

## **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 “sleeper 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

to be invoked after Congress authorizes surveillance if the person suffered an attack creating an national emergency.

**Section 104: Strengthening FISA**

50 U.S.C. § 1802 allows the President to authorize surveillance for one year, without the FISA Court's prior approval, if the surveillance is directed solely at acquiring communications from property of a United States person. (The Attorney General must certify that the acquisition of the communications of United States persons is necessary for the acquisition of intelligence concerning international terrorism.) Section 1802 is of limited use because it only allows the acquisition of spoken communications. For wiretapping searches, 50 U.S.C. § 1822(a), which allows for the acquisition of property for the purpose of overheard communications, requires presidential authorization except in the case of emergency. This provision cannot be directed at the spoken communications of a United States person.

**Section 105: Law Enforcement**

50 U.S.C. § 1806(b) currently requires that information obtained for law enforcement purposes be disclosed for law enforcement purposes unless the disclosure is necessary for a criminal proceeding without the consent of the person from whom the information was obtained. Amend § 1806(b) to give federal law enforcement agencies the authority to obtain information obtained for law enforcement purposes. Specifically, require the Attorney General to personally approve the use of such information for law enforcement purposes. The requirement that such use be approved by the Attorney General, or an Associate Attorney General, or a Deputy Attorney General.

**Section 106: Defense of Reliance**

50 U.S.C. §§ 1809(b) and 1829 provide a defense of reliance for surveillance or searches, or who acted in reliance on an order issued by the FISA Court. This provision applies to agents who engage in surveillance or searches if prior court approval is required. Amend 50 U.S.C. §§ 1829 & 1844), or FISA's provisions regarding the defense of reliance. This provision would clarify that

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 trap 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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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. § 2331, 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. § 2711(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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**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 cases, 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. Presently, however, except in cases involving military personnel, the United States has no such 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 the return of the loved one's remains to family members, as well as cause significant delays in 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 would not be 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 would be performed by local coroners, private forensic 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, *see* 18 U.S.C. § 3486(a)(1)(A), immigration violations, *see* 8 U.S.C. § 1225(a), and false claims against the United States, *see* 31 U.S.C. § 3733. But administrative subpoenas are not available in investigations of terrorism, even though the consequences of a terrorist attack are far more dire than those of simple fraud against the United States government. As a result, law-enforcement personnel are often 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 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 of John Doe, D.P.M., 253 F.3d 256 (6th Cir. 2001).*

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

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

- (1) 18 U.S.C. § 2709—Providing FBI access, in connection with investigations of international terrorism or espionage, to certain electronic communication records maintained by communication service providers.
- (2) Section 625(a)-(b) of the Fair Credit Reporting Act (15 U.S.C. § 1681v)—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 FBI access to consumer reports and other consumer information maintained by consumer reporting agencies, where needed by government agencies authorized to conduct intelligence or analysis activities related to international terrorism.
- (4) Section 1114(a)(5) of the Right to Financial Privacy Act (12 U.S.C. § 1760)—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. § 1702)—Providing access by authorized investigative agencies to financial records and 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 information to a foreign power.

Problems under these provisions include the following: (1) The national security letter provisions appear generally prohibit persons from disclosing information in response to these requests for information, to safeguard the integrity of the terrorism investigations in which national security letters are used. However, they do not prohibit persons who make such unlawful disclosures. (2) While these statutes require the recipient to provide the requested information, they do not specify the consequences of non-compliance or provide for judicial enforcement in case the recipient refuses to comply with the requirements. The remedy under the national security letter provisions on the terrorism side is generally limited to civil penalties.

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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(e)) 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 203 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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**Section 204: Ex Parte Authorizations Under C**

Under the current version of the Classified Information Procedures Act (CIPA), 18 U.S.C. §§ 1-16, courts have discretion over whether to grant an ex parte authorization—which enables the submission of classified information to the U.S. District Court. 38 F.3d 1044 (D.C. Cir. 1994) (“The court *may* permit the U.S. District Court to grant an ex parte authorization [for a protective order] in the form of a protective order.” (emphasis added)). As a result, the government wastes resources to litigating this question. And even when there is a security breach: the government risks disclosing sensitive information by explaining in open court why the information should be protected. *Rezaq*, 899 F. Supp. 697, 707 (D.D.C. 1995) (granting an ex parte authorization to the defendant and then litigated in an adversarial proceeding).

This provision would amend CIPA to provide that a party may make a request for a CIPA authorization ex parte without first having to affect the showing that the United States is required to make. This would be done by replacing “may” with “shall,” the United States would be required in every case in which classified information may be disclosed. *Id.*, 144 F.3d 1249, 1261 (9th Cir. 1998) (upholding the constitutionality of ex parte hearings and written submissions by the government in connection with its determinations).

**Section 205: Exclusion of United States Security Personnel from Protected Officials.**

Under current tax law, certain federal officials who are required to use specific facilities, for the protection of the States’ national security—may be taxed on the value of their homes. 26 C.F.R. 1.132-5(m) (describing the circumstances under which transportation expenses may be deemed to be working expenses). In recent years, because of recent terrorist threats, an increasing and variable number of Cabinet and subcabinet officers, congressional leaders, and other officials have begun to receive protective services, and now for their families and residences.

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 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 modify the protection of witnesses and persons to whom subpoenas are directed subject to grand jury secrecy rules 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 evidence, tampering with evidence, intimidation of a potential witness, or other serious jeopardy to the 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 from 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 from unlawful combatants at Guantanamo Bay, can be used as necessary for counterterrorism 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)(D) or (5)(F); (2) persons conspiring or attempting to do so; (2) enemy combatants or other battlefield detainees.



