending paragraph (a)(2) to read as follows

“(2) against any person or property within the United States,

and



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“(A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;

“(B) such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce;

“(C) any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or

“(D) the offense, or the results of the offense, affect interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce.”;

(2) in paragraph (a)(3), deleting the comma at the end and inserting “; or”;

(3) in subsection (a), adding the following at the end

“(4) against any property within the United States that is owned, leased, or used by a foreign government.”;

(4) in paragraph (c)(1), deleting “and” at the end,

(5) in paragraph (c)(2), deleting the period at the end and inserting “; and”;

and

(6) in subsection (c), inserting the following at the end:

“(3) the term ‘property’ includes all real and personal  
property.”

(b) **RESTORATION OF THE COVERAGE OF CHEMICAL WEAPONS** Section  
2332a of title 18, United States Code, as amended by subsection (a), is further amended by

(1) in the caption, deleting “certain”;

(2) in subsection (a), deleting “(other than a chemical weapon as that term is  
defined in section 229F)”; and

(3) in subsection (b), deleting “(other than a chemical weapon (as that term is  
defined in section 229F))”

(c) **CONFORMING AMENDMENT TO NEW SELECT AGENT**

**REGULATIONS.** (1) Section 175b(a)(1) of title 18, United States Code, is amended by  
striking “as a select agent in Appendix A” and all that follows and inserting the following: “as  
a non-overlap or overlap select biological agent or toxin in [sections 73.4 and 73.5] of title  
42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act,  
and is not exempted under [section 73.6] of title 42, Code of Federal Regulations.”

(2) The amendment made by paragraph (1) shall take effect at the same time  
that [sections 73.4, 73.5, and 73.6] of title 42, Code of Federal Regulations, become  
effective.

**Sec. 404: Use of Encryption to Conceal Criminal Activity.**

(a) Part 1 of title 18, United States Code, is amended by inserting after chapter  
123 the following

**"CHAPTER 124 – ENCRYPTED WIRE OR ELECTRONIC  
COMMUNICATIONS AND STORED ELECTRONIC INFORMATION**

**"Sec. 2801. Unlawful use of encryption**

**"(a) Any person who, during the commission of a felony under  
Federal law, knowingly and willfully encrypts any incriminating  
communication or information relating to that felony –**

**"(1) in the case of a first offense under this section,  
shall be imprisoned not more than 5 years, fined under this title,  
or both, and**

**"(2) in the case of a second or subsequent offense  
under this section, shall be imprisoned not more than 10 years,  
fined under this title, or both.**

**"(b) The terms 'encrypt' and 'encryption' refer to the  
scrambling (and descrambling) of wire communications, electronic  
communications, or electronically stored information, using  
mathematical formulas or algorithms in order to preserve the  
confidentiality, integrity, or authenticity of, and prevent unauthorized  
recipients from accessing or altering, such communications or  
information "**

**(b) The table of Chapters is amended by inserting after to Chapter 123, the following**

“Chapter 124 – Encrypted Wire or Electronic Communications and  
Stored Electronic Information”

**Sec. 405. Presumption for Pretrial Detention in Cases Involving Terrorism.**

Section 3142 of title 18, United States Code, is amended –

(1) in subsection (e) –

(A) by inserting “or” before “the Maritime”; and

(B) by striking “, or an offense under section 924(c), 956(a), or 2332b of title  
18 of the United States Code” and inserting “, an offense under section 924(c), or an  
offense described in section 2332b(g)(5)(B)”, and

(2) in subsections (f)(1)(A) and (g)(1), by inserting “or an offense described in section  
2332b(g)(5)(B)” after “violence”.

**Sec. 406: “Mass Transportation Vehicle” Technical Correction**

(a) Section 1993 of title 18, United States Code, is amended –

(1) in paragraph (7), by deleting “and” at the end,

(2) in paragraph (8), by deleting the period at the end in inserting in lieu  
thereof “; and”; and

(3) by inserting at the end thereof the following

“(9) ‘The term ‘vehicle’ means any carriage or other  
contrivance used, or capable of being used, as a means of  
transportation on land, water, or throughout the air.”.

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1           (b)     The title of chapter 97 of title 18, United States Code, is amended to read  
2     “RAILROADS AND OTHER MASS TRANSPORTATION SYSTEMS”

3           (c)     The table of chapters for Part 1 of title 18, United States Code, is amended in  
4     the item relating to chapter 97 by amending the title to read “Railroads and other mass  
5     transportation systems”.

6           (d)     The title of section 1993 of title 18, United States Code, is amended by adding  
7     “on land, water, or through the air” after “systems”.

8           (e)     The table of sections for chapter 97 of title 18, United States Code, is amended in  
9     the item relating to section 1993 by adding “on land, water, or through the air” after  
10    “systems”.

11    **Sec. 407: Acts of Terrorism Transcending National Boundaries.**

12           (a)     Section 2332b of title 18, United States Code, is amended –

13                   (1) in subsection (a)(1), by inserting “in a case” before “involving”,

14                   (2) in subsection (b)(1)(A), by inserting “any person travels in interstate or  
15     foreign commerce or” before “the mail”; and

16                   (3) in subsection (g) –

17                           (A) by amending paragraph (1) to read as follows

18   “(1) the term ‘conduct transcending national  
19     boundaries’ means conduct engaged in

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“(A) by the defendant or another person outside  
of the United States, in addition to conduct occurring in  
the United States,

“(H) at the instigation of a foreign power or of a  
person outside of the United States; or

“(C) in furtherance of an objective of a foreign  
power or of a person outside of the United States ”,

(B) in paragraph (4), by striking “and” at the end,

(C) in paragraph (5), by striking the period at the end and inserting “;  
and”; and

(D) by inserting at the end the following:

“(6) the term ‘foreign power’ has the meaning given  
that term in section 101 of the Foreign Intelligence  
Surveillance Act of 1978 (50 U.S.C. 1801).”

“(b) Section 1958 of title 18, United States Code, is amended –

(1) in subsection (a), by striking “facility in” and inserting “facility of”, and

(2) in subsection (b)(2), by inserting “or foreign” after “interstate”.

**Sec. 408: Postrelease Supervision of Terrorists.**

Section 3583 of title 18, United States Code, is amended –

(1) in subsection (e)(3), by inserting “on any such revocation” after “required to  
serve”,

(2) in subsection (h), by striking “that is less than the maximum term of imprisonment authorized under subsection (e)(3)”; and

(3) in subsection (j)

(A) by striking “, the commission” and all that follows through “person,” ; and

(B) by inserting “and the sentence for any such offense shall include a term of supervised release of at least 10 years” before the period

**Sec. 409: Suspension, Revocation, and Denial of Certificates for Civil Aviation or National Security Reasons.**

Chapter 447 of title 49, United States Code, is amended

(1) in the chapter analysis, by inserting at the end the following

“44727 Suspension, revocation, and denial of certificates for civil aviation or national security reasons.”, and

(2) by inserting at the end the following:

**“§ 44727. Suspension, revocation, and denial of certificates for civil aviation or national security reasons**

**“(a) Suspension of Certificate. –**

**“(1) Notification of Initial Threat Determination.** – The Under Secretary of Transportation for Security or designee shall notify the Administrator of the Federal Aviation Administration of the identity of

**“(A) any holder of a certificate issued by the Administrator under this chapter on whom the Under Secretary or designee has**

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1 served an initial determination that the certificate holder poses a threat  
2 to civil aviation or national security, or

3 “(B) any holder of a certificate issued by the Administrator  
4 under this chapter on whom the Under Secretary or designee has  
5 served an initial determination that an individual who has a controlling  
6 or ownership interest in the certificate holder poses a threat to civil  
7 aviation or national security by virtue of that interest.

8 “(2) **Suspension.** – The Administrator of the Federal Aviation Administration  
9 shall issue an order suspending any certificate identified by the Under Secretary or  
10 designee pursuant to paragraph (1)(A) or (B). The Administrator's order of  
11 suspension shall be immediately effective and remain effective until–

12 “(A) the Administrator withdraws the order; or

13 “(B) the Administrator issues an order revoking the certificate

14 The Administrator's order of suspension is not subject to administrative or judicial  
15 review

16 “(3) **Opportunity to Respond to Initial Threat determination.** -- The  
17 Under Secretary or designee shall afford certificate holders and persons with a  
18 controlling or ownership interest identified in paragraph (1)(A) or (B) notice and an  
19 opportunity to respond to an initial determination that the certificate holders or  
20 persons pose a threat to civil aviation or national security prior to the issuance of a  
21 final threat determination.



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1           **“(4) Judicial Review of Initial Threat Determination.** -- The initial  
2           determination by the Under Secretary or designee that a certificate holder or person  
3           with a controlling or ownership interest identified in subsection (a)(1)(A) or (B) poses  
4           a threat to civil aviation or national security is not subject to judicial review.

5           **“(b) Revocation of Certificate.** --

6           **“(1) Notification of Final Threat Assessment** -- The Under Secretary or  
7           designee shall notify the Administrator of the identity of any certificate holder  
8           described in subsection (a)(1)(A) or (B) on whom --

9                   “(A) a withdrawal of initial threat determination has been served; or

10                   “(B) a final threat determination has been served.

11           The Under Secretary or designee must issue either a withdrawal or final threat  
12           determination within 60 days of the notification of initial threat determination.

13           **“(2) Revocation.** -- The Administrator shall issue an order revoking the  
14           certificate held by a certificate holder described in subsection (a)(1)(A) or (B) on  
15           whom the Under Secretary or designee has served a final determination that the  
16           certificate holder poses a threat to civil aviation or national security or that a person  
17           who has a controlling or ownership interest in the certificate holder poses a threat to  
18           civil aviation or national security by virtue of that interest. The Administrator's order  
19           of revocation shall be immediately effective.

20           **“(3) Review of Final Threat Determination and Order of Revocation.** --

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1           “(A) A final threat determination by the Under Secretary or designee  
2           or an order of revocation issued by the Administrator with regard to a person  
3           who is neither a citizen nor permanent resident alien of the United States is  
4           not subject to administrative or judicial review.

5           “(B) A person who is a citizen or permanent resident alien of the  
6           United States disclosing a substantial interest in a final threat determination by  
7           the Under Secretary or designee under paragraph (1) and an order of  
8           revocation issued by the Administrator under paragraph (2) may seek review  
9           of those actions by filing a petition for review in the United States Court of  
10          Appeals for the District of Columbia Circuit or in the court of appeals of the  
11          United States for the circuit in which the person resides. The petition for  
12          review must be filed not later than 30 days after the issuance of the order of  
13          revocation. The court may allow the petition to be filed after the 30th day  
14          only if there are reasonable grounds for not filing by the 30th day. The court’s  
15          review is limited to determining whether it was arbitrary, capricious, or  
16          otherwise not according to law for the Under Secretary to make the final  
17          threat determination and for the Administrator to issue the order of  
18          revocation.

19          “(C) In any judicial review of the Under Secretary’s determination and  
20          the Administrator’s order under paragraphs (1) and (2), if the actions were  
21          based on classified information (as defined in section 1(a) of the Classified

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Information Procedures Act) or sensitive security information (as defined in regulations issued under section 40119(b) of this title) such information may be submitted to the reviewing court ex parte and in camera

**“(d) Denial of Certificate. –**

**“(1) Notification of Threat Determination.--** The Under Secretary or designee shall notify the Administrator of the identity of

**“(A) any person on whom the Under Secretary or designee has served an initial or final determination that the person poses a threat to civil aviation or national security, or**

**“(B) any entity on whom the Under Secretary or designee has served an initial or final determination that a person who has a controlling or ownership interest in the entity poses a threat to civil aviation or national security by virtue of that interest.**

**“(2) Denial.--**The Administrator may not issue a certificate to any person or entity identified in paragraph (1) unless the Under Secretary or designee has withdrawn a determination that the person poses a threat. A denial of certificate based on an initial threat determination is not subject to administrative or judicial review

**“(3) Opportunity to Respond to Initial Threat determination. --** The Under Secretary or designee shall afford applicants for certificates and persons with a controlling or ownership interest identified in paragraph (1)(A) or (B) notice and an

1 opportunity to respond to an initial determination that an applicant for a certificate or  
2 person with a controlling or ownership interest in an applicant poses a threat to civil  
3 aviation or national security prior to the issuance of a final determination of threat  
4 assessment.

5 **“(4) Review of Initial Threat Determination.** -- The initial determination by  
6 the Under Secretary or designee that an applicant for a certificate or person with a  
7 controlling ownership interest in an applicant poses a threat to civil aviation or  
8 national security is not subject to judicial review.

