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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
048	Letter	[Draft letter] [15 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS] - To: Bob Graham - From: Daniel Bryant	15	N.D.	
049	Fax Cover Sheet	[Fax Cover Sheet]	1	10/03/2001	b6;
050	Draft	[Draft bill] [13 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	13	N.D.	
051	Memorandum	Title III of House Bill [4 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS] - To: Jennifer Newstead - From: David Karp	4	10/03/2001	

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
Anti-Terrorism Legislation [4]

FRC ID:
9121

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

A. Closed by Executive Order 13526 governing access to national security information.
B. Closed by statute or by the agency which originated the document.
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Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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This document was prepared on Friday, September 12, 2025

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
052	Memorandum	Outstanding Issues [with attachment] [11 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS] - To: Beryl Howell - From: Courtney Simmons Elwood	11	10/20/2001	

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

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2017-0345-F
2018-0016-P
2018-0259-F 2
2018-0016-P 2

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SUPERSEDE

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048	Letter	[Draft letter] - To: Bob Graham - From: Daniel Bryant	15	N.D.	P5;
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TITLE II—ALIENS ENGAGING IN TERRORIST ACTIVITY

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

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

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

(1) in clause (i)—

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

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

"(IV) is a representative of—

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

"(b) a political, social, or other similar group whose public

107TH CONGRESS
1ST SESSION

H. R. 2975

To combat terrorism, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2001

Mr. SENSENBRENNER (for himself, Mr. CONYERS, Mr. HYDE, Mr. COBLE, Mr. GOODLATTE, Mr. JENKINS, Ms. JACKSON-LEE of Texas, Mr. CANNON, Mr. MEEHAN, Mr. GRAHAM, Mr. BACHUS, Mr. WEXLER, Mr. HOSTETTLER, Mr. KELLER, Mr. ISSA, Ms. HART, Mr. FLAKE, Mr. SCHIFF, Mr. THOMAS, Mr. GOSS, Mr. RANGEL, Mr. BERMAN, and Ms. LOFGREN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Intelligence (Permanent Select), International Relations, Resources, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To combat terrorism, and for other purposes.

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

SECTION 1. SHORT TITLE.

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

SEC. 2. TABLE OF CONTENTS.

The following is the table of contents for this Act:

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

TITLE I—INTELLIGENCE GATHERING

Subtitle A—Electronic Surveillance

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

Subtitle B—Foreign Intelligence Surveillance and Other Information

Sec. 151. Period of orders of electronic surveillance of non-United States persons under foreign intelligence surveillance.
Sec. 152. Multi-point authority.
Sec. 153. Foreign intelligence information.
Sec. 154. Foreign intelligence information sharing.
Sec. 155. Pen register and trap and trace authority.
Sec. 156. Business records.
Sec. 157. Miscellaneous national-security authorities.
Sec. 158. Proposed legislation.
Sec. 159. Presidential authority.
Sec. 160. Sunset.

TITLE II—ALIENS ENGAGING IN TERRORIST ACTIVITY

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

Sec. 201. Changes in classes of aliens who are ineligible for admission and deportable due to terrorist activity.
Sec. 202. Changes in designation of foreign terrorist organizations.
Sec. 203. Mandatory detention of suspected terrorists; habeas corpus; judicial review.
Sec. 204. Multilateral cooperation against terrorists.
Sec. 205. Changes in conditions for granting asylum and asylum procedures.
Sec. 206. Protection of northern border.
Sec. 207. Requiring sharing by the Federal Bureau of Investigation of certain criminal record extracts with other Federal agencies in order to enhance border security.

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

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

SEC. 160. SUNSET.

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

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

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

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

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

Subtitle B—Preservation of Immigration Benefits for Victims of Terrorism

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

TITLE III—CRIMINAL JUSTICE

Subtitle A—Substantive Criminal Law

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

Subtitle B—Criminal Procedure

Sec. 351. Single-jurisdiction search warrants for terrorism.
Sec. 352. DNA identification of terrorists.
Sec. 353. Grand jury matters.
Sec. 354. Extraterritoriality.
Sec. 355. Jurisdiction over crimes committed at United States facilities abroad.
Sec. 356. Special agent authorities.

TITLE IV—FINANCIAL INFRASTRUCTURE

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

TITLE V—EMERGENCY AUTHORIZATIONS

Sec. 501. Office of Justice programs.
Sec. 502. Attorney General's authority to pay rewards.
Sec. 503. Limited authority to pay overtime.
Sec. 504. Department of State reward authority.

TITLE VI—DAM SECURITY

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

TITLE VII—MISCELLANEOUS

Sec. 701. Employment of translators by the Federal Bureau of Investigation.
Sec. 702. Review of the Department of Justice.

SEC. 3. CONSTRUCTION; SEVERABILITY.

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

TITLE I—INTELLIGENCE GATHERING

Subtitle A—Electronic Surveillance

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

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

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

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

SEC. 159. PRESIDENTIAL AUTHORITY.

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

(1) in subparagraph (A)—

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

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

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

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

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

(3) in subparagraph (B)—

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

(b) Section 624 of Public Law 90–321 (15 U.S.C. 1681u) is amended—

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

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

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

SEC. 158. PROPOSED LEGISLATION.

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

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

(b) ISSUANCE OF ORDERS.—

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

"(a) IN GENERAL.—

"(1) Upon an application made under section 3122(a)(1), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order shall, upon service thereof, apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order.

"(2) Upon an application made under section 3122(a)(2), the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law-en-

forcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.".

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

(A) in subparagraph (A)—

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

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

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

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

ing the items relating to title V and inserting the following:

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

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

SEC. 157. MISCELLANEOUS NATIONAL-SECURITY AUTHORITIES.

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

(1) in paragraph (1)—

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

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

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

release of records under this section on behalf of a judge of that court; and

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

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

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

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

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

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

(c) CLERICAL AMENDMENT.—The table of contents at the beginning of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by strik-

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

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

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

(c) DEFINITIONS.—

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

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

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

(A) by striking "electronic or other impulses" and all that follows through "is attached" and inserting "dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire

or electronic communication is transmitted (but not including the contents of such communication)"; and

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

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

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

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

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

(A) by striking "and"; and

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

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

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

"(b) Each application under this section—

"(1) shall be made to—

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

"(B) a United States magistrate judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the

tained pursuant to chapter 119 of title 18, United States Code) to be provided to any Federal law-enforcement-, intelligence-, protective-, national-defense, or immigration personnel, or the President or the Vice President of the United States, for the performance of official duties.

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

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

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

(2) in paragraph (2)—

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

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

(3) by striking paragraph (3).

SEC. 156. BUSINESS RECORDS.

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

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

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

Title 18, United States Code, is amended—

(1) in section 2510—

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

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

(2) in section 2703—

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

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

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

SEC. 103. AUTHORIZED DISCLOSURE.

Section 2510(7) of title 18, United States Code, is amended by inserting ", and (for purposes only of section

2517 as it relates to foreign intelligence information) any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or the President or Vice President of the United States" after "such offenses".

SEC. 104. SAVINGS PROVISION.

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

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

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

SEC. 105. INTERCEPTION OF COMPUTER TRESPASSER COMMUNICATIONS.

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

(1) in section 2510—

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

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

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

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

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

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

SEC. 152. MULTI-POINT AUTHORITY.

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

SEC. 153. FOREIGN INTELLIGENCE INFORMATION.

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

SEC. 154. FOREIGN INTELLIGENCE INFORMATION SHARING.

Notwithstanding any other provision of law, it shall be lawful for foreign intelligence information obtained as part of a criminal investigation (including information ob-

sections (a) and (b) of this section and the number of orders, warrants, or subpoenas granted or denied pursuant to subsections (a) and (b) of this section during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the Administrative Office by paragraphs (1) and (2) of this subsection. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by paragraphs (1) and (2) of this subsection.".

Subtitle B—Foreign Intelligence Surveillance and Other Information

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

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

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

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

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

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

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

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

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

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

SEC. 106. TECHNICAL AMENDMENT.

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

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

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

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

"entity the—

"(A) name;

"(B) address;

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

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

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

ignated by the Attorney General shall report to the Administrative Office of the United States Courts—

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

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

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

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

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

"(3) In June of each year, beginning in 2003, the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders, warrants, or subpoenas authorizing or requiring the disclosure of the contents of electronic communications pursuant to sub-

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

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

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

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

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

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

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

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

"(2) In January of each year the Attorney General or an Assistant Attorney General specially des-

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

of a"; and

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

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

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

(1) in section 2703, by striking "under the Federal Rules of Criminal Procedure" each place it appears and inserting "using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation"; and

(2) in section 2711—

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

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

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

"(3) the term 'court of competent jurisdiction' has the meaning given that term in section 3127,

and includes any Federal court within that definition, without geographic limitation.".

SEC. 109. CLARIFICATION OF SCOPE.

Section 2511(2) of title 18, United States Code, as amended by section 106(2) of this Act, is further amended by adding at the end the following:

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

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

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

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

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

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

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

"(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information

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

(2) in subsection (10)—

(A) in paragraph (a)—

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

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

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

(B) by striking paragraph (c).

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

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

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

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

scriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

"(1) as otherwise authorized in section 2703;

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

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

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

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

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

(1) so that the section heading reads as follows: **"§ 2703. Required disclosure of customer communications or records";**

(2) in subsection (c)(1)—

(A) in subparagraph (A), by striking "Except" and all that follows through "only when" in subparagraph (B) and inserting "A governmental entity may require a provider of elec-

tronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when";

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

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

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

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

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

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

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

SEC. 111. USE AS EVIDENCE.

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

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

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

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

(4) by adding at the end the following:

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

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

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

pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.";

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

(5) in subsection (b)(6)—

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

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

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

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

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

"(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER RECORDS.—A provider described in subsection (a) may divulge a record or other information pertaining to a sub-

filed not later than 60 days after it otherwise would have been due.

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

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

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

(i) the alien's application shall be considered timely filed if it is filed not later

endorsement of terrorist activity the Secretary of State has determined undermines the efforts of the United States to reduce or eliminate terrorist activities;";

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

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

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

(2) in clause (ii)—

(A) in the matter preceding subclause (I), by striking "(or which, if committed in the United States," and inserting "(or which, if it

had been or were to be committed in the United States,"; and

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

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

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

"(I) to commit a terrorist activity;

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

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

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

"(a) a terrorist activity;

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

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

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

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

(3) AUTHORIZED EMPLOYMENT.—During the period in which a principal alien or alien spouse is in lawful nonimmigrant status under paragraph (1), the alien shall be provided an "employment authorized" endorsement or other appropriate document signifying authorization of employment not later than 30 days after the alien requests such authorization.

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

(1) FILING DELAYS.—In the case of an alien who was lawfully present in the United States as a nonimmigrant on September 10, 2001, if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is

in section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)) who are not described in subparagraph (A), (B), (C), or (K) of such section.

SEC. 212. EXTENSION OF FILING OR REENTRY DEADLINES.

(a) AUTOMATIC EXTENSION OF NONIMMIGRANT STATUS.—

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

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

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

(2) ALIENS DESCRIBED.—

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

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

"(V) to solicit any individual—

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

"(b) for membership in a terrorist government;

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

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

"(VI) to commit an act that the actor knows, or reasonably should

know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, and radiological weapons), explosives, or training—

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

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

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

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

(4) by adding at the end the following:

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

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

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

(d) NUMERICAL LIMITATIONS.—For purposes of the application of sections 201 through 203 of the Immigration and Nationality Act (8 U.S.C. 1151–1153) in any fiscal year, aliens eligible to be provided status under this section shall be treated as special immigrants described

filed under regulations of the Secretary of Labor on or before such date; and

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

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

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

(2) SPOUSES AND CHILDREN.—

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

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

(ii) the alien—

(I) is accompanying such principal alien; or

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

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

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

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

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

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

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

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

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

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

(b) ALIENS DESCRIBED.—

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

(A) the alien was the beneficiary of—

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

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

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

(ii) an application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)) that was

force or administer the immigration laws of the United States, for the purpose of such enforcement or administration, upon terms that are consistent with sections 212 through 216 of the National Crime Prevention and Privacy Compact Act of 1998 (42 U.S.C. 14611 et seq.).