(3) persons suspected of terrorism or aliens including those of

**Section 303: Establish Terrorist Activities.**

This provision would pertain to the terrorist information have been probation offices, would any DNA records, fingerprints. This provision, Subtitle. This provision investigate, prosecute, suspected terrorists. In with other federal, state

**Section 304: Definition**

This section would also would define "suspected" Attorney General may information may be included

**Section 305: Existing**

This provision would addition to any authority that this Subtitle shall not dissemination of evidence

**Section 306: Conditions**

This provision would terrorists or suspected terrorists release, including parole the physical custody of would require such individual supervision or conditions

**Subtitle**

**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. 1986). 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

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. § 2332a, 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

weapons of mass destruction; (2) require criminal defendants to the United States, State and local first responders who incur ex investigative response to the terrorism hoax; and (3) authorize

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

18 U.S.C. § 2339A's prohibition on providing material unnecessarily narrow; it currently does not reach all situations resources are provided to facilitate the commission of "international only encompasses those acts of international terrorism which a statute. Because, unlike the existing underlying offenses in § 2 per se is not an offense under Title 18, it is prudent to establish for prohibiting such support. The first basis is if the material si foreign commerce. The second basis is the regulation and cont nationals and U.S. legal entities who are outside the United Sta among others, the United States' constitutional foreign affairs j amends the definition of "international terrorism" to make it cl their nature appear to be intended for the stated purposes. Her to show that the defendants actually had such an intent. (Ther definition of "domestic terrorism" to maintain the existing para

Second, one court of appeals recently has questioned w U.S.C. § 2339B on providing "training" or "personnel" to terr under section 219 of the Immigration and Nationality Act are u *Humanitarian Law Project v. Reno*, 205 F.3d 1130 (9th Cir. 2 (2001). *But see United States v. Lindh*, \_\_\_ F. Supp. 2d \_\_\_ ( holding of *Humanitarian Law Project*). Subsection (b) would remove any possible doubts about the scope of the prohibition. now be defined as "instruction or teaching designed to impart a liability for "personnel" would apply to "knowingly provid[ing] conspir[ing] to provide a terrorist organization with one or mo 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 sta only one of the several constitutional bases for asserting federa involving weapons of mass destruction in certain circumstance or property and "affect[s] interstate commerce." *Id.* § 2332a(a the statute to specifically cover property and persons in three c jurisdiction constitutionally can be asserted: (1) if the mail or a

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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 1 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

appropriate supervision periods on persons convicted of non-violent terrorist cyberterrorism attack on the United States that results in tens of billions of dollars of damage—and on persons who provide the essential financial or other material apparatus of terrorism, but do not directly engage themselves in violent terrorism. 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 discretion in prescribing postrelease supervision in their cases.

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

This section provides procedures for the suspension, revocation, and denial of 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 in this area because there are several pending challenges to FAA revocations of certificates. Some certificates were revoked following notification that they “were known to pose a risk of air piracy or terrorism or a threat to airline or passenger safety.” 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 a foreseeable risk of, death or serious injury. With this amendment, the provision would include offenses in the standard list of crimes likely to be committed by terrorists and other persons who provide the essential financial or other material support for terrorism (see 18 U.S.C. § 2332b(g)(5)(B)). The existing limitation could curtail the prosecution of persons convicted of non-violent terrorist offenses—such as persons who provide the essential financial or other material support for the terrorism, but do not directly engage themselves in violent terrorist acts. The 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 at some period of time.

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

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

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violation of 42 U.S.C. § 2284, or destroying an energy facility there would be no possibility of imposing the death penalty on offenses because they contain no death penalty authorizations.

In contrast, dozens of other federal violent crime provisions authorize imprisonment or the death penalty in cases where victims are killed. These provisions which authorize these sanctions for specified classes of offenses, such as 18 U.S.C. § 2245, which provides that a person who commits an abuse offense, “engages in conduct that results in the death of or imprisonment for any term of years or for life.”

This section similarly authorizes uniformly up to life imprisonment for conduct resulting in death that occurs in the course of the offense of terrorism that is committed by terrorists that are listed in 18 U.S.C. § 2232b(g)(5)(B) or in the offenses defined in 18 U.S.C. § 2510 under the amendment in section 1.

This section also adds the new provision covering terrorism (proposed 18 U.S.C. § 2339D) to the list of offenses in 18 U.S.C. § 2332a. The commission of this offense permits the jury to consider imposition of the death penalty as an option of capital punishment available more consistently in cases where the offense results in death. The imposition of capital punishment in such cases will continue to be governed by 18 U.S.C. § 3591 that the offender have a high degree of culpability, the death of the victim or victims, and to the requirement that the death sentence is warranted under the standards and procedures of 18 U.S.C. § 3591.

**Subtitle B: Incapacitating Terrorists**

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

At present, the maximum civil penalty for violations of the International Economic Powers Act, 50 U.S.C. § 1701 et seq., is only \$10,000 per violation under 1705. This is a relatively mild maximum fine; the civil penalty for violations of the International Emergency Economic Powers Act, for example, is fully \$25,000 for each day the violation persists. IEEPA’s modest civil penalty may not adequately deter individuals and entities engaged in economic transactions that finance terrorist organizations, companies, and individuals. And given the severity of terrorist threats, and the consequences of a terrorist attack, the United States should be able to punish those who finance terrorism as it can punish polluters. This proposal therefore would amend the International Economic Powers Act to increase the civil penalty amount from \$10,000 per violation to \$50,000 per violation.

**Section 422: Money Laundering Through Hawalas**

Under the funds in U.S.C. § 1915(f)(2) (There is some aspects of a For example money in B; from Bank A to B some question from Bank A parallel transaction Market Place

Several transaction (for the first See *United States v. [redacted]* drug dealer, money laundering (7th Cir. 1991 check is written cleared); *United States v. [redacted]* SUA proceeds same day, so proposal is part of a set of proposals does so.