9 **“(5) Review of Final Threat Determination and Certificate Denial –**

10 **“(A)** A final threat determination by the Under Secretary or designee  
11 and the denial of certificate by the Administrator under this subsection with  
12 regard to person who is not a citizen or resident alien of the United States is  
13 not subject to administrative or judicial review

14 **“(B)** A citizen or permanent resident alien of the United States may  
15 seek review of a final threat determination by the Under Secretary or designee  
16 and denial by the Administrator under this subsection by filing a petition for  
17 review in the United States Court of Appeals for the District of Columbia  
18 Circuit or in the court of appeals of the United States for the circuit in which  
19 the person resides. The petition for review must be filed no later than the 30th  
20 day after the issuance of the denial. The court may allow the petition to be  
21 filed after the 30th day only if there are reasonable grounds for not filing by

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1           the 30th day. The court's review is limited to determining whether it was  
2           arbitrary, capricious, or otherwise not according to law for the Under  
3           Secretary to make the final threat determination and for the Administrator to  
4           deny a certificate.

5                   “(C) In any judicial review of the Under Secretary's final threat  
6           determination and the Administrator's denial, if the actions were based on  
7           classified information (as defined in section 1(a) of the Classified Information  
8           Procedures Act) or sensitive security information (as defined in regulations  
9           issued under section 40119(h) of this title) such information may be submitted  
10          to the reviewing court *ex parte* and *in camera*.

11          “(e) **Coordination with the Attorney General** – Nothing in this section is intended  
12          to alter any provisions in section 44939 of this title. The Under Secretary shall coordinate  
13          any request to the Administrator of the Federal Aviation Administration under this section  
14          with the Attorney General on matters within the Attorney General's jurisdiction under section  
15          44939.”.

16          **Sec. 410. No Statute of Limitations for Terrorism Crimes.**

17               (a) Section 3286(b) of title 18, United States Code, is amended by striking “, if the  
18          commission” and all that follows through “person”.

19               (b) The amendment made by this section shall apply to the prosecution of any offense  
20          committed before, on, or after the date of the enactment of this section.

21          **Sec. 411: Penalties for Terrorist Murders**

(a) Chapter 113B of title 18, United States Code, is amended –

(1) in the chapter analysis, by inserting at the end the following:

“2339D. Terrorist offenses resulting in death.”; and

(2) by inserting at the end the following:

**“2339D. Terrorist offenses resulting in death**

“A person who, in the course of an offense listed in section 2332b(g)(5)(B) or of terrorist activities (as defined in section 2510), engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.”

(b) Section 3592(c)(1) of title 18, United States Code, is amended by inserting

“section 2339D (terrorist offenses resulting in death),” after “destruction).”.

#### **Subtitle B: Incapacitating Terrorism Financing**

##### **Sec. 421: Increased Penalties for Terrorism Financing**

Section 206 of the International Emergency Economic Powers Act (50 U.S.C. § 1705) is amended

(1) in subsection (a), by deleting “\$10,000” and inserting “\$50,000”

(2) in subsection (b), by deleting “\$50,000” and inserting “\$250,000”, and by deleting “ten years” and inserting “twenty years”

##### **Sec. 422: Money Laundering Through Hawalas**

Section 1956 of title 18, United States Code, is amended by adding at the end the following:

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“(j)(1) For the purposes of subsections (a)(1) and (a)(2), a transaction, transportation, transmission, or transfer of funds shall be considered to be one involving the proceeds of specified unlawful activity, if the transaction, transportation, transmission, or transfer is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity.

“(2) As used in this section, a “dependent transaction” is one that completes or complements another transaction or one that would not have occurred but for another transaction.

**Sec. 423: Suspension of Tax-Exempt Status of Designated Foreign Terrorist Organizations.**

(a) Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

**“(p) SUSPENSION OF TAX-EXEMPT STATUS OF DESIGNATED TERRORIST ORGANIZATIONS.**

“(1) **IN GENERAL.** The exemption from tax under subsection (a) with respect to any organization shall be suspended during any period in which the organization is a designated terrorist organization

“(2) **DESIGNATED TERRORIST ORGANIZATION.** For purposes of this subsection, the term ‘designated terrorist organization’ means an organization which

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“(A) is designated as a terrorist organization by an Executive Order or under the authority of

“(i) section 212(a)(3) or 219 of the Immigration and Nationality Act,

“(ii) the International Emergency Economic Powers Act, or

“(iii) section 5 of the United Nations Participation Act, or

“(B) is a person listed in or designated by an Executive Order as supporting terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989)

“(3) DENIAL OF DEDUCTION. No deduction shall be allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any contribution to an organization during the period such organization is a designated terrorist organization.

