

104TH CONGRESS  
1ST SESSION

# H. R. 2703

To combat terrorism.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 1995

Mr. HYDE (for himself, Mr. MCCOLLUM, Mr. SMITH of Texas, and Mr. BARR of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To combat terrorism.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Comprehensive  
5 Antiterrorism Act of 1995”.

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

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

### TITLE I—CRIMINAL ACTS

Sec. 101. Protection of Federal employees.

Sec. 102. Prohibiting material support to terrorist organizations.

Sec. 103. Modification of material support provision.

Sec. 104. Acts of terrorism transcending national boundaries.

- Sec. 105. Conspiracy to harm people and property overseas.
- Sec. 106. Clarification and extension of criminal jurisdiction over certain terrorism offenses overseas.
- Sec. 107. Expansion and modification of weapons of mass destruction statute.
- Sec. 108. Addition of offