Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	James J. Jukes to Legislative Liaison Officer [partial] (1 page)	08/20/1997	P3/b(3)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 18930

FOLDER TITLE:
International Crime Bill [2]

2016-0931-S
rc2288

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]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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]

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	James J. Jukes to Legislative Liaison Officer [partial] (1 page)	08/20/1997	P3/b(3)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 18930

FOLDER TITLE:

International Crime Bill [2]

2016-0931-S
rc2288

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]

- C. Closed in accordance with restrictions contained in donor's deed of gift.
- PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
- RR. Document will be reviewed upon request.

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]

Total Pages: ___

LRM ID: REJ229

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, August 18, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO:	Legislative Liaison Officer - See Distribution below
FROM:	James J. Jukes (for) Assistant Director for Legislative Reference
OMB CONTACT:	Ronald E. Jones PHONE: (202)395-3386 FAX: (202)395-3109
SUBJECT:	**JUSTICE Draft Bill on Antiterrorism Act of 1997**
DEADLINE:	**Friday, August 29, 1997**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS:

DISTRIBUTION LIST

AGENCIES:

114-STATE - Julia C. Norton - (202) 647-4468
25-COMMERCE - Michael A. Levitt - (202) 482-3151
118-TREASURY - Richard S. Carro - (202) 622-0650 [001]
[redacted] (b)(3)
29-DEFENSE - Samuel T. Brick Jr. - (703) 697-1305
117 and 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687
82-Nuclear Regulatory Commission - Trip Rothschild - (301) 415-1611
32-ENERGY - Bob Rabben - (202) 586-6718
83-National Security Council - Glyn T. Davies - (202) 456-9221
36-Federal Communications Commission - Steve Klitzman - (202) 418-1900

EOP:

Karen A. Popp
Peter G. Jacoby
Tracey E. Thornton
Donald H. Gips
Bruce N. Reed
Jose Cerda III
Leanne A. Shimabukuro
KRECZKO_A
SIMON_S
Steven D. Aitken

Alice E. Shuffield
James C. Murr
David J. Haun
Edward H. Chase
James Boden
Harry G. Meyers
Michael F. Crowley
Lisa A. Gaisford
Antonio E. Chavez
Margaret E. Evans
Mary Jo Siclari
Andrew W. Kleine
Robert L. Civiak
Bruce W. McConnell
Glenn R. Schlarman
Maya A. Bernstein
Ellen J. Balis
Beverly B. Thierwechter
Victoria Wassmer
Jim Murr
Bill Marshall

LRM ID: REJ229 **SUBJECT: JUSTICE** Draft Bill on Antiterrorism Act of 1997

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter.
Please include the LRM number shown above, and the subject shown below.

TO: Ronald E. Jones Phone: 395-3386 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

The following is the reponse of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _________

_____ Other: ____________________

_____ FAX RETURN of _____ pages, attached to this reponse sheet

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DRAFT

The Honorable Newt Gingrich
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

There is transmitted herewith a draft bill entitled the *Antiterrorism Act of 1997*, as well as a section-by-section analysis of the draft bill. We request that it be referred to the appropriate committee or committees and promptly enacted.

On April 24, 1996, the President signed into law the Antiterrorism and Effective Death Penalty Act of 1996. That legislation, which was originally proposed by the President, represents the most significant and comprehensive antiterrorism legislative package ever enacted in the United States. Unfortunately, several important antiterrorism proposals made by the President were not enacted.

Those measures submitted by the President to the Congress in 1995 which have not yet been enacted are: the addition of certain terrorist offenses to the Racketeer Influenced and Corrupt Organizations (RICO) Statute (Section 2); authority for the interception of communications in certain terrorism related offenses (Section 3); expanded authority for multi-point wiretaps in situations where further specificity is not practically possible (Section 4); authority for pen registers and trap and trace devices in foreign intelligence and international terrorism investigations (Section 5); authority to access records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental facilities in foreign counterterrorism and counterterrorism cases (Section 6); temporary emergency wiretap and pen register authority involving terrorist crimes (Section 7); extension of statute of limitations for criminal violations of the National Firearms Act, including those violations related to the making of destructive devices (Section 8); and a modification to the exclusionary rule under the wiretap statute in those situations involving "good faith" (Section 9).

Thank you for your consideration of, and attention to, this matter. If we may be of additional assistance, we trust that you will not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection to the submission of this legislation from the standpoint of the Administration's program.

Sincerely,

Andrew Fois
Assistant Attorney General

DRAFT

August 15, 1997

A BILL

To further inhibit terrorist activity within the United States, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as "Antiterrorism Act of 1997."

SEC. 2. ADDITION OF TERRORIST OFFENSES TO THE RICO STATUTE.

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

(1) inserting after "Section" the following: "32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a federal official by threatening or injuring a family member), section ";

(2) inserting after "section 224 (relating to sports bribery)," the following: "section 351 (relating to Congressional or Cabinet officer assassination),";

(3) inserting after "section 664 (relating to embezzlement from pension and welfare funds)," the following: section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce),";

(4) inserting after "sections 891-894 (relating to extortionate credit transactions)," the following: "section 930(c) (relating to violent attacks against federal buildings), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),";

(5) inserting after "section 1084 (relating to the transmission of gambling information)," the following: "section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1203 (relating to hostage taking),";

(6) inserting after "section 1344 (relating to financial institution fraud)," the following: "section 1361 (relating to willful injury of government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),";

(7) inserting after "sections 1581-1588 (relating to peonage and slavery)," the following: "section 1751 (relating to Presidential assassination),";

(8) inserting after "section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire)," the following: "section 1992 (relating to train wrecking), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),"; and

(9) inserting after "2321 (relating to trafficking in certain motor vehicles or motor vehicle parts)," the following: "section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to acts of terrorism transcending national boundaries), section 2332c (relating to use of chemical weapon), section 2339A (relating to providing material support to terrorists), section 2339B (relating to providing material support or resources to designated foreign terrorist organizations),".

(b) Section 1961(1) of title 18, United States Code, is amended by striking "or" before "(E)" and "or" before "(F)", and inserting at the end thereof the following: "or (G) section 46502 of title 49, United States Code;".

SEC. 3. AUTHORIZATION FOR INTERCEPTIONS OF COMMUNICATIONS IN CERTAIN TERRORISM RELATED OFFENSES.

(a) Section 2516(1) of title 18, United States Code, is amended by—

(1) striking "and" at the end of the first subparagraph (p) (relating to identification documents);

(2) redesignating the second subparagraph (p) (relating to conspiracy) as subparagraph (t); and

(3) inserting these three new subparagraphs after the first subparagraph (p) (relating to identification documents):

"(q) any violation of section 956 or section 960 of this title (relating to certain actions against foreign nations);

"(r) any felony violation which the Attorney General certifies is related to an act of terrorism as that term is defined by section 3077(1) of this title;

"(s) any violation of section 842 or section 930(c) of this title; and".

(b) Section 2516(1)(c) of title 18, United States Code, is amended by inserting before "section 1992 (relating to wrecking trains)" the following: "section 2332 (relating to terrorist acts abroad), section 2332a (relating to weapons of mass destruction, section 2332b (relating to acts of terrorism transcending national boundaries), section 2332c (relating to the use of chemical weapons), section 2339A (relating to providing material support to terrorists), section 2339B (relating to providing material support or resources to designated foreign terrorist organizations), section 37 (relating to violence at international airports),".

SEC. 4. EXPANDED AUTHORITY FOR MULTI-POINT WIRETAPS.

Section 2518(11) of title 18, United States Code, is amended to read as follows:

"(11) The requirements of subsections (1) (b) (ii) and (3) (d) of this section relating to the specification of facilities from which or the place where the communication is to be intercepted do not apply if in the case of an application with respect to the interception of wire, oral or electronic communications —

"(a) the application is by a federal investigative or law enforcement officer, and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant Attorney General (or an official acting in any such capacity);

"(b) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(c) the judge finds that such specification is not practical.".

SEC. 5. PEN REGISTERS AND TRAP AND TRACE DEVICES IN FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.

(a) Chapter 206, title 18, United States Code, is amended--

(1) by inserting "or under section 3126" in section 3121 after "under section 3123";

(2) by redesignating sections 3126 and 3127 as sections 3127 and 3128, respectively; and

(3) by adding the following new section 3126:

"§ 3126. Pen registers or a trap and trace device in foreign intelligence or international terrorism investigations

"(a) Notwithstanding the provisions of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), the Attorney General or a designated attorney for the Government may make an application for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap or trace device for any investigation to gather foreign intelligence information, as that term is defined by section 101(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(e)), or information concerning international terrorism, as that term is defined by section 101(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(c)), which is being conducted by the Federal Bureau of Investigation under guidelines approved by the Attorney General.

"(b) Each application under this section shall be in writing under oath or affirmation to a judge having jurisdiction under section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) or to a Federal magistrate, as defined in sections 631 - 639 of title 28, United States Code, publicly designated by the Chief Justice of the United States to have the power to hear applications for and grant orders approving the installation and use of a pen register or trap or trace device on behalf of a judge having jurisdiction under section 103 of the Foreign Intelligence Surveillance Act of 1978.

"(c) Each application under this section shall require the approval of the Attorney General or a designated attorney for the government and shall include—

"(1) the identity of the Federal officer making the application;

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing foreign intelligence or international terrorism "(ii) that the provider of a wire or electronic communication service, landlord, custodian, or other person —

"(a) shall not disclose the existence of the investigation or of the pen register or trap and trace device to any person unless or until ordered by the court; and

"(b) shall maintain under security procedures approved by the Attorney General and the Director of Central Intelligence pursuant to section 105(b)(2)(C) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(b)(2)(C)), any records concerning the pen register or trap and trace device, or the aid furnished.

"(e) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days. Extensions of such an order may be granted, but only upon an application for an order under this section and upon the judicial finding required by subsection (d) of this section. The period of extension shall be for a period not to exceed sixty days.

"(f) Unless otherwise ordered by the judge, the results of a trap and trace device shall be furnished at reasonable intervals during regular business hours for the duration of the order to the authorized Government official or officials.".

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of Chapter 206 is amended —

(1) to renumber sections 3126 and 3127 as redesignated; and

(2) by adding after the item relating to section 3125 the following:

"3126. Pen register or a trap and trace device in foreign intelligence or international terrorism investigations.".

SEC. 6. ACCESS TO RECORDS OF COMMON CARRIERS, PUBLIC ACCOMMODATION FACILITIES, PHYSICAL STORAGE FACILITIES AND VEHICLE RENTAL FACILITIES IN FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS.

Title 18, United States Code, is amended by inserting after chapter 121 the following new chapter:

"CHAPTER 122—ACCESS TO CERTAIN RECORDS

"Sec.

"2720. Access to records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental facilities in foreign intelligence and international terrorism investigations.

"§ 2720. Access to records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental facilities in foreign intelligence and international terrorism investigations

"(a) Any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility shall comply with a request for records in its possession made pursuant to this section by the Federal Bureau of Investigation when the Director or designee (whose rank shall be no lower than Assistant Special Agent in Charge) certifies in writing to the common carrier, public accommodation facility, physical storage facility, or vehicle rental facility that such records are sought for foreign intelligence or international terrorism investigation purposes and that there are specific and articulable facts giving reason to believe that the person to whom the records sought pertain, is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act (50 U.S.C. 1801).

"(b) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility or any officer, employee, or agent of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility shall disclose to any person, other than those officers, agents, or employees of the common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose the information to the Federal Bureau of Investigation under this section, that the Federal Bureau of Investigation has sought or obtained the records requested.

"(c) As used in this chapter —

"(1) the term 'common carrier' means a locomotive, a rail carrier, a bus carrying passengers, a water common carrier, an air common carrier, or a private commercial interstate carrier for the delivery of packages and other objects;

"(2) the term 'public accommodation facility' means any inn, hotel, motel or other establishment which provides lodging to transient guests;

"(3) the term 'physical storage facility' means any business or entity which provides space for the storage of goods or materials, or services related to the storage of goods or materials, to the public or any segment thereof; and

"(4) the term 'vehicle rental facility' means any person or entity which provides vehicles for rent, lease, loan, or other similar use to the public or any segment thereof.".

(b) The Table of Chapters for Part I of Title 18, United States Code, is amended by inserting after the item for chapter 121 the following:

"122. Access to certain records .... 2720".

SEC. 7. TEMPORARY EMERGENCY WIRETAP AND PEN REGISTER AUTHORITY INVOLVING TERRORIST CRIMES.

(a) Section 2518 (7) (a) (iii) of title 18, United States Code, is amended by inserting "or domestic terrorism or international terrorism (as those terms are defined in section 2331 of this title)" after "organized crime".

(b) Section 2331 of title 18, United States Code, is amended by inserting the following new subsection after subsection (4):

"(5) the term 'domestic terrorism' means any activities that involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State which appear to be intended to intimidate or coerce a civilian population or to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by assassination or kidnapping.".

(c) Section 3125(a)(1) of title 18, United States Code, is amended by—

(1) striking the "or" at the end of subparagraph (A);

(2) striking the comma at the end of subparagraph (B) and inserting ";or"; and

(3) adding the following new subparagraph:

"(C) domestic terrorism or international terrorism (as those terms are defined in section 2331 of this title),".

SEC. 8. EXTENSION OF NATIONAL FIREARMS ACT STATUTE OF LIMITATIONS.

(a) Section 6531 of the Internal Revenue Code of 1986 (26 U.S.C. 6531) is amended by amending the matter preceding paragraph (1) to read as follows:

"No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense, except that the period of limitation—

(a) shall be 5 years for offenses described in section 5861 (relating to firearms and other devices); and

(b) shall be 6 years—".

SEC. 9. LIMITATION OF EXCLUSIONARY RULE.

Section 2515 of title 18, United States Code, is amended by adding at the end thereof the following: "This section shall not apply to the disclosure by the United States in a criminal trial or hearing or before a grand jury of the contents of a wire or oral communication, acquired pursuant to an order of a court of the United States or of a State, or evidence derived therefrom, unless the violation of this chapter involved bad faith by law enforcement.".

DRAFT

July 30, 1997

SECTION-BY-SECTION ANALYSIS

Section 1 Short Title

This section provides the short title for the bill.

Section 2 Addition of Terrorist Offenses to the RICO Statute

Section 2 would broaden the federal anti-racketeering statute, 18 U.S.C. § 1962, which, *inter alia*, prohibits the operating of an enterprise "through a pattern of racketeering activity." Such a pattern of racketeering activity is defined as the commission of two or more specifically enumerated crimes within a period of ten years. See 18 U.S.C. § 1961.

The amendment would expand the catalog of racketeering predicate crimes to include, *inter alia*: violence at international airports, retaliation against a federal official, assassination of Congressional or Cabinet officers, prohibited transactions involving nuclear materials, U.S.-based conspiracy to commit terrorists acts in a foreign country, hostage taking, injury to government property, destruction of property within the special maritime and territorial jurisdiction, Presidential assassination, train wrecking, violence against maritime platforms, terrorist acts abroad against United States nationals, offenses involving weapons of mass destruction or chemical weapons, and provision of material support to terrorist organizations.

Section 3 Authorization for Interceptions of Communications in Certain Terrorism Related Offenses

Section 3 would amend the federal wiretapping statute, 18 U.S.C. § 2516, to authorize the Attorney General to permit a federal prosecutor to seek an order to intercept wire or oral communications in connection with the investigation of certain terrorism-related offenses not presently embraced by the statute. The offenses to be added include, *inter alia*, U.S.-based conspiracy to commit terrorist acts in a foreign country, train wrecking, extraterritorial terrorist murders, acts of terrorism transcending national boundaries, providing material support to terrorists, violence at international airports, and offenses involving the use of weapons of mass destruction.

Section 4 Expanded Authority for Multi-point Wiretaps

As presently enacted, 18 U.S.C. § 2518 (1)(b)(2) and (3)(d) requires applications for court authorized electronic surveillance of wire, oral or electronic communications to particularize the location or the facility where the communication is to be intercepted. Subsection (11)(a) of this statute contains an exception of this requirement of particularization in the case of applications for interceptions of oral communications where "the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted."

In contrast, for wire and electronic communications, an exception to the particularization requirement is permitted only where the government makes a showing that the target of the application has "a purpose ... to thwart interception by changing facilities," a standard that can require additional investigation that delays the application for a court order to initiate the interception. Section 4 would amend subsection (11)(a) to extend the particularization requirement that currently exists for oral communications to cover all communications, thereby removing the more onerous requirements that currently exist for wire and electronic communications and avoiding potentially catastrophic delay.

Section 5 Pen Registers and Trap and Trace Devices in Foreign Intelligence and International Terrorism Investigations

Pen registers and trap and trace devices are employed respectively to identify the number dialed or otherwise transmitted on the telephone line, and to identify the originating number of an instrument from which a wire or electronic communication was transmitted. See 18 U.S.C. § 3127 (3),(4). Chapter 206 of Title 18 prohibits the installation or use of such devices except upon application to a court and a determination by a court that such installation and use "is relevant to an ongoing criminal investigation."

Section 5 would amend Chapter 206 to extend the ability to employ such devices to foreign intelligence and international terrorism investigations being conducted by the FBI under guidelines approved by the Attorney General. In particular, it authorizes a judge having jurisdiction under the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. § 1801, *et seq.*, to issue a pen register or a trap and trace order upon a certification that the information sought is relevant to such an ongoing investigation.

Section 6 Access to Records of Common Carriers, Public Accommodation Facilities, Physical Storage Facilities and Vehicle Rental Facilities in Foreign Intelligence and International Terrorism Investigations

In criminal investigations, federal authorities acquire records from common carriers, public accommodation facilities, etc., through the use of grand jury subpoenas. However, the grand jury can only be used for criminal investigations. As a result, there is a need to create some other mechanism for acquisition of such records in the course of an intelligence investigation.

Section 6 would add a new chapter to Title 18 of the United States Code. It would require a common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to comply with a request by the FBI for the production of records in its possession where a senior FBI official, who can be no lower in grade than an Assistant Special Agent in Charge, certifies in writing that such records are sought for foreign intelligence or international terrorism investigation purposes and that there are specific and articulable facts giving reason to believe that the person to whom the records sought pertain is a foreign power or an agent of a foreign power as that term is defined in the Foreign Intelligence Surveillance Act. Prior to its issuance, the FBI certification is subject to review by a government attorney for the purpose of assessing its legal and factual sufficiency.