**Section 423  
Organizational**

A grant among many United States exempt organizations status. And to deduct the

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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

United States. This section adds a parallel provision for planning or perpetrating an act of terrorism against the United States while acting within the jurisdiction of the United States.

**Section 428: Technical and Conforming Amendments**

This section makes a number of corrections to the USA PATRIOT Act, mostly affecting money laundering or asset forfeiture provisions. These amendments are critical, because typographical errors in these provisions are preventing prosecutors from fully utilizing the new forfeiture authorities enacted by that Act where 31 U.S.C. § 5331 is intended.

Subsection (a) makes technical corrections to the USA PATRIOT Act. Subsection (b) codifies section 1360A. Subsection (c) adds explicit language covering co-conspirators committed by terrorists (18 U.S.C. §§ 33 and 1360A) to the USA PATRIOT Act, which added conspiracy language to section 1360A.

**Title V: Enhancing Immigration and Customs Enforcement**

**Section 501: Expatriation of Terrorists.**

Under 8 U.S.C. § 1481, an American can lose his or her nationality if: (1) he or she has the intent to relinquish nationality, taking any of a number of actions: (1) taking an oath of naturalization in a foreign state; (2) taking an oath of allegiance to a foreign state; (3) serving in the armed forces of a foreign state, (4) serving in the armed forces of a foreign state against the United States. The current expatriation provisions do not cover serving in a hostile terrorist organization. It thus fails to take account of the national security interests that can be waged against the United States.

This provision would amend 8 U.S.C. § 1481 to include serving in a hostile terrorist organization. Specifically, if an American citizen serves in a hostile terrorist organization with the intent to relinquish nationality, he becomes an alien. A hostile terrorist organization is a group that the United States has designated as a terrorist organization and 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. Terrazas*, 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 King 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 admissibility, 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(b), 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  
2    Protected Officials.

3    Sec. 206. Grand Jury Informat

4                    TITLE III – ENHANC

5                                    Subtitle

6    Sec. 301. Short Title.

7    Sec. 302. Collection and Use o  
8    Other Sources.

9    Sec. 303. Establishment of Da  
10    Activities.

11   Sec. 304. Definitions.

12   Sec. 305. Existing Authorities.

13   Sec. 306. Conditions of Releas

14                                    Subtitle B: Fac

15   Sec. 311. State and Local Infor

16   Sec. 312. Appropriate Remedie

17   Sec. 313. Disclosure of Inform

18                                    Subtitle C: Fac

19   Sec. 321. Authority to Seek Se

20   Sec. 322. Extradition Without

1 TITLE IV – ENHANCING PROSECUTION AND PREVENTION OF TERRORIST  
2 CRIMES

3 Subtitle A: Increased Penalties and Protections Against Terrorist Acts

4 Sec. 401. Terrorism Hoaxes.

5 Sec. 402. Providing Material Support to Terrorism.

6 Sec. 403. Weapons of Mass Destruction.

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

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

10 Sec. 406. “Mass Transportation Vehicle” Technical Correction.

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

12 Sec. 408. Postrelease Supervision of Terrorists.

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

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

16 Sec. 411. Penalties for Terrorist Murders.

17 Subtitle B: Incapacitating Terrorism Financing

18 Sec. 421. Increased Penalties for Terrorism Financing.

19 Sec. 422. Money Laundering Through Hawalas.

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

- 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.**

1 Section 101(a)(4) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
2 1801(a)(4)) is amended by inserting “or individual” after “group”.

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

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

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

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

12 **Sec. 104: Strengthening FISA’s Presidential Authorization Exception.**

13 Section 102(a)(1)(A)(ii) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
14 1802(a)(1)(A)(ii)) is amended by striking “, other than the spoken communications of  
15 individuals,”.

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

17 Sections 106(b), 305(c), and 405(b) of the Foreign Intelligence Surveillance Act of 1978  
18 (50 U.S.C. 1806(b), 1825(c), and 1845(b)) are each amended by striking “the Attorney  
19 General” and inserting “the Attorney General, the Deputy Attorney General, the Associate  
20 Attorney General, or an Assistant Attorney General designated by the Attorney General”.

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

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

4           (b) Section 307(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
5 1827(b)) is amended by inserting after “jurisdiction” the following: “or was authorized by and  
6 conducted pursuant to the authorization of the President or the Attorney General”.

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

8           Section 402(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
9 1842(a)(1)) is amended by striking “not concerning” and all that follows through “intelligence  
10 activities”.

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

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

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

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

20           (1) redesignating subsection (d) as subsection (e); and

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

22           “(d) **Enforcement of court’s orders.**



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                   “(r) terrorist activities; or”; and

2           (2) in subsection (2) –

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

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

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

6                   (1) by redesignating subparagraphs (ii) and (iii) as subparagraphs (iii) and (iv)  
7                   respectively; and

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

9                               “(ii) terrorist activities.”

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

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

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

14                   (2) by redesignating subparagraph (B) as subparagraph (D); and

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

16                               “(B) terrorist activities;

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

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

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

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

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

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

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

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

10 (1) by inserting "or of an offense listed in 18 U.S.C. § 2332b(g)(5)(B))" after  
11 "2331"); and