Subtitle B—Preservation of Immigration Benefits for Victims of Terrorism

SEC. 211. SPECIAL IMMIGRANT STATUS.

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

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

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

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

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

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

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

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

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

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

eliminate terrorist activities, terrorist activity; or

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

(d) RETROACTIVE APPLICATION OF AMENDMENTS.—

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

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

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

(i) in removal proceedings on or after such date (except for proceedings in which

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

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

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

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

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

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

(e) CONSTRUCTION.—Nothing in this section, or in any other law, shall be construed to limit the authority of the Attorney General or the Director of the Federal Bureau of Investigation to provide access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, or to any other information maintained by such center, to any Federal agency or officer authorized to en-

automated criminal history record. To obtain the full content of a criminal history record, the Secretary of State shall submit the applicant's fingerprints and any appropriate fingerprint processing fee authorized by law to the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

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

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

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

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

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

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

there has been a final administrative decision before such date); or

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

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

(3) SPECIAL RULE FOR SECTION 219 ORGANIZATIONS.—

(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), no alien shall be considered inadmissible under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)), or deportable under section 237(a)(4)(B) of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendments made by subsection (a), on the ground that the alien engaged in a terrorist activity described in subclause (IV)(b), (V)(c), or (VI)(c) of section

212(a)(3)(B)(iii) of such Act (as so amended) with respect to a group at any time when the group was not a foreign terrorist organization designated by the Secretary of State under section 219 of such Act (8 U.S.C. 1189).

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

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

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

(4) by adding at the end the following:

"(b) CRIMINAL HISTORY RECORD INFORMATION.—The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Secretary of State and the Commissioner access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the official to be provided access, for the purpose of determining whether a visa applicant or applicant for admission has a criminal history record indexed in any such file. Such access shall be provided by means of extracts of the records for placement in the Department of State's automated visa lookout database or other appropriate database, and shall be provided without any fee or charge. The Director of the Federal Bureau of Investigation shall provide periodic updates of the extracts at intervals mutually agreed upon by the Attorney General and the official provided access. Upon receipt of such updated extracts, the receiving official shall make corresponding updates to the official's databases and destroy previously provided extracts. Such access to any extract shall not be construed to entitle the Secretary of State to obtain the full content of the corresponding

ber authorized under current law) in each State along the northern border;

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

(3) an additional $50,000,000 to the Immigration and Naturalization Service for purposes of making improvements in technology for monitoring the northern border and acquiring additional equipment at the northern border.

SEC. 207. REQUIRING SHARING BY THE FEDERAL BUREAU OF INVESTIGATION OF CERTAIN CRIMINAL RECORD EXTRACTS WITH OTHER FEDERAL AGENCIES IN ORDER TO ENHANCE BORDER SECURITY.

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

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

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

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

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

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

(1) in paragraph (1)—

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

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

(2) in paragraph (2)—

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

"(A) NOTICE.—

"(i) IN GENERAL.—Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and minority leader of the House of Representatives, the President pro tempore, majority leader, and minority leader of the Senate,

the members of the relevant committees, and the Secretary of the Treasury, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

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

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

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

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

(4) in paragraph (4)(B), by inserting after the first sentence the following: "The Secretary may also redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the rel-

the alien is described in section 212(a)(3)(B)(i) or 237(a)(4)(B); and

"(B) the Attorney General has reasonable grounds to believe that the alien may be so described.

"(2) EXCEPTION.—The requirement of paragraph (1)(B) shall not apply to an alien if the alien alleges that the alien is eligible for asylum, in whole or in part, because a foreign government believes that the alien is described in section 212(a)(3)(B)(i) or 237(a)(4)(B).

"(3) DISCLOSURES TO FOREIGN GOVERNMENTS.—If the Attorney General desires to disclose information to a foreign government under paragraph (1), the Attorney General shall request the Secretary of State to make the disclosure.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to the disclosure of information on or after such date.

SEC. 206. PROTECTION OF NORTHERN BORDER.

There are authorized to be appropriated—

(1) such sums as may be necessary to triple the number of Border Patrol personnel (from the num-

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

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

(b) DISCLOSURE OF ASYLUM APPLICATION INFORMATION.—

(1) IN GENERAL.—Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended by adding at the end the following:

"(e) LIMITATION ON CONFIDENTIALITY OF INFORMATION.—

"(1) IN GENERAL.—The restrictions on information disclosure in section 208.6 of title 8, Code of Federal Regulations (as in effect on the date of the enactment of the PATRIOT Act or pursuant to any successor provision), shall not apply to a disclosure to any person, if—

"(A) the disclosure is made in the course of an investigation of an alien to determine if

evant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.";

(5) in paragraph (6)—

(A) in subparagraph (A)—

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

(ii) in clause (i)—

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

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

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

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

(C) by adding at the end the following:

"(C) EFFECTIVE DATE.—Any revocation shall take effect on the date specified in the

revocation or upon publication in the Federal Register if no effective date is specified.";

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

(7) in paragraph (8)—

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

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

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

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

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

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

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

agreement to limit the use of such records and information to the purposes described in the preceding sentence.

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

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

SEC. 205. CHANGES IN CONDITIONS FOR GRANTING ASYLUM AND ASYLUM PROCEDURES.

(a) ALIENS INELIGIBLE FOR ASYLUM DUE TO TERRORIST ACTIVITIES.—

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

(A) by striking "inadmissible under" and inserting "described in"; and

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

(2) RETROACTIVE APPLICATION OF AMENDMENTS.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to—

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

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

(3) by adding at the end the following:

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

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

"(B) Such records and information may be provided on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism. General access to records and information may be provided under an

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

"(2) RELEASE.—Except as provided in paragraph (5), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States. Such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3).

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

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

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

"(4) NONDELEGATION.—The Attorney General may delegate the authority provided under para-

graph (3) only to the Commissioner. The Commissioner may not delegate such authority.

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

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

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

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

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

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

(2) the grounds for such certifications;

(3) the nationalities of the aliens so certified;

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

(5) the number of aliens so certified who—

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

(B) were removed;

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

(D) were released from detention.

SEC. 204. MULTILATERAL COOPERATION AGAINST TERRORISTS.

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

ducting, or concealing an act of domestic terrorism or international terrorism (as defined in section 2331) against the United States, citizens or residents of the United States, or their property; or

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

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

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

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

(a) DISCLOSURE WITHOUT A REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—Paragraph (3) of section 6103(i) of the Internal Revenue Code of 1986 (relating to disclosure of return information to apprise appropriate officials of criminal activities or emer-

gency circumstances) is amended by adding at the end the following new subparagraph:

"(C) TERRORIST ACTIVITIES, ETC.—

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

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

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

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

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

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

"(A) DISCLOSURE TO LAW ENFORCEMENT AGENCIES.—

"(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (iii), the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal

law enforcement agency who are personally and directly engaged in the response to or investigation of terrorist incidents, threats, or activities.

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

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

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

ligence authorities contained in title I of this Act and provide a report to the President and Congress.

○

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

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

"(B) DISCLOSURE TO INTELLIGENCE AGENCIES.—

"(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (ii), the Secretary may disclose return information (other than taxpayer return information) to those officers and employees of the Department of Justice, the Department of the Treasury, and other Federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning ter-

rorists and terrorist organizations and activities. For purposes of the preceding sentence, the information disclosed under the preceding sentence shall be solely for the use of such officers and employees in such investigation, collection, or analysis.

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

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

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

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

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

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

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

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

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

(6) RESOURCES.—Identifying resources needed by the Inspector General to implement such plan.

(d) REVIEW OF INVESTIGATIVE TOOLS.—Not later than August 31, 2003, the Deputy shall review the implementation, use, and operation (including the impact on civil rights and liberties) of the law enforcement and intel-

by government employees and officials including employees and officials of the Department of Justice;

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

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

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

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

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

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

"(C) DISCLOSURE UNDER EX PARTE ORDERS.—

"(i) IN GENERAL.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under clause (ii), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal law enforcement agency or Federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and

counterintelligence information concerning any terrorist activity or threats. Return or return information opened pursuant to the preceding sentence shall be solely for the use of such officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to any such terrorist activity or threat.

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

"(I) there is reasonable cause to believe, based upon information believed to be reliable, that the taxpayer whose return or return information is

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

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

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

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

SEC. 702. REVIEW OF THE DEPARTMENT OF JUSTICE.

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

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

(1) review information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling

eral, State, or local government agency, including an Indian tribal agency, who have successfully completed law enforcement training approved by the Secretary and are authorized to carry firearms, make arrests, and execute service of process to enforce criminal laws of their employing jurisdiction.

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

TITLE VII—MISCELLANEOUS

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

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

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

to be disclosed may be connected to a terrorist activity or threat,

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

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

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

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

subclauses (I) and (II) of subparagraph (C)(ii) are met.

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

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

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

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

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

(c) CONFORMING AMENDMENTS.—

when carrying out Federal law enforcement responsibilities, be considered a Federal employee.

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

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

"(8) For the purposes of this subsection, the term 'law enforcement personnel' means employees of a Fed-

fense committed within a Reclamation project or on Reclamation lands; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the laws or ordinances of that State or local government; and

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

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

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

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

United States magistrate judge designated for that purpose by the court by which such judge was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18, United States Code.

"(4) The Secretary may—

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

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

"(C) cooperate with any State or local government, including Indian tribes, in the enforcement of

SEC. 406. EXTRATERRITORIAL JURISDICTION.

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

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

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

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

TITLE V—EMERGENCY AUTHORIZATIONS

SEC. 501. OFFICE OF JUSTICE PROGRAMS.

(a) In connection with the airplane hijackings and terrorist acts (including, without limitation, any related search, rescue, relief, assistance, or other similar activi-

ties) that occurred on September 11, 2001, in the United States, amounts transferred to the Crime Victims Fund from the Executive Office of the President or funds appropriated to the President shall not be subject to any limitation on obligations from amounts deposited or available in the Fund.

(b) Section 112 of title I of section 101(b) of division A of Public Law 105–277 and section 108(a) of Appendix A of Public Law 106–113 (113 Stat. 1501A–20) are amended—

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

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

(c) Section 1404B(b) of the Victim Compensation and Assistance Act is amended after "programs" by inserting ", to victim service organizations, to public agencies (including Federal, State, or local governments), and to non-governmental organizations that provide assistance to victims of crime,".

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

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

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

TITLE VI—DAM SECURITY

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

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

"(3) Any person who violates any such regulation which is issued pursuant to this Act shall be fined under title 18, United States Code, imprisoned not more than 6 months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any

SEC. 504. DEPARTMENT OF STATE REWARD AUTHORITY.

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

(1) in subsection (b)—

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

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

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

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

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

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

"(1) AMOUNT OF AWARD.—

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

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

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

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

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

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

"§ 3059. Rewards and appropriation therefor

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

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

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

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

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

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

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

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

(b) CONFORMING AMENDMENTS.——

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

((2) Public Law 101–647 is amended—

(A) in section 2565—

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

(ii) by striking subsection (e); and

(C) by striking section 2569.

SEC. 503. LIMITED AUTHORITY TO PAY OVERTIME.

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

SEC. 402. MATERIAL SUPPORT FOR TERRORISM.

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

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

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

SEC. 403. ASSETS OF TERRORIST ORGANIZATIONS.