Section 7 Temporary Emergency Wiretap and Pen Register Authority Involving Terrorist Crimes

Title 18 U.S.C. § 2518(7) authorizes law enforcement authorities to intercept wire, oral or electronic communications without first seeking a court order when the legal basis for such an order exists and there is an emergency situation of the type specified in the statute. A court order must subsequently be obtained within 48 hours. Section 7 would add acts of domestic or international terrorism to the catalog of emergency situations for which such authority applies.

Section 8 Extension of National Firearms Act Statute of Limitations

Section 8 amends the Internal Revenue Code to increase from three years to five years the period within which a person can be indicted for a firearm offense charged under Title 26.

Section 9 Limitation of Exclusionary Rule

Section 2515 of title 18, United States Code, requires the exclusion in judicial proceedings of any wire or oral communication that has been intercepted in violation of Title III of the Organized Crime Control and Safe Streets Act of 1968, as codified in chapter 119 of title 18, United States Code. Section 9 would amend § 2515 by adding a "good faith" exception to the exclusionary rule similar to that articulated in United States v. Leon, 468 U.S. 897 (1984). Under the amendment, evidence derived pursuant to a court-ordered interception order would not be subject to exclusion, absent a judicial finding of bad faith by law enforcement in obtaining the court order.

Total Pages: ____

LRM ID: REJ112

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, May 27, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference JJ
OMB CONTACT: Ronald E. Jones
PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: **JUSTICE Qs and As on International Crime**

DEADLINE: Friday, May 30, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: The attached Q&As respond to questions asked by Sen. Kerry (MA) during a Senate Foreign Relations Committee hearing on U.S. law enforcement interests in Hong Kong. One question and answer pertains to the current status of the International Crime Control Act, which the Administration transmitted to Congress in September 1996.

DISTRIBUTION LIST

AGENCIES:
84-National Science Foundation - Lawrence Rudolph - (703) 306-1060
114-STATE - Julia C. Norton - (202) 647-4463
118-TREASURY - Richard S. Carro - (202) 622-0650
117 and 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687
29-DEFENSE - Samuel T. Brick Jr. - (703) 697-1305

EOP:
Jose Cerda III
Leanne A. Shimabukuro
Alphonse J. Maldon
Tracey E. Thornton
KRECZKO_A
KRECZKO_A
Alice E. Shuffield
Charles Konigsberg
Antonio E. Chavez
Edward H. Chase
Harry G. Meyers
Mary Jo Siclari

Andrew W. Kleine

Annette Toomey

LRM ID: REJ112 **SUBJECT:** JUSTICE Qs and As on International Crime

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Ronald E. Jones Phone: 395-3386 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

The following is the reponse of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _________

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this reponse sheet

DRAFT.

MARK RICHARD'S DRAFT RESPONSES TO QUESTIONS FOR THE RECORD FROM
SENATOR JOHN F. KERRY
SENATE COMMITTEE ON FOREIGN RELATIONS'
HEARING ON UNITED STATES LAW ENFORCEMENT INTERESTS
IN HONG KONG

APRIL 10, 1997

QUESTION: 1) The police force in Hong Kong is generally regarded as professional, competent and efficient, and Administration witnesses at today's hearing have described a good working relationship with U.S. law enforcement.

(a) As the Chinese increase their interaction with and influence over the Hong Kong police, does this provide the U.S. with an opportunity to improve relations with Chinese law enforcement, or do you expect the Chinese to put pressure on the Hong Kong police to scale back contacts with U.S. law enforcement?

ANSWER: We do not expect the Chinese to pressure Hong Kong police authorities to scale back contacts with United States law enforcement. We believe that our efforts over the last six years to reinforce our cooperation with Hong Kong law enforcement can also provide an opportunity to improve relations with Chinese law enforcement. One example is Hong Kong's designation of the United States as a country that can benefit from Hong Kong's Drug Trafficking (Recovery of Proceeds) Ordinance. Other measures include the negotiation and recent signing of treaties on extradition and mutual legal assistance.

QUESTION: (b) Is there a danger that the Chinese authorities will try to manipulate this very capable Hong Kong police force for internal control of political dissent? How would such a development affect the U.S. relationship with the Hong Kong police and the ability to cooperate on law enforcement matters?

ANSWER: While we generally believe that questions regarding the potential actions of the Chinese government fall within the purview of the Department of State, the Department of Justice will pay close attention to any post-reversion developments that might have an impact on Hong Kong law enforcement. Our hope is that through ratification of our new extradition and mutual legal assistance treaties, we will be able to cement existing ties and improve our level of cooperation with Hong Kong authorities.

QUESTION: 2) In his speech to the 50th UN General Assembly, the President outlined steps that the United States would be taking to address international organized crime. Those steps included the drafting of a legislative package of new authorities which U.S. government agencies believe they need to better investigate and prosecute all aspects of international organized crime. I understand that the Administration is preparing a legislative package to submit to the Congress sometime this year.

(a) Is this package the result of the initiative outlined by the President in 1995?

ANSWER: Yes. The Administration submitted a package of legislation aimed at fighting international crime to the Congress in September of 1996. The Administration is currently revising and updating these proposals for submission to this Congress.

QUESTION: (b) What is the time frame for completing this proposal? Who is the lead agency for this effort?

ANSWER: Although there is no specific deadline, the Administration is moving expeditiously to submit the revised international crime legislation to Congress. The Department of Justice is the lead agency for the legislative initiative, with extensive input from the Department of State, the Department of the Treasury, the Coast Guard, and other agencies.

QUESTION: (c) What input did your agency provide for this package? What deficiencies did you identify during this process?

ANSWER: The Department of Justice has had extensive input in developing the international crime legislation, along with the Department of State, the Department of the Treasury, the Coast Guard, and other agencies. During this process, the agencies identified a number of areas where United States law should be changed to deny safe haven to international criminals, locate, seize, and forfeit the assets of international crime; and facilitate the arrest and prosecution of international criminals through cooperative efforts with foreign law enforcement agencies. While these new proposals are important, we note that we have worked with the Congress and specifically with the Senate Foreign Relations Committee to increase penalties for international crime. There is now the opportunity for the Committee and the Congress to approve new extradition and mutual legal assistance treaties.

DRAFT

INTERNATIONAL CRIME CONTROL STRATEGY (ICCS)
FACT SHEET
MAY 12, 1998

I. ORIGIN AND PURPOSE OF THE ICCS

- International crime is a real and potent threat to Americans at home and abroad.

  In 1997: Americans spent approximately $50 billion on cocaine and heroin, all of which originated abroad; there were 123 terrorist attacks against U.S. targets worldwide, including 108 bombings and eight kidnappings; one billion dollars worth of stolen cars were taken out of the United States; U.S. companies lost up to $23 billion from the illegal duplication and piracy of films, compact disks, computer software, pharmaceutical and textile products; U.S. credit card companies suffered losses of hundreds of millions of dollars from international fraudulent activity; hundreds of U.S. companies and organizations suffered computer attacks resulting in millions of dollars of losses and significant threats to our safety and security.

  Drug trafficking, terrorism, money laundering, counterfeiting, illegal alien smuggling, advanced fee scams, credit card fraud, auto theft, intellectual property theft, computer hacking, economic espionage and foreign corruption are all linked to international criminal activity. International crime costs Americans hundreds of billions of dollars each year.

- Presidential Decision Directive 42 (PDD-42) issued in October 1995, ordered agencies of the government to (1) increase the priority and resources devoted to fighting international crime; (2) achieve greater effectiveness and synergy by improving internal coordination; (3) work more closely with other governments to develop a global response to this threat; and (4) use aggressively and creatively all legal means available to combat international crime.

- The ICCS -- the first international crime control strategy in U.S. history -- responds to the high priority accorded international crime in the National Security Strategy and builds on existing crime control strategies, such as the National Drug Control Strategy and the Presidential Directives on international heroin control, counternarcotics operations in the Western Hemisphere, alien smuggling, nuclear materials safety and security, and counterterrorism. The ICCS, a broader strategy, complements these other documents, providing the framework for integrating all facets of the federal response to international crime.

II. CONTENTS OF THE ICCS

- The ICCS is a plan of action. It articulates eight broad goals with thirty related objectives. The ICCS expresses the nation's strong resolve to combat international crime aggressively and reduce substantially its adverse impacts on the American people. Its goals and objectives are dynamic. They will evolve over time as

DRAFT

conditions change, new crime trends emerge, and improved anti-crime techniques are developed.

- The Strategy's eight goals are to:

1. **Extend the First Line of Defense Beyond U.S. Borders** by (1) preventing acts of international crime planned abroad before they occur, (2) using all available laws to prosecute select criminal acts committed abroad, and (3) intensifying activities of law enforcement, diplomatic and consular personnel abroad.

2. **Protect U.S. Borders** by (1) enhancing our land border inspection, detection and monitoring capabilities, (2) improving the effectiveness of maritime and air smuggling interdiction efforts, (3) seeking new, stiffer criminal penalties for smuggling activities, and (4) targeting enforcement and prosecutorial resources more effectively against smuggling crimes and organizations.

3. **Deny Safe Haven to International Criminals** by (1) negotiating new international agreements to create a seamless web for the prompt location, arrest and extradition of international fugitives, (2) implementing strengthened immigration laws that prevent international criminals from entering the United States and provide for their prompt expulsion when appropriate, and (3) promoting increased cooperation with foreign law enforcement authorities.

4. **Counter International Financial Crime** by (1) combating money laundering and strengthening enforcement efforts to reduce inbound and outbound movement of criminal proceeds, (2) seizing the assets of international criminals, (3) enhancing bilateral and multilateral cooperation against all financial crime, and (4) targeting offshore centers of international fraud, counterfeiting, electronic access device schemes and other financial crimes.

5. **Prevent Criminal Exploitation of International Trade** by (1) interdicting illegal technology exports, (2) preventing unfair and predatory trade practices in violation of U.S. criminal law, (3) protecting intellectual property rights, (4) countering industrial theft and economic espionage of U.S. trade secrets, and (5) enforcing import restrictions on certain harmful substances, dangerous organisms and protected species.

6. **Respond to Emerging International Crime Threats** by (1) disrupting new activities of international organized crime groups, (2) enhancing intelligence efforts against criminal enterprises, (3) reducing trafficking in human beings and crimes against children, (4) increasing enforcement efforts against high tech and computer-related crime, and (5) continuing to identify and counter the vulnerabilities of critical infrastructures and new technologies in high tech areas.

DRAFT

7. **Foster International Cooperation and the Rule of Law** by (1) establishing international standards, goals and objectives to combat international crime and by actively encouraging compliance, (2) improving bilateral cooperation with foreign governments and law enforcement authorities, and (3) strengthening the rule of law as the foundation for democratic government and free markets in order to reduce societies' vulnerability to criminal exploitation.

8. **Optimize the Full Range of U.S. Efforts** by (1) enhancing executive branch policy and operational coordination mechanisms to assess the risks of criminal threats and to integrate strategies, goals and objectives to combat those threats, (2) mobilizing and incorporating the private sector into U.S. government efforts, and (3) developing measures of effectiveness to assess progress over time.

III. TEN INITIATIVES HIGHLIGHTED IN THE ICCS

Highlighted below are ten of the Administration's initiatives described in the ICCS to further our efforts to fight international crime.

1. **International Crime Control Act of 1998**: Proposed legislation containing significant new tools for law enforcement in the fight against international crime.

2. **Comprehensive Threat Assessment**: A comprehensive U.S. government assessment of the threat to Americans posed by international crime, to be completed within six months.

3. **International Conference on Upholding Integrity Among Justice and Security Officials**: An international conference organized by the Vice President to be held within the next six months focusing on upholding integrity among key justice and security officials worldwide.

4. **High Tech Crime**: An action plan, building on the work of the G-8 justice and interior ministers and the creation of the National Infrastructure Protection Center, to protect interconnected U.S. communications and information systems from foreign criminal attack.

5. **Border Law Enforcement**: A program to enhance border law enforcement through deployment of advanced detection technology and investment of greater resources.

6. **Financial Crimes**: A Treasury led initiative employing new tools to deny criminals access to U.S. financial institutions and to enhance enforcement efforts against financial crimes.

7. **International Asset Forfeiture and Sharing**: A U.S. initiative to institute new asset forfeiture regimes worldwide and advocate asset forfeiture sharing agreements with our international partners.

DRAFT

8. **OAS Treaty Against Illegal Trafficking in Firearms**: A program to work with our OAS partners to implement fully a hemispheric convention to combat the illicit manufacturing of and trafficking in firearms, ammunition, explosives and related materials.

9. **Economic Espionage and Theft of Industrial Property**: A commitment to use the Economic Espionage Act to increase U.S. investigations and prosecutions of individuals and companies who attempt to steal U.S. proprietary information.

10. **Strategic Communications Plan**: A plan to engage the private sector in assessing the impact of international crime on that sector and determining its proper role in countering that impact.

DRAFT

INTERNATIONAL CRIME CONTROL ACT OF 1998 (ICCA)

BACKGROUND:

In response to the potent threat international crime poses to Americans, President Clinton has directed the Departments of Justice, State and the Treasury, the Coast Guard, National Security Council, as well as the intelligence community and other federal agencies, to increase their international anti-crime efforts. The ICCA responds to that directive. The ICCA is one of the foremost initiatives highlighted in the Administration's International Crime Control Strategy (ICCS).

IMPACT OF THE ICCA:

The ICCA will close loopholes in existing laws, make criminal new and dangerous forms of international criminal activity, and strengthen foreign and domestic criminal justice systems to address the new challenges posed by crime crossing international boundaries. It would substantially improve the ability of U.S. law enforcement agencies to investigate and prosecute international criminals, to seize their money and assets, to stop them from crossing our borders, and to prevent them from striking at our people and institutions.

RELATIONSHIP TO OTHER CRIME BILLS:

In 1996, the Administration submitted to Congress an international crime bill -- never enacted -- that is related to the ICCA but also different in many respects from the current bill. Since then, an interagency group has revised the legislation, adding to, subtracting from, and making significant improvements in provisions of the earlier bill. Certain ICCA provisions, related to asset forfeiture, are similar to those in other bills now pending before Congress. Otherwise, there is no overlap between the ICCA and other pending legislation.

CONTENTS OF THE ICCA:

The ICCA contains 58 provisions divided into seven parts. Highlights include:

<u>Investigating and Punishing Acts of Violence Committed Against Americans Abroad</u>

- Broadens U.S. criminal law to authorize the investigation and prosecution of organized crime groups committing serious criminal acts abroad against U.S. nationals.

- Provides jurisdiction in the United States over violent acts committed abroad against state and local officials while on official federal business.

DRAFT

Strengthening the Air, Land and Sea Borders of the United States

- Increases penalties for smugglers who engage in "portrunning," endangering federal law enforcement officials seeking to interdict their activities along our borders.
- Strengthens our ability to detect and prosecute criminals smuggling goods and contraband into and out of the United States by creating a general statute criminalizing exports in violation of U.S. law, and by making certain illegal export activities money laundering predicates.
- Provides new authority to search outgoing mail at our borders for drug proceeds, terrorist devices and pornography.

Denying Safe Haven to International Fugitives

- Authorizes the United States to extradite suspected criminals to foreign nations under an applicable extradition treaty even if it is an outdated "list" treaty that does not specifically include the underlying offense.
- Provides for exclusion from the United Sates of drug traffickers and their immediate family members and of people fleeing or avoiding prosecution in another country.

Seizing and Forfeiting the Assets of International Criminals

- Expands the scope of money laundering "predicate crimes" to include certain violent crimes, international terrorism, and public corruption against foreign governments.
- Provides new tools to crack down on illegal money transmitting businesses and investigate money laundering under the Bank Secrecy Act.
- Toughens penalties for violations of the Trading With the Enemy Act.

Responding to Emerging International Crime Problems

- Provides extraterritorial jurisdiction for fraud involving credit cards and other "access devices" that costs U.S. businesses hundreds of millions of dollars every year.
- Authorizes wiretapping for investigations of felony computer crime offenses.
- Requires background checks for the purchase of explosives in order to deter terrorist acts within the United States.

DRAFT

- Cracks down on international shipment of "precursor chemicals," which are used to manufacture methamphetamine -- a drug posing a major threat to our country.

Promoting Global Cooperation

- Authorizes U.S. law enforcement agencies to share more effectively with foreign law enforcement agencies the seized assets of international criminals.

Streamlining the Investigation and Prosecution of International Crime in U.S. Courts

- Authorizes the Attorney General to defray translation, transportation and other costs of state and local law enforcement agencies in cases involving fugitives or evidence overseas.

- Facilitates the admission of foreign records as evidence in U.S. courts.

TITLE I--INVESTIGATING AND PUNISHING VIOLENT CRIMES AGAINST U.S. NATIONALS ABROAD

Section 1001. Murder and extortion against U.S. nationals abroad in furtherance of organized crime.

This section provides additional discretionary authority for investigations and prosecutions of organized crime groups who perpetrate criminal acts against U.S. nationals abroad. With the expanded role of federal law enforcement, specifically the Federal Bureau of Investigations, in the investigation of international organized criminal groups, additional legislation is needed to counteract crimes occurring abroad. Statutes now in effect are narrow and generally address these kinds of issues only when they are related to international terrorism matters. This provision broadens the scope of other current statutes so that they can be of assistance in targeting violent criminal acts committed against U.S. nationals by members of organized criminal groups. The same safeguards are required that have been established in statutes relating to international terrorism, i.e., such a prosecution cannot be brought without the approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General. In subsection (g), the statute places a monetary limitation in extortion cases, and defines an organized criminal group by reference to the RICO statute. These limitations have been included to preclude any expectation that the United States will devote resources to investigate and prosecute cases which are of primarily local (versus international) impact or those which the foreign nation is adequately addressing.

Section 1002. Murder and serious assault of a state or local official abroad.

This section provides additional discretionary authority to investigate and prosecute murders and serious assaults of state and local officials that occur abroad when the state and local officials are involved in a federally-sponsored training or assistance program. As the United States expands its efforts to fight international crime and bring peace and stability to nations the world over, the role of state and local officials -- law enforcement, judges, and others -- in federally-sponsored training and other forms of assistance programs is also increasing. The scope of these programs is broad, and includes programs designed to bolster law enforcement, promote trade and tourism, and improve education. As with United States military personnel, these officials may become targets of violent acts committed abroad. Insofar as these officials are often involved in training designed to assist a host country in improving its criminal justice system or other public-sector infrastructures, the host country may lack the resources and skills to effectively investigate and prosecute such crimes. Because these officials are acting under the auspices of the federal government, the United States has a strong interest in prosecuting those criminals who attack and kill them. As with other provisions of law that allow extraterritorial jurisdiction over crimes, this provision requires that the Attorney General approve any prosecutions under this section.