“(4) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION. Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a



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determination or listing under paragraph (2), or a denial of a deduction under paragraph (3) in any administrative or judicial proceeding relating to the organization's Federal tax liability

**"(5) CREDIT OR REFUND IN CASE OF ERRONEOUS  
DESIGNATION**

**"(A) IN GENERAL.** If an erroneous designation of an organization pursuant to 1 or more of the provisions of law described in paragraph (2) results in an overpayment of income tax for any taxable year with respect to such organization, credit or refund (with interest) with respect to such overpayment shall be made.

**"(B) WAIVER OF LIMITATIONS.** If credit or refund of any overpayment of tax described in subparagraph (A) is prevented at any time before the close of the 1-year period beginning on the date of the determination of such credit or refund by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period."

(b) If the tax exemption of any organization is suspended under section 501(p) of the Internal Revenue Code of 1986 (as added by subsection (a)), the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to

1 taxpayers of such suspension and of the fact that contributions to such organization are not  
2 deductible during the period of such suspension.

3 **Sec. 424: Denial of Federal Benefits to Terrorists.**

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

5 (1) in the chapter analysis, by adding at the end the following:

6 “2339C. Denial of federal benefits to terrorists”; and

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

8 “§ 2339C. Denial of federal benefits to terrorists

9 “(a) In general. Any individual who is convicted of an offense listed  
10 in section 2332b(g)(5)(B) shall, as provided by the court on motion of the  
11 government, be ineligible for any or all Federal benefits for any term of years  
12 or for life

13 “(b) Definition. – As used in this section, ‘Federal benefit’ has the  
14 meaning given that term in section 421(d) of the Controlled Substances Act  
15 (21 U.S.C. 862(d)).

16 **Sec. 425: Corrections to Financing of Terrorism Statute.**

17 (a) Section 2339C(c)(2) of title 18, United States Code, is amended by

18 (1) striking “resources, or funds” and inserting “resources, or any funds or  
19 proceeds of such funds”;

20 (2) in subparagraph (A), striking “were provided” and inserting “are to be  
21 provided, or knowing that the support or resources were provided.”, and

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1 (3) in subparagraph (B) -

2 (A) striking "or any proceeds of such funds", and

3 (B) striking "were provided or collected" and inserting "are to be  
4 provided or collected, or knowing that the funds were provided or collected,".

5 (b) Section 2339C(e) is amended by—

6 (1) striking "and" at the end of paragraph (12),

7 (2) redesignating paragraph (13) as paragraph (14); and

8 (3) inserting after paragraph (12) the following new paragraph.

9 "(13) the term 'material support or resources' has the same meaning as in  
10 section 2339A(b) of this title, and"

11 (c) Section 2332b(g)(5)(B) of title 18, United States Code, is amended by inserting  
12 ")" after "2339C (relating to financing of terrorism)"

13 **Sec. 426: Terrorism-Related Specified Activities for Money Laundering.**

14 (a) AMENDMENTS TO RICO. Section 1961(1) of title 18, United States Code, is  
15 amended -

16 (1) in subparagraph (B), by inserting "section 1960 (relating to illegal money  
17 transmitters)," before "sections 2251", and

18 (2) in subparagraph (F), by inserting "section 274A ( relating to unlawful  
19 employment of aliens)," before "section 277".

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1           (b) AMENDMENTS TO SECTION 1956(c)(7).— Section 1956(c)(7)(D) of title 18,  
2   United States Code, is amended by –

3                   (1) striking “or section 2339A or 2339B or 2339B” and inserting “section  
4           2339A or 2339B”;

5                   (2) inserting “. or section 2339C (relating to financing of terrorism)” before  
6           “of this title”: and

7                   (3) striking “or any felony violation of the Foreign Corrupt Practices Act” and  
8           inserting “any felony violation of the Foreign Corrupt Practices Act, or any violation  
9           of section 208 of the Social Security Act (relating to obtaining funds through misuse  
10          of a social security number)”

11   **Sec. 427: Assets of Persons Committing Terrorist Acts Against Foreign Countries or**  
12   **International Organizations.**

13          Section 981(a)(1)(G) of title 18, United States Code, is amended by –

14               (1) striking “or” at the end of clause (ii);

15               (2) striking the period at the end of clause (iii) and inserting “; or”; and

16               (3) inserting the following after clause (iii)

17                               “(iv) of any individual, entity, or organization engaged  
18                               in planning or perpetrating any act of international terrorism  
19                               (as defined in section 2331) against any international  
20                               organization (as defined in section 209 of the State Department  
21                               Basic Authorities Act of 1956) or against any foreign

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Government, its citizens or residents, or their property. Where the property sought for forfeiture is located beyond the territorial boundaries of the United States, an act in furtherance of such planning or perpetration must have occurred within the jurisdiction of the United States.”.

**Sec. 428: Technical and Conforming Amendments Relating to the USA PATRIOT Act.**

(a) TECHNICAL CORRECTIONS.-- (1) Sections 5312(a)(3)(C) and 5324(b) of title 31 are amended by striking “5333” each time it appears and inserting “5331”

(2) Section 322 of Pub. L. 107-56 is amended by striking “title 18” and inserting “title 28”.

(3) Section 5318(k)(1)(B) of title 31, United States Code, is amended by striking “5318A(f)(1)(B)” and inserting “5318A(e)(1)(B)”.

(4) Section 5332(a)(1) of title 31, United States Code, is amended by striking “article of luggage” and inserting “article of luggage or mail”

(5) Section 1956(b)(3) and (4) of title 18, United States Code, are amended by striking “described in paragraph (2)” each time it appears; and

(6) Section 981(k) of title 18, United States Code, is amended by striking “foreign bank” each time it appears and inserting “foreign bank or financial institution”

(b) CODIFICATION OF SECTION 316. (1) Chapter 46 of title 18, United States Code, is amended –

1 (A) in the chapter analysis, by inserting at the end the following.

2 "987. Anti-terrorist forfeiture protection."; and

3 (B) by inserting at the end the following.

4 **"§ 987. Anti-terrorist forfeiture protection**

5 **"(a) Right to contest.** – An owner of property that is confiscated under this chapter  
6 or any other provision of law relating to the confiscation of assets of suspected international  
7 terrorists, may contest that confiscation by filing a claim in the manner set forth in the Federal  
8 Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims),  
9 and asserting as an affirmative defense that

10 **"(1)** the property is not subject to confiscation under such provision of law; or

11 **"(2)** the innocent owner provisions of section 983(d) apply to the case

12 **"(b) Evidence.** – In considering a claim filed under this section, a court may admit  
13 evidence that is otherwise inadmissible under the Federal Rules of Evidence, if the court  
14 determines that the evidence is reliable, and that compliance with the Federal Rules of  
15 Evidence may jeopardize the national security interests of the United States.

16 **"(c) Clarifications.** –

17 **"(1) Protection of rights.** – The exclusion of certain provisions of Federal law  
18 from the definition of the term 'civil forfeiture statute' in section 983(i) shall not be  
19 construed to deny an owner of property the right to contest the confiscation of assets  
20 of suspected international terrorists under

21 **"(A)** subsection (a) of this section;

1                   “(B) the Constitution, or

2                   “(C) subchapter II of chapter 5 of title 5, United States Code

3                   (commonly known as the ‘Administrative Procedure Act’).

4                   “(2) **Savings clause.** – Nothing in this section shall limit or otherwise affect  
5                   any other remedies that may be available to an owner of property under section 983  
6                   or any other provision of law.”.

7                   (2) Subsections (a), (b), and (c) of section 316 of Pub. L. 107-56 are repealed

8                   (c) **CONFORMING AMENDMENTS CONCERNING CONSPIRACIES.**

9                   (1) Section 33(a) of title 18, United State Code is amended by inserting “or  
10                  conspires” before “to do any of the foregoing”.

11                  (2) Section 1366(a) of title 18, United State Code, is amended by—

12                         (A) striking “attempts” each time it appears and inserting “attempts or  
13                         conspires”; and

14                         (B) inserting “, or if the object of the conspiracy had been achieved,”  
15                         after “the attempted offense had been completed”.

16

17                   **Title V: Enhancing Immigration and Border Security**

18                   **Sec. 501: Expatriation of Terrorists.**

19                   Section 349 of the Immigration and Nationality Act (8 U.S.C. 1481) is amended

20                   (1) by amending subsection (a)(3) to read as follows

21                         “(3) (A) entering, or serving in, the armed forces of a foreign state if

1                   “(i) such armed forces are engaged in hostilities against the United  
2                   States; or

3                   “(ii) such person serves as a commissioned or non-commissioned  
4                   officer; or

5                   “(B) joining or serving in, or providing material support (as defined in  
6                   section 2339A of title 18, United States Code) to, a terrorist organization  
7                   designated under section 212(a)(3) or 219 or designated under the  
8                   International Emergency Economic Powers Act, if the organization is engaged  
9                   in hostilities against the United States, its people, or its national security  
10                  interests.”; and

11               (2) by adding at the end of subsection (b) the following: “The voluntary commission  
12               or performance of an act described in subsection (a)(3)(A)(i) or (B) shall be prima facie  
13               evidence that the act was done with the intention of relinquishing United States nationality.”.

14       **Sec. 502: Enhanced Criminal Penalties for Violations of Immigration and Nationality**  
15       **Act .**

16               (a) **ENTRY CRIMES.** Section 275(a)(1) of the Immigration and Nationality Act (8  
17       U.S.C. 1325(a)(1)) is amended by

18                   (1) striking “6 months” and inserting “one year”; and

19                   (2) striking “2 years” and inserting “3 years”.

20               (b) **REENTRY AFTER REMOVAL.** – Section 276 of the Immigration and  
21       Nationality Act (8 U.S.C. 1326) is amended --



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(1) in subsection (a), by striking “2 years” and inserting “3 years”; and

(2) in subsection (b)(3), by striking “10 years” and inserting “20 years”.

(c) **ALIEN SMUGGLING** – Section 274(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(2)(A)) is amended by striking “one year” and inserting “3 years”.

(d) **REGISTRATION OFFENSES.** – (1) Section 264(e) of the Immigration and Nationality Act (8 U.S.C. 1304(e)) is amended by striking “be fined not to exceed \$100 or be imprisoned not more than 30 days” and inserting “be fined under title 18, United States Code, or imprisoned not more than 90 days”.

(2) Section 266 of the Immigration and Nationality Act (8 U.S.C. 1306) is amended –

(A) in subsection (b), by striking “be fined not to exceed \$200 or be imprisoned not more than thirty days” and inserting “be fined under title 18, United States Code, or imprisoned not more than six months”, and

(B) in subsection (c), by striking “be fined not to exceed \$1000, or be imprisoned not more than six months” and inserting “be fined under title 18, United States Code, or imprisoned not more than one year”

(e) **UNLAWFUL VOTING.** – Section 611(b) of title 18, United States Code, is amended by striking “one year” and inserting “three years”

**Sec. 503: Inadmissibility and Removability of National Security Aliens or Criminally Charged Aliens**

(a) Section 212(a)(3) of the Immigration and Nationality Act, as amended, is amended by adding at the end thereof the following new subparagraphs:

“(G) An alien whose entry or proposed activities in the United States the Attorney General has reason to believe would pose a danger to the national security of the United States as defined in section 219(c)(2) of the Act is inadmissible.

“(H) An alien whom the Attorney General has reason to believe is charged with or has committed a serious criminal offense in a country other than the United States is inadmissible.”.

(b) Section 237(a)(4) of Immigration and Nationality Act is amended by adding at the end thereof the following new subparagraphs:

“(E) An alien whose presence or activities in the United States the Attorney General has reason to believe pose a danger to the national security of the United States, as defined in section 219(c)(2) of the Act is removable

“(F) An alien whom the Attorney General has reason to believe is charged with or has committed a serious criminal offense in a country other than the United States is removable.”.

**Sec. 504: Expedited Removal of Criminal Aliens.**

(a) The caption of Section 238 of the Immigration and Nationality Act is amended to read as follows: “EXPEDITED REMOVAL OF CRIMINAL ALIENS”.

(b) Section 238(b) of the Immigration and Nationality Act is amended to read as follows.