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

"(G) All assets, foreign or domestic—

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

"(ii) acquired or maintained by any person for the purpose of supporting, planning, con-

than 60 days after it otherwise would have been due; and

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

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

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

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

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

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

(c) DIVERSITY IMMIGRANTS.—

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

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

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

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

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

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

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

TITLE IV—FINANCIAL INFRASTRUCTURE

SEC. 401. LAUNDERING THE PROCEEDS OF TERRORISM.

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

on the date of the enactment of this paragraph.".

SEC. 356. SPECIAL AGENT AUTHORITIES.

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

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

"(2) in the course of performing the functions set forth in paragraphs (1) and (3), obtain and execute search and arrest warrants, as well as obtain and serve subpoenas and summonses, issued under the authority of the United States;";

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

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

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

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

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

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

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

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

(a) TREATMENT AS IMMEDIATE RELATIVES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, if the citizen died as a direct result of a specified terrorist activ-

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

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

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

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

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

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

Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or to the President or Vice President of the United States, for the performance of official duties.";

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

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

SEC. 354. EXTRATERRITORIALITY.

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

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

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

ity, the alien (and each child of the alien) shall be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death, but only if the alien files a petition under section 204(a)(1)(A)(ii) of such Act within 2 years after such date and only until the date the alien remarries.

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

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

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

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

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

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

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

(1) IN GENERAL.—Any alien who was, on September 10, 2001, the spouse or child of an alien described in paragraph (2), and who applied for adjustment of status prior to the death described in

title 18, United States Code), by a Federal magistrate judge in any district in which activities related to the terrorism may have occurred, for a search of property or for a person within or outside the district".

SEC. 352. DNA IDENTIFICATION OF TERRORISTS.

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

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

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

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

SEC. 353. GRAND JURY MATTERS.

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

(1) by adding at the end the following:

"(v) when permitted by a court at the request of an attorney for the government, upon a showing that the matters pertain to international or domestic terrorism (as defined in section 2331 of title 18, United States Code) or national security, to any

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

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

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

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

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

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

SEC. 310. CIVIL DAMAGES.

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

Subtitle B—Criminal Procedure

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

Rule 41(a) of the Federal Rules of Criminal Procedure is amended by inserting after "executed" the following: "and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of

paragraph (2)(A), may have such application adjudicated as if such death had not occurred.

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

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

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

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

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

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

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

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

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

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

SEC. 215. TEMPORARY ADMINISTRATIVE RELIEF.

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

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

vices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved, or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49."; and

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

"25. Federal terrorism offense defined.".

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

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

(1) in paragraph (1)(B)—

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

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

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

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

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

defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture);

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

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

"(5) any of the following provisions of title 49: section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3), (relating to explosive or incendiary de-

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

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

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

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

(1) Death.

(2) Disability.

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

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

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

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

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

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

SEC. 218. DEFINITIONS.

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

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

TITLE III—CRIMINAL JUSTICE

Subtitle A—Substantive Criminal Law

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

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

175, 175b (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 792 (relating to harboring terrorists), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f) or (i) (relating to arson and bombing of certain property), 930(c), 956 (relating to conspiracy to injure property of a foreign government), 1030(a)(1), 1030(a)(5)(A), or 1030(a)(7) (relating to protection of computers), 1114 (relating to protection of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to injury of Government property or contracts), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366 (relating to destruction of an energy facility), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992, 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155 (relating to destruction of national

mitted, or in any other Federal judicial district as provided by law.".

SEC. 308. POST-RELEASE SUPERVISION OF TERRORISTS.

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

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

SEC. 309. DEFINITION.

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

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

"§ 25. Federal terrorism offense defined

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

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

"(2) is a violation of, or an attempt or conspiracy to violate- section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction),

"§ 3286. Terrorism offenses

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

"(1) A violation of, or an attempt or conspiracy to violate, section 32 (relating to destruction of aircraft or aircraft facilities), 37(a)(1) (relating to violence at international airports), 175 (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 792 (relating to harboring terrorists), 831 (relating to nuclear materials), 844(f) or (i) when it relates to bombing (relating to arson and bombing of certain property), 1114(1) (relating to protection of officers and employees of the United States), 1116, if the offense involves murder (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 2332(a)(1) (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a (relating to use of weapons of mass destruction), 2332b

(relating to acts of terrorism transcending national boundaries) of this title.

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

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

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

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

"(1) Section 175b (relating to biological weapons), 842(m) or (n) (relating to plastic explosives), 930(c) if it involves murder (relating to possessing a dangerous weapon in a Federal facility), 956 (relating to conspiracy to injure property of a foreign government), 1030(a)(1), 1030(a)(5)(A), or 1030(a)(7) (relating to protection of computers), 1362 (relating to destruction of communication lines, stations, or systems), 1366 (relating to destruction of an energy facility), 1992 (relating to trainwrecking), 2152 (relating to injury of fortifications, harbor defenses, or defensive sea areas), 2155

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

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

(1) in subsection (a)—

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

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

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

SEC. 307. PROHIBITION AGAINST HARBORING.

Title 18, United States Code, is amended by adding the following new section:

"§ 791. Prohibition against harboring

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

suant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination that remains in effect that such country has repeatedly provided support for acts of international terrorism.

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

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

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

"175b. Possession by restricted persons.".

(relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture).

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

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

"3286. Terrorism offenses.".

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

SEC. 302. ALTERNATIVE MAXIMUM PENALTIES FOR TERRORISM CRIMES.

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

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

SEC. 303. PENALTIES FOR TERRORIST CONSPIRACIES.

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

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

1996 (Public Law 104–132), and is not exempted under subsection (h) of such section 72.6, or Appendix A of part 72 of such title; except that the term select agent does not include any such biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.

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

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

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

"(3) is a fugitive from justice;

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

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

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

"(7) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pur-

struction of aircraft or aircraft facilities), 37(a)(1) (relating to violence at international airports), 175 (relating to biological weapons), 229 (relating to chemical weapons), 351(a)–(d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f) or (i) when it involves a bombing (relating to arson and bombing of certain property), 930(c) when it involves an attack on a Federal facility, 1114 when it involves murder (relating to protection of officers and employees of the United States), 1116 when it involves murder (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1362 (relating to destruction of communication lines, stations, or systems), 1366 (relating to destruction of an energy facility), 1751(a)–(d) (relating to Presidential and Presidential staff assassination and kidnaping), 1992 (relating to trainwrecking), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national

boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture) of this title; section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2284); or section 46502 (relating to aircraft piracy) or 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.".

SEC. 305. BIOLOGICAL WEAPONS.

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

(1) in section 175—

(A) in subsection (b)—

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

"(1) the";

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

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

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

"(2) the terms biological agent and toxin do not encompass any biological agent or toxin that is in its

naturally-occurring environment, if the biological agent or toxin has not been cultivated, collected, or otherwise extracted from its natural source.";

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

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

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

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

"§ 175b. Possession by restricted persons

"(a) No restricted person described in subsection (b) shall ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any biological agent or toxin, or receive any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in subsection (j) of section 72.6 of title 42, Code of Federal Regulations, pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of

"§ 2332c. Attempts and conspiracies

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

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

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

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

"2332c. Attempts and conspiracies.".

SEC. 304. TERRORISM CRIMES AS RICO PREDICATES.

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

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

(2) by striking "financial gain;" and inserting "financial gain, or (G) any act that is a Federal terrorism offense or is indictable under any of the following provisions of law: section 32 (relating to de-

Fri 9/28
9:30 AM

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

(1) Sept. 11 change
(2) strength of case law
(3) special needs cases
(4)

The Honorable Bob Graham
Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Senator Graham:

I am writing to relay to you the views of the Department of Justice on the constitutionality of amending the Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1800-1863 (FISA), so that a search may be approved when the collection of foreign intelligence is a purpose of the search. In its current form, FISA requires that the purpose of the search be for the collection of foreign intelligence. 50 U.S.C. § 1804(a)(7)(B) and 50 U.S.C. § 1823(a)(7)(B). We believe that this amendment would not violate the Fourth Amendment.

It should be made clear at the outset that the proposed FISA amendment *cannot* cause a facial violation of the Fourth Amendment. Because a purpose would include the current warrant applications in which foreign intelligence is the purpose of the search, a significant class of valid searches would continue to fall within the new statutory language. Amending FISA merely gives the Department the full flexibility to conduct foreign intelligence surveillance that is permitted by the Constitution itself.

I

The Fourth Amendment declares that, the right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures, shall not be violated. U.S. Const. Amend. IV (emphasis added). The Amendment also declares that no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. *Id.*

Thus, the touchstone for review is whether a search is ▒reasonable.▒ *See, e.g., Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995) (▒[a]s the text of the Fourth Amendment indicates, the ultimate measure of the constitutionality of a government search is `reasonableness.'▒). When law enforcement undertakes a search to discover evidence of criminal wrongdoing, the Supreme Court has said that reasonableness generally requires a judicial warrant. *See id.* at 653. But the Court has made clear that a warrant is not required for all government searches. A warrantless search can be constitutional ▒when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.▒ *Id.*

As a result, the Court properly has found a variety of warrantless government searches to be consistent with the Fourth Amendment. *See, e.g., Pennsylvania v. Labron*, 518 U.S. 938 (1996) (per curiam) (certain automobile searches); *Acton, supra* (drug testing of high school athletes); *Michigan v. Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) (drunk driver checkpoints); *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602 (1989) (drug testing of railroad personnel); *Treasury Employees v. Von Raab*, 489 U.S. 656 (1989) (random drug testing of federal customs officers); *United States v. Place*, 462 U.S. 696 (1983) (temporary seizure of baggage); *Michigan v. Summers*, 452 U.S. 692 (1981) (detention to prevent flight and to protect law enforcement officers); *Terry v. Ohio*, 392 U.S. 1 (1968) (temporary stop and limited search for weapons).

In these circumstances, the Court has examined several factors to determine whether a warrantless search is reasonable. As the Court stated just last Term: ▒When faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable.▒ *Illinois v. McArthur*, 121 S. Ct. 946, 949 (2001). In creating these exceptions to its warrant requirement, the Court has found that, under the totality of the circumstances, the ▒importance of the government's interests▒ has outweighed the ▒nature and the quality of the intrusion on the individual's Fourth Amendment interests.▒ *See Tennessee v. Garner*, 471 U.S. 1, 8 (1985).

Of particular relevance here, the Court has found warrantless searches reasonable when there are ▒exigent circumstances,▒ such as a potential threat to the safety of law enforcement officers or third parties. The Court has also recognized that a government official may not need to show the same kind of proof to a magistrate to obtain a warrant for a search unrelated to the investigation of a crime ▒as one must who would search for the fruits or instrumentalities of crime.▒

Camara v. Municipal Court of San Francisco, 387 U.S. 523, 538 (1967). For example, ▒[w]here considerations of health and safety are involved, the facts that would justify an inference of `probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken.▒ *Id.* *See also Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000) (in context of seizure and exigent circumstances, Fourth Amendment would permit appropriately tailored roadblock to thwart an imminent terrorist attack or catch a dangerous criminal who is likely to flee).

II

This analysis of Fourth Amendment doctrine demonstrates that the government could conduct searches to obtain foreign intelligence without satisfying all of the requirements applicable in the normal law enforcement context. It is important to understand the current shape of Fourth Amendment law, and how it would apply to the circumstances at hand, in order to evaluate the constitutionality of the proposed amendment to FISA. As we have noted earlier, the Fourth Amendment's reasonableness test for searches generally calls for a balancing of the government's interest against the individual's Fourth Amendment interests. Here, the nature of the government interest is great. In the counter-intelligence field, the government is engaging in electronic surveillance in order to prevent foreign powers or their agents from obtaining information or conducting operations that would directly harm the security of the United States.

To be sure, the Supreme Court has subjected counter-intelligence searches of purely domestic terrorist groups to a warrant requirement. When it first applied the Fourth Amendment to electronic surveillance, the Supreme Court specifically refused to extend its analysis to include domestic searches that were conducted for national security purposes. *Katz v. United States*, 389 U.S. 347, 358 n. 23 (1967); *see also Mitchell v. Forsyth*, 472 U.S. 511, 531 (1985). Later, however, in *United States v. United States District Court for the Eastern District of Michigan*, 407 U.S. 297, 299 (1972) (▒*Keith*▒), the Court held that the warrant requirement should apply to cases of terrorism by purely domestic groups. In doing so, the Justices framed the question by explaining that, ▒[i]ts resolution is a matter of national concern, requiring sensitivity both to the Government's right to protect itself from unlawful subversion and attack and to the citizen's right to be secure in his privacy against unreasonable Government intrusion.▒ *Id.* While acknowledging that ▒unless Government safeguards its own capacity to function and to preserve the security of its people, society itself could become so disordered that all rights and liberties would be endangered,▒ *id.* at 312, the Court cautioned that ▒[t]he danger to political dissent is acute where the Government

attempts to act under so vague a concept as the power to protect `domestic security.' Given the difficulty of defining the domestic security interest, the danger of abuse in acting to protect that interest becomes apparent.' *Id.* at 314. As a result, the Court held that the absence of neutral and disinterested magistrates governing the reasonableness of the search impermissibly left 'those charged with [the] investigation and prosecutorial duty [as] the sole judges of when to utilize constitutionally sensitive means in pursuing their tasks.' *Id.* at 317.

The Court explicitly noted, however, that it was not considering the scope of the President's surveillance power with respect to the activities of foreign powers within or without the country. *Id.* at 308. And after the *Keith* decision, lower courts have found that when the government conducts a search, for national security reasons, of a foreign power or its agents, it need not meet the same requirements that would normally apply in the context of a search of United States citizens who are not foreign agents or for criminal law enforcement purposes. In *United States v. Truong Dinh Hung*, 629 F.2d 908 (4th Cir. 1980), for example, the Fourth Circuit observed that 'the needs of the executive are so compelling in the area of foreign intelligence, unlike the area of domestic security, that a uniform warrant requirement would, following *Keith*, `unduly frustrate,' the President in carrying out his foreign affairs responsibilities.' *Id.* at 913. The Court based this determination on a number of factors, including:

> (1) '[a] warrant requirement would reduce the flexibility of executive foreign intelligence initiatives, in some cases delay executive response to foreign intelligence threats, and increase the chance of leaks regarding sensitive executive operations,' *id.*;
>
> (2) 'the executive possesses unparalleled expertise to make the decision whether to conduct foreign intelligence surveillance, whereas the judiciary is largely inexperienced in making the delicate and complex decisions that lie behind foreign intelligence surveillance . . . . Few, if any, district courts would be truly competent to judge the importance of particular information to the security of the United States or the `probable cause' to demonstrate that the government in fact needs to recover that information from one particular source,' *id.* at 913-14; and
>
> (3) the executive branch 'is also constitutionally designated as the pre-eminent authority in foreign affairs.' *Id.* at 914.

The Court also recognized, however, that ▒because individual privacy interests are severely compromised any time the government conducts surveillance without prior judicial approval, this foreign intelligence exception to the Fourth Amendment warrant requirement must be carefully limited to those situations in which the interests of the executive are paramount.▒ *Id.* at 915. *See also United States v. Brown*, 484 F.2d 418 (5th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974); *United States v. Buck*, 548 F.2d 871 (9th Cir.), *cert. denied*, 434 U.S. 890 (1977); *United States v. Clay*, 430 F.2d 165 (5th Cir. 1970), *rev'd on other grounds*, 403 U.S. 698 (1971).

Therefore, the Fourth Circuit held that the government was relieved of the warrant requirement when (1) the object of the search or surveillance is a foreign power, its agent or collaborators since such cases are ▒most likely to call into play difficult and subtle judgments about foreign and military affairs,▒629 F.2d at 915; and (2) ▒when the surveillance is conducted `primarily' for foreign intelligence reasons . . . . because once surveillance becomes primarily a criminal investigation, the courts are entirely competent to make the usual probable cause determination, and because, importantly, individual privacy interests come to the fore and government foreign policy concerns recede when the government is primarily attempting to form the basis for a criminal prosecution.▒ *Id.*

As the attacks on September 11, 2001 revealed, the government interest in conducting searches related to fighting terrorism is perhaps of the highest order -- the need to defend the nation from direct attack. As the Supreme Court has said, ▒It is `obvious and unarguable' that no governmental interest is more compelling than the security of the nation.▒ *Haig v. Agee*, 453 U.S. 280, 307 (1981). The compelling nature of the government's interest here may be understood in light of the Founders' express intention to create a federal government ▒cloathed with all the powers requisite to the complete execution of its trust.▒ *The Federalist* No. 23, at 147 (Alexander Hamilton) (Jacob E. Cooke ed. 1961). Foremost among the objectives committed to that trust by the Constitution is the security of the nation. As Hamilton explained in arguing for the Constitution's adoption, because ▒the circumstances which may affect the public safety▒ are not ▒reducible within certain determinate limits,▒

> it must be admitted, as a necessary consequence, that there can be no limitation of that authority, which is to provide for the defence and protection of the community, in any matter essential to its efficacy.

Id. at 147-48.[1] Within the limits that the Constitution itself imposes, the scope and distribution of the powers to protect national security must be construed to authorize the most

efficacious defense of the nation and its interests in accordance with the realistic purposes of the entire instrument." *Lichter v. United States*, 334 U.S. 742, 782 (1948). Nor is the authority to protect national security limited to that necessary "to victories in the field." *Application of Yamashita*, 327 U.S. 1, 12 (1946). The authority over national security "carries with it the inherent power to guard against the immediate renewal of the conflict." *Id.*

The text, structure and history of the Constitution establish that the Founders entrusted the President with the primary responsibility, and therefore the power, to ensure the security of the United States in situations of grave and unforeseen emergencies. Intelligence gathering is a necessary function that enables the President to carry out that authority. The Constitution, for example, vests in the President the power to deploy military force in the defense of United States by the Vesting Clause, U.S. Const. Art. II, § 1, cl. 1, and by the

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[1] *See also The Federalist* No. 34, at 211 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) (Federal government is to possess "an indefinite power of providing for emergencies as they might arise"); *The Federalist* No. 41, at 269 (James Madison) ("Security against foreign danger is one of the primitive objects of civil society. . . . The powers requisite for attaining it, must be effectually confided to the federal councils.") Many Supreme Court opinions echo Hamilton's argument that the Constitution presupposes the indefinite and unpredictable nature of "the circumstances which may affect the public safety," and that the federal government's powers are correspondingly broad. *See, e.g., Dames & Moore v. Regan*, 453 U.S. 654, 662 (1981) (noting that the President "exercis[es] the executive authority in a world that presents each day some new challenge with which he must deal"); *Hamilton v. Regents*, 293 U.S. 245, 264 (1934) (Federal government's war powers are "well-nigh limitless" in extent); *Stewart v. Kahn*, 78 U.S. (11Wall.) 493, 506 (1870) ("The measures to be taken in carrying on war . . . are not defined [in the Constitution]. The decision of all such questions rests wholly in the discretion of those to whom the substantial powers involved are confided by the Constitution."); *Miller v. United States*, 78 U.S. (11 Wall.) 268, 305 (1870) ("The Constitution confers upon Congress expressly power to declare war, grant letters of marque and reprisal, and make rules respecting captures on land and water. Upon the exercise of these powers no restrictions are imposed. Of course the power to declare war involves the power to prosecute it by all means and in any manner in which war may be legitimately prosecuted.").

Commander in Chief Clause, *id.*,§ 2, cl. 1.[2] Intelligence operations, such as electronic surveillance, often are necessary and proper for the effective deployment and execution of military force against terrorists. Further, the Constitution makes explicit the President's *obligation* to safeguard the nation's security by whatever lawful means are available by imposing on him the duty to ▒take Care that the Laws be faithfully executed.▒ *Id.*, § 3. The implications of constitutional text and structure are confirmed by the practical consideration that national

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[2]*See Johnson v. Eisentrager*, 339 U.S. 763, 789 (1950) (President has authority to deploy United States armed forces ▒ abroad or to any particular region▒); *Fleming v. Page*, 50 U.S. (9 How.) 603, 615 (1850) (▒As commander-in-chief, [the President] is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual▒); *Loving v. United States*, 517 U.S. 748, 776 (1996) (Scalia, J., concurring in part and concurring in judgment) (The ▒inherent power▒ of the Commander in Chief ▒are clearly extensive.▒); *Maul v. United States*, 274 U.S. 501, 515-16 (1927) (Brandeis & Holmes, JJ., concurring) (President ▒may direct any revenue cutter to cruise in any waters in order to perform any duty of the service▒); *Commonwealth of Massachusetts v. Laird*, 451 F.2d 26, 32 (1st Cir. 1971) (the President has ▒power as Commander-in-Chief to station forces abroad▒); *Ex parte Vallandigham*, 28 F.Cas. 874, 922 (C.C.S.D. Ohio 1863) (No. 16,816) (in acting ▒under this power where there is no express legislative declaration, the president is guided solely by his own judgment and discretion▒); *Authority to Use United States Military Forces in Somalia*, 16 Op. O.L.C. 6, 6 (1992) (Barr, A.G.).

[3]As Alexander Hamilton explained in *The Federalist* No. 74, ▒ [o]f all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand.▒ *The Federalist* No. 74, at 500 (Alexander Hamilton) (Jacob E. Cooke ed., 1961). And James Iredell (later an Associate Justice of the Supreme Court) argued in the North Carolina Ratifying Convention that ▒[f]rom the nature of the thing, the command of armies ought to be delegated to one person only. The secrecy, despatch, and decision, which are necessary in military operations, can only be expected from one person.▒ Debate in the North Carolina Ratifying Convention, in 4 Jonathan Elliott, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 107 (2d ed. Ayer Company, Publishers, Inc. 1987) (1888). *See also* 3 Joseph Story, *Commentaries on the Constitution* § 1485, at 341

security decisions often require the unity in purpose and energy in action that characterize the Presidency rather than Congress.[3]

Judicial decisions since the beginning of the Republic confirm the President's constitutional power and duty to repel military action against the United States and to take measures to prevent the recurrence of an attack. As Justice Joseph Story said long ago, "[i]t may be fit and proper for the government, in the exercise of the high discretion confided to the executive, for great public purposes, to act on a sudden emergency, or to prevent an irreparable mischief, by summary measures, which are now found in the text of the laws." *The Apollon*, 22 U.S. (9 Wheat.) 362, 366-67 (1824). The Constitution entrusts the "power [to] the executive branch of the Government to preserve order and insure the public safety in times of emergency, when other branches of the Government are unable to function, or their functioning would itself threaten the public safety." *Duncan v. Kahanamoku*, 327 U.S. 304, 335 (1946) (Stone, C.J., concurring). If the President is confronted with an unforeseen attack on the territory and people of the United States, or other immediate, dangerous threat to American interests and security, it is his constitutional responsibility to respond to that threat. *See, e.g., The Prize Cases*, 67 U.S. (2 Black) 635, 668 (1862) ("If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force . . . without waiting for any special legislative authority."); *Kahanamoku*, 327 U.S. at 336 (Stone, C.J., concurring) ("Executive has broad discretion in determining when the public emergency is such as to give rise to the necessity" for emergency measures); *United States v. Smith*, 27 F. Cas. 1192, 1230 (C.C.D.N.Y. 1806) (No. 16,342) (Paterson, Circuit Justice) (regardless of statutory authorization, it is "the duty . . . of the executive magistrate . . . to repel an invading foe"); *see also* 3 Story, *Commentaries* § 1485 ("[t]he command and application of the public force . . . to maintain peace, and to resist foreign invasion" are executive powers).

The Department believes that the President's constitutional responsibility to defend the Nation may justify reasonable, but warrantless, counter-intelligence searches. As the Commander-in-Chief, the President must be able to use whatever means necessary to prevent attacks upon the United States; this power, by implication, includes the authority to collect information necessary for its effective exercise.

(1833) (in military matters, "[u]nity of plan, promptitude, activity, and decision, are indispensable to success; and these can scarcely exist, except when single magistrate is entrusted exclusively with the power").

This examination demonstrates that the current situation, in which Congress has recognized the President's authority to use force in response to a direct attack on the American homeland, has demonstrated the government's increased interest. The government's interest has changed from merely conducting foreign intelligence surveillance to counter intelligence operations by other nations, to one of preventing terrorist attacks against American citizens and property within the continental United States itself. The courts have observed that even the use of deadly force is reasonable under the Fourth Amendment if used in self-defense or to protect others. *See, e.g., Romero v. Board of County Commissioners*, 60 F.3d 702 (10th Cir. 1995), *cert. denied* 516 U.S. 1073 (1996); *O'Neal v. DeKalb County*, 850 F.2d 653 (11th Cir. 1988). Here, for Fourth Amendment purposes, the right to self-defense is not that of an individual, but that of the nation and of its citizens. *Cf. In re Neagle*, 135 U.S. 1 (1890); *The Prize Cases*, 67 U.S. (2 Black) 635 (1862). If the government's heightened interest in self-defense justifies the use of deadly force, then it certainly would also justify warrantless searches.

III

It is against this background that the change to FISA should be understood. Both the executive branch and the courts have recognized that national security searches against foreign powers and their agents need not comport with the same Fourth Amendment requirements that apply to domestic criminal investigations. FISA embodies the idea that, in this context, the Fourth Amendment applies differently than in the criminal context. Nonetheless, FISA itself is not required by the Constitution, nor is it necessarily the case that its current standards match exactly to Fourth Amendment standards. Rather, like the warrant process in the normal criminal context, FISA represents a statutory procedure that, if used, will create a presumption that the surveillance is reasonable under the Fourth Amendment. Thus, it is wholly appropriate to amend FISA to ensure that its provisions are coeextensive with bounds of the Fourth Amendment's reasonableness test.

The national security and foreign intelligence elements of the search justify its exemption from the standard law enforcement warrant process. After the enactment of FISA, for example, courts have emphasized the distinction between searches conducted to collect foreign intelligence and those undertaken for pursuing criminal prosecutions. Although this may be due, in part, to a statutory construction of the FISA provisions, these courts' language may be seen as having broader application. As the Second Circuit has emphasized, although courts, even prior to the enactment of FISA, concluded that the collection of foreign intelligence information constituted an exception to the warrant requirement, the governmental interests presented in national

security investigations differ substantially from those presented in traditional criminal prosecutions." *United States v. Duggan*, 743 F.2d 59, 72 (2d Cir. 1984). The *Duggan* Court held that FISA did not violate the Fourth Amendment because the requirements of FISA "provide an appropriate balance between the individual's interest in privacy and the government's need to obtain foreign intelligence information." *Id.* at 74. The Court's holding was made in the context of acknowledging the reasonableness of "the adoption of prerequisites to surveillance that are less stringent than those precedent to the issuance of a warrant for a criminal investigation." *Id.* at 73.

Similarly, the Ninth Circuit found that the lowered probable cause showing required by FISA is reasonable because, although the application need not state that the surveillance is likely to uncover evidence of a crime, "the purpose of the surveillance is not to ferret out criminal activity but rather to gather intelligence, [and therefore] such a requirement would be illogical." *United States v. Cavanagh*, 807 F.2d 787, 790-91 (9th Cir. 1987) (Kennedy, J.).[4] And consistent with both the language of the Second and Ninth Circuits, the First Circuit, in upholding the constitutionality of FISA, explained that "[a]lthough evidence obtained under FISA subsequently may be used in criminal prosecutions, the investigation of criminal activity cannot be the primary purpose of the surveillance [and therefore] [t]he act is not to be used as an end-run around the Fourth Amendment's prohibition of warrantless searches." *United States v. Johnson*, 952 F.2d 656, 572 (1st Cir. 1992) (citations omitted), *cert. denied*, 506 U.s. 816 (1992).

On the other hand, it is also clear that while FISA states that "the" purpose of a search is for foreign surveillance, that need not be the only purpose. Rather, law enforcement considerations can be taken into account, so long as the surveillance also has a legitimate foreign intelligence purpose. FISA itself makes provision for the use in criminal trials of evidence obtained as a result of FISA searches, such as rules for the handling of evidence obtained through FISA searches, 50 U.S.C. § 1801(h) & 1806, and procedures for deciding suppression motions, *id.* § 1806(e). In approving FISA, the Senate Select Committee on Intelligence observed: "U.S. persons may be authorized targets, and the surveillance is part of an investigative process often designed to protect against the commission of serious crimes such as espionage, sabotage,

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[4]The Ninth Circuit has reserved the question of whether the "primary purpose" test is too strict. *United States v. Sarkissian*, 841 F.2d 959, 964 (9th Cir. 1988).

assassinations, kidnapping, and terrorist acts committed by or on behalf of foreign powers. Intelligence and criminal law enforcement tend to merge in this area.[illegible] S. Rep. No. 95-701, at 10-11 (1978). The Committee also recognized that [illegible]foreign counterintelligence surveillance frequently seeks information needed to detect or anticipate the commission of crimes,[illegible] and that [illegible]surveillance conducting under [FISA] need not stop once conclusive evidence of a crime is obtained, but instead may be extended longer where protective measures other than arrest and prosecution are more appropriate.[illegible] *Id.* at 11.

The courts agree that the gathering of counter-intelligence need not be the only purpose of a constitutional FISA search. An [illegible] otherwise valid FISA surveillance is not tainted simply because the government can anticipate that the fruits of such surveillance may later be used, as allowed by § 1806(b), as evidence in a criminal trial.[illegible] *Duggan,* 743 F.2d at 78. This is due to the recognition that [illegible]in many cases the concerns of the government with respect to foreign intelligence will overlap those with respect to law enforcement.[illegible] *Id.* In order to police the line between legitimate foreign intelligence searches and pure domestic law enforcement operations, most courts have adopted the test that the [illegible]primary purpose[illegible] of a FISA search is to gather foreign intelligence. *See id.*; *United States v. Johnson*, 952 F.2d 565, 572 (1st Cir. 1991); *United States v. Pelton*, 835 F.2d 1067 (4th Cir. 1987), *cert. denied*, 486 U.S. 1010 (1988); *United States v. Badia*, 827 F.2d 1458, 1464 (11th Cir. 1987), *cert. denied*, 485 U.S. 937 (1988). Not all courts, however, have felt compelled to adopt the primary purpose test. The Ninth Circuit has explicitly reserved the question whether the [illegible]primary purpose[illegible] is too strict and the appropriate test is simply whether there was a legitimate foreign intelligence purpose. *United States v. Sarkissian*, 841 F.2d 959, 964 (9th Cir. 1988). No other Circuit has explicitly held that such a formulation would be unconstitutional.

In light of this case law and FISA's statutory structure, we do not believe that an amendment of FISA from [illegible]the[illegible] purpose to [illegible] a[illegible] purpose would be unconstitutional. To be sure, it is difficult to predict with exact certainty where the courts would draw the line in the context of balancing individual privacy interests and government foreign policy concerns. So long, however, as the government has a legitimate objective in obtaining foreign intelligence information, it should not matter whether it also has a collateral interest in obtaining information for a criminal prosecution. As courts have observed, the criminal law interests of the government do not taint a FISA search when its foreign intelligence objective is primary. This implies that a FISA search should not be invalid when the interest in criminal prosecution is significant, but there is still a legitimate foreign intelligence purpose for the search. This concept flows from the courts' recognition that the concerns of government with respect to foreign policy will often overlap

with those of law enforcement.

Further, there are other reasons that justify the constitutionality of the proposed change to FISA. First, as an initial matter, the alteration in the statute could not be facially unconstitutional. As the Court has held, in order to succeed a facial challenge to a statute must show that the law is invalid ▒in every circumstance.▒ *Babbitt v. Sweet Home Chapter,* 515 U.S. 687, 699 (1995). As the Court made clear in *United States v. Salerno*, 481 U.S. 739 (1987), ▒[a] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.▒ *Id.* at 745. Such a challenge would fail here. Even if FISA were amended to require that ▒a▒ purpose for the search be the collection of foreign intelligence, that class of searches would continue to include both searches in which foreign intelligence is *the only* purpose and searches in which it is the *primary* purpose -- both permissible under current case law.

Second, amending FISA would merely have the effect of changing the statute to track the Constitution. Courts have recognized that the executive branch has the authority to conduct warrantless searches for foreign intelligence purposes, so long as they are reasonable under the Fourth Amendment. Although the few courts that have addressed the issue have followed a primary purpose test, it is not clear that the Constitution, FISA, or Supreme Court case law requires that test. It may very well be the case that the primary purpose test is more demanding than that called for by the Fourth Amendment's reasonableness requirement. Adopting the proposed FISA amendment will continue to make clear that the government must have a legitimate foreign surveillance purpose in order to conduct a FISA search. It would also recognize that because the executive can more fully assess the requirements of national security than can the courts, and because the President has a constitutional duty to protect the national security, the courts should not deny him the authority to conduct intelligence searches even when the national security purpose is secondary to criminal prosecution. At the same time, however, it still remains the province of the FISA court to determine whether such searches are constitutional by following a primary purpose test, or a less severe standard, such as requiring only a ▒significant▒ or ▒substantial▒ purpose. By altering the FISA standard to ▒a▒ purpose, Congress would allow the government to file applications that would be consistent with whatever Fourth Amendment standard the FISA court chooses.

For purposes of discussion, we could imagine a situation wherein the government might attempt to obtain a FISA warrant where ▒a▒ foreign intelligence purpose is present, but ▒the primary▒ purpose is to obtain evidence in furtherance of a criminal investigation. The fact that the search is aimed at furthering a criminal investigation, which only incidentally

promotes the national security and our foreign affairs interests, probably would not exempt the search from the usual probable cause requirements of the Fourth Amendment. Once the objective in acquiring the information is aimed primarily at effecting a criminal prosecution, as opposed to gathering intelligence information for counterintelligence purposes, the case may be more like *Keith* than it is like *Truong Dinh Hung*. Rather than being a matter of judicial second-guessing of the executive branch's determination that a foreign intelligence search is necessary, the objective would center instead on the desire to obtain information for a criminal prosecution.

In these circumstances, however, the FISA amendment would not permit unconstitutional searches. A court could still conclude that there is no real distinction between the law enforcement objective with incidental national security considerations, despite the fact that it arises in the foreign intelligence context, and the objective at issue in *Keith*. Once the primary purpose of the search is to further a criminal prosecution of one or more individuals, then absent exigent circumstances it would seem that the core principles of the Fourth Amendment are triggered, requiring the reasonableness determination of a neutral magistrate based on the full probable cause standard of the Fourth Amendment. No longer would it be a question of conducting the ▒delicate and complex decisions that lie behind foreign intelligence surveillance,▒ *Truong Dinh Hung*, 629 F.2d at 913, nor would it primarily be a question of the ▒ importance of particular information to the security of the United States▒ or ▒diplomacy and military affairs,▒ *id.* at 913-14. A court could decide that the warrant instead asked whether there are sufficient grounds to search premises or to conduct surveillance of private individuals for purposes of pursuing criminal prosecutions. In such a context, ▒individual privacy interests come to the fore and government foreign policy concerns recede.▒ *Id.* at 915.