TITLE II--STRENGTHENING THE BORDERS OF THE UNITED STATES

Subtitle A--Violence Committed Along U.S. Border

Section 2101. Felony punishment for violence committed along the U.S. border.

This section will establish a specific criminal penalty of up to ten years for "portrunning," that is, intentionally evading border inspections by driving through ports of entry without stopping, causing injury to or putting at risk of injury federal officers and civilians alike. The section provides strict sanctions where the portrunning involves a crime of violence against customs officers, immigration officers, or other persons charged with enforcing laws along U.S. borders, or is accompanied by an attempt to smuggle contraband or controlled substances. It also would enhance the criminal penalty under 18 United States Code 111 for persons who knowingly disregard or disobey the lawful authority of a federal officer charged with enforcing laws along the border and thereby recklessly endanger the safety of any person or property.

Drug, alien, and other smuggling activity has always been associated with a potential for violence along the southwest border. Increasingly, smugglers have taken to violent and dangerous means to evade apprehension at our borders, endangering law enforcement officers and innocent members of the public. Such activity includes over a thousand recent incidents of "portrunning." Currently, there is no specific federal jurisdiction over crimes of violence committed in the course of evading our border controls, and state law has to be used, where applicable, to prosecute violators that injure civilians. This section will correct that problem by creating specific sanctions, such that the federal government will be able to prosecute portrunners, as well as those committing crimes of violence at our borders, more easily and effectively under federal law.

Subtitle B -- Strengthening Maritime Law Enforcement Along U.S. Borders

The Coast Guard is authorized to enforce, or assist in the enforcement of, all applicable federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States (14 United States Code 2). Coast Guard commissioned, warrant, and petty officers are also deemed to be customs officers (14 United States Code 143; 19 United States Code 1401). The Coast Guard may board and examine any vessel subject to the jurisdiction of the United States (14 United States Code 89). To carry out this broad grant of authority, statutory sanctions are needed against the master, operator, or person in charge of a vessel who fails to obey the order of a federal law enforcement officer to heave to, or who otherwise obstructs the exercise of law enforcement authority.

Under existing law, a civil penalty can be imposed for failure to heave to a vessel upon the command of a customs officer (19 United States Code 1581(d)). However, the penalty only applies to violations involving vessels at those places where a customs officer is authorized to stop and board. In addition, a criminal and civil penalty can be imposed for failure to stop a vessel when hailed by a customs officer or other government authority within 250 miles of the territorial sea of the United States (19 United States Code 1590(g)(8)). However, these penalties may be imposed only on vessels caught with prohibited or restricted merchandise. As a last resort, to compel vessels to heave to, the Coast Guard is authorized, after firing warning shots, to fire into and disable a vessel which has failed to stop (14 United States Code 637).

Appropriate sanctions are required to facilitate and enhance the Coast Guard's interdiction of vessels smuggling contraband. The Coast Guard requires an intermediate measure -- short of firing into a vessel -- to compel a vessel to comply with a lawful order to heave to. Without such sanctions drug smugglers can delay or sometimes prevent the legitimate exercise of Coast Guard law enforcement boarding authority.

Such sanctions are necessary to address the following scenario. The operator of a vessel fails to heave his vessel to in order to delay a Coast Guard boarding. After a lengthy pursuit, the vessel is finally boarded and no contraband is found. Or the operator of a vessel avoids being boarded by failing to heave his vessel to and fleeing; he eventually enters the territorial waters of a safe haven country. In either case, the vessel may have initially been carrying contraband -- which has been jettisoned -- or may have been acting as a decoy to divert Coast Guard assets away from other vessels carrying contraband. The use of such tactics by drug smugglers not only thwarts Coast Guard drug law enforcement efforts, but diverts Coast Guard assets from their other missions.

Sanctions are also required to deter non-forcible acts of obstruction during a Coast Guard boarding. While forcibly obstructing a federal law enforcement officer is a crime (18 United States Code 111, 113), no statute provides penalties, criminal or civil, for non-forcible acts of obstruction during a Coast Guard boarding. Such penalties are needed as a deterrent to prevent confrontational situations from escalating from non-physical obstructions of boardings to physical assaults on Coast Guard boarding officers.

Sanctions are also required as a means to compel persons on board vessels to provide truthful information regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew. False information concerning a vessel's nationality or registration can delay the determination as to whether the United States has jurisdiction over a vessel, or hinder attempts to obtain consent from a foreign country for the United States to exercise jurisdiction. This offers drug smugglers the opportunity to jettison contraband and destroy evidence. Truthful information concerning the vessel's destination, origin, ownership, cargo, or crew facilitates the ability of the boarding team to determine whether the vessel may be engaged in drug smuggling. This information is also important for the successful prosecution of drug smuggling cases.

Sections 2201-03 of this title address these gaps in current United States drug interdiction law by increasing the authority of federal law enforcement officers over the movement of vessels. Criminal penalties are provided by Section 2201 for failure to obey the order of a federal law enforcement officer to heave to a vessel. These same sanctions are imposed against persons on board vessels who fail to comply with an order in connection with the boarding of a vessel, impede or obstruct a boarding, or provide certain false information during a boarding. These provisions are bolstered by section 2201, which provides civil penalties for failure to support maritime law enforcement, and by section 2203, which clarifies the authority of Customs officers in foreign countries.

Section 2201. Sanctions for failure to heave to, obstructing a lawful boarding, and providing false information.

This section makes several changes to enhance enforcement of federal law involving vessels. Subsection (a)(1) provides that it shall be unlawful for the master, operator, or person in charge of a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to fail to obey an order to heave to that vessel on being ordered to do so by an authorized federal law enforcement officer. Paragraph (2) provides that it shall be unlawful for any person on board a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to: (1) fail to comply with an order of an authorized federal law enforcement officer in connection with the boarding of the vessel; (2) impede or obstruct a boarding or arrest, or other law enforcement action authorized by any federal law; or (3) provide false information to a federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew. Nothing in this section is a limitation on 18 United States Code 1001, which makes it a crime to give a false statement to a government agent.

Subsection (b) provides that this section does not limit in any way the preexisting authority of a customs officer under section 581 of the Tariff Act of 1930 or any other provision of law enforced or administered by the Customs Service, or the preexisting authority of any federal law enforcement officer under any law of the United States to order a vessel to heave to. This section is necessary to establish that this statute in no way **limits** the potential actions of federal law enforcement officers that exist under other statutes.

Subsection (c) specifies that a foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section in an international agreement, or, on a case-by-case basis, by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the Secretary's designee.

Subsection (d) defines the terms used in this section, including "vessel of the United States;" "vessel subject to the jurisdiction of the United States;" to "heave to;" and "Federal law enforcement officer."

Subsection (e) sets forth penalties for violation of this section. Any person who intentionally violates the provisions of this section shall be subject to: (1) imprisonment for not more than five years; and (2) a fine as provided in this title.

Subsection (f) authorizes the seizure and forfeiture of a vessel that is used in violation of this section. Existing customs laws and duties shall apply to such seizures and forfeitures. This subsection further provides that any vessel that is used in violation of this section is also liable in rem for any fine or civil penalty imposed under this section. This provision gives added force to the prohibitions contained in the section, and provides additional incentives to would-be portrunners to comply with the law.

Section 2202. Civil penalties to support maritime law enforcement.

This section amends chapter 17 of title 14, United States Code, by adding a new section 675. Subsection (a) authorizes the Secretary of Transportation to impose a civil penalty of not more than $15,000 upon the master, operator or person in charge of a vessel, who fails to comply with an order of a Coast Guard commissioned officer, warrant officer, or petty officer relating to the boarding of a vessel issued under the authority of section 2237 of title 18, United States Code. The Secretary is authorized to impose a civil penalty of not more than $25,000 for intentional violations. This order is to be communicated according to any applicable, internationally recognized standards, or in any other manner reasonably calculated to be received and understood. Subsection (b) provides that any vessel used in violation of this subtitle is also liable in rem.

Section 2203. Customs orders.

Section 1205 adds a new subsection (i) to section 581 of the Tariff Act of 1930 (19 United States Code 1581) that defines "authorized place" as that term is used in section 581. Authorized place is defined as the following: with respect to a vessel or vehicle, a location in a foreign country at which United States customs officers are permitted to conduct inspections, examinations, or searches. This amendment clarifies the law enforcement authority of customs officers in foreign countries.

Subtitle C -- Smuggling of Contraband and Other Illegal Products

Section 2301. Smuggling contraband and other goods from the United States.

Under existing law, there is no general criminal statute covering illegal exports. Congress long ago created such a statute for importation activity conducted contrary to law, 18 United States Code § 545, and this amendment is intended to create a parallel provision for exportation activity conducted contrary to law.

The amendment is needed because, although there are currently many provisions of federal law that prohibit or restrict the exportation of certain items, specific criminal sanctions do not exist for all of the export restrictions. Examples of export prohibitions that already exist but lack a criminal sanction include 7 United States Code § 136, et seq., which deal with insecticides and pesticides, 15 United States Code § 45, which covers unfair deceptive practices including unlawful textile exports, and 42 United States Code § 7522, which deals with air pollution and motor vehicle emissions.

This amendment is primarily intended to cover those export prohibitions that lack criminal sanctions. The amendment is not intended to affect in any fashion the ability of the United States to bring prosecutions under other provisions of law, where applicable, that also cover illegal exports.

The provision also amends the money laundering statute, 18 United States Code § 1956, to make a violation of this new provision a predicate under the money laundering statute. The intent of this change is to make this provision as powerful a tool as possible to combat illegal export smuggling. The definitional sections proposed are patterned after similar provisions in 18 United States Code § 545.

Proposed subsection (d) provides for civil forfeiture of the goods involved in a violation of this provision. Subsection (d) would provide clear authority for civil forfeiture of merchandise exported contrary to federal law, and of property used to facilitate the receipt, purchase, transportation, concealment or sale of such merchandise prior to exportation. Subsection (d) would amend one of the principal customs forfeiture statutes, 19 U.S.C. 1595a, which already provides for, among other things, the civil forfeiture of merchandise introduced in the United States contrary to law. This subsection is necessary because, although Congress has already provided some authority under current law for the forfeiture of commercial goods (in 22 United States Code § 401), that statute is designed to provide for the forfeiture of exported illegal war materials.

Section 2302. Controlling illicit liquor trafficking.

In recent years, there has been a dramatic increase in illegal commerce in liquor. The majority of this illegal commerce is between the United States and Canada because the excise taxes in Canada are significantly higher than those in the United States. The Canadian government has formally requested the assistance of United States law enforcement agencies in this matter.

Intelligence gathered indicates that international organized crime is heavily involved in the illegal diversions to Canada. It is estimated that States have lost millions of dollars due to liquor diversion, while Canadian authorities estimate that Canada is losing more than one billion dollars a year in tax revenues from illegal diversion. Moreover, the monies obtained by diversion finance other illegal activities such as money laundering, alien smuggling, narcotics trafficking, and illegal firearms trafficking. It follows that the proceeds of diversion avoid federal and State income taxes as well. Although these diversion-related transactions involve violations of federal, State, and foreign laws, there is currently no comprehensive federal felony which could be applied to the various diversion schemes. Therefore, a statute is needed that provides a uniform and systematic approach to the problem of liquor diversion by providing both an adequate deterrent to this conduct, as well as an enforcement tool that will aid prosecutors.

Proposed section 1266 will combat the problem of illicit liquor on three fronts. First, the bill will broaden the jurisdiction of the U.S. Customs Service under 18 United States Code § 546 by prohibiting the smuggling of merchandise into foreign countries by means of vehicles or aircraft, in addition to the existing prohibition against smuggling via vessel. Second, it will make a violation of § 546 a predicate under the money laundering statute. Third, on a more minor note, it would remove an archaic requirement that the government must prove the foreign country has laws proscribing violations of U.S. customs revenues, an element of proof that involves courts and prosecutors in difficult and unnecessary litigation. Fourth, the bill will add a new section 1266 to title 18 of the United States Code. This provision would allow the United States to stop the illegal liquor trafficking as soon as the distilled spirits are shipped in violation of state law. It also allows the Department of Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF) to attack the diversion schemes in their incipiency, if the illegal commerce involves a distillery or wholesaler of distilled spirits who is licensed and subject to record keeping requirements and inspection by ATF officers. The proposed legislation would thus allow ATF to cut off the flow of illicit liquor at the source.

Specifically, proposed section 1266 would:

(1) Create federal felonies which would uniformly apply with respect to diversions of liquor from the United States to Canada. There is no current federal felony statute that ATF and the Department of Justice can utilize to uniformly prevent the diversion of liquor from the United States to Canada before such liquor enters Canada. The proposed legislation sets a minimum threshold of 360 liters (30 cases) of liquor, which is presumed to be more than is intended for personal use. The transportation, shipment, or introduction of 360 or more liters into a State in violation of its laws therefore triggers a federal felony which would provide significant penalties for violations which occur in the United States; and

(2) Provide for the seizure and forfeiture of any conveyance, liquor, or monetary instrument involved in a violation of 18 United States Code § 1266, or any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 United States Code § 1266.

The proposed legislation is in harmony with the Twenty-First Amendment, which bars the transportation of distilled spirits from one State into another "for delivery or use therein" in violation of the laws of the recipient State, and with the Commerce Clause of Article I, which empowers Congress to "regulate Commerce with foreign Nations, and among the several States." In the Webb-Kenyon Act, which is a statutory reiteration of the Twenty-First Amendment, Congress clearly directed that the federal government assist states in the exercise of their police powers regulating the traffic or control of alcoholic beverages within their borders.

Further, in the Federal Alcohol Administration Act, 27 United States Code § 203, Congress directed close federal regulation of the interstate and foreign commerce in liquor, protection of the revenue, and limitation of such commerce to qualified and licensed individuals. Finally, Congress has, through the enactment of the Interstate Transportation in Aid of Racketeering statute, 18 United States Code § 1952, and the Contraband Cigarette Trafficking Act, 18 United States Code § 2342, demonstrated its desire that the federal government maintain a strong federal enforcement presence with respect to illegal interstate trafficking in commodities such as liquor and tobacco.

This section would be especially helpful in maintaining a strong federal enforcement presence in the area of liquor diversion because states and foreign governments do not always have the resources, expertise, or jurisdiction to attack this problem when it transcends state and international boundaries.

Section 2303. Customs duties.

The proposal amends 18 United States Code 542 to establish a five year sentence for violation of 18 United States Code 542 (entry of goods by means of false statements), thereby curing a problem that has arisen with respect to the embezzlement of customs duties by customs brokers. Section 545 of Title 18 (smuggling) provides for a five year sentence, while Section 542 of Title 18, which is Section 545's sister statute, currently only provides a two year sentence. Moreover, Section 542 has been interpreted to require that the government establish that a customs broker had the specific intent to deprive the government of duties in order to obtain a conviction for embezzling importers' funds that are earmarked for payment of customs duties. See United States v. Yip, 930 F.2d 142 (2nd Cir. 1991). Prior to this case, it was the government's position that it need only show that the broker's actions were willful. Restoration of that interpretation will remove a significant impediment to the successful prosecution of importers' agents who abscond with clients' funds. The legislation will render Section 542 consistent with Section 545 and will cure the defect associated with the Yip case by requiring that the government show only that the defendant's actions were willful and that they resulted in a deprivation of lawful duties.

Section 2304. False certifications relating to exports.

This section creates a criminal statute that proscribes a false certification that exported goods qualify for preferential treatment under international agreements to which the United States is a signatory. Currently, there is no such general proscription. Under the North American Free Trade Agreement (NAFTA), the United States pledged to provide, at a minimum, the same legal consequences for exporters or producers who falsely certify goods as originating goods under the NAFTA, as would apply to importers who make false statements to Customs upon the importation of merchandise. See Article 504. This legislation will fill a gap that was inadvertently created when the NAFTA implementing legislation created a civil penalty for such an activity but failed to create a corresponding criminal penalty. The proposal will also proscribe similar activities that violate future trade agreements.

TITLE III--DENYING SAFE HAVEN TO INTERNATIONAL CRIMINALS

Subtitle A--Strengthening Extradition to Ensure International Criminals Are Brought to Justice

Section 3101. Extradition for offenses not covered by a list treaty.

The United States currently has extradition treaty relations with approximately 110 countries. Well over half of these treaty relationships were developed more than 20 years ago, when common international extradition practice was to negotiate "lists" or "schedules" of extraditable offenses with our extradition treaty partners based on the serious crimes common to the legal systems of the United States and each treaty partner at the time of the negotiation. As a result, the treaty relations of the United States with many countries do not include more modern offenses such as money laundering, bribery, counterfeiting, and some crimes of violence, including certain crimes against children. This section will amend existing extradition law to authorize the United States to extradite to treaty partners for modern crimes that may not be included in these older list treaties.

The statute allows the Attorney General to authorize the filing of a complaint under this provision for both list and certain serious non-list offenses as though all were covered by the existing treaty, and provides that the extradition process will be handled by judicial officers in the same manner as for list offenses. All provisions of the relevant treaty would apply as if the offense were a crime provided for by the treaty.

The proposal incorporates important safeguards before extradition may be ordered when a treaty exists but it fails to cover the crime for which extradition has been requested. A certification is required by the Attorney General that, in the judgment of the Attorney General, the offense is serious and submission of the request is important to the law enforcement interests of the United States or is otherwise in the interests of justice. A separate certification is required by the Secretary of State that, in the judgment of the Secretary, submission of the request would be consistent with the foreign policy interests of the United States and the facts and circumstances then known would not appear likely to present a significant impediment to the ultimate surrender of the person if found extraditable.

As provided in most of our extradition treaties, the proposal provides for provisional arrest in cases of urgency. Extradition under the statute would be possible only for enumerated serious offenses. In addition, the provision follows present practice under extradition treaties by vesting in the Secretary of State the final determination whether to surrender a fugitive and, if appropriate, to impose conditions upon such surrender.

In subsection (f), the statute provides the Secretary of State express authority to enter into agreements that the Secretary may deem necessary to implement the statute. This would enable the Secretary to enter into agreements with list treaty partners, where appropriate, to establish a reciprocal obligation on the part of the treaty partner to extradite to the United States for the same serious offenses set forth in subsection (e). The Secretary, of course, also would have the inherent authority to enter into agreements at times to memorialize assurances provided by a foreign government as a condition of extradition in a specific case.

Section 3102. Extradition absent a treaty.

Except for a narrow provision of the Antiterrorism and Effective Death Penalty Act of 1996 permitting extradition of non-U.S. nationals who are charged with committing a crime of violence against U.S. citizens overseas (18 United States Code 3181(b)) and a provision of law providing for extradition from the United States to the war crimes tribunals for the Former Yugoslavia and Rwanda 18 United States Code 3181 Note), existing law permits the United States to extradite offenders to foreign nations only when there is a treaty or convention in force with that nation. However, the process of negotiating and ratifying new treaties is both time consuming and complex. At present, there are close to 70 countries in the world with which the U.S. has no extradition treaty at all.

This inability to surrender even escaped convicts to a large number of nations without a treaty means that criminals can, at least in some instances, find "safe haven" in the United States. It also impedes our ability to secure extradition without a treaty from non-treaty partners. There are countries in the world who can extradite in the absence of a treaty. However, such countries are usually willing to do so only when there exists at least the possibility of reciprocity. Consequently, this statute would create the legal authority for such reciprocal treatment, and open the door for the extradition of important fugitives back to the United States from countries with which our extradition treaty relationship is non-existent.

The proposal incorporates important safeguards before extradition may be ordered in the absence of a treaty. A certification is required by the Attorney General (delegable only to the Deputy Attorney General) that, in the judgment of the Attorney General, the offense is serious and submission of the request is important to the law enforcement interests of the United States or is otherwise in the interests of justice. A separate certification is required by the Secretary of State (delegable only to the Deputy Secretary of State) that, in the judgment of the Secretary, based on facts then known, submission of the request would be consistent with the foreign policy interests of the United States, the facts and circumstances -- including humanitarian considerations -- do not appear likely to present a significant impediment to the ultimate surrender of the person if found extraditable, and the country submitting the request is not doing so in order to try or punish the person based primarily on the person's race, religion, nationality, or political opinions.

The proposal provides for the provisional arrest of a person when there is probable cause to believe the person is extraditable. As in extradition pursuant to a treaty, a judicial officer may only find a person extraditable if it finds probable cause to believe that the person before the judicial officer is the person sought in the foreign state, and probable cause to believe that the person before the judicial officer committed the offense for which such person is sought, or was duly convicted of that offense in the requesting state.

Extradition under the statute would be possible only for enumerated serious offenses of a character punishable by more than ten years imprisonment in the United States such as drug trafficking, money laundering, and crimes of violence, including certain crimes against children. In addition, the provision maintains present law by vesting in the Secretary of State the final determination whether to surrender a fugitive. The Secretary's decision takes into account humanitarian considerations, and the Secretary may impose conditions upon the surrender and demand assurances of compliance as the Secretary believes appropriate. The statute further provides that the Secretary shall demand in every case that the person not be tried or punished for an offense other than for which the person has been extradited, and that the person not be subject to capital punishment unless the person was subject to the same punishment by the applicable laws in the United States.

Section 3102 does not have a subsection comparable to subsection (f) of section 3101, wherein the Secretary of State is authorized to enter into agreements that the Secretary deems necessary to implement the statute. Such a provision is not necessary in Section 3102 because it is not anticipated that the Secretary would enter into general agreements in implementation of Section 3102 without seeking advice and consent of the Senate since there is no pre-existing treaty relationship. The Secretary would, however, have inherent authority to enter into case-specific agreements recording assurances provided as a condition for extradition.

Section 3103. Technical and conforming amendments.

This section is necessary to reconcile the changes made to existing statutes by sections 3101 and 3102.

Subtitle B--Strengthening Immigration Laws to Exclude International Criminals from the United States

Section 3201. Exclusion of persons fleeing prosecution in other countries.

This section will add flight to avoid lawful prosecution as an additional ground of inadmissibility under the Immigration and Nationality Act and designate the country seeking to prosecute such individuals as the primary country of deportation. This section will be triggered if the crime for which prosecution is sought is a crime of moral turpitude, other than a purely political offense.

Individuals often seek refuge in the United States to avoid prosecution for crimes committed in other countries. Presently, if such persons are detected attempting to enter the United States, the United States must either find some other basis for exclusion (e.g., having been previously convicted of another crime), or embark on lengthy extradition proceedings, assuming there is an applicable extradition treaty, which is not always the case.

This section will provide an independent statutory basis to remove persons who enter or attempt to enter the United States for the purpose of avoiding lawful prosecution in another country and to return them to the country seeking their prosecution unless the Attorney General, in his/her discretion, determines that such return would be impracticable, inadvisable, or impossible. An additional ground of removal under INA section 237 is not necessary because such an alien fugitive found in the United States would be removable under section 237(a)(1)(A) as an alien inadmissible at the time of entry or adjustment of status. The provision is intended to reach situations where the person flees after a warrant has been issued or in anticipation of a warrant being issued. Nothing in this proposed new section would alter U.S. obligations to protect bona fide refugees. Persons covered by this section remain eligible to apply for withholding of deportation under INA section 241(b)(3), and asylum under section 208, to the extent those remedies would otherwise be available.

Section 3202. Exclusion of persons involved in racketeering and arms trafficking.

This section will provide for inadmissibility of any individual whom a consular officer has reason to believe has or is engaged in certain RICO and arms trafficking offenses, or any criminal activity in a foreign country that would constitute such an offense if committed in the United States, regardless of whether a judgment of conviction has been entered or avoided due to flight, corruption, etc. This section treats serious criminals with the same standard applicable to drug traffickers and will make our ability to exclude aliens involved in such activities less dependent upon our ability to draw inferences about a person's intent to do something illicit in the United States. With only minor exceptions, the RICO offenses referenced constitute crimes involving moral turpitude that are already grounds for exclusion under the Immigration and Nationality Act.

The section will similarly exclude the spouse, son or daughter (regardless of age) of such persons if, within the previous five years, they benefitted from such illicit activity and reasonably should have known that the benefit was the result of illegal activity. This exclusion of close family members will increase pressure on aliens involved in racketeering and arms trafficking to abandon their illegal activity, and will ensure that such aliens cannot benefit by having their spouses, sons, or daughters travel to the United States with impunity.

The provision includes a waiver provision that allows the Attorney General to waive its applicability for offenses other than aggravated felonies. This provision has been added to provide the Attorney General flexibility to waive these provisions in the event that there is a law enforcement, humanitarian or other important national interest justifying such waiver.

Section 3203. Exclusion of persons who have benefitted from illicit activities of drug traffickers.

This section will provide for exclusion of spouses and children whom the Attorney General or a consular officer has reason to believe are or have been, within the previous five years, benefitting from the illegal activities of controlled substance violators, when such persons have known or reasonably should have known that they were receiving benefits from such illicit activities. Such aliens will be subject to the same standard applicable to drug traffickers, and their associates who direct or assist them, without having to meet current RICO limitations relating to the expenditure of funds in the United States. The provision is subject to waiver in certain limited, enumerated circumstances.

Section 3204. Exclusion of persons involved in international alien smuggling.

This section will address the problem of excluding international alien smugglers where there is evidence that they have assisted aliens to illegally enter countries other than the United States, but not the United States. Often there is a strong likelihood that such assistance was part of a scheme to illegally bring such aliens into the U.S. or could develop into a scheme to illegally bring such aliens into the U.S., but under current law the alien providing such assistance may not be excludable. This provision will allow consular officers and the Immigration and Naturalization Service to find such aliens ineligible for entry into the U.S. when the alien should have known that the illegal entry into another country would have assisted other aliens to enter the U.S. in violation of law.

Subtitle C--Additional Tools to Deny Safe Haven to International Criminals

Section 3301. Temporary transfer of persons in custody for prosecution.

This section addresses two situations. In the first, a person wanted to stand trial in the United States is already in detention -- perhaps serving a long sentence -- in another country. Some of our most modern extradition treaties permit the defendant to be "temporarily surrendered," that is, temporarily transferred to the United States for purposes of trial, and then returned to the foreign country to complete service of sentence. However, the majority of treaties do not, and absent such a treaty provision, any transfer must wait until the defendant's foreign sentence has expired, which delay significantly jeopardizes the prospects for an effective prosecution and which may deny to victims and defendant the benefits of a speedy trial. This provision ameliorates that problem.

In subsection (a) it provides independent, discretionary statutory authority for the Attorney General to request the temporary surrender for purposes of trial of defendants in custody who have been found extraditable to the United States, to maintain their custody while in the U.S., and to return them expeditiously at the conclusion of trial, so that they may serve out the remainder of their foreign sentence (or if in pretrial custody, to proceed to trial in the foreign jurisdiction).

In the second situation, a defendant wanted in a foreign country is in custody in the United States either pending trial or post-trial. Subsection (b) gives the Attorney General authority -- where the Attorney General and the Secretary of State agree -- to temporarily surrender a defendant incarcerated in the U.S. to a foreign country to which the defendant has been found extraditable by the appropriate judicial officer in the manner prescribed by applicable federal extradition law. This provision will not only allow us to assist a foreign country in assuring a prompt trial of the offender, but also, by allowing us to make assurances of reciprocity, enhance the prospects of foreign countries being willing to send incarcerated defendants to the U.S. under the circumstances contemplated in subsection (a).

Because subsection (b) applies to persons in pretrial as well as post-trial detention, the statute is drafted to make clear that a temporary transfer for prosecution of a person in pre-trial detention pursuant to this provision interrupts that person's pretrial detention status. The statute provides that, during the period of such interruption, a person who had been in pretrial detention prior to their temporary transfer not challenge the conditions of their confinement in the foreign country to which they have been transferred based on the terms of this statute. Because pretrial detention is a creature of statute, see 18 United States Code § 3142, this provision accomplishes that end by limiting that existing provision of law to make clear it does not apply to persons while in the foreign country temporarily pursuant to this provision.

Because there may be new conditions that arise during the interruption in pretrial detention status but which are not -- for the reason discussed above -- properly the subject of a motion to revisit conditions of release, it is contemplated that a pretrial detainee who is temporarily transferred could bring a motion pursuant to 18 United States Code § 3142(f), and receive a new hearing to assess their conditions of confinement, immediately upon their return to the United States.

Similarly, although it is not mandated by the statute, it is contemplated that a prisoner under sentence in the United States who was temporarily transferred to a foreign country and is returned back to the United States pursuant to this provision could, upon his or her return, bring an appropriate motion under 18 United States Code §§ 2241 or 2255.

Further, although 18 United States Code § 3142(i)(2) requires that any pretrial detention order state that such persons be "committed to the custody of the Attorney General for confinement in a corrections facility", the impact of that provision is necessarily altered to the extent that the Attorney General is empowered by this provision to interrupt the pretrial detention and temporarily transfer pretrial detainees to a foreign country.

Finally, because such confinement is an interruption in that person's U.S. custody, it is contemplated that a person transferred to a foreign country under this provision would not be entitled to receive credit under 18 United States Code § 3585(b) for any time spent in custody in that foreign country.

The intent of these provisions and associated comments is to make clear that a person transferred under this provision is not, by virtue of this statute, in U.S. custody while in the foreign country. Rather, but for the fact that they are eventually returned to the United States, such persons are treated the same way as any other person not in custody or pretrial detention who is picked up by legal authorities in the United States and is extradited to a foreign country pursuant to existing treaties and extradition statutes.

Subsection (c) addresses those situations in which the defendant is willing to be transferred and to forego formal extradition proceedings. This may often be the case since a temporary transfer for prosecution may enable the defendant to defend the foreign case while any exculpatory evidence is most readily available. In those situations, the Attorney General may exercise the transfer authorities under subsections (a) and (b) without a prior finding of extraditability if the defendant to be transferred and all the governments involved consent.

Subsection (d) makes it clear that the return of the person at the conclusion of the proceedings for which he was transferred does not require extradition or immigration proceedings, nor is a person being temporarily transferred to the U.S. able to use his transfer for trial as an avenue for obtaining asylum. This provision is necessary to prevent temporary transferees from frustrating the statute's purpose and remaining in the United States despite an agreement between the United States and the prisoner's country of origin.

The statute requires that, before a decision is made to request a transfer under subsections (a) and (b), the Attorney General shall make a determination, in consultation with the Secretary of State, that such a transfer would be consistent with the United States' international obligations. This will ensure that any humanitarian concerns, such as the possibility that the person may be subjected to persecution or torture upon transfer or return to the foreign country, mat be considered prior to the transfer.

Lastly, as to any defendant temporarily transferred to a foreign country pursuant to this provision who was in custody pretrial, it is contemplated that such transfer would constitute "delay resulting from trial with respect to other charges against the defendant," for purposes of the Speedy Trial Act, 18 United States Code § 3161(h)(D). Thus, any time spent in the foreign country answering charges there would be excluded by Courts applying the Speedy Trial Act in computing the time within which an information or indictment must be filed, or in computing the time within which the trial of any such offense must commence.

Section 3302. Prohibiting fugitives from benefitting from their fugitive status.

This provision authorizes the district court to bar a fugitive from justice from attempting to hide behind his fugitive status while contesting a civil forfeiture action against his property. It reinstates what is commonly known as the fugitive disentitlement doctrine under which "a person who is a fugitive from justice may not use the resources of the civil legal system while disregarding its lawful orders in a related criminal action." United States v. Eng, 951 F.2d 461, 464 (2d Cir. 1991) (applying the doctrine to bar an appellant who was resisting extradition from participating in related civil forfeiture proceedings).

Eng and similar cases in other circuits applied a judicially created rule intended to protect the integrity of the judicial process from abuse by a fugitive in a criminal case. But in Degen v. United States, 116 S.Ct. 1777 (1996), the Supreme Court held that as a judge-made rule, the sanction of absolute disentitlement goes too far. In the absence of legislative authority to bar a fugitive from filing a claim, courts must resort to other devices to prevent a fugitive from abusing the discovery rules or otherwise taking advantage of his fugitive status in litigating a civil forfeiture case, such as imposing sanctions for failure to comply with discovery orders.

These devices, however, are not adequate to address the problems that arise when fugitives contest forfeiture actions. Moreover, if a forfeiture action involves a business, perishable property, or any other asset whose value depreciates with time, the government cannot simply stay the civil case until the fugitive is apprehended. In such cases, delay is prejudicial to the government, 'for if its forfeiture claims are good, its right to the properties is immediate." Degen, 116 S. Ct. at 1782. Finally, as the Supreme Court acknowledged, the law should not encourage "the spectacle of a criminal defendant reposing in Switzerland, beyond the reach of our criminal courts, while at the same time mailing papers to the court in a related civil action and expecting them to be honored." Degen, 116 S. Ct. at 1783.

This provision addresses these concerns through legislation, thus imposing the straightforward sanction of disentitlement that judges by themselves are not able to impose without statutory authorization. Under the proposal, the doctrine would apply in all civil forfeiture cases such as Eng, as well as in ancillary proceedings in criminal forfeitures in which fugitive third-parties might otherwise be able to file claims. For the purposes of this provision, a fugitive from justice would be any person who, in order to avoid criminal prosecution, purposely leaves the jurisdiction or decides not to return to it. See 951 F.2d at 464.

Section 3303. Transfer of foreign prisoners to serve sentences in country of origin.

This section amends the prisoner transfer statute to eliminate the statutory requirement that prisoners consent to transfer, and it permits non-consensual transfers where provided by treaty. Presently, all U.S. prisoner transfer treaties require consent of the prisoner. This amendment will remove any inconsistency between U.S. domestic prisoner transfer law and prisoner transfer treaties we may negotiate in the future that do not include a prisoner consent requirement. Each transfer will be approved on an individual basis and only after an evaluation is made of the information we have available about the alien and about the particular foreign prison system at issue.

It should be noted that even where non-consensual treaty provisions can be negotiated, it will not necessarily follow that transfer of most or all eligible aliens will be appropriate for transfer. A critical consideration will be whether the alien's home country is in a position to fully enforce the U.S. sentence. Thus, limited suitable prison capacity in the foreign country may be a consideration bearing on the pace and extent to which the number of prisoner transfers increases significantly.

Section 3304. Transit of fugitives for prosecution in foreign countries.

It is not uncommon that international fugitives being transferred from one country to face trial in another may need to transit a third country such as the United States. Indeed, the international airports of the U.S. are logical transit points between other continents. It is important that the practical necessity of transit not serve to frustrate international cooperation in the rendition of fugitives, and this proposal is intended to assure that the U.S. can cooperate effectively with law enforcement partners overseas when they must pass through the U.S. as they escort a prisoner to stand trial.

Many U.S. extradition treaties provide for, and indeed set out obligations regarding, transit. However, those treaties do not provide an adequate framework of authority to deal with the full range of circumstances and issues pertaining to international transit of prisoners. First, the person may be in transit to a country with which we do not have a current extradition treaty, or with which we have an old treaty that does not address transit. Such a situation might arise, for example, where a Russian organized crime figure was being extradited to Russia, with which we have no treaty, from a country in South America, and transit through the U.S. were required. While the Attorney General's parole authority under the immigration laws may provide some basis for holding transitting prisoners, it was not developed with this situation in mind and, of course, it can have no application where the prisoner is a U.S. citizen.

Second, fugitives are not always returned through a formal extradition process, the process generally necessary to invoke the transit provisions of a treaty. Instead, a country may have exercised lawful authority to deport or exclude a fugitive. In those situations, clear statutory authority to accommodate a foreign request to permit transit will be extremely helpful.

Third, even where a treaty transit provision is applicable, such provisions generally deal with mechanisms, often diplomatic communications, through which the treaty partners seek and grant transit requests, but not with the underlying basis for maintaining the custody of the person. For these reasons, a clear statement of statutory authority for the Attorney General to permit the transit and maintain the custody of the person is warranted.

The language of this provision makes it clear that the decision of the Attorney General to exercise the transit authority is a discretionary matter and not subject to judicial review. Of course, the discretionary nature of the authority set out in this section is not in anyway intended to derogate any obligations of the United States to grant transit in accordance with the provisions of our extradition or other relevant treaties. In exercising this discretion, the Attorney General would consult with the Secretary of State. Such coordination between the State and Justice Departments is common with respect to treaty provisions regarding transit. Moreover, such consultations will be extremely useful in the event there are foreign policy reasons or international human rights concerns that might argue against the granting of transit in a particular case.

Finally, it is not intended that prisoners, by virtue of the practical necessity of their transitting the United States on the way to face trial, should thereby be subject to the same documentation requirements, and be afforded the full range of rights and remedies otherwise applicable to aliens in the United States, under the Immigration and Nationality Act of 1952. This concern is specifically addressed in the final sentence of the new section, which provides that such transitting prisoners are required to have only such documents as required by the Attorney General, shall not be considered to be admitted or paroled into the United States, and shall not be entitled to apply for asylum or any other right or remedy under that Act.

TITLE IV--SEIZING AND FORFEITING THE ASSETS OF INTERNATIONAL CRIMINALS

Section 4001. Criminal penalties for violations of anti-money laundering orders.

Section 5326 of title 31, United States Code, permits the Secretary of the Treasury to issue "geographic targeting orders" lowering various Bank Secrecy Act ("BSA") reporting threshold requirements for 60 day periods to permit the government to detect attempts to evade the BSA. For example, such an order, commonly referred to as a GTO, may be used to lower the currency reporting requirement from $10,000 to some lower amount for 60 days to detect the transfer of narcodollars from a given area such as New York to Colombia through money transmitters.

31 United States Code §§ 5321 and 5322 impose civil and criminal penalties, respectively, for violations of the BSA and BSA regulations; Section 5324 creates additional criminal offenses for failing to file a report, filing a false or incomplete report, and structuring currency transactions in order to evade a reporting requirement under the BSA. Those statutes, however, do not specifically refer to reports required by GTOs issued under section 5326. This provision eliminates any possible doubt concerning the applicability of these provisions to GTOs by inserting specific references to section 5326 in the respective statutes.

Section 4002. Border search authority for drugs, weapons, terrorist items, and monetary instruments.

Each year, billions of dollars worth of illegal drugs and other contraband are sold in the United States. A substantial portion of this illicit trade is controlled by, or linked to, international crime groups. Like most criminal organizations, these groups must either launder their ill-gotten gains in the United States or smuggle bulk currency out of the United States. In addition, a substantial amount of illegal firearms, child pornography, instrumentalities of terrorism, and other dangerous articles are smuggled out of the United States. There is ample evidence demonstrating that criminal organizations -- including international drug cartels -- use the U.S. mail to smuggle money and contraband out of the United States, in part because of the current restrictions on searches of outbound U.S. mail. For example, a 4 lb. letter-class package -- which under current law may not be searched without a warrant -- can hold approximately $100,000 in $100 bills.

This proposal would enhance the ability of Customs investigators to search outbound U.S. mail for money, firearms, drugs, and other contraband under prescribed conditions. Section 4002 would authorize searches of letter-class outbound mail upon reasonable suspicion it contained a monetary instrument (checks or cash), drugs, firearms, weapons of mass destruction, information related to national defense, or several other categories of dangerous materials. The proposal further would authorize suspicionless searches of outbound non-letter class packages. Such authority was endorsed by the Gore Commission on aviation security and terrorism.

The statute would not be used by Customs to engage in the wholesale opening of letter class mail containing monetary instruments in small amounts. Moreover, the statute is not a vehicle to allow Customs to read letters in outbound mail, even when those letters accompany monetary instruments. As the statute sets forth, any correspondence found inside such a letter or package could not be read without first obtaining a warrant based upon probable cause. Individuals could gain further privacy protection by not sending correspondence and monetary instruments in the same letter.

There is substantial support in federal law and court decisions supporting broad authority for Customs searches at U.S. borders, including authority to search outbound mail. See, e.g., 31 United States Code 5317 (authorizing Customs searches at the border of persons, conveyances, envelopes, and other items) (emphasis added); United States v. Ramsey, 431 U.S. 606 (1977); United States v. Oriakhi, 57 F.3d 1290 (4th Cir. 1995); United States v. Smith, 29 F.3d 270 (7th Cir. 1994). Despite this authority, Treasury regulations and Customs practice are more circumscribed than the Fourth Amendment might otherwise permit. Section 4002 is designed to provide broader authority to search outbound mail in a manner that balances the need to halt the smuggling of drugs, firearms, child pornography, other dangerous articles and monetary instruments through the use of outbound mail against the privacy concerns associated with letter-class mail of domestic origin. The current proposal is not designed to codify the outer reach of Customs search authority under the Fourth Amendment.

Section 4003. Forfeiture of proceeds of foreign crimes.

This provision authorizes the forfeiture of the proceeds of any foreign crime that has been designated as "specified unlawful activity" for purposes of the money laundering statute. Such crimes currently include drug trafficking, terrorism and other crimes of violence and bank fraud. By authorizing the forfeiture of the proceeds of such crimes when found in the United States, the provision makes it more difficult for international criminals to use the United States as a haven for the profits from their crimes, and it permits the United States to assist foreign governments in recovering the proceeds of crimes committed abroad.

The forfeiture provision will only apply where the foreign offense was punishable by at least one year in prison in the foreign country, and would be recognized as a felony under federal law if committed within the jurisdiction of the United States.

Section 4004. Forfeiture of property used to commit drug crimes abroad.

In accordance with the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the "Vienna Convention"), which the United States ratified on November 11, 1990, the United States is obligated to enact procedures for the forfeiture of both the proceeds and the instrumentalities of foreign crimes involving drug trafficking. 18 United States Code § 981(a)(1)(B) already provides for the forfeiture of foreign drug proceeds, but it does not provide for the forfeiture of facilitating property. The amendment rectifies this omission.

Section 4005. Forfeiture of property used to violate federal explosives laws.

The unlawful use of explosive materials is widely recognized as a serious violent crime problem. This section would authorize the civil and criminal forfeiture of any conveyance, chemicals, laboratory equipment or any other device made, possessed, used or intended to be used to commit a violation of the federal explosives law (except for record keeping and storage offenses). Currently, only the explosive material can be forfeited. The enhanced forfeiture authority would deprive criminals of the materials used to continue their illegal trade in explosive materials.

Section 4006. Cracking down on illegal money transmitting businesses.

As a recent study by the Treasury Department has revealed, an increasingly popular means of laundering drug proceeds and remitting the proceeds to South American countries and elsewhere involves the use of money transmitting businesses in the United States. For example, cash proceeds of drug trafficking in New York may be deposited with a money transmitter by couriers under the pretext of sending money back to relatives in Columbia. The operation of an illegal money transmitting business is a violation of federal law under 18 United States Code § 1960.

When Congress enacted § 1960 in 1992, it provided for criminal but not civil forfeiture. The proposal corrects this oversight, and thus allows the government to forfeit property involved in the operation of an illegal money transmitting business even if the perpetrator is a fugitive.

Also, the proposal clarifies the scienter requirement in § 1960 to avoid the problems that occurred when the Supreme Court interpreted the currency transaction reporting statutes to require proof that the defendant knew that structuring a cash transaction to avoid the reporting requirements had been made a criminal offense. See Ratzlaf v. United States, 114 S. Ct. 655 (1994). The proposal makes clear that all the defendant need have known was that the money transmitted was unlicensed, and that a license was required by state law. He need not know that the operation of an unlicensed business is a criminal offense.

Section 4007. Enhancing prosecutions in international drug and money laundering cases.

This section creates a rebuttable presumption that will apply to the forfeiture of the proceeds of foreign drug offenses under 18 United States Code § 981(a)(1)(B). It is derived from the presumption in 21 United States Code § 853(d) which provides that, in criminal cases, income earned by a drug trafficker during the time he is trafficking in illegal drugs is presumed to be drug proceeds if the trafficker has no other obvious source of income.

The presumption in § 853(d), which has been in effect since 1984, has been used successfully in cases where a drug trafficker has been convicted and the government seeks to forfeit a large sum of cash, or deposits in a bank account, that the drug dealer acquired during the time in which he was engaged in the illegal activity, but the evidence linking the funds specifically to the drug offenses is lacking. Because of the statutory presumption, the court is empowered to find that the currency accumulated by the drug trafficker during the time he was committing the drug offense was in fact drug proceeds, and is therefore subject to forfeiture, unless the defendant rebuts the presumption by proffering evidence that the money came from some legitimate source.

The proposed presumption would work the same way in the civil forfeiture context. In other words, if the government brings a civil forfeiture action against a sum of money in the United States that was acquired by a person during the time in which the person was committing a foreign offense for which forfeiture is authorized under § 981(a)(1)(B), the court would be empowered to presume that the money represented the proceeds of the foreign offense and it would be subject to forfeiture unless the person claiming the funds offered proof that the funds were derived from a legitimate source. The presumption is essential to the ability of law enforcement to forfeit the proceeds of foreign crimes because of the difficulty in tracing the proceeds of foreign offenses without access to foreign records.

This section also establishes rebuttable presumptions applicable to international money laundering forfeitures for violations of 18 United States Code § 1956 and 1957, which frequently involve sophisticated efforts to transfer, by wire or other means, large sums of money through shell corporations or bank secrecy jurisdictions in a manner calculated to avoid detection. In such cases, a rebuttable presumption is necessary to allow the government to overcome the efforts made to obscure the true nature of the transaction and to force the claimant to come forward with evidence regarding the source of the money. Moreover, without such a presumption, some courts may not permit the government to draw any inference from the absence of evidence that the money came from a legitimate source. <u>See</u> <u>United States v. Rutgard</u>, 108 F.3d 1041 (9th Cir. 1997) (government's argument that money was forfeitable under § 982 as property involved in money laundering because there was no evidence of a legitimate source improperly shifted burden of proof to the defendant).

Both of these presumptions provisions were contained in the "Forfeiture Act of 1996" which is pending before Congress. The definition of "shell corporation" is taken from Financial Action Task Force recommendation 13 which defines "domiciliary companies," a diplomatic term for shell corporations.

Section 4008. Seizure of assets of persons arrested abroad.

This section relates to situations where a person has been arrested in a foreign country and there is a danger that property subject to forfeiture in the United States in connection with the foreign offenses will disappear if it is not immediately restrained. In the case of foreign arrests, it is possible for the property of the arrested person to be transferred out of the United States before U.S. law enforcement officials have received from the foreign country the evidence necessary to support a finding a probable cause for the seizure of the property in accordance with federal law. This situation is most likely to arise in the case of drug traffickers and money launderers whose bank accounts in the United States may be emptied within hours of an arrest by foreign authorities in the Latin America or Europe.

To ensure that property subject to forfeiture in such cases is preserved, the new provision provides for the issuance of an ex parte restraining order upon the application of the Attorney General and a statement that the order is needed to preserve the property while evidence supporting probable cause for seizure is obtained. A party whose property is retrained would have a right to a post-restraint hearing in accordance with Rule 65(b), Fed.R.Civ.P.

Section 4009. Access to financial records in bank secrecy jurisdictions.

This section provides for dismissal of a civil claim or third party ancillary claim in a criminal forfeiture proceeding if the foreign bank records necessary to respond to the claim are in a bank secrecy jurisdiction and the claimant refuses to waive his or her bank secrecy rights in order to make the records available to the government. It was Section 144 of the "Forfeiture Act of 1996" which has been previously submitted to Congress. This proposal deals with financial records located in foreign jurisdictions that may be material to a claim filed in either a civil or criminal forfeiture case. It is frequently the case that in order for the government to respond to a claim, it must have access to financial records abroad. For example, in a drug proceeds case where a claimant asserts that the forfeited funds were derived from a legitimate business abroad, the government might need access to foreign bank records to demonstrate in rebuttal that the funds actually came from an account controlled by international drug traffickers or money launderers.

Numerous mutual legal assistance treaties (MLATs) and other international agreements now in existence provide a mechanism for the government to obtain such records through requests made to a foreign government. In other cases, the government is able to request the records only through letters rogatory. This amendment deals with the situation that commonly arises where a foreign government declines to make the requested financial records available because of the application of secrecy laws. In such cases, where the claimant is the person protected by the secrecy laws, he or she has it within his or her power to waive the protection of the foreign law to allow the records to be made available to the United States, or to obtain the records him- or herself and turn them over to the government. It would be unreasonable to allow a claimant to file a claim to property in federal court and yet hide behind foreign secrecy laws to prevent the United States from obtaining documents that may be material to the claim. Therefore, this subsection 986(d) provides that the refusal of a claimant to waive secrecy in this situation may result in the dismissal of the claim with prejudice as to the property to which the financial records pertain.

Section 4010. Expanding civil money laundering laws to reach foreign persons.

This section amends the civil penalty provision of 18 United States Code § 1956. The first new provision is a long arm statute that gives the district court jurisdiction over a foreign bank that violates the money laundering statute, provided that the bank maintains an account in the United States and that the bank receives service of process pursuant to the applicable statutes or rules of procedure. The purpose of the provision is to ensure that a bank that violates the money laundering laws of the United States and that conducts banking business through an account in the United States does not escape liability under Section 1956(b) by asserting that its contacts with the United States are not sufficient to satisfy the "minimum contacts" requirements for in personam jurisdiction.

The second provision, modeled on 18 United States Code § 1345(b), gives the district court the power to restrain property or take other action necessary to ensure that a defendant in a § 1956 action does not dissipate the assets that would be needed to satisfy a judgment under that section.

Section 4011. Punishment of money laundering through foreign banks.

Section 1956 of Title 18, United States Code, makes it an offense to conduct a transaction involving a financial institution if the transaction involves criminally derived property. Similarly, section 1957 of Title 18, United States Code, creates an offense relating to the deposit, withdrawal, transfer or exchange of criminally derived funds "by, to or through a financial institution." For the purposes of both statutes, the term "financial institution" is defined in 31 United States Code § 5312. See 18 United States Code § 1956(c)(6); 18 United States Code § 1957(f).

The definition of "financial institution" in 31 United States Code § 5312 excludes foreign banks. Thus, as presently drafted, the government cannot rely on that definition to prosecute an offense under either § 1956 or § 1957 (of Title 18) involving a transaction through a foreign bank, even if the offense occurs in part in the United States. For example, if a person in the United States sends criminal proceeds abroad -- for example, to a Mexican bank -- and launders them through a series of financial transactions, the government could not rely on the definition of a "financial institution" in § 1956(c)(6) to establish that the transaction was a "financial transaction" within the meaning of § 1956(c)(4)(B) (defining a "financial transaction" as a transaction involving the use of a "financial institution"), or that it was a "monetary transaction" within the meaning of § 1957(f) (defining "monetary transaction" as, inter alia, a transaction that would be a "financial transaction" under § 1956(c)(4)(B)).

The amendment closes this loophole by including foreign banks within the definition of "financial institution" in 18 United States Code § 1956(c)(6). The definition is the same as the one set forth in 12 United States Code § 3101(7) which is already employed in 18 United States Code § 1956(c)(7)(B) for another purpose.

Section 4012. Addition of serious foreign crimes to list of money laundering predicates.

This amendment enlarges the list of foreign crimes for which money laundering prosecutions may be brought in this country when the proceeds of a foreign crime are laundered in the United States. Certain foreign offenses involving violence and bank fraud already have been made predicates for money laundering. Thus the government is already able to prosecute persons who use U.S. financial institutions to launder proceeds generated through the commission of some foreign crimes. By enlarging the list of foreign crimes set forth in the money laundering statute, the proposal makes it possible for the government to exercise this power in cases involving all crimes of violence and crimes as to which the U.S. is under an obligation to extradite or prosecute offenders.

The provision also expands the prosecutorial authority to include the laundering of the proceeds of frauds against foreign governments or foreign governmental entities and crimes of public corruption. Passage of this amendment would send a strong signal that the United States will not tolerate the use of its financial institutions for the purpose of laundering the proceeds of such activities.

Nothing in this section or the section amended is intended to criminalize any authorized activity of an intelligence or law enforcement agency of the United States.

Section 4013. Authority to order convicted criminals to return property located abroad.

In criminal forfeiture cases, the sentencing court is authorized to order the forfeiture of "substitute assets" when the defendant has placed the property otherwise subject to forfeiture "beyond the jurisdiction of the court." Frequently, this provision is applied when a defendant has transferred drug proceeds or other criminally derived property to a foreign country. For example, a defendant who earns illegal proceeds from drug trafficking in the United States may cause that money to be wired to bank accounts in Europe, the Caribbean, South America or Hong Kong where it is beyond the reach of U.S. law enforcement, but remains available to the criminal for use in financing future international criminal activity.

In many cases, the defendant has no other assets in the United States of a value commensurate with the forfeitable property overseas. In such cases, ordering the forfeiture of substitute assets in the United States does nothing to take the profit out of the crime or remove the ill-gotten gains from the control of the criminal.

Other countries, such as the United Kingdom, address this problem by authorizing the court to order the defendant to repatriate the property that he has sent abroad. Because the sentencing court has in personam jurisdiction over the defendant, it can use this authority to reach assets that are otherwise beyond the jurisdiction of the court, as long as the defendant retains control of the property.

This section amends 21 United States Code § 853 to authorize the sentencing court to issue a repatriation order either post-trial as part of the criminal sentence and judgment, or pre-trial pursuant to the court's authority under 21 United States Code § 853(e) to restrain property, including substitute assets, so that they will be available for forfeiture. See United States v. Sellers, 848 F. Supp. 73 (E.D. La. 1994) (pre-trial repatriation order). Failure to comply with such an order would be punishable as a contempt of court, or it could result in a sentencing enhancement, such as a longer prison term, under the U.S. Sentencing Guidelines, or both. The government has the authority to grant use immunity to a defendant for the act of repatriating property to the United States pre-trial or while an appeal was pending if such act would tend to implicate the defendant in a criminal act in violation of the Fifth Amendment. Id. (no 5th Amendment violation if government does not use evidence of the repatriation in its case in chief).

Section 4014. Enforcement of foreign forfeiture judgments.

Article V of the 1988 UN Drug Convention requires the member nations (the Parties) to enact legislation providing for the forfeiture of proceeds and instrumentalities of drug trafficking and drug-related money laundering offenses. Specifically, paragraph 1(a) of Article V says that each Party shall adopt measures authorizing the forfeiture of "proceeds derived from offenses established in accordance with article 3, paragraph 1, [which defines the predicate drug and drug-related money laundering offenses], or property the value of which corresponds to that of such proceeds."

The United States is in full compliance with these requirements insofar as they relate to domestic forfeitures. The drug and money laundering forfeiture statutes enacted by Congress since 1978 authorize the forfeiture of both drug proceeds and property involved in money laundering offenses where the underlying crime is committed in the United States. The substitute assets provisions of these statutes permit the forfeiture of property of "equivalent value" when the property traceable to the criminal offense is unavailable. See 21 United States Code § 853(p). Indeed, these statutes frequently serve as models for other Parties seeking to comply with the Vienna Convention's requirements. Additional legislation, however, will support our compliance with the Convention's international forfeiture obligations.