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

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

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

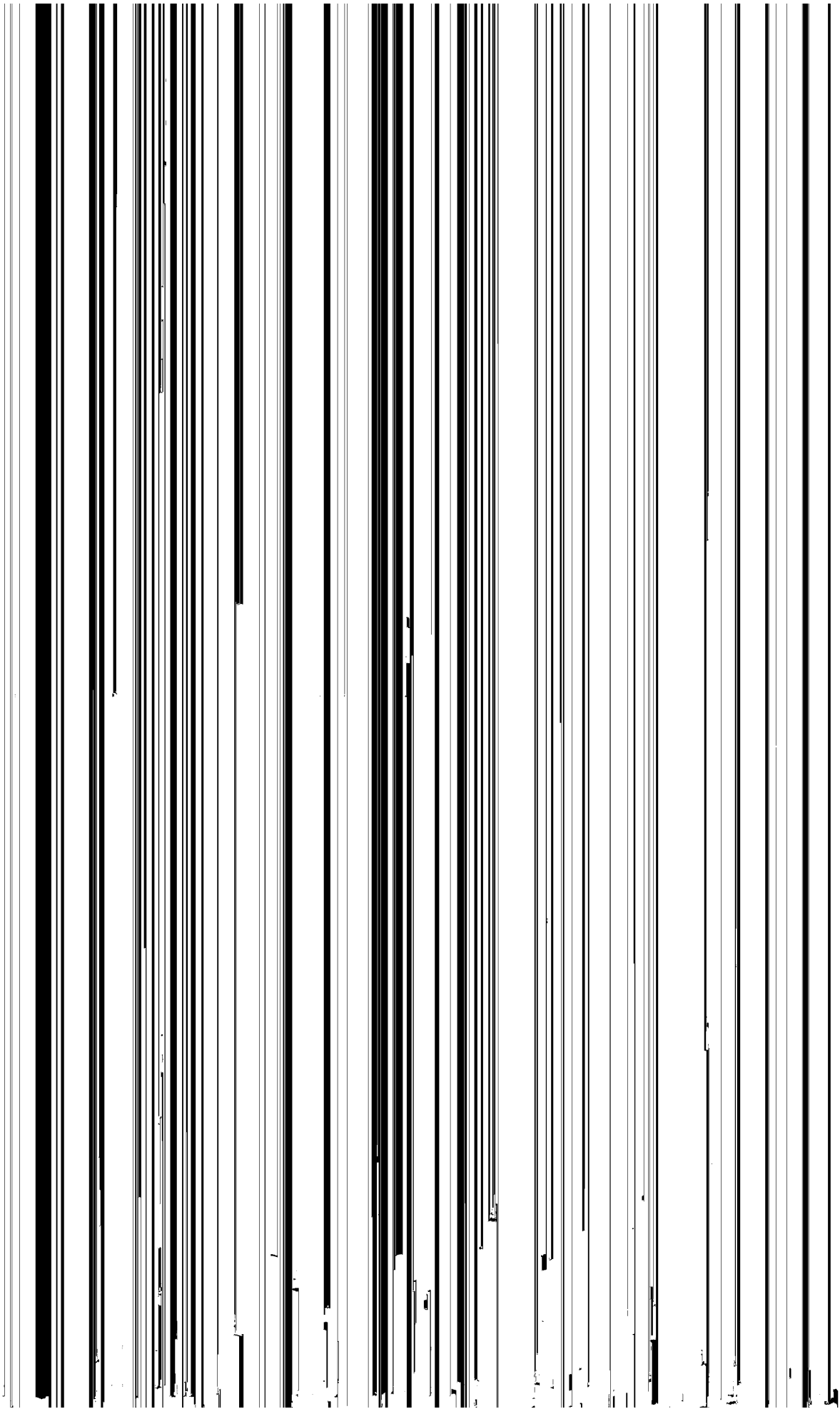
19 **Sec. 127: Autopsy Authority.**

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

22 "§ 530C. Autopsy authority in criminal investigations

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1 this section shall describe the records or items required to be produced and prescribe a  
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  
6 not be required to appear at any hearing more than 500 miles distant from the place where  
7 was served with a subpoena. Witnesses summoned under this section shall be paid the  
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 law  
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  
16 person serving the subpoena entered by him on a true copy thereof shall be sufficient proof  
17 of 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.  
22 A 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 of court.



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

7       (b) JUDICIAL ENFORCEMENT OF NATIONAL SECURITY LETTERS. – Chapter  
8 113B of title 18, United States Code, is amended –

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

11       “2332g. Enforcement of requests for information.”; and

12       (2) by inserting before section 2333 the following:

13       “§ 2332g. **Enforcement of requests for information**

14       “ In the case of a refusal to comply with a request for records, a report, or other  
15 information made to any person under section 2709(b) of this title, section 625(a) or (b) or  
16 626(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial  
17 Privacy Act, or section 802(a) of the National Security Act of 1947, the Attorney General  
18 may invoke the aid of any court of the United States within whose jurisdiction the  
19 investigation is carried on or the person resides, carries on business, or may be found, to  
20 compel compliance with the request. The court may issue an order requiring the person to  
21 comply with the request. Any failure to obey the order of the court may be punished by the  
22 court as contempt thereof. Any process under this section may be served in any judicial  
23 district in which the person may be found.”.

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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. 1681u(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.”.

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

6 (4) Section 1114(a)(5)(B) of the Right to Financial Privacy Act (12 U.S.C.  
7 3414(a)(5)(B)) is amended by striking “for foreign” and all that follows through “such  
8 agency”.

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

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

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

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

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

1           (a) **SHORT TITLE.** This section may be cited as the “Con  
2 Chemical Terrorism Act.”

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

4               (1) the nationwide threat of terrorist attacks has greatly  
5 2001;

6               (2) government-mandated publicly available information  
7 accidents at chemical facilities provides a blueprint that ter  
8 carry out terrorist attacks;

9               (3) improved protections are necessary to prevent terro  
10 described in paragraph (2) to target and attack local comm

11               (4) while communities have a right to know about the  
12 communities, communities also have the right not to allow  
13 information to destroy the communities.

14           (c) **SAFE USAGE OF CHEMICAL INFORMATION.** Se  
15 Air Act (42 U.S.C. 7412(r)(7)) is amended by deleting subpara  
16 thereof:

17                       “(H) **ACCESS TO OFF-SITE CONSEQUENCE A**

18                       –

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

20                               “(I) **CRIMINAL RELEASE –** The term ‘cr  
21 emission of a regulated substance into the ambi  
22 that is caused, in whole or in part, by a criminal

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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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1 “(aa) allows the reading of information; but

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

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

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

10 “(ii) AVAILABILITY UNDER FREEDOM OF INFORMATION ACT –

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

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

16 “(iii) ACCESS BY MEMBERS OF THE PUBLIC TO OFF-SITE

17 CONSEQUENCE ANALYSIS INFORMATION – Except as provided in this  
18 clause, notwithstanding any other provision of law, no member of the public shall  
19 have access to off-site consequence analysis information. The Administrator, in  
20 consultation with the Attorney General, shall establish procedures to allow a  
21 member of the public read-only access to off-site consequence analysis  
22 information that does not disclose the identity or location of any facility or any  
23 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 3559 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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1 “(aa) notice of the definition of official use and examples of actions  
2 that do and actions that do not fall within that definition; and

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

5 “(vi) EFFECT ON STATE OR LOCAL LAW –

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

9 “(II) AVAILABILITY OF INFORMATION UNDER STATE LAW –  
10 Nothing in this subparagraph precludes a State from making available data on  
11 the off-site consequences of chemical releases collected in accordance with  
12 State law.

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

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

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

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

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

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

3 (3) by inserting at the end the following:

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

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

15 **Subtitle A: Terrorism Identification Database**

16 **Sec. 301: Short Title.**

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

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

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

1 (1) COLLECTION FROM SUSPECTED TERRORISTS  
2 UNDER SUPERVISION OR ON CONDITIONAL RELEASE

3 (A) DEPARTMENT OF JUSTICE. —

4 official or agency designated by the Attorney General  
5 collect DNA samples, fingerprints, and other identifying information from  
6 suspected terrorist who is in the custody of the Federal Bureau of Investigation,  
7 Marshal Service, the Bureau of Prisons, or the Immigration and Naturalization  
8 Service. A Federal official or agency so designated shall also be authorized to  
9 collect DNA samples, fingerprints, and other identifying information from  
10 person as directed by the Attorney General.

11 (B) PROBATION OFFICERS. — Upon

12 probation office responsible for the supervision of a suspected terrorist on  
13 probation, parole, or supervised release shall be authorized to collect  
14 other identification information from any such person as directed by the

15 (C) DEPARTMENT OF DEFENSE. —

16 official or agency within the Department of Defense shall be authorized to  
17 have the authority to collect DNA samples, fingerprints, and other identifying  
18 information from any suspected terrorist who is in the custody of, or under the  
19 by, the Department of Defense. A Federal official or agency so designated  
20 Secretary shall collect DNA samples, fingerprints, and other identifying  
21 information from any such person as directed by the Secretary.

22 (D) COLLECTION PROCEDURES. —

23 (A), (B), or (C) to collect a DNA sample from a suspected terrorist shall be  
24 authorize the use of such means as are reasonable and necessary to obtain such

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.

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

3 (1) ANALYSIS AND USE OF SAMPLES. – The Attorney General shall have the  
4 authority to analyze DNA samples, fingerprints, and other information collected or  
5 received under subsection (a) or that has been lawfully acquired under any other source  
6 of law. Any such analysis of DNA samples shall be conducted in conformity with the  
7 quality assurance standards issued by the Director of the Federal Bureau of Investigation  
8 under section 210303 of the Violent Crime Control and Law Enforcement Act of 1994  
9 (42 U.S.C. 14131).

10 (2) AGREEMENTS WITH OTHER ENTITIES CONCERNING DNA SAMPLES.  
11 – The Attorney General may enter into agreements with Federal agencies, with units of  
12 State or local government, or with private entities, to assist in the collection, analysis,  
13 storage, or maintenance of the DNA samples described in paragraph (1).

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

16 (a) DATABASES. –

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

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

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

21 and

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

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

7 (b) USES. –

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

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



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

5           (c) RELATION TO OTHER LAWS. –

6           (1) IN GENERAL. – Except as provided in paragraph (2), DNA samples and records  
7 and other information described in this section may be used and disclosed in conformity  
8 with this section, notwithstanding any limitation on the use or disclosure of such samples,  
9 records, or information under the DNA Identification Act of 1994 (42 U.S.C. 14131-  
10 14134), the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135-14135e),  
11 or any other law.

12           (2) RELATION TO THE PRIVACY ACT. –

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

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

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

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

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

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

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

3                                   (ii) in subsection (b)(7)–

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

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

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

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

9       **Sec. 304: Definitions.**

10       As used in this Act:

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

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

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

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

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

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

1 (D) is an alien who is described in section 212(a)(3)(A)(i), 212(a)(3)(A)(iii),  
2 212(a)(3)(B), 212(a)(3)(F), 237(A)(4)(a)(i), 237(a)(4)(iii), or 237(a)(4)(B) of the  
3 Immigration and Nationality Act, or who is engaged in any other activity that endangers  
4 the national security of the United States.

5 **Sec. 305: Existing Authorities.**

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

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

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

14 (b) CONDITIONS OF SUPERVISED RELEASE. – Section 3583(d) of title 18, United  
15 States Code, is amended by striking the period after “the DNA Analysis Backlog Elimination  
16 Act of 2000” and inserting “or section 3 of the Terrorist Identification Database Act of  
17 2002.”.

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

22 (d) CONDITIONS OF RELEASE GENERALLY. – If the collection of a DNA sample  
23 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,

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

9 (b) Termination of relief. —

10 (1) Termination of prospective relief. —

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

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

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

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

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

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

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.



1 (d) State law remedies.

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3 (e) Procedure for motio

4 (1) Generally. — T

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7 (2) Automatic stay.

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18 (4) Order blocking

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1 (f) Definitions. — As used in this section —

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

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

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

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

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

22 (6) “State” means a State, the District of Columbia, and any commonwealth,  
23 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

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

4                   “(b) AUTHORIZATION OF FILING –

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

11                  “(2) FILING AND TREATMENT OF COMPLAINTS –

12                  “(A) IN GENERAL – A complaint authorized under paragraph (1) shall  
13                  be filed pursuant to section 3184.

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

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

20                  “(1) by the Attorney General, that in the judgment of the Attorney General—

21                  “(A) the offense for which extradition is sought is a serious offense; and

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

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

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

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

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

14                   “(d) LIMITATIONS ON DELEGATION AND JUDICIAL REVIEW –

15                   “(1) DELEGATION BY ATTORNEY GENERAL; JUDICIAL REVIEW –  
16 The authorities and responsibilities of the Attorney General under subsection (c)  
17 may be delegated only to the Deputy Attorney General.

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

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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.

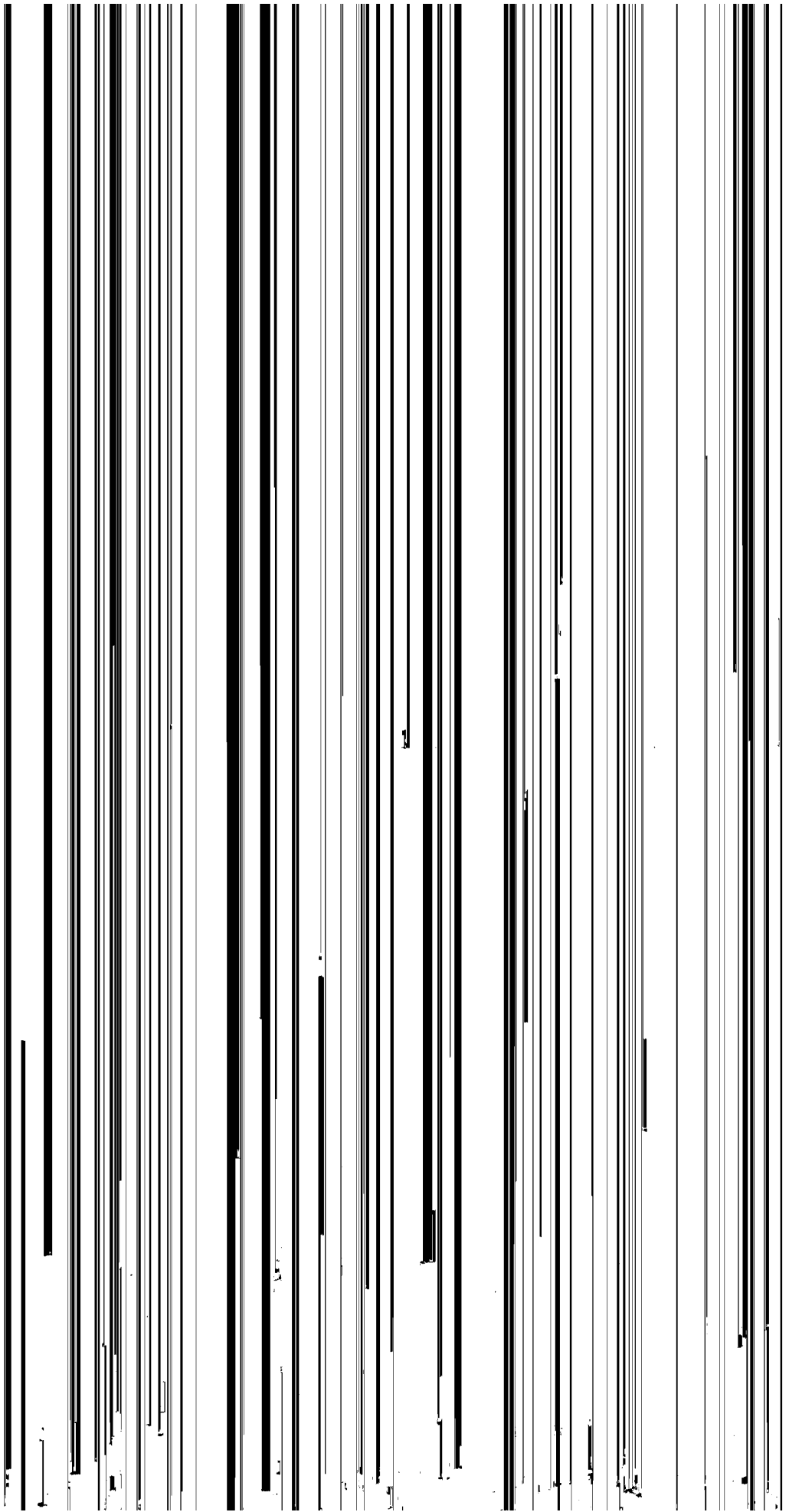
17           “(C) RELEASES – If, not later than 45 days after the arrest, the formal  
18 request for extradition and documents in support of that are not received by  
19 the Department of State, the appropriate judicial officer may order that a  
20 person detained pursuant to this subsection be released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

21           “(f) HEARINGS –



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

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

6           “(B) a political offense.

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

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

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

14           “(i) extradite the person sought; or

15           “(ii) submit the case to the competent authorities for decision as to  
16 prosecution; or

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

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

21 –

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

3           “(A) humanitarian concerns;

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

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

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

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

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

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

21           “(i) CONDITIONS OF SURRENDER; ASSURANCES –

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

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

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

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

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

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

“(i) shall not be imposed; or

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

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

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

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

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

6           “3197. Extradition for offenses not covered by an existing treaty.”

7           “3198. Extradition absent a treaty.”

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

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

10          **Sec. 401: Terrorism Hoaxes.**

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

13                 “Sec. 1037. False information and hoaxes

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

15                                 with intent to convey false or misleading information, under circumstances

16   where such information may reasonably be believed and where such

17   information concerns an activity which would constitute a violation of section

18   175, 229, 831, or 2332a, shall be fined under this title or imprisoned not more

19   than 5 years, or both.

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“(b) CIVIL ACTION – Whoever engages to convey false or misleading information, under information concerns an activity which would co: 175, 229, 831, or 2332a, is liable in a civil action expenses incident to any emergency or investigat for those expenses.

“(c) REIMBURSEMENT – The court, ir defendant who has been convicted of an offense order the defendant to reimburse any person or e incident to any emergency or investigative respon expenses. For the purpose of this provision, a St private not-for-profit organization that provides dispatched and responds to such an emergency sl of actual costs of response or \$1,000. A person reimbursement under this subsection shall be join such expenses with each other person, if any, wh reimbursement under this subsection for the same reimbursement under this subsection shall, for th treated as a civil judgment.”.

1 (b) CLERICAL AMENDM  
2 47 of title 18, United States Code, is  
3 following: "1037. False information  
4 **Sec. 402: Providing Material Sup**

5 (a) Section 2339A(a) of title

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

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

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

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

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

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

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

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

20 and



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

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

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

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

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

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

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

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

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

19                                   and

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

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

3 (b) RESTORATION OF THE COVERAGE OF CHEMICAL WEAPONS. Section  
4 2332a of title 18, United States Code, as amended by subsection (a), is further amended by

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

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

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

10 (c) CONFORMING AMENDMENT TO NEW SELECT AGENT

11 REGULATIONS. – (1) Section 175b(a)(1) of title 18, United States Code, is amended by  
12 striking “as a select agent in Appendix A” and all that follows and inserting the following: “as  
13 a non-overlap or overlap select biological agent or toxin in [sections 73.4 and 73.5] of title  
14 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act,  
15 and is not exempted under [section 73.6] of title 42, Code of Federal Regulations.”.

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

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

20 (a) Part I of title 18, United States Code, is amended by inserting after chapter  
21 123 the following:

1                   “CHAPTER 124 – ENCRYPTED WIRE OR ELECTRONIC  
2                   COMMUNICATIONS AND STORED ELECTRONIC INFORMATION

3                   “Sec. 2801. Unlawful use of encryption

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

7                   ““(1) in the case of a first offense under this section,  
8                   shall be imprisoned not more than 5 years, fined under this title,  
9                   or both; and

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

13                  ““(b) The terms ‘encrypt’ and ‘encryption’ refer to the  
14                  scrambling (and descrambling) of wire communications, electronic  
15                  communications, or electronically stored information, using  
16                  mathematical formulas or algorithms in order to preserve the  
17                  confidentiality, integrity, or authenticity of, and prevent unauthorized  
18                  recipients from accessing or altering, such communications or  
19                  information.”

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

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

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

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

5           (1) in subsection (e) –

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

7                           (B) by striking “, or an offense under section 924(c), 956(a), or 2332b of title  
8           18 of the United States Code” and inserting “, an offense under section 924(c), or an  
9           offense described in section 2332b(g)(5)(B)”; and

10           (2) in subsections (f)(1)(A) and (g)(1), by inserting “or an offense described in section  
11   2332b(g)(5)(B)” after “violence”.

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

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

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

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

17                           (3) by inserting at the end thereof the following:

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

1 (b) The title of chapter 97 of

2 "RAILROADS AND OTHER MASS T

3 (c) The table of chapters for

4 the item relating to chapter 97 by amend

5 transportation systems".

6 (d) The title of section 1993 of t

7 "on land, water, or through the air" afte

8 (e) The table of sections for cha

9 the item relating to section 1993 by add

10 "systems".

11 **Sec. 407: Acts of Terrorism Transcen**

12 (a) Section 2332b of title 18, Ur

13 (1) in subsection (a)(1),

14 (2) in subsection (b)(1)(A)

15 foreign commerce or" before "th

16 (3) in subsection (g) –

17 (A) by amending

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

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

6                   “(C) in furtherance of an objective of a foreign  
7                   power or of a person outside of the United States.”;

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

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

11                  (D) by inserting at the end the following:

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

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

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

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

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

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

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

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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.



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

4 **“(d) Denial of Certificate. –**

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

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

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

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

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

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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

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(b) 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.**

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

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

3 “2339D. Terrorist offenses resulting in death.”; and

4 (2) by inserting at the end the following:

5 **“2339D. Terrorist offenses resulting in death**

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

9 (b) Section 3592(c)(1) of title 18, United States Code, is amended by inserting  
10 “section 2339D (terrorist offenses resulting in death),” after “destruction),”.

11 **Subtitle B: Incapacitating Terrorism Financing**

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

13 Section 206 of the International Emergency Economic Powers Act (50 U.S.C. §  
14 1705) is amended –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

4                   “(5) CREDIT OR REFUND IN CASE OF ERRONEOUS  
5                   DESIGNATION.

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

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

18                  (b) If the tax exemption of any organization is suspended under section 501(p) of the  
19                  Internal Revenue Code of 1986 (as added by subsection (a)), the Internal Revenue Service  
20                  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

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”.

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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1 Government, its citizens or residents, or their property. Where  
2 the property sought for forfeiture is located beyond the  
3 territorial boundaries of the United States, an act in furtherance  
4 of such planning or perpetration must have occurred within the  
5 jurisdiction of the United States.”.

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

7 (a) TECHNICAL CORRECTIONS.— (1) Sections 5312(a)(3)(C) and 5324(b) of title  
8 31 are amended by striking “5333” each time it appears and inserting “5331”.

9 (2) Section 322 of Pub. L. 107-56 is amended by striking “title 18” and  
10 inserting “title 28”.

11 (3) Section 5318(k)(1)(B) of title 31, United States Code, is amended by  
12 striking “5318A(f)(1)(B)” and inserting “5318A(e)(1)(B)”.