**“(b) Removal of Criminal Aliens. –**

**“(1) The Attorney General may, in the case of an alien described in paragraph (2), determine the deportability of such alien, and issue an order of removal pursuant to the procedures set forth in this subsection or section 240.**

**“(2) An alien is described in this paragraph if the alien, whether or not admitted into the United States, was convicted of any criminal offense covered in 237(a)(2)(A)(iii), (B), (C), or (D), without regard to its date of commission.**

**“(3) The Attorney General in his discretion may at any time execute any order described in paragraph (1), except during the 14 calendar day period after the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to apply for judicial review under section 242, or if the removal has been stayed under section 242(f)(2) of the Act. Notwithstanding any other provision of law including section 2241 of title 28, United States Code, no court other than a court of appeals pursuant to its jurisdiction under section 242 of this Act shall have jurisdiction to review or set aside any order, action, or decision taken or issued**

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1           pursuant to this subsection. Review in the court of appeals shall be  
2           limited to determining whether the petitioner (i) is an alien and (ii) is  
3           subject to a final judgment of conviction for an offense covered in  
4           section 237(a)(2)(A)(iii), (B), (C), or (D).

5           “(4) Proceedings before the Attorney General under this  
6           subsection shall be in accordance with such regulations as the  
7           Attorney General shall prescribe. The Attorney General shall provide  
8           that –

9                   “(A) the alien is given reasonable notice of the charges  
10                  and of the opportunity described in subparagraph (C);

11                  “(B) the alien shall have the privilege of being  
12                  represented (at no expense to the government) by such  
13                  counsel, authorized to practice in such proceedings, as the  
14                  alien shall choose,

15                  “(C) the alien has a reasonable opportunity to inspect  
16                  the evidence and rebut the charges;

17                  “(D) a determination is made for the record that the  
18                  individual upon whom the notice for the proceeding under this  
19                  section is served (either in person or by mail) is, in fact, the  
20                  alien named in such notice,

21                  “(E) a record is maintained for judicial review, and

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“(F) the final order of removal is not adjudicated by the  
same person who issues the charges.

“(5) No alien described in this section shall be eligible for any  
relief from removal that the Attorney General may grant in the  
Attorney General’s discretion.”

(c) Section 238(c) of the Immigration and Nationality Act relating to judicial removal  
is amended to read as follows

“(d) Stipulated judicial order of deportation. – The United States  
Attorney may, pursuant to Federal Rule of Criminal Procedure 11, enter into a  
plea agreement which calls for the alien to waive the right to notice and a  
hearing under this section, and stipulate to the entry of a judicial order of  
deportation from the United States as a condition of the plea agreement or as  
a condition of probation or supervised release, or both. The United States  
district court, in both felony and misdemeanor cases, and a United States  
magistrate judge in misdemeanor cases, may accept such a stipulation and  
shall have jurisdiction to enter a judicial order of deportation pursuant to the  
terms of such stipulation.”

(d) Section 242(f)(2) of the Immigration and Nationality Act is amended to read as  
follows

“(2) Particular cases -- Notwithstanding any other provision of law, no  
court shall enjoin or stay, whether temporarily or otherwise, the removal of

any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law."

**Sec. 505: Clarification of Continuing Nature of Failure-to-Depart Offense, and  
Deletion of Provisions on Suspension of Sentence.**

(a) Subparagraph (A) of section 243(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1253(a)(1)) is amended to read as follows.

"(A) willfully—

"(1) fails or refuses to depart from the United States within a period of 30 days from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court; or

"(2) remains in the United States more than 30 days after the date of the final is had, then more than 30 days after the date of the final order of the court,"

(b) Section 243 of the Immigration and Nationality Act (8 U.S.C. 1253) is amended by striking—

(1) paragraph (3) of subsection (a), and

(2) subsection (b).

**Sec. 506. Additional Removal Authorities.**

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1           (a) Section 241(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(1)) is  
2 amended by inserting at the end the following:

3                           **“(D) OTHER PLACES OF REMOVAL.”**

4                           “(i) The Attorney General may direct that the alien be removed  
5 to another country or region if the Attorney General determines that  
6 removal to any country specified in the preceding subparagraphs is  
7 impracticable, inadvisable or impossible.

8                           “(ii) The Attorney General may direct that an alien be removed  
9 to any country or region regardless of whether the country or region  
10 has a government, recognized by the United States or otherwise.”

11           (b) Section 241(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(1)) is  
12 amended by inserting at the end the following:

13                           **“(G) OTHER PLACES OF REMOVAL.”**

14                           “(i) The Attorney General may direct that the alien be removed  
15 to another country or region if the Attorney General determines that  
16 removal to any country specified in the preceding subparagraphs is  
17 impracticable, inadvisable, or impossible.

18                           “(ii) The Attorney General may direct that an alien be removed  
19 to any country or region regardless of whether the country or region  
20 has a government, recognized by the United States or otherwise.”

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