Under Article V, a Party must provide for the forfeiture of drug proceeds derived from an offense occurring in another country by providing forfeiture assistance to a Party in whose jurisdiction the underlying drug or money laundering offense occurred. This obligation applies both to the drug proceeds themselves and to property of equivalent value. Under 18 United States Code § 981(a)(1)(B), the United States can initiate a civil action against foreign drug proceeds that would result in the seizure and confiscation of such property. But because that statute is a civil in rem statute, it does not authorize the forfeiture of substitute assets of equivalent value.

The proposed statute is intended reinforce our compliance with the Vienna Convention in this regard by giving our treaty partners access to our courts for enforcement of their forfeiture judgments. Under the proposal, once a defendant is convicted of a drug trafficking or money laundering offense in a foreign country and an order of forfeiture is entered against him, the foreign country, as the Party requesting assistance under the Vienna Convention, would file a civil action as a plaintiff in federal court seeking enforcement of the judgment against assets that may be found in the United States. The Requesting Party, however, would not be allowed to file for enforcement without approval from the United States Department of Justice, thereby permitting the United States to screen out requests that are factually deficient or based on unacceptable foreign proceedings.

The concept of placing the Requesting Party in the posture of a plaintiff seeking enforcement of a judgment is drawn from Canada's Mutual Legal Assistance in Criminal Matters Act. Section 9 of the Act provides, in pertinent part:

> Where the Minister [of Justice] approves a request of a foreign state to enforce the payment of a fine imposed in respect of an offense by a court of criminal jurisdiction of the foreign state, a court in Canada has jurisdiction to enforce the payment of the fine and the fine is recoverable in civil proceedings instituted by the foreign state, as if the fine had been imposed by a court in Canada.

The Justice Department has been informed by Canadian Justice Ministry authorities that, although this provision has not yet been applied, it is expected to cover foreign criminal forfeiture orders. Canada views Section 9 as part of its response to the Vienna Convention.

Enactment of this proposal would bring the United States into line with an important trend in international law enforcement while preserving our <u>in rem</u>/<u>in personam</u> distinctions and without requiring the government to become a party to the enforcement of a foreign order. Laws providing for the enforcement of foreign confiscation orders have been enacted by a number of jurisdictions, including Australia, Denmark, Hong Kong, Japan, the Netherlands, Singapore, and the United Kingdom. We can anticipate that more countries will enact laws to give full faith and credit to their treaty partners' "equivalent value" forfeiture orders. If we expect such countries to enforce our forfeiture orders against substitute assets located abroad, we must be prepared to render reciprocal assistance.

Section 4015. Administrative summons authority under the Bank Secrecy Act.

This section will amend 31 United States Code § 5318(b)(1) to expand the situations in which an administrative summons will be sufficient to obtain information from financial institutions subject to the Bank Secrecy Act (BSA). At present, the Secretary of the Treasury is permitted to examine information maintained at financial institutions under the requirements of the BSA, but is permitted to summon information or individuals only "in connection with investigations for the purpose of civil enforcement of violations of" the BSA, it regulations, or certain related statutes. BSA policy requires the government to focus on the efficacy of compliance systems rather than attempt to identify particular BSA violations. Restriction of summons authority to investigations for the purpose of civil enforcement of BSA violations could hamper the ability of the Secretary to review the adequacy of compliance systems. In addition to existing civil enforcement authority, this amendment will enable the Secretary to review the adequacy of BSA compliance systems. Subpoena requests will remain subject to the account holder rights specified in the Right to Financial Privacy Act.

Section 4016. Encouraging financial institutions to notify law enforcement authorities of suspicious financial transactions.

This proposed amendment to 18 United States Code § 2702 would provide that "suspicious transactions relevant to possible violation of law or regulation" may be reported by electronic communications services to a law enforcement agency or a supervisory agency. This amendment would bring section 2702 into line with the disclosure provisions that exist currently for financial institutions covered by the Right to Financial Privacy Act. The provisions of 31 United States Code § 5318(g)(2), which prohibit disclosing to targets and others that a suspicious transaction has been reported pursuant to any authority, and 31 United States Code § 5318(g)(3), which provides a shield from civil liability for the disclosure of any possible violation of law or regulation or disclosure under any authority, would apply. Thus, international organizations that facilitate international money transfers but who may not be within the current definition of "financial institutions," such as Fedwire or CHIPS, could file such a report in good faith without fear of civil litigation.

Section 4017. Exempting financial enforcement data from unnecessary disclosure.

This section will amend the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA) to exempt from disclosure information collected by the Department of the Treasury's Office of Foreign Assets Control in the administration of economic sanctions programs. IEEPA and TWEA currently do not exempt information submitted, obtained, or considered in connection with any transaction that is prohibited under these titles, including license applications, licenses or other authorizations, information or evidence obtained in the course of any investigation, and information obtained or furnished in connection with international agreements, treaties, or obligations. As a result, the agency devotes considerable time and resources to searching and indexing documents pursuant to Freedom of Information Act (FOIA), requests and then preparing the justification for withholding those documents from release due to certain FOIA exemptions. This information is ordinarily withheld on the grounds that it is proprietary information. However, the process of applying that FOIA exception involves a considerable expenditure of law enforcement resources and delay. Therefore, this information should be exempt on the ground that it is necessary for the purposes of IEEPA and TWEA.

These amendments would provide such information with the same statutory protection provided for similar information obtained or submitted under the Export Administration Act (EAA), which is placed outside the scope of searches required to be performed under FOIA requests. The Department of Commerce, Bureau of Export Administration, also favors this amendment to IEEPA, since it has been acting under IEEPA during periods when the EAA has lapsed and this amendment would ensure identical treatment of these documents under either statute.

Section 4018. Criminal and civil penalties under the International Emergency Economic Powers Act.

This provision will increase the monetary limits of the civil and criminal penalty authorities provided for in the International Emergency Economic Powers Act (IEEPA). IEEPA currently provides for civil penalties of up to $10,000 per violation of IEEPA prohibitions, and criminal penalties of up to $50,000 per violation for individuals and corporations, and imprisonment for up to 10 years per violation by individuals and participating corporate officers. These limitations no longer constitute effective deterrents for flagrant or willful violations of IEEPA and are significantly less than the penalty limitations provided for in the Trading with the Enemy Act for violations of economic sanctions imposed under that statute. The ineffectiveness of the civil penalty cap is particularly apparent in situations where the IEEPA violation relates to transactions (and profits) valued at many times the maximum penalty amount. This section will raise the IEEPA civil penalty authority to $50,000 per violation, and raise the criminal penalty monetary limits to $250,000 per violation for individuals and participating corporate officers, as is provided for criminal offenses generally in 18 United States Code 3571(b)(3), and $1 million per violation for corporations.

Section 4019. Attempted violations of the Trading With the Enemy Act.

This section will amend the Trading with the Enemy Act (TWEA) to provide that criminal and civil penalties may be imposed not only against any person who violates a license, order, or regulation issued under TWEA, but also against a person who attempts to violate such a license, order, or regulation. Last year, Congress added an "attempt" provision to the International Emergency Economic Powers Act (IEEPA), but did not add a similar provision to its companion statute, TWEA. TWEA lacks an attempt provision similar to those found in other export administration statutes, for example, the Export Administration Act. Recent executive orders imposing economic sanctions and regulations implementing such orders typically include language prohibiting attempted violations. Current case law in the federal circuit courts of appeal supports promulgation of regulations prohibiting attempts to violate statutes not explicitly containing attempt language. In spite of these factors, the absence of an attempt provision in TWEA makes prosecution of attempted violations more problematic. To clarify existing law, and to insulate prosecutions of attempted violations from any possibility of attack based on the scope of the President's authority, these amendments expressly prohibit attempts to violate TWEA.

TITLE V--RESPONDING TO EMERGING INTERNATIONAL CRIME THREATS

Subtitle A--Computer and High-Tech Crime

Section 5101. Enhanced authority to investigate computer fraud and attacks on computer systems.

This section would add certain violations relating to computer crime to the list of serious criminal activity for which 18 United States Code 2516 permits court authorized interception of wire, oral, and electronic communications when the rigorous requirements of chapter 119 (including section 2516) are met. Violations of 18 United States Code 1030 can include computer fraud and attacks on computer systems, such as those controlling the public telecommunications networks, air traffic control, and the electric power network. In computer attack cases, since the evidence of the crime may lie largely in cyberspace, interceptions of wire and electronic communications may be the primary or only available avenue of investigation. Moreover, in computer cases where the activities originate from a business or university, voicetaps may be the only way to complete the identification of the criminal actually using the terminal involved. The statute limits wiretap authority to investigation of felony offenses.

Section 5102. Jurisdiction over certain financial crimes committed abroad.

This section clarifies the extraterritorial jurisdiction of 18 United States Code 1029 (access device fraud). It expressly recognizes United States jurisdiction over access device fraud -- including credit card fraud, debit card fraud and telecommunications fraud -- in cases where the fraud causes an effect on an entity within the jurisdiction of the United States, even if the defendant has never physically entered the United States. Such a clarification is of great importance to the United States' ability to protect its financial system. The modern financial system relies substantially on access devices to access and utilize a vast array of accounts and systems, including credit and debit card accounts, accounts in banks and other financial institutions, electronic funds, and telecommunications systems. Increasingly, U.S. financial, corporate and government entities have implemented access device payment systems to conduct transactions reaching billions of dollars per day. The dramatic increase in electronic and computerized access to such systems from outside the United has enhanced the vulnerabilities of these systems to criminal activities internationally. By recognizing that the United States has the authority to protect its access device systems against both foreign and domestic threats, this section ensures the security and integrity of United States based payment systems in the same way that 18 United States Code § 470 ensures the integrity of United States currency. Together, this section and 18 United States Code § 470 will enhance the United States' ability to protect its financial system and combat transnational financial crimes that target that system.

Subtitle B--Alien Smuggling

Section 5201. Forfeiture for alien smuggling.

These amendments to the Immigration and Nationality Act will enhance the ability of the Immigration and Naturalization Service (the Service) to address the problem of alien smuggling by broadening the authority to obtain forfeiture of property used in or derived from smuggling operations.

Under current law, the Service may obtain forfeiture of conveyances (vehicles, boats, aircraft) used to smuggle, transport, or harbor aliens. This section would amend section 274(b) of the INA, 8 United States Code 1324(b), to broaden this forfeiture authority. The amendment makes subject to civil and criminal forfeiture all property, both real and personal, used or intended to be used to smuggle aliens. Also subject to forfeiture is any property, real or personal, which constitutes, is derived from, or is traceable directly or indirectly to the proceeds of the smuggling, transportation, or harboring of aliens. Innocent owners of property are protected by the proposed uniform innocent owner statute, to be codified at 18 United States Code § 983.

Subtitle C--Trafficking in Chemicals Used to Produce Drugs

Section 5301. Import and export of chemicals used to produce illicit drugs.

This provision gives the Drug Enforcement Administration the authority to require that exporters of certain listed chemicals to drug producing areas of the world document to DEA the ultimate consignee and use of the listed chemical. This provision clarifies DEA's authority to require advance notification of imports and exports including identifying the importer in the country of destination.

If the importer is not the end user of the listed chemical, establishing the bona fides of the importer does not mean that the listed chemical will not be diverted. In the case of specific listed chemicals such as those essential for the production of cocaine that are shipped to the Andean region, it is necessary to have the authority to determine the final destination and use of the chemical. This legislation will authorize DEA to require by regulation additional information concerning the ultimate consignee and use of shipment of listed chemicals. The U.S. exporter involved in the transaction would be required to provide this information in addition to the information which is routinely supplied to DEA. The legislation will also provide DEA with the authority to require advance notification on all imports of certain chemicals which are of greater concern to the agency. Examples of this would be ephedrine and pseudo-ephedrine which are immediate precursors for methamphetamine.

The legislation will also correct a technical omission from previous legislation by imposing a direct obligation for advance notification of transshipment of listed chemicals through the United States. Currently, the Department of Justice requires this by regulation but has had to rely on its authority to control imports and exports to support the regulation. The legislation also provides a mechanism for disposition of suspended shipments, and gives the Attorney General injunctive authority under the Import Export Act, two important features not provided by current law.

Subtitle D--Arms Trafficking

Section 5401. Enhanced tools to investigate illicit arms trafficking.

The prohibitions under current law on the shipment of items controlled under the Arms Export Control Law to various countries preclude law enforcement agencies from obtaining authorization to engage in undercover transactions designed to detect illicit arms trafficking with those countries. This provision would provide an exception to the current provision when such transactions are undertaken for the purpose of investigating possible violations of U.S. law. It does not in any way affect other licensing or interagency approval requirements applicable to such shipments, nor internal agency guidelines controlling the review and conduct of undercover investigations.

Section 5402. Background checks for purchases of explosives.

This section will amend the federal explosives laws to provide for an "instant check" of the criminal history of individuals (other than explosives licensees or permittees) who acquire explosive materials from federal explosive licensees. The procedures are virtually the same as those for firearms purchasers under the Brady law. The proposed statute provides that background check for explosives buyers will not become effective until six months after the National Instant Criminal Background Check System for instant firearms checks currently being developed becomes operational.

The amendment would also increase license and permit fees for all explosive licenses and permits. By increasing these, the amendment would help offset the administrative cost of investigating and processing license and permit applications. The authorized statutory fees have not been increased since the law was enacted in 1970.

Section 5403. Prohibiting convicted felons from possessing black powder.

This section would extend current law, which prohibits convicted felons and other dangerous persons from possessing firearms and ammunition, to prohibit such persons from possessing black powder. There is no justification for allowing such dangerous persons to possess black powder when they have been deemed, by statute, to be too dangerous to possess firearms. This is particularly true since black powder is used in a significant number of bombings in the United States.

TITLE VI--PROMOTING GLOBAL COOPERATION IN THE FIGHT AGAINST INTERNATIONAL CRIME

Section 6001. Sharing proceeds of joint forfeiture operations with cooperating foreign agencies.

This proposal provides for expansion of the authorization to share forfeited property with foreign governments that cooperate in federal forfeitures. It was Section 406 of the "Forfeiture Act of 1996" which has been previously submitted to Congress. Section 981(i) of Title 18, U.S. Code, authorizes the sharing of forfeited property with foreign governments in certain circumstances. It currently applies to all civil and criminal forfeitures under 18 United States Code §§ 981 and 982, which are the forfeiture statutes for most federal offenses in Title 18. Older parallel provisions applicable only to drug cases and Customs cases appear in 21 United States Code 881(e)(1)(E) and 19 United States Code § 1616a(c)(2), respectively.

The amendment simply extends the existing sharing authority to all other criminal and civil forfeitures, including those undertaken pursuant to RICO, the Immigration and Naturalization Act, the antipornography and gambling laws, and other statutes throughout the United States Code. Because the amendment makes the parallel provisions in the drug and customs statutes unnecessary, Section 881(e) is amended to remove the redundancy.

Section 6002. Streamlined procedures for execution of MLAT requests.

This section expands the authority of U.S. district courts to execute, or order execution of, foreign requests for assistance in criminal matters made pursuant to mutual legal assistance treaties (MLATs), conventions, and executive agreements such as an "antitrust mutual assistance agreement" (see, e.g., 15 United States Code § 6201 et seq.). This section applies only when the execution of such a request requires or appears to require the use of compulsory measures in more than one district. On such occasions, this section permits a judge or judge magistrate in any district involved in a multidistrict execution, or in the District of Columbia, to execute the entire request.

The U.S. generally relies on 28 United States Code § 1782 -- which authorizes the practice of appointing a "commissioner" to execute a foreign request for assistance -- to provide the framework for executing foreign requests for assistance, whether made by letter rogatory, letter of request, request pursuant to an MLAT, or other similar form of request. Section 1782 calls for execution of the foreign request in the district where the witness resides or is found, or where the evidence is located. Consequently, the Attorney General -- the authority to whom foreign requests in criminal matters are generally sent for execution -- often transmits the same request to each district in which a witness or evidence may be located for execution of that portion directly connected to the district.

This practice of transmitting a request to each and every district in which assistance requested may be found is inefficient and prone to creating delay. A majority of requests entail execution in multiple districts. Execution of a multiple district request requires substantial coordination by U.S. authorities (e.g., often documents located in different districts must be produced and analyzed before testimony from witnesses located in other districts can be profitably taken) and duplication of efforts by U.S. authorities (e.g., a judge or magistrate judge, prosecutor, and assisting agent or agents in each district must become familiar with and involved in executing the same request). In addition to the profligate expenditure of U.S. resources, the practice often results in delay, rendering the U.S. unable to provide foreign law enforcement authorities, and especially foreign treaty partners, with the level of service that the U.S. would like to receive with respect to U.S. requests. Another problem often encountered with multidistrict requests is that a U.S. Attorney's Office designated to execute a portion of a request is unable to devote the necessary resources at the time requested. If timing is critical, and it often is, execution of the request in a district involved in another aspect of the execution, or in the District of Columbia, is a reasonable solution.

This proposal provides an alternative to the current practice of executing foreign requests for assistance only in each and every district in which a witness or evidence is located. Placing authority in a U.S. district court for a district otherwise involved in the execution of a multidistrict request, or in the U.S. District Court for the District of Columbia, should dramatically improve:

(1) the efficient use of U.S. resources to execute foreign requests that involve multiple districts, and

(2) the execution of requests involving multiple districts in a timely manner.

Providing the U.S. District Court for the District of Columbia as an alternative venue also permits the Attorney General, with requests that require substantial allocation of resources or coordination, to provide attorneys to undertake execution in the District of Columbia in conjunction with the United States Attorney's Office for the District of Columbia.

Finally, this proposal recognizes that executing foreign requests in criminal matters by requiring witnesses to appear in different districts from those in which they are located may create some hardships for witnesses, just as it does in domestic criminal investigations and prosecutions where the U.S. prosecutor subpoenas witnesses to appear anywhere in the U.S. (i.e., wherever in the U.S. the investigation or prosecution is taking place). This proposal contemplates the same possibility of travel to comply with a commissioner's order as in a domestic criminal investigation or prosecution; however, it provides a procedure to balance the hardship against the exigencies of the request. Upon notice to either the court or the commissioner executing the request, the court will decide whether to transfer execution involving the complaining witness to that witness' district by balancing the (1) inconvenience to the witness against the (2) negative impact upon execution of the request.

Section 6003. Temporary transfer of incarcerated witnesses.

U.S. mutual legal assistance treaties generally provide a mechanism for the U.S. to send and receive persons in custody who are needed as witnesses. Current section 3508 of Title 18 was enacted in 1988 to provide authority, in the absence of such a treaty, for the Attorney General to request such persons to appear at criminal proceedings in the U.S., to maintain their custody while here, and to assure their expeditious return to the country of their incarceration once their presence at the U.S. proceeding was no longer necessary.

This proposal amends section 3508 to permit the United States, as a matter of comity and reciprocity, to send persons in custody in the U.S. abroad to appear in foreign judicial proceedings. Such transfers, when based solely on the statutory authority set out in this section, would require the consent of the person in custody as well as of the foreign state. Moreover, in the case of State prisoners, consent of the appropriate State authorities would be required as well.

These provisions carry forward the language of the current statute which makes it clear that the return of persons transferred shall occur as soon as the person's presence is no longer required and shall not require formal extradition proceedings.

Subsection (e) has been added to make it clear that persons who have consented to their transfer to the United States for purposes of appearing in a U.S. proceeding, may not transform the transfer process into a vehicle for gaining entry into the United States for purposes of seeking asylum.

Subsection (f) has been added to ensure that any decision by the Attorney General to transfer or a return a prisoner to foreign country (made after consultation with the Secretary of State) is consistent with U.S. international obligations, including those related to humanitarian concerns, and is not subject to judicial review.

In such instances, the U.S. may have been misled with respect to the person's ostensible motives in consenting to the transfer and providing the testimony, and the failure to promptly return a prisoner has immediate and direct consequences upon the foreign affairs of the United States. For example, it may significantly strain law enforcement relations between the United States and the country in which the person was incarcerated. The considerable complications which may unfold if a transferred witness can make an asylum claim are suggested by the chain of events at issue in Wang Zong Xiao v. Reno, 81 F.3d 808 (9th Cir. 1996).

For persons in the United States in pretrial detention, it is contemplated, for purposes of interpreting the bail statute, that they remain in U.S. custody while in the foreign country. However, those witnesses who are transferred with their consent also should be required to waive their right to challenge the conditions of their confinement while in the foreign country to prevent them from bringing a motion pursuant to 18 U.S. Code § 3142(f)(2) while they are abroad.

Finally, it is contemplated that a decision by the Attorney General to exercise their authority under this provision is adequate to support a finding by a court, pursuant to 18 United States Code § 3161(h)(8)(A), that the time the witness spends abroad should be excluded from calculation under the Speedy Trial Act because "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial."

Section 6004. Training of foreign law enforcement agencies.

By its very nature antiterrorism assistance requires that foreign law enforcement officials be provided training and advice to combat terrorism effectively. For this reason, assistance provided with funds specifically appropriated for the Department of State's antiterrorism program under Chapter 8 of Part II of the Foreign Assistance Act of 1961, as amended (the "Act") has always been authorized to be provided notwithstanding section 660 of the Act, which prohibits, with certain exceptions, the use of Foreign Assistance Act funds for police training or advice.

This provision would ensure that foreign assistance funds that are otherwise available for combatting terrorism could similarly be used notwithstanding the section 660 restriction, regardless of whether they were specifically appropriated to carry out chapter 8 of Part II of the Act. It will thus provide a significant tool for the United States in the international fight against terrorism. At the same time, adoption of this provision will clarify an issue raised in connection with recent amendments (Section 121 of P.L. 104-164) to the Foreign Assistance Act authorities that govern the antiterrorism assistance (ATA) program. In those amendments, in place of the previous provision in the ATA authorities that specifically authorized the provision of assistance notwithstanding section 660, a broader and very important authority was provided that authorizes antiterrorism assistance "notwithstanding any other provision of law that restricts assistance to foreign countries." In the context of this particular provision, the Administration has interpreted that phrase to encompass the restrictions on assistance embodied in section 660 of the Foreign Assistance Act, and this amendment will clarify this point.

Section 6005. Discretionary authority to use forfeiture proceeds to promote cooperation with foreign agencies.

This proposal amends the statute governing both the Justice Department's forfeiture fund to provide for disbursements to indemnify foreign governments, in certain circumstances, against adverse judgments that may result from the foreign government's repatriation to the United States of assets forfeitable pursuant to U.S. law.

The proposal permits use of the funds to indemnify foreign governments that repatriate forfeitable property to the U.S. in the event they are sued domestically by third parties challenging the legality of the repatriation. The indemnification would be limited to the amount of a judgment within five years of the date that the property was repatriated to the United States and not to exceed the amount of funds deposited to the funds, plus interest earned on the fund, less any awards and equitable shares paid by the fund to the foreign government or those acting at its direction in connection with a particular case. The provision relating to the Justice Department forfeiture fund was Section 410(e) of the "Forfeiture Act of 1996" previously submitted to Congress. Under current U.S. law, there is no provision allowing the return of forfeited property to a foreign country or other entity, such as a foreign bank, that suffers foreign legal liability as the result of assisting a United States forfeiture action. This amendment authorizes the Attorney General to return the forfeited property plus interest in such circumstances. Without assurances that the property plus interest can be returned, a number of foreign jurisdictions have been unwilling to seize or repatriate property on behalf of the United States.

TITLE VII--STREAMLINING THE INVESTIGATION AND PROSECUTION OF INTERNATIONAL CRIMES IN U.S. COURTS

Section 7001. Reimbursement of state and local law enforcement agencies in international crime cases.

This proposal authorizes the Attorney General to designate funds to defray unusual expenses incurred by state and local jurisdictions in international extradition cases, including the costs of transporting the fugitive back to the United States and the cost of translating the extradition documents into the language of the foreign state.

State and local prosecutors are sometimes forced to abandon efforts to extradite serious offenders who have fled abroad because the prosecutors lack the resources to pay the costs of international extradition. Because extradition in cases involving violent offenders or career criminals is a national priority, this provision would authorize the Attorney General to allocate funds to pay the costs of such extraditions in serious cases if the state or local authorities certify that the financial assistance is needed. The Marshals Service spent about $900,000 last year transporting federal fugitives back to the U.S., and it estimates that transportation of all state and local fugitives could cost twice that amount. The Marshals Service currently retrieves fugitives from abroad for state and local jurisdictions, on a reimbursable basis.

This provision is not intended to shift the entire financial burden that may be involved in international cases from states and localities to the federal government. Rather, it provides authority to assist state and localities in meeting extraordinary expenses that could not reasonably be anticipated in the local jurisdiction's ordinary budget process.

Section 7002. Facilitating the admission of foreign records in U.S. courts.

This section provides a statutory basis to authenticate and admit into evidence, in federal judicial proceedings, foreign-based records of regularly conducted activity obtained pursuant to official requests. The section expands the extant statutory basis with respect to foreign business records, making records produced in accordance with the statute admissible in civil proceedings (whereas the statute currently authorizes admission only in criminal proceedings). The section also provides an independent statutory basis for foreign official records, treating official records produced in accordance with the statute as admissible in a fashion similar to foreign business records. The section continues to incorporate elements of the Federal Rules of Evidence, especially Rule 803(6), that ensure the reliability of the foreign records and maintains the requirement of a foreign certification or similar certification provided by treaty, convention, or agreement.

To make foreign business records admissible in a civil proceeding under Federal Rules of Evidence 803(6) and 901(a)(1), a foreign custodian or other qualified witness must give testimony, either by appearing at a proceeding in the U.S. or by providing a deposition taken abroad and introduced at the U.S. proceeding, which testimony or deposition establishes that the foreign business records are authentic (901(a)(1)) and reliable (Rule 803(6)). The United States has no means by which to compel the attendance of a foreign custodian or other qualified foreign witness at a U.S. proceeding to testify. Thus, to adduce the requisite testimony, U.S. authorities must (1) rely on the prospective witness' willingness to voluntarily appear (which is rare and subject to vicissitude) or (2) attempt to depose the witness abroad. The latter process is unduly cumbersome and not available in many situations (e.g., in matters involving tax administration pursuant to tax treaties or agreements). This section provides a streamlined process for making foreign business records admissible without having to rely on the unpredictability of a foreign witness' voluntary travel to the U.S. or the unpredictable and cumbersome process of deposing the witness abroad.

Foreign official records include records of birth, vehicle registry, property transfer and liens, foreign business incorporation, and the like. Such records are routinely kept in much the same manner as business records. This section authorizes a single certification for both self-authentication and foundation for an exception to the hearsay rule similar to that currently available for foreign business records. It, likewise, will streamline the process of securing documents admissible in U.S. judicial proceedings while, at the same time, maintaining assurances of reliability.

Section 7003. Safe conduct for foreign witnesses testifying in U.S. courts.

This section will provide an independent statutory basis for a discretionary grant of "safe conduct" for witnesses in foreign countries whose testimony in the United States is needed in connection with a state or federal criminal matter. Some foreign witnesses are reluctant to travel to the United States to testify, absent an assurance that they will not be arrested or subject to process once here. To address this problem, most U.S. mutual legal assistance treaties contain "safe conduct" provisions. Absent such a treaty provision, however, the extent to which such safe conduct may be granted is unclear. Accordingly, this provision provides clear authority to facilitate the appearance of foreign witnesses by granting safe conduct. However, the decision to grant safe conduct is to be a matter solely within the discretion of the Attorney General, and there is no intent to create any right whatsoever on the part of a witness or party to demand such a grant of safe conduct. To the extent the "safe conduct" provisions of a mutual legal assistance treaty are inconsistent with the section (e.g., by providing a different duration of the period of safe conduct), the treaty provisions will control.

Section 7004. Prohibiting fugitives from benefitting from time served abroad.

This proposal is designed so that defendants who become fugitives either by fleeing the United States, or by remaining outside the United States (in the event they are sought based on an assertion of extraterritorial jurisdiction), in order to avoid trial and punishment do not inappropriately benefit from their actions. Because U.S. prison time is now credited to fugitives after their return to the U.S. for the time during which fugitives pursue tactics in foreign countries designed to delay their return and trial in the United States, the current law unwittingly encourages fugitives to file every frivolous challenge to their rendition which is available, in order to delay the case and perhaps weaken the prosecution's case. This proposal is needed because the time consuming and complex nature of the international extradition process which involves foreign sovereigns, foreign legal laws and processes, and foreign languages, typically creates substantially longer delays than the delays that occur in the comparable domestic situation. Nationwide federal jurisdiction and interstate compacts typically result in the swift rendition of interstate fugitives.

Section 7005. Suspension of statute of limitations for collection of evidence located abroad.

Currently, ascertaining the length of time tolled is guesswork, and often the fact that "final action" has been taken in a foreign country is not known to U.S. authorities until later, sometimes causing the statute to expire without the evidence in hand, the primary purpose of the tolling. This proposal will clarify that the time tolled runs from the date of making an official request for assistance to the date of receiving the results of that request by the authority requesting assistance.

Section 7006. Clarification of discretionary nature of payments to informants.

This provision clarifies that the authority to make payments to informants is entirely discretionary and does not create any right relating to the failure to make such payments that is enforceable in a court of law, court of equity, or otherwise.

Document No. ______

WHITE HOUSE STAFFING MEMORANDUM

Date: 5/27 ACTION / CONCURRENCE / COMMENT DUE BY: 5/29

Subject: International Crime Control Legislation

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	McCURRY	☐	☑
BOWLES	☑	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☑	☐	REED	☑	☐
MATHEWS	☑	☐	RUFF	☑	☐
LEW	☐	☐	SMITH	☐	☐
BEGALA	☑	☐	SOSNIK	☐	☐
BERGER	☑	☐	SPERLING	☐	☐
BLUMENTHAL	☐	☐	STEIN	☑	☐
ECHAVESTE	☐	☐	STERN	☐	☐
EMANUEL	☑	☐	STREETT	☐	☐
GIBBONS	☑	☐	VERVEER	☐	☐
IBARRA	☐	☐	WALDMAN	☑	☐
KLAIN	☐	☐	YELLEN	☐	☐
LEWIS	☑	☐	Cerda	☑	☐
LINDSEY	☐	☐		☐	☐
MARSHALL	☐	☐		☐	☐
				☐	☐

REMARKS: Any comment on transmittal letter? (Legislation itself is in my office)

RESPONSE:

3/98

Staff Secretary's Office
Ext. 62702

TO THE CONGRESS OF THE UNITED STATES:

I am transmitting for immediate consideration and enactment the "International Crime Control Act of 1998" (ICCA). The ICCA is one of the foremost initiatives highlighted in the Administration's International Crime Control Strategy announced on May 12, 1998. The proposed legislation would substantially improve the ability of U.S. law enforcement agencies to investigate and prosecute international criminals, to seize their money and assets, to intercept them at our borders, and to prevent them from striking at our people and institutions.

Advances in technology, the resurgence of democracy, and the lowering of global political and economic barriers have brought increased freedom and higher living standards to countries around the world, including our own. But these changes have also provided new opportunities for international criminals trafficking in drugs, firearms, weapons of mass destruction, and human beings, and engaging in fraud, theft, extortion, and terrorism.

In response to these formidable threats to the American people, I have directed the Departments of Justice, State, and the Treasury, as well as the Federal law enforcement and intelligence communities, to intensify their ongoing efforts to combat international crime. In order to carry out this mandate most effectively, the many departments and agencies involved need the additional tools in the proposed ICCA that will enhance Federal law enforcement authority in several key areas, close gaps in existing laws, and facilitate global cooperation against international crime.

The ICCA provisions focus on seven essential areas to improve the Federal Government's ability to prevent, investigate, and punish international crimes and criminals:

Investigating and Punishing Acts of Violence Committed Against Americans Abroad

- Broadens existing criminal law to authorize the investigation and punishment of organized crime groups who commit serious criminal acts against Americans abroad. (Current law generally requires a link to terrorist activity.)

- Provides jurisdiction in the United States over violent acts committed abroad against State and local officials while in other countries on official Federal business.

Strengthening U.S. Air, Land, and Sea Borders

- Increases penalties for smugglers who endanger Federal law enforcement officials seeking to interdict their activities, introducing the Federal criminal offense of "portrunning" (i.e., evading border inspections, often through the use of force).

- Addresses gaps in current law relating to maritime drug interdiction operations, introducing the criminal offense of failing to stop ("heave to") a vessel at the direction of a Coast Guard or other Federal law enforcement official seeking to board that vessel.

- Provides clear authority to search international, outbound letter-class mail if there is reasonable cause to suspect that the mail contains monetary instruments, drugs, weapons of mass destruction, or merchandise mailed in violation of several enumerated statutes (including obscenity and export control laws).

- Broadens the ability to prosecute criminals smuggling goods out of the United States.

Denying Safe Haven to International Fugitives

- Authorizes the extradition, in certain circumstances, of suspected criminals to foreign nations in two separate cases not covered by a treaty: (1) when the United States has an extradition treaty with the nation, but the applicable treaty is an outdated "list" treaty that does not cover the offense for which extradition is sought; and (2) when the United States does not have an extradition treaty with the requesting nation.

- Provides for exclusion from the United States of drug traffickers and their immediate family members and of persons who attempt to enter the United States in order to avoid prosecution in another country.

Seizing and Forfeiting the Assets of International Criminals

- Expands the list of money laundering "predicate crimes" to include certain violent crimes, international terrorism, and bribery of public officials, thus increasing the availability of money laundering enforcement tools.

- Broadens the definition of "financial institution" to include foreign banks, thereby closing a loophole involving criminally-derived funds laundered through foreign banks doing business here.

- Provides new tools to crack down on businesses illegally transmitting money, and to investigate money laundering under the Bank Secrecy Act.

- Toughens penalties for violations of the International Emergency Economic Powers Act.

- Criminalizes attempted violations of the Trading With the Enemy Act.

Responding to Emerging International Crime Problems

- Enhances enforcement tools for combating arms trafficking, including requiring "instant checks" of the criminal history of those acquiring explosive materials from Federal licensees and clarifying Federal authority to conduct undercover transactions subject to the Arms Export Control Act for investigative purposes.

- Addresses the increasing problem of alien smuggling by authorizing the forfeiture of the proceeds and all instrumentalities of alien smuggling.

- Cracks down on the international shipment of "precursor chemicals" used to manufacture illicit drugs, primarily by authorizing Drug Enforcement Administration to require additional "end-use" verification.

- Provides extraterritorial jurisdiction for fraud involving credit cards and other "access devices", which costs U.S. businesses hundreds of millions of dollars every year.

- Authorizes wiretapping for investigations of felony computer crime offenses.

<u>Promoting Global Cooperation</u>

- Expands the authority of U.S. law enforcement agencies to share the seized assets of international criminals with foreign law enforcement agencies.

- Provides new authority, applicable in cases where there is no mutual legal assistance treaty provision, to transfer a person in U.S. government custody to a requesting country temporarily for purposes of a criminal proceeding.

<u>Streamlining the Investigation and Prosecution of International Crime in U.S. Courts</u>

- Authorizes the Attorney General to use funds to defray translation, transportation, and other costs of State and local law enforcement agencies in cases involving fugitives or evidence overseas.

- Facilitates the admission into evidence in U.S. court proceedings of certain foreign government records.

The details of this proposal are described in the enclosed section-by-section analysis.

I urge the prompt and favorable consideration of this legislative proposal by the Congress.

THE WHITE HOUSE,

Date: 05/12/98 Time: 11:04
bWhite House Backgrounder on International Crime Control Strategy

To: National and International desks
Contact: White House Press Office, 202-456-2100
WASHINGTON, May 12 /U.S. Newswire/ -- The following was released today by the White House:
Subject: International Crime Control Strategy
INTERNATIONAL CRIME CONTROL STRATEGY
BACKGROUND

International crime is a serious and potent threat to the American people at home and abroad. Drug and firearms trafficking, terrorism, money laundering, counterfeiting, illegal alien smuggling, trafficking in women and children, advanced fee scams, credit card fraud, auto theft, economic espionage, intellectual property theft, computer hacking, and public corruption are all linked to international criminal activity and all have a direct impact on the security and prosperity of the American people.

Americans spend billions of dollars annually on cocaine and heroin, all of which originates abroad; in 1997, there were 123 terrorist attacks against U.S. targets worldwide, including 108 bombings and eight kidnappings; each year, approximately one billion dollars worth of stolen cars are smuggled out of this country; annually, U.S. companies lose up to $23 billion from the illegal duplication and piracy of films, compact discs, computer software, pharmaceutical and textile products, while U.S. credit card companies suffer losses of hundreds of millions of dollars from international fraud; and several hundred U.S. companies and other organizations have already suffered computer attacks in 1998, resulting in millions of dollars of losses and significant threats to our safety and security.

PURPOSE

The International Crime Control Strategy (ICCS) addresses this increasing threat by providing a framework for integrating all facets of the federal government response to international crime. This first-ever strategy reflects the high priority accorded international crime by this Administration and builds on such existing strategies as the National Drug Control Strategy and the Presidential Directives on alien smuggling, counter-terrorism and nuclear materials safety and security.

The ICCS is also an important initiative in terms of enhancing the ability of U.S. law enforcement officials to cooperate effectively with their overseas counterparts in investigating and prosecuting international crime cases. At the upcoming Birmingham Summit, G-8 leaders will discuss international crime as one of the most pressing issues related to increasing globalization and rapid technological and economic change. President Clinton will highlight the new ICCS in underscoring the U.S. commitment to close cooperation with all nations who are mobilizing to confront this increasing threat.

OVERVIEW

The ICCS is a plan of action containing eight broad goals with thirty implementing objectives. The ICCS expresses President Clinton's resolve to combat international crime aggressively and substantially reduce its impact on the daily lives of the American people.

The Strategy's eight goals and related objectives are:

1. Extend the First Line of Defense Beyond U.S. Borders by (a) preventing acts of international crime planned abroad before they

occur, (b) using all available laws to prosecute select criminal acts committed abroad, and (c) intensifying activities of law enforcement, diplomatic and consular personnel abroad.

2. Protect U.S. Borders by (a) enhancing our land border inspection, detection and monitoring capabilities, (b) improving the effectiveness of maritime and air smuggling interdiction efforts, (c) seeking new, stiffer criminal penalties for smuggling activities, and (d) targeting enforcement and prosecutorial resources more effectively against smuggling crimes and organizations.

3. Deny Safe Haven to International Criminals by (a) negotiating new international agreements to create a seamless web for the prompt location, arrest and extradition of international fugitives, (b) implementing strengthened immigration laws that prevent international criminals from entering the United States and provide for their prompt expulsion when appropriate, and (c) promoting increased cooperation with foreign law enforcement authorities.

4. Counter International Financial Crime by (a) combating money laundering and strengthening enforcement efforts to reduce inbound and outbound movement of criminal proceeds, (b) seizing the assets of international criminals, (c) enhancing bilateral and multilateral cooperation against all financial crime, and (d) targeting offshore centers of international fraud, counterfeiting, electronic access device schemes and other financial crimes.

5. Prevent Criminal Exploitation of International Trade by (a) interdicting illegal technology exports, (b) preventing unfair and predatory trade practices in violation of U.S. criminal law, (c) protecting intellectual property rights, (d) countering industrial theft and economic espionage of U.S. trade secrets, and (e) enforcing import restrictions on certain harmful substances, dangerous organisms and protected species.

6. Respond to Emerging International Crime Threats by (a) disrupting new activities of international organized crime groups, (b) enhancing intelligence efforts against criminal enterprises, (c) reducing trafficking in human beings and crimes against children, (d) increasing enforcement efforts against high tech and computer-related crime, and (e) continuing to identify and counter the vulnerabilities of critical infrastructures and new technologies in high tech areas.

7. Foster International Cooperation and the Rule of Law by (a) establishing international standards, goals and objectives to combat international crime and by actively encouraging compliance, (b) improving bilateral cooperation with foreign governments and law enforcement authorities, and (c) strengthening the rule of law as the foundation for democratic government and free markets in order to reduce societies' vulnerability to criminal exploitation.

8. Optimize the Full Range of U.S. Efforts by (a) enhancing executive branch policy and operational coordination mechanisms to assess the risks of criminal threats and to integrate strategies, goals and objectives to combat those threats, (b) mobilizing and incorporating the private sector into U.S. government efforts, and (c) developing measures of effectiveness to assess progress over time.

ICCS INITIATIVES

Highlighted below are ten Administration initiatives to further our efforts to fight international crime.

1. International Crime Control Act of 1998: Proposed legislation containing significant new law enforcement tools for the fight against international crime.

2. Comprehensive Threat Assessment: A comprehensive assessment

of the threat to the American people posed by international crime, to be completed within six months.

3. International Conference on Upholding Integrity Among Justice and Security Officials: An international conference to address upholding integrity among key justice and security officials worldwide, to be organized by the Vice President within the next six months.

4. High Tech Crime: An action plan, building on the work of the G-8 justice and interior ministers and the creation of the U.S. National Infrastructure Protection Center, to protect interconnected U.S. communications and information systems from attack by international criminals.

5. Border Law Enforcement: A program to enhance border law enforcement through deployment of advanced detection technology and investment of new resources.

6. Financial Crimes: A commitment to employ aggressively new tools to deny criminals access to U.S. financial institutions and to enhance enforcement efforts against financial crimes.

7. International Asset Forfeiture and Sharing: A U.S. call for new criminal asset forfeiture regimes worldwide and new asset forfeiture sharing agreements with our international partners.

8. OAS Treaty Against Illicit Trafficking in Firearms: A program to work with our OAS partners to implement fully a hemispheric convention to combat the illicit manufacturing of and trafficking in firearms, ammunition and explosives.

9. Economic Espionage and Theft of Industrial Property: A commitment to use the Economic Espionage Act to increase U.S. investigations and prosecutions of individuals and companies who attempt to steal U.S. proprietary information.

10. Strategic Communications Plan: A plan to engage the private sector in assessing the impact of international crime on that sector and in determining its appropriate role in countering this threat.

-0-

/U.S. Newswire 202-347-2770/

APNP-05-12-98 1105EDT

Current: 2200 20 April 1998

OVERVIEW OF INTERNATIONAL CRIME CONTROL STRATEGY (ICCS)

Background

Responding to the increasing international crime threat to national security, PDD-42 (OCT 95) directed all involved federal agencies to intensify their efforts in this arena. Since PDD-42, we have made substantial progress -- particularly in terms of: (1) improved interagency coordination; (2) more effective attacks on the financial underpinnings of international crime groups; and (3) new strategic bilateral, regional and global approaches, combining training with aggressive enforcement that investigates, prosecutes and disrupts major criminal groups. To promote further progress, the NSC tasked Justice, State and Treasury to develop a comprehensive national strategy to attack international crime and reduce its impact on Americans.

The Strategy

The ICCS is an action plan laying out 8 broad goals and 30 objectives (see Tab A) as the blueprint for an effective, long-term attack on international crime. The goals are:

- Extend the first line of defense beyond U.S. borders.
- Protect U.S. borders by attacking smuggling and smuggling-related crimes.
- Deny safe haven to international criminals.
- Counter international financial crime.
- Prevent criminal exploitation of international crime.
- Respond to emerging international crime threats.
- Foster international cooperation and the rule of law.
- Optimize the full spectrum of U.S. efforts.

The ICCS goals and objectives are complemented by 11 major initiatives (see Tab B) involving:

- International Crime Control Act of 1998.
- Comprehensive Threat Assessment.
- High Tech Crime.
- Border Law Enforcement Enhancements.
- Financial Crimes Enforcement.
- International Asset Forfeiture and Sharing.
- OAS Treaty Against Illegal Trafficking in Firearms.
- Economic Espionage and Theft of Industrial Property.
- International Conference on Promoting Integrity Among Justice and Security Officials.
- Strategic Communications Plan.
- Measures of Effectiveness.

Conceptually, the ICCS responds to the high priority accorded international crime in the National Security Strategy and builds on existing international crime-specific strategies (e.g., National Drug Control Strategy and PDDs on alien smuggling, counter-terrorism, etc.). The broader ICCS does not reiterate or supplant existing strategies on any topics related in whole or in part to international crime; rather, the ICCS supplements these documents, providing the framework for integrating all facets of the federal response to international crime.

State of Play
Working closely with the Justice-led interagency drafting team, we have nearly finished preparing the ICCS text. NSC/EXECSEC circulated the final version ten days ago, and the comparatively few comments received to date (deadline was COB last Friday) have been incorporated or otherwise addressed. There are no outstanding substantive issues of which we are aware.

The remaining work consists of: inserting a VPOTUS initiative (cleared for inclusion by OVP only this morning) calling for an international conference on promoting integrity among justice and security officials; clearing a draft POTUS letter of promulgation; and performing a final edit. Our target is to complete the remaining work tomorrow or Wednesday, and then forward a "one-dot" package to the Front Office requesting the final go-ahead for publication.

Assuming approval of our proposal for a tandem rollout (i.e., the ICCS and the International Crime Control Act) in early May just prior to the POTUS departure for Europe and the Birmingham Summit, and assuming further that we want glossy copies of the ICCS ready to hand out at the event, the publisher at Justice will need the text no later than this Friday.

Tab A ICCS Goals and Objectives
Tab B ICCS Action Plan Initiatives

TAB A

THE INTERNATIONAL CRIME CONTROL STRATEGY: GOALS AND OBJECTIVES

Goal 1: Extend the First Line of Defense Beyond U.S. Borders

Objective 1: Prevent acts of international crime planned abroad, including terrorist acts, before they occur.

Objective 2: Use all appropriate laws to prosecute select criminal acts committed abroad.

Objective 3: Intensify activities of law enforcement, diplomatic and consular personnel abroad.

Goal 2: Protect U.S. Borders by Attacking Smuggling and Smuggling-Related Crimes

Objective 1: Enhance our land border inspection, detection and monitoring capabilities through a greater resource commitment, further coordination of federal agency efforts, and increased cooperation with the private sector.

Objective 2: Improve the effectiveness of maritime and air smuggling interdiction efforts in the transit zone.

Objective 3: Seek new, stiffer criminal penalties for smuggling activities.

Objective 4: Target enforcement and prosecutorial resources more effectively against smuggling crimes and organizations.

Goal 3: Deny Safe Haven to International Criminals

Objective 1: Negotiate new international agreements to create a seamless web for the prompt location, arrest and extradition of international fugitives.

Objective 2: Implement strengthened immigration laws to prevent international criminals from entering the United States and expel them promptly where appropriate.

Objective 3: Promote increased cooperation with foreign law enforcement authorities to provide rapid, mutual access to witnesses, records and other evidence.

Goal 4: Counter International Financial Crime

Objective 1: Combat money laundering by denying criminals access to financial institutions and by strengthening enforcement efforts to reduce inbound and outbound movement of criminal proceeds.

Objective 2: Seize the assets of international criminals through the aggressive use of forfeiture laws.

Objective 3: Enhance bilateral and multilateral cooperation against all financial crime by working with foreign governments to establish or update enforcement tools and implement multilateral anti-money laundering standards.

Objective 4: Target offshore centers of international fraud, counterfeiting, electronic access device schemes and other financial crimes.

Goal 5: Prevent Criminal Exploitation of International Trade

Objective 1: Interdict illegal technology exports through improved detection, increased cooperation with the private sector, and heightened sanctions.

Objective 2: Prevent unfair or predatory trade practices.

Objective 3: Protect intellectual property rights by enhancing foreign and domestic law enforcement efforts to curtail the flow of counterfeit and pirated goods and by educating U.S. consumers.

Objective 4: Counter industrial theft and economic espionage of U.S. trade secrets through increased prosecution of offenders.

Objective 5: Prevent imports of restricted substances and organisms.

Goal 6: Respond to Emerging International Crime Threats

Objective 1: Disrupt emerging activities of international organized crime groups.

Objective 2: Enhance intelligence efforts against criminal organizations to provide timely warning of changes in their organizations and methods.

Objective 3: Reduce trafficking in women and girls and global crimes against children.

Objective 4: Increase enforcement efforts against high tech and computer-related crime.

Objective 5: Continue identifying the vulnerabilities of critical infrastructures and of emerging technologies in telecommunications, financial transactions and other high-tech areas and develop plans to counter them.

Goal 7: Foster International Cooperation and the Rule of Law

Objective 1: Establish international standards, goals and objectives to combat international crime by using bilateral, multilateral, regional and global mechanisms, and by actively encouraging international compliance.

Objective 2: Improve bilateral cooperation with foreign governments and law enforcement authorities through increased collaboration, training and technical assistance.

Objective 3: Strengthen the rule of law as the foundation for democratic government and free markets in order to reduce societies' vulnerability to criminal exploitation.

Goal 8: Optimize the Full Spectrum of U.S. Efforts

Objective 1: Enhance executive branch policy and operational coordination mechanisms to assess the risks of criminal threats and to integrate strategies, goals and objectives to combat those threats.

Objective 2: Mobilize and incorporate the private sector into U.S. government efforts.

Objective 3: Develop measures of effectiveness to assess progress over time.

TAB B

ICCS ACTION PLAN INITIATIVES

International Crime Control Act of 1998

One of the foremost initiatives of this Strategy is the proposed International Crime Control Act (ICCA). The Administration will soon forward this important legislation to Congress and urge its prompt and favorable consideration. Its passage would provide law enforcement authorities with significant new tools in the fight against international crime, including the ability to: prosecute violent acts of organized crime committed against Americans overseas; deny visas to suspected drug and alien smugglers -- and their family members -- based on "reasonable cause" to believe their involvement in those crimes; freeze a criminal's assets in the United States when the criminal is arrested abroad; and extradite suspected criminals to other nations even without an extradition treaty or where the offense falls outside the offenses listed in an existing treaty.

Comprehensive Threat Assessment

Pursuant to the ICCS, the Administration will prepare, on a priority basis, a fully comprehensive assessment of the threat posed by international crime to Americans and their communities, American businesses and financial institutions, and global security and stability. The new threat assessment, which will be completed within six months, will draw upon all available data and will be the product of a cooperative effort among all U.S. law enforcement and intelligence agencies.

High Tech Crime

The United States relies heavily upon its interconnected telecommunications and automated information systems for basic services, such as energy, finance, transportation and defense. The Attorney General recently hosted the first-ever meeting of justice and interior ministers of the G-8 (the G-7 plus Russia) specifically focused on international efforts against high tech crime. The action plan items agreed to by the ministers included: (1) ensuring that a sufficient number of trained and equipped law enforcement personnel are allocated to the task of fighting high tech crime; (2) establishing an international network of high tech crime points of contact who can be available 24 hours a day to respond to requests for assistance in related investigations; and (3) developing faster ways to trace attacks via computer networks so that the infiltration source can be quickly determined.

The Administration is committed to implementing these action plan items and expanding national efforts to protect our critical information infrastructure from cyberattacks and cybercrime. The establishment of the National Infrastructure Protection Center at FBI headquarters in February 1998, for example, helps provide a national-level response to the risks posed by these novel threats. The current budget contains several requests for increased funding to equip and train federal law enforcement agents in this field and to bolster the number of federal prosecutors specializing in the prosecution of high tech crime.

Border Law Enforcement Enhancements

The Administration is committed to enhancing interdiction and investigative efforts along our nation's borders through advanced detection and monitoring capabilities and greater resource allocations. This initiative will focus on the detection of illegal border activities, such as illegal immigration, as well as the investigation and prosecution of criminal groups involved in smuggling currency, drugs and other contraband.

In order to stem the tide of illegal immigration through traditional corridors of unlawful entry, the Administration is requesting over $280 million for new border-related initiatives. These funds will place 1,000 new Border Patrol agents on the front lines and equip them with state of the art infrared scopes and night vision goggles. They will also support programs to detain and remove aliens, including criminal aliens. The Administration also plans to improve sharing of intelligence regarding alien smuggling among relevant government agencies, and to further deploy portable computerized biometric and fingerprint identification systems along our borders, which will allow for quicker identification of smugglers and other criminals.

Financial Crimes Enforcement

The Administration will continue to deny criminals access to financial institutions and enhance enforcement efforts to reduce the inbound and outbound movement of criminal proceeds, strengthen the ability of our international partners to combat money laundering, and target offshore centers of international fraud, access device schemes and other financial crimes. Two of the most effective tools the Administration will employ are the Geographic Targeting Order (GTO) provisions of the Bank Secrecy Act and the International Emergency Economic Powers Act (IEEPA).

The GTO authority was used to great effect during 1996 and 1997 in New York City and Puerto Rico to combat money laundering. GTOs are based on statutory provisions that grant the Secretary of the Treasury authority to require any financial institution, or a group of financial institutions, in a geographic area to report on any currency transaction involving an amount prescribed by the Secretary. The Administration plans to expand the use of GTOs to cover the entire United States. Additionally, if passed by Congress, the new ICCA would clarify and thus strengthen the existing law subjecting violators of GTOs to criminal penalties.

With respect to IEEPA authority, the Administration will continue to employ this tool against trafficker, terrorists and those supporting them whenever the President determines that the national security, foreign policy or economy of the United States is threatened.

International Asset Forfeiture and Sharing

The United States will press in bilateral and multilateral forums for international commitments to institute asset forfeiture regimes that undercut the profit motive in international crime. Moreover, sharing the proceeds from seized assets can provide added incentive for international cooperation, and thus the United States will push specifically for new asset sharing agreements with our international partners.

OAS Treaty Against Illegal Trafficking in Firearms

In October 1997, after five months of negotiation in which the United States and Mexico played a leadership role, a working group of OAS member states reached final agreement on the text of a hemispheric convention to combat the illicit manufacturing of and trafficking in firearms, ammunition, explosives and related materials. The convention was adopted by the OAS and signed by a number of countries, including the United States, in November 1997. The convention contains specific provisions requiring the signatories to, among other things, ensure that all firearms are marked by the manufacturer and the importer, designate a point of contact for purposes of cooperation and information exchange, make the crimes of illicit manufacturing and trafficking extraditable offenses, and pledge to exchange technical information to improve the signatories' respective efficiency in combating these crimes. The Administration expects to forward this convention to the Senate for advice and consent in April 1998. The Administration is committed to working with its OAS partners to implement fully this convention for improving government measures against illegal firearms trafficking.

Economic Espionage and Theft of Industrial Property

With the passage of the Economic Espionage Act, the Administration now has the means to investigate and prosecute the theft of U.S. trade secrets. Federal law enforcement agencies will work with the counterintelligence community to identify agents of foreign governments and businesses targeting U.S. government and corporate proprietary information. Government-industry cooperation and a heightened sensitivity to the theft of industrial property are expected to result in an increase in investigations and prosecutions of individuals and companies who steal U.S. trade secrets.

Strategic Communications Plan

Governments working alone, or even in close cooperation with each other, will not be fully effective in countering international crime. Real and enduring success in this vital effort will come only when the private sector -- including both individual and corporate citizens -- joins in that effort. To that end, the Administration will develop and implement a strategic communications plan to engage the private sector on assessing the impact of international crime on the private sector and the role the private sector should play in countering that threat.

Measures of Effectiveness

The Administration will develop measures of effectiveness to evaluate progress under the Strategy. Such measures will enable us to determine whether the Strategy is making tangible progress and evaluate the contribution of specific initiatives over time.