A FISA court still remains an Article III court. As such, it still has an obligation to reject FISA applications that do not truly qualify for the relaxed constitutional standards applicable to national security searches. Rejecting an individual application, however, would not amount to a declaration that the ▒a purpose▒ standard was unconstitutional. Rather, the Court would only be interpreting the new standard so as not to violate the Constitution, in accordance with the canon of statutory construction that courts should read statutes to avoid constitutional difficulties. *See Public Citizen v. Department of Justice*, 491 U.S. 440, 466 (1989); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568, 575 (1988). Amending FISA to require only ▒a▒ purpose merely removes any difference between the statutory standard for reviewing FISA applications and the constitutional standard for national security searches.

Third, it is not unconstitutional to establish a standard for FISA applications that may be less demanding than the current standard, because it seems clear that the balance of Fourth Amendment considerations has shifted in the wake of the September 11 attacks. As discussed earlier in this memo, the reasonableness of a search under the Fourth Amendment depends on the balance between the government's interests and the privacy rights of the individuals involved. As a result of the direct terrorist attacks upon the continental United States, the government's interest has reached perhaps its most compelling level, that of defending the Nation from assault. This shift upward in governmental interest has the effect of expanding the class of reasonable searches under the Fourth Amendment. Correspondingly, changing the FISA standard to ▒a▒ purpose will allow FISA warrants to issue in that class of searches. A lower standard also recognizes that, as national security concerns in the wake of the September 11 attacks have dramatically increased, the constitutional powers of the executive branch have expanded, while judicial competence has correspondingly receded. Amending FISA only recognizes that the Fourth Amendment analysis has changed in light of the more compelling nature of the government's interests given the altered national security environment.

Fourth, amending FISA in this manner would be consistent with the Fourth Amendment because it only adapts the statutory structure to a new type of counter-intelligence. FISA was enacted at a time when there was a clear distinction between foreign intelligence threats, which would be governed by more flexible standards, and domestic law enforcement, which was subject to the Fourth Amendment's requirement of probable cause. Even at the time of the act's passage in 1978, however, there was a growing realization that ▒intelligence and criminal law enforcement tend to merge in [the] area▒ of foreign counterintelligence and counterterrorism. S. Rep. No. 95-701, at 11. September 11's events demonstrate that the fine distinction between foreign intelligence gathering and domestic law enforcement has broken down. Terrorists, supported by foreign powers or interests, had lived in the United States for substantial periods of time, received training within the country, and killed thousands of civilians by hijacking civilian airliners. The attack, while supported from abroad, was carried out from within the United States itself and violated numerous domestic criminal laws. Thus, the nature of the national security threat, while still involving foreign control and requiring foreign counterintelligence, also has a significant domestic component, which may involve domestic law enforcement. Fourth Amendment doctrine, based as it is ultimately upon reasonableness, will have to take into account that national security threats in future cannot be so easily cordoned off from domestic criminal investigation. As a result, it is likely that courts will allow for more mixture between foreign intelligence gathering and domestic criminal investigation, at least in the

counter-terrorism context. Changing the FISA standard from ▒the▒ purpose to ▒a▒ purpose would be consistent with this likely development.

For the foregoing reasons, we believe that changing FISA's requirement that ▒the▒ purpose of a FISA search be to collect foreign intelligence to ▒a▒ purpose will not violate the Constitution. We hope that making the Committee aware of the Department's views is helpful to its deliberation. Please do not hesitate to contact my office if we may be of further assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

AN IDENTICAL LETTER HAS BEEN SENT TO THE HONORABLE RICHARD SHELBY, VICE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE; THE HONORABLE PATRICK J. LEAHY, CHAIRMAN, COMMITTEE ON THE JUDICIARY; AND THE HONORABLE ORRIN G. HATCH, RANKING MINORITY MEMBER, COMMITTEE ON THE JUDICIARY

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Seventh Congress

FAX COVER SHEET

DATE: _____ NUMBER OF PAGES: 14
(Including Cover Sheet)

TO: Brett Cavanaugh

FROM: Bob MARSH (b)(6)
202-225-3951 (Telephone)
202-225-7686 (Fax)

COMMENTS: (F) 456-1647

*If this transmission is not received in its entirety, please call 202-225-3951.

1) **Mr. Berman** would like to strike section 153 and keep the current statutory language of "the purpose."

Reasons to Oppose:

Any application for electronic surveillance under this section of FISA, as amended by our bill requires, among other things, a certification by the Assistant to the President for National Security Affairs or other high official designated by the President that a **significant** purpose of the surveillance is to obtain foreign intelligence information.

A target of surveillance under this provision may well be engaging in criminal acts, but there are facts and evidence that indicate that the activities involve a threat to the national security of the United States. Requiring the "sole" or "primary" purpose to be restricted to only foreign intelligence information would tie the hands of investigators seeking to locate or identify potential terrorists.

2) In sections 155, 156, or 157 **Mr. Berman** may want to add back the language of the "agent of a foreign power."

Reasons to Oppose:

The "agent of a foreign power" nexus in the Foreign Intelligence Surveillance Act, particularly with regard to the use of pen registers and trap and trace devices, imposes more burdensome requirements than now exist under our federal criminal statutes. Do we really want to impose a higher standard on potential terrorists than on ordinary criminal suspects?

The acquisition of telephone numbers and toll billing and transactional records in the domestic criminal area can be obtained with a showing of probable cause. However, with new technologies, especially cell phones and computers, these records are much harder to identify where agents of a foreign power are involved. We should not hamstring our law enforcement investigators with the requirement to show both relevance to the investigation and that the target is an agent of a foreign power.

4) Sections 108 and 351 - Mr. Scott may offer an amendment to these sections, because he believes that forum shopping is created. The amendment will limit the ability to get a nationwide search warrant only to areas where there is a significant terrorism activity.

RECOMMENDATION OPPOSE:

- **Current provisions create unnecessary delays and burdens for the government in the investigation of terrorist activities and networks that span a number of districts.**

  - There has already been a negotiated two year sunset provision for section 108 which will allow for a timely review of any potential abuse of this section.

  - These sections only apply to cases involving domestic or international terrorism and therefore there is little chance of widespread abuse throughout the criminal justice system.

  - Limiting search warrant applications in terrorism cases only to districts where there is significant terrorism activity will not solve the problem of unnecessary delays or burdens since terrorists know no boundaries and would not limit themselves to any particular part of the country.

5) Section 305-Mr. Scott's Amendment to Narrow the Definition of Biological Weapons

- The definition of "for use as a weapon" is based on current law contained in 18 U.S.C. 175(b)

- The terms "biological agent," "toxin" and "delivery system"as used in this bill are defined in 18 U.S.C. § 178.

- Under current law, 18 U.S.C. §175, anyone who knowingly develops, produces, stockpiles, transfers, acquires retains or possesses any biological agent, toxin or delivery system for use as a weapon or knowingly assists a foreign state or organization to do so or attempt, threatens, or conspires to do so, may be fined or imprisoned or both.

- This bill does not change the current law with regard to this standard.

- This section changes the definition of what is considered to be prohibited behavior "for use as a weapon" to include the development, production, transfer, acquisition, retention or possession of any biological agent, toxin or delivery system for ***other than for a prophylactic, protective or other peaceful purpose.***

- Law enforcement will not be concerned with the persons who clearly have an amount that is appropriate for the business they are engaged in; it is the persons who clearly possess to much of a biological agent or toxin or have no legitimate reason to possess these materials that they will focus on.

- These materials are so inherently dangerous in the wrong hands-law enforcement must have the ability to act quickly when it is

clear that a person has no legitimate reason for possessing these materials.

- Biological agents or toxins are not all inherently weapons; however, if placed in the wrong hands many of them can be as lethal as nuclear weapons. In the same way we don't allow persons in this country to possess or transport plutonium or other materials, we should not allow possession of these products with no legitimate purpose.

- This section was added because certain materials are so inherently dangerous to our country that we should not allow persons to possess or transport them without a legitimate purpose.

- This section provides a deterrence for persons who have no legitimate need to possess a biological agent/toxin.

- The list of persons restricted from access is based on the list of persons who are unable to possess a gun; however, it has been narrowed form those provisions to eliminate persons convicted of domestic violence offenses.

- A person who the law does not recognize as safe enough to possess a handgun should not be given access to something so lethal.

- The terms biological agent and toxin do not encompass any biological agent or toxin that is in its naturally-occurring environment, if the biological agent or toxin **has not been** cultivated, collected, or otherwise extracted from its natural source

7) In section 152, **Mr. Scott** will offer an amendment on multi-point wiretaps to make the language clear that the law enforcement officer must ask for a multi-point order. (Apparently, he is concerned that the FISA judge will just grant them at anytime).

Reasons to Oppose:

Foreign agents are trained to thwart those who are ordered by the court to assist law enforcement. They use false names, switch cell phones, Internet accounts and hotels to avoid detection. Often, they make these changes just prior to an important meeting or communication that would normally have to be specified in the court order. Now, agents must return to the court each time these evasive steps are taken.

Judges still must have the name of the foreign agent, evidence to indicate what activities he has been engaged in, the type of information being sought, the period of time of the surveillance–all of the elements of **probable cause.** All this change does is allow the judge to broaden the order with regard to the persons or places where the assistance of law enforcement is being sought.

8) In section 355, **Mr. Scott** will offer an amendment regarding extraterritorial provisions. (He wants to allow those arrested or detained in other countries to litigate in those countries).

Reasons to Oppose:

Rule 4(d)(2) of the Federal Rules of Criminal Procedure allows for an arrest warrant to be served at any place within the jurisdiction of the United States.

Rule 5 requires that an individual arrested be brought before the nearest federal magistrate judge without unnecessary delay.

All constitutional safeguards are afforded fugitives or others detained or arrested outside of the United States where there is U.S. jurisdiction.

9. Mr. Cannon may offer an amendment to require compensation to communication providers if they have to adjust their systems to comply with an intercept or pen/trap order or request.

RECOMMENDATION: **OPPOSE.**

- **Both the wiretap statute and pen/trap statutes have compensation provisions.**
  - 18 U.S.C. §2518(4) in the Wiretap Statute provides that "any provider of wire or electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance.
  - 18 U.S.C. §3124(c) in the Pen/Trap Statute provides that "a provider of a wire or electronic communications service, landlord, custodian or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.
  - 18 U.S.C. 2706 contains a compensation provision for accessing stored communications.
- This is the first, the Committee has heard that there may be a problem and the Committee has received no evidence that the current compensation provisions are inadequately covering the costs to wire or electronic communication service providers.
- This is an oversight issue, if there is actually a problem and the providers who are concerned should present the Committee with information demonstrating how they have not been compensated or that the compensation is inadequate.
- It is unfortunate that the technology groups appear to be attempting to profit off this tragedy.

10. Mr. Cannon may offer an amendment to prohibit new technology mandates.

RECOMMENDATION: **OPPOSE and offer report language instead.**

- Nothing in the bill mandates new technology. This appears to be an attempt by technology groups to reopen CALEA. Now, is not the time to revisit CALEA.

- Note that "information services," is defined in CALEA, and is are already expressly exempted from CALEA's assistance capability requirements. See 47 USC 1002(b)(2).

    - The technology groups claim Justice and the FBI ignore this exemption or try to. If this is the problem, this is an oversight issue.

    - A new exemption is not going to stop those in the FBI or Justice who are allegedly attempting to already get around the law.

11. Messrs. Cannon/Goodlatte or Boucher may offer an amendment to change the reimbursement provisions under stored electronic communications.

RECOMMENDATION: **OPPOSE and OFFER GAO review instead via a letter not legislative language**.

- There has been no evidence offered that the current reimbursements are inadequate. No dollar amounts have been offered to verify that the ISP's lose any money.

- This is the first, the Committee has heard that there may be a problem and the Committee has received no evidence that the current compensation provisions are inadequately covering the costs to wire or electronic communication service providers.

- This is an oversight issue, if there is actually a problem and the providers who are concerned should present the Committee with information demonstrating how they have not been compensated or that the compensation is inadequate.

- It is unfortunate that the technology groups appear to be attempting to profit off this tragedy.

13) Ms. Waters may offer an amendment to sections 108 and 351, the Nationwide search warrants that would allow the person to object to the warrants in any court of competent jurisdiction.

RECOMMENDATION: OPPOSE

- **Current provisions create unnecessary delays and burdens for the government in the investigation of terrorist activities and networks that span a number of districts.**

  - There has already been a negotiated two year sunset provision for section 108 which will allow for a timely review of any potential abuse of this section.

  - These sections only apply to cases involving domestic or international terrorism and therefore there is little chance of widespread abuse throughout the criminal justice system.

  - It is inappropriate to divide a case between multiple judges. An investigation could be ongoing for months and it would be impractical to have to keep bringing new Judges up to speed on a terrorism case that will most likely be extremely complicated.

15. Messrs. Goodlatte/Boucher may offer an amendment to section 101 to limit pen/trap orders for electronic communications (computers) to the "origin" or "destination" of communications (in the definitions in 18 USC 3127) and to remove the terms "routing" and "addressing" information.

RECOMMENDATION: OPPOSE.

- This would roll back current pen/trap law.
  - This language is attempting to restrict law enforcement from determining the time, date and size of the e-mail as well as such other non-content information such as the computer port used.
  - Time, date and size would not fit into origin or destination.

- The fact that the email was to a fax would not fit into origin. These privacy groups do not even want law enforcement to have this non-content information. Now is not the time to restrict law enforcement from non-content information. We are suppose to be providing tools to law enforcement, not taking them away.

- Also, it is important to understand that Internet communications typically pass through more than one site, and that the absolute "origin" or "destination" often cannot be determined except through routing and addressing information.

- Also, the from: line does not always indicate the true origin of an e-mail. According to the Department of Justice it is easy to falsify the header even without detailed technical expertise.

- They may argue that "routing and address" are not defined in the bill. However, the current law does not define signaling or dialing either, which was the technology (phones) at the time the wiretap statute was originally enacted. Technology is fluid and these terms should not be restricted.

16) Messrs. Goodlatte/Boucher may offer an amendment to amend the pen register and trap and trace statute for email to require a showing of "specific and articulable facts [that] reasonably indicate that a crime has been, is being, or will be committed, and information likely to be obtained by such installation and use is relevant to an investigation of that crime." This is the same standard for the acquisition of stored electronic data under U.S.C. 2703(d).

RECOMMENDATION: OPPOSE.

- **This will roll back current pen/trap law by setting a higher standard for law enforcement to use a pen/trap order to obtain "non-content" information such as e-mail addresses.**

- Please note that this was in H.R. 5018, that passed the Committee in the last Congress. This was when everyone had a fear and misunderstanding with regard to Carnivore. This was a bad bill that never made it to the floor. Neither Chairman Sensenbrenner nor Mr. Conyers voted on this bill.

- The pen register/trap and trace order is basically the best way for law enforcement to filter through non-content information and determine if they need to go further with an application for authority to intercept wire or electronic communications. This amendment discourages law enforcement from using this filter that filters out the innocent communications.

- This language, which would set an intermediate standard between pen/register and wiretap statutes, similar to the standard used to access stored wire or electronic communications may do the exact opposite of its intent. The intent is to supposedly protect privacy. The problem with the language is that it actually encourages law enforcement to get a wiretap instead. If law enforcement is going to have to use a higher standard just to get non-content information, why wouldn't they just go all the way and get wiretap authority to review content information.

10/03/01

TO: Jennifer Newstead

FROM: David Karp

SUBJECT: TITLE III OF HOUSE BILL

Title III of the House bill, in § 309(a), has a new definition of "Federal terrorism offense," which includes "terrorist motivation" – "is calculated to influence or affect the conduct of government by intimidation or coercion; or to retaliate against government conduct." This definition would appear in a new 18 USC 25, which sets out the "terrorist motivation" element in paragraph (1) and the list of pertinent offenses in paragraph (2). The inclusion of requirements that the government prove terrorist motivation is highly objectionable for reasons you are aware of.

However, the effect of the proposed 18 USC 25 definitional provision varies, because a number of the important substantive provisions in the bill do not insist on proof of all the elements set out in the 18 USC 25 definition, but rather make it sufficient if one of the offenses listed in 18 USC 25(2) is involved, even in the absence of "terrorist motivation."

With that much background, the merits and demerits of particular sections in the title which use the notion of "Federal terrorism offense," or listings of crimes which are likely to be committed by terrorists, are as follows:

Section 301 – statute of limitations:

This is a good provision, preferable in most respects to the corresponding provisions in Leahy's bill and the current Administration draft bill, which condition elimination of the limitation period on occurrence/risk of death or serious injury.

The section splits the offenses for which extended limitation periods are being provided into two lists: (1) a list subject to no limitation period for prosecution, and (2) a list subject to a 15 year limitation for prosecution. By way of comparison, these offenses under current law (in noncapital cases) would generally be subject to limitation periods of five or eight years, or at most 10 years for a few of them.

The no-limitation rule would apply to "any Federal terrorism offense" and to offenses (including conspiracies and attempts) in a fairly comprehensive list of the major crimes that are likely to be involved in terrorist acts – basically, aircraft destruction or hijacking; biological, chemical, and nuclear offenses; bombing offenses; political assassinations and kidnappings; murders of federal officers; hostage taking; terrorist murders of U.S. nationals abroad; use of weapons of mass destruction; acts of terrorism transcending national boundaries; and disclosure of covert agent identities.

The 15 year list applies to "lesser" crimes that are likely to be committed by terrorists and their supporters, such as bio-agent and toxin possession by disqualified persons, plastic explosive offenses, certain computer crimes, national defense offenses, the material support offenses, aircraft violence offenses below the level of hijacking and aircraft destruction, etc. While one could quarrel with the relegation of some of these offenses to the lower tier, the division does not seem unreasonable overall.

The reference to "Federal terrorism offense[s]" in this section is problematic because, as discussed above, that notion entails proof of "terrorist motivation." However, the section independently provides strong limitation rule reform for the offenses it enumerates – no limitation period or a 15 year limitation – independent of that reference. Overall, this strikes me as a much stronger and preferable alternative to the Administration/Leahy current formulation, which uniformly requires proof of occurrence/risk of death or serious injury as the basis for any improvement in the limitation rule.

Section 302 – alternative maximum penalties

This is a bad provision which authorizes up to life imprisonment for any "Federal terrorism offense." Since it would uniformly require proof of terrorist motivation, it would have little practical value and would constitute a negative precedent in statutory formulation. The provisions of the Administration and Leahy drafts which raise the maximum penalties in particular statutes that now have unduly low maxima would be strongly preferable.

Section 303 – penalties for terrorist conspiracies

This is a good provision, which uniformly authorizes conspiracy and attempt penalties equal to the penalties for the object offense for any "Federal terrorism offense" and for any offense in the 18 USC 25(2) list. The reference to "Federal terrorism offense" is facially problematic because it entails a requirement of proof of terrorist motivation. However, the reference is wholly redundant and superfluous, because the "Federal terrorism offense[s]" are simply a subset of the offenses in the 18 USC 25(2) list – i.e., offenses in the list which are committed with terrorist motivation. Hence, we could always just charge conspiracy to commit a 25(2) offense.

This provision is much better than the piecemeal amendments in the current Administration and Leahy drafts which add conspiracy language to some particular statutes. You could make it perfect by deleting the redundant subsection (2332c(a)) that refers to "Federal terrorism offense."

Section 304 – terrorism crimes as RICO predicates

This is a good provision which adds as RICO predicates "Federal terrorism offense[s]"

and all offenses in a list that is fairly close to the full 25(2) list. The reference to "Federal terrorism offense" is problematic because of our general concerns about statutory requirements of proving terrorist motivation. However, the inclusion of a long list of predicates (for which terrorist motivation would not have to be shown) means that there would not be much direct negative effect. The scope of offense coverage seems comparable overall to that in the corresponding provisions in the current Administration and Leahy drafts.

Section 307 – harboring terrorists offense

This is a bad provision which creates a new offense of harboring or concealing someone where the harborer knows that the person has committed or is about to commit an offense in the 18 USC 25(2) list. This is practically worthless because 18 USC 2339A already prohibits providing material support to persons – including "lodging" and "safehouses" – with knowledge that they have committed or are preparing to commit terrorism offenses. A harboring offense advances significantly beyond current law only if it lowers the culpability threshold, such as making "reasonable grounds to believe" adequate, rather than requiring knowledge. The corresponding provisions in the current Administration and Leahy bills are the real deal in this respect.

Section 308 – postrelease supervision periods

This is a bad provision which authorizes up to lifetime postrelease supervision for persons convicted of "Federal terrorism offense[s]." This is of little practical value and objectionable because it would uniformly require proof of terrorist motivation. The corresponding provisions in the Administration's and Leahy's current drafts are also bad because they require the occurrence of death or serious injury (and/or a foreseeable risk thereof). If forced to choose between these approaches, the latter (Administration/Leahy) is less objectionable.

The best option would be to persuade the House people to substitute a reference to "any offense described in section 25(2)" for the reference to "Federal terrorism offense." Another attractive possibility would be to suggest to the House people that they parallel in this context what they have done regarding the statute of limitations reform. In other words, they could have two lists of offenses, with offenses in the "more serious" list subject to supervised release of up to life, and offenses in the "lesser offense" list subject to supervised release of up to 15 years.

Section 353 – DNA identification

This is a bad provision which adds "Federal terrorism offense[s]" as DNA sample collection predicates for federal offenders. The Bureau of Prisons and the federal probation offices are responsible for collecting DNA samples from federal offenders in the specified categories. They are in no position to make judgments about whether offenders acted with " terrorist motivation," as this provision would require. In contrast, the provision in the

Administration and Leahy current drafts to expand DNA sample collection to include all crimes of violence would do a lot of good.

Section 355 – extraterritoriality

This is a bad provision, which provides extraterritorial jurisdiction over "any Federal terrorism offense" and over the offenses in the formal terrorism chapter of the criminal code. The requirement to prove terrorist motivation in most instances makes this provision objectionable, and it is not likely to do much good otherwise. A preferable substitute would be our proposal to strike the "within the United States" restriction in 18 USC 2339A (the material support of terrorists offense).

October 2, 2001

MEMORANDUM FOR BERYL HOWELL

CC: BRUCE COHEN
HEATHER WINGATE
JENNIFER NEWSTEAD

FROM: COURTNEY SIMMONS ELWOOD

SUBJECT: OUTSTANDING ISSUES

This memo should address many of the issues you raised this evening. (We have provided some of these answers through individual e-mails.) More answers will be forthcoming in the morning.

101: We have reviewed the proposal you provided at the meeting. We are concerned that the changes you request, when inserted into the existing statutory language, render the provision nonsensical. Specifically, as amended the provision would read:

> 3121(c) Limitation.--A government agency authorized to install and use a pen register or trap and trace device under this chapter or under State law shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing, routing, addressing, and signaling information that does not include the contents the processing and transmitting of wire and electronic communications.

Obviously this is not what you intended. And I think we agree on the principle that you were trying to articulate. Perhaps the following language would accomplish the goal:

> (c) Limitation.--A government agency authorized to install and use a pen register or trap and trace device under this chapter or under State law shall use

technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing, routing, addressing, and signaling information utilized in the processing and transmitting of wire and electronic communications so as not to include the contents of any wire or electronic communications.

With respect to the "Assistance to Law Enforcement Agencies" provision that you received from the telecommunications industry, we have the following comments. We understand the first sentence to confirm that the Act would not require a telecommunications provider to modify its equipment to provide the assistance, facilities, and services required by the Act. If that is also your understanding, then it should not cause a problem. Tomorrow, we may request for a clarification in the statutory language or in the legislative history to ensure that this intent is clear.

The second sentence appears to be a blanket statement that providers shall be reasonably compensated for complying with obligations to assist law enforcement. We have no objection in principle to this idea. We wonder, however, why the telecom industry thinks this provision is necessary. The wiretap statute, the pen/trap statute, and the Electronic Communications Privacy Act already contain just this kind of provision for reasonable compensation. I would appreciate learning if the telecommunications providers are concerned that the compensation provisions in one of these statutes does not cover something added by the Act.

103: The following provision has not been fully vetted at the Department of Justice and at the FBI, but I believe that it captures the concept we were discussing at today's meeting.

DISCLOSURE ▒ Section 2517 of title 18, United States Code, is amended by inserting at the end the following:

> ▒ (6) Any investigative or law enforcement officer, or attorney for the government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence, protective, immigration, national defense, or other national security official to the extent that such contents include foreign intelligence or counterintelligence (as defined in 50 U.S.C. 401a), foreign intelligence information (as

defined in 50 U.S.C. 1801), or national security information, to assist the official who is to receive that information in the performance of that his official duties. Any Federal official who receives information pursuant to this provision may use that information as necessary in the conduct of that person's official duties subject to any limitations applicable to that official's retention and dissemination of information of that type.

109: After our meeting, you asked whether our proposed Cable Act provision (section 109 of the Administration's bill) provided for government access to cable viewing activity. Our proposal provides:

Section 631 of the Communications Act of 1934 (47 U.S.C. 551) is amended--
(1) in subsection (c)(2)--
(A) in subparagraph (B) by striking "or";
(B) in subparagraph (C) by striking the period at the end and inserting "; or"; and
(C) by adding the following subparagraph after subparagraph (C):
"(D) authorized under chapters 119, 121, or 206 of title 18, United States Code. Such disclosure shall not include records revealing customer cable television viewing activity."; and
(2) in subsection (h) by striking "A governmental entity" and inserting "Except as provided in subsection (c)(2)(D), a governmental entity".

Under this proposal, the procedure for getting cable TV viewing records would remain unchanged: such records could still be obtained under 551(h). This amendment (109) would provide no new procedure for obtaining such records.

Since this confirms your reading of this provision, I shall assume that, consistent with the your earlier e-mail, you accept this formulation for section 109 of the bill. Please let me know if my assumption is incorrect.

152: Here is a new proposal for section 152, along the lines we discussed today. This revision would replace the current 206 of the Leahy bill.

Sec. [ ] Multi-Point Authority

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

153: We would like you to consider the following language for section 153. It changes the "purpose" provision to a "significant purpose" and adds coordination language similar to what you proposed. David Kris will be available any time tomorrow to discuss why the specific language that you proposed may be problematic.

SEC. 153. FOREIGN INTELLIGENCE INFORMATION.

(a) The Foreign Intelligence Surveillance Act of 1978 is amended by replacing "the purpose" with "a significant purpose" –

(1) in section 104(a)(7)(B) (50 U.S.C. 1804(a)(7)(B)); and
(2) in section 303(a)(7)(B) (50 U.S.C. 1823(a)(7)(B)).

(b) The Foreign Intelligence Surveillance Act of 1978 is amended by adding a new section, 50 U.S.C. 1812, as follows:

(a) Notwithstanding any other provision of this title, subject to guidelines approved by the Attorney General, information relevant to preserving or enhancing the option of a possible criminal prosecution that is obtained in the course of a foreign intelligence or counterintelligence investigation that has been authorized by the Attorney General, including information obtained from activity authorized by this title, may be disseminated by officials conducting, supervising, or assisting such an investigation to federal or state law-enforcement officials.

(b) Notwithstanding any other provision of this title, subject to guidelines approved by the Attorney General, a full range of advice designed to preserve or enhance the option of a possible criminal prosecution, other than advice on the initiation, operation, continuation, or expansion of activity

authorized by this title, may be provided by federal or state law-enforcement officials to officials conducting, supervising, or assisting a foreign intelligence or counterintelligence investigation that has been authorized by the Attorney General, including investigations in which activity authorized by this title is being conducted.

154: The following provision has not been fully vetted at the Department of Justice and at the FBI, but I believe that it captures the concept we were discussing at today's meeting.

> Notwithstanding any other provision of law, it shall be lawful for foreign intelligence or counterintelligence (as defined in 50 U.S.C. 401a), foreign intelligence information (as defined in 50 U.S.C. 1801), or national security information obtained as part of a criminal investigation (including, without limitation, information subject to Rule 6(e) of the Federal Rules of Criminal Procedure and information obtained pursuant to chapter 119 of title 18, United States Code) to be disclosed to any Federal law enforcement, intelligence, protective, immigration, national defense, or other national security official in order to assist the official receiving that information in the performance of his official duties.

156: The Administration accepts Leahy's Section 216 as a substitute for our administrative subpoena provision.

159: You asked us to consider deleting paragraph (4) of section 159 on "classified information." I have spoken by telephone with Brad Berenson of the White House Counsel's Office, and he tells me that deleting paragraph (4) is not a viable option. He can provide you with a detailed explanation. But here it is in a nutshell: There will be certain circumstances under which determinations under section 159 <u>are</u> reviewable. The President's recent Executive Order contemplates that the Secretary of Treasury will designate persons, organizations, and/or countries to be added to the list, and this determination will reviewable under the APA. While we do not expect that such judicial review will be commonplace, it will occur. Therefore we need the provision on classified information to specify the treatment of such classified information in those administrative proceedings.

You have Brad's phone number (456-2318), and you should feel free to discuss this with him at greater length.

Disclosure of FISA Applications to Defense Counsel under CIPA.

This evening you provided us with a draft provision that would require mandatory disclosure of FISA applications under CIPA. The Administration would strongly oppose inclusion of such a provision in this bill. Current law provides that a district court "may" disclose FISA applications and other materials to a criminal defendant (or other litigant) against whom FISA information is to be used in court. The draft proposal would require the district court to order such disclosure under CIPA. If enacted, such a provision would represent a major change from current law. No district court has ever found it necessary to disclose a FISA application to a criminal defendant in order to ensure that the defendant was afforded his or her constitutional right to a fair trial. A criminal defendant's procedural due process rights do not in any way turn on the defendant's obtaining access to the application that gives rise to FISA Court authorized collection against the defendant. Given that fact, it is especially important to note that mandatory disclosure of FISA applications would significantly augment the risk of publicly exposing extraordinarily sensitive - and perishable - intelligence sources and methods. It would be imprudent to invite that heightened intelligence risk for no procedural due process gain. For those reasons, we believe statutorily compelling disclosure of FISA applications, even under CIPA, would be unnecessary and unsound.

305: Two issues. First, you asked if the Administration would be willing to drop the "Additional Offense" provision found in 305(a)(1)(C). This language, as you know, came directly from Senator Biden's bill, and we are unwilling to drop it without Senator Biden's approval. Part of your frustration with this provision, I understand, is its awkward phrasing. This language, however, tracks the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and or their Destruction. Second, to respond to concerns raised by Senator Kyl this evening, we ask that you agree to delete 305(a)(1)(A)(iv) - referring to the definitions of "biological agent" and "toxin."

307: We ask that you consider adding the following two crimes to the list of predicates for the harboring provision:

> 2280 (involving maritime violence--basically an Achille Lauro situation, and to be symmetrical with air piracy).

1366(a) (damage of over $100,000 to an energy facility, or which would cause a significant interruption or impairment of function of an energy facility).

352: After our meeting, you sent us proposal on the notice ("sneak and peak") provision. We unfortunately cannot accept your proposal in its entirety. We have prepared a redline of your proposal, which shows the additional language we think is need and the language that should be deleted.

Sec. ___ Authority for delaying notice of the execution of a warrant.

Section 3103a of title 18, United States Code, is amended by -

(1) inserting "(a) IN GENERAL.-" before "In addition"; and

(2) inserting at the end the following:

"(b) With respect to the issuance of any warrant or court order under this section, or any other rule of law, to search for and seize any property or material that constitutes evidence of a criminal offense in violation of the laws of the United States ~~[an act of domestic or international terrorism (as defined in section 2331)]~~, any notice required, or that may be required, to be given may be delayed if --

"(1) the court finds ~~probable~~ reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result as defined in section 2705;

"(2) ~~the warrant prohibits the seizure of any tangible property, any wire or electronic communication, or any stored wire or electronic communication (as defined in section 2510) except where necessary to prevent~~ **a [***an immediate***]** ~~threat to life or public safety; and~~

~~"(3)~~ the warrant provides for the giving of such notice within a reasonable period of its execution, which period may thereafter be extended by the court for good cause shown."

In our meeting, you said that each of the three conditions found in paragraphs (1) through (3) sprang directly from the case law.

We have looked at that case law and have not been able to find the condition outlined in paragraph (2). Similarly, the cases do not speak of "probable cause"; they speak of "reasonable cause." We therefore modified that language accordingly.

354: The following provision has not been fully vetted at the Department of Justice and at the FBI, but I believe that it captures the concept we were discussing at today's meeting.

Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure is amended -
in subparagraph (iii), by striking "or" at the end;
in subparagraph (iv), by striking the period at the end and inserting "; or"; and
by inserting at the end the following:
"(v) when the matters involve foreign intelligence or counterintelligence (as defined in 50 U.S.C. 401a), foreign intelligence information (as defined in 50 U.S.C. 1801), or national security information, to any other Federal law enforcement, intelligence, protective, immigration, national defense, or other national security official in order to assist the official receiving that information in the performance of his official duties.

356: As we've discussed before, I'd appreciate your including in section 356 (Leahy 805) at the bottom of the provision:

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

Additional comments

106: We have made a technical change in our section 106 - changing "preexisting" to "existing" to make it clear that former customers may still be considered computer trespassers.

We have separately provided to you by fax minor revisions to **Sections 504, 806, 807, 808, 810, 811, 812, 813, and 815 of the Leahy bill.**

It also appears that you have dropped section 108 of our bill. Was this inadvertent?

Finally, there are a couple of provisions in your bill that we have not discussed. First, section 209, on encouraging airline

employees to report suspicious activities. The Administration cannot support this provision because of the potentially dangerous unintended consequences created by the immunity provision. Second, is there a meaningful difference between sections 209 and 217 of your bill? They appear at first glance to do the same thing.

Tomorrow we will study the remaining provisions of the Leahy bill and will let you know where, in our view, your provisions may deviate (if at all) from our understanding of the negotiations.

We look forward to discussing these and other issues with you tomorrow.

PROPOSED AMENDMENT FOR SECTION 103/154/354 - INFORMATION SHARING

103

DISCLOSURE - Section 2517 of title 18, United States Code, is amended by -

(a) inserting at the end the following:

"(6) Any investigative or law enforcement officer, or attorney for the government, who by means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security officer to the extent that such contents include foreign intelligence information (as defined in 50 U.S.C. 1801) and to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer receiving the disclosure. Any officer receiving such disclosure may use such contents to the extent such use is appropriate to the proper performance of his official duties.

154

Notwithstanding any other provision of law, it shall be lawful for foreign intelligence information (as defined in 50 U.S.C. 1801) obtained as part of a criminal investigation (including, without limitation, information subject to Rule 6(e) of the Federal Rules of Criminal Procedure and information obtained pursuant to chapter 119 of title 18, United States Code) to be disclosed to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer receiving the disclosure.

354

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

(a) in clause (iii), by striking "or" at the end;

(b) in clause (iv), by striking the period at the end and inserting "; or"; and

(c) by inserting at the end the following:

"(v) when the matters include foreign intelligence information (as defined in 50 U.S.C. 1801), to any other Federal law enforcement, intelligence, protective, immigration, national security, or national defense officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer receiving the disclosure.