13 (4) Section 5332(a)(1) of title 31, United States Code, is amended by striking  
14 “article of luggage” and inserting “article of luggage or mail”.

15 (5) Section 1956(b)(3) and (4) of title 18, United States Code, are amended  
16 by striking “described in paragraph (2)” each time it appears; and

17 (6) Section 981(k) of title 18, United States Code, is amended by striking  
18 “foreign bank” each time it appears and inserting “foreign bank or financial  
19 institution”.

20 (b) CODIFICATION OF SECTION 316. – (1) Chapter 46 of title 18, United States  
21 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 (1) in subsection (a), by striking “2 years” and inserting “3 years”; and

2 (2) in subsection (b)(3), by striking “10 years” and inserting “20 years”.

3 (c) ALIEN SMUGGLING. – Section 274(a)(2)(A) of the Immigration and

4 Nationality Act (8 U.S.C. 1324(a)(2)(A)) is amended by striking “one year” and inserting “3  
5 years”.

6 (d) REGISTRATION OFFENSES. – (1) Section 264(e) of the Immigration and

7 Nationality Act (8 U.S.C. 1304(e)) is amended by striking “be fined not to exceed \$100 or be  
8 imprisoned not more than 30 days” and inserting “be fined under title 18, United States Code,  
9 or imprisoned not more than 90 days”.

10 (2) Section 266 of the Immigration and Nationality Act (8 U.S.C. 1306) is

11 amended –

12 (A) in subsection (b), by striking “be fined not to exceed \$200 or be  
13 imprisoned not more than thirty days” and inserting “be fined under title 18,  
14 United States Code, or imprisoned not more than six months”; and

15 (B) in subsection (c), by striking “be fined not to exceed \$1000, or be  
16 imprisoned not more than six months” and inserting “be fined under title 18,  
17 United States Code, or imprisoned not more than one year”.

18 (e) UNLAWFUL VOTING. – Section 611(b) of title 18, United States Code, is

19 amended by striking “one year” and inserting “three years”.

20 **Sec. 503: Inadmissibility and Removability of National Security Aliens or Criminally**  
21 **Charged Aliens.**

1 (a) Section 212(a)(3) of the Immigration and Nationality Act, as amended, is  
2 amended by adding at the end thereof the following new subparagraphs:

3 “(G) An alien whose entry or proposed activities in the United States  
4 the Attorney General has reason to believe would pose a danger to the  
5 national security of the United States as defined in section 219(c)(2) of the  
6 Act is inadmissible.

7 “(H) An alien whom the Attorney General has reason to believe is  
8 charged with or has committed a serious criminal offense in a country other  
9 than the United States is inadmissible.”

10 (b) Section 237(a)(4) of Immigration and Nationality Act is amended by adding at  
11 the end thereof the following new subparagraphs:

12 “(E) An alien whose presence or activities in the United States the  
13 Attorney General has reason to believe pose a danger to the national security  
14 of the United States, as defined in section 219(c)(2) of the Act is removable.

15 “(F) An alien whom the Attorney General has reason to believe is  
16 charged with or has committed a serious criminal offense in a country other  
17 than the United States is removable.”

18 **Sec. 504: Expedited Removal of Criminal Aliens.**

19 (a) The caption of Section 238 of the Immigration and Nationality Act is amended to  
20 read as follows: “EXPEDITED REMOVAL OF CRIMINAL ALIENS”.

1 (b) Section 238(b) of the Immigration and Nat

2 follows:

3 “(b) Removal of Criminal Aliens.

4 “(1) The Attorney Gener

5 described in paragraph (2), deter

6 and issue an order of removal pu

7 this subsection or section 240.

8 “(2) An alien is describe

9 whether or not admitted into the

10 criminal offense covered in 237(e)

11 regard to its date of commission.

12 “(3) The Attorney Gener

13 execute any order described in pa

14 calendar day period after the date

15 waived by the alien, in order that

16 for judicial review under section

17 under section 242(f)(2) of the Ac

18 provision of law including section

19 Code, no court other than a cour

20 jurisdiction under section 242 of

21 review or set aside any order, ac

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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



1           any alien pursuant to a final order under this section unless the alien shows by  
2           clear and convincing evidence that the entry or execution of such order is  
3           prohibited as a matter of law.”

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

6           (a) Subparagraph (A) of section 243(a)(1) of the Immigration and Nationality Act (8  
7   U.S.C. 1253(a)(1)) is amended to read as follows:

8                   “(A) willfully—

9                           “(1) fails or refuses to depart from the United States within a period of  
10                           30 days from the date of the final order of removal under administrative  
11                           processes, or if judicial review is had, then from the date of the final order of  
12                           the court; or

13                           “(2) remains in the United States more than 30 days after the date of the  
14                           final is had, then more than 30 days after the date of the final order of the  
15                           court,”.

16           (b) Section 243 of the Immigration and Nationality Act (8 U.S.C. 1253) is amended  
17   by striking—

18                           (1) paragraph (3) of subsection (a); and

19                           (2) subsection (b).

20   **Sec. 506. Additional Removal Authorities.**

1 (a) Section 241(b)(1) of the Immigration and Nat

2 amended by inserting at the end the following:

3 “(D) OTHER PLACES OF REMO

4 “(i) The Attorney General

5 to another country or region if the

6 removal to any country specified i

7 impracticable, inadvisable or impo

8 “(ii) The Attorney General

9 to any country or region regardles

10 has a government, recognized by t

11 (b) Section 241(b)(2) of the Immigration and Nat

12 amended by inserting at the end the following:

13 “(G) OTHER PLACES OF REMO

14 “(i) The Attorney General

15 to another country or region if the

16 removal to any country specified i

17 impracticable, inadvisable, or imp

18 “(ii) The Attorney General

19 to any country or region regardles

20 has a government, recognized by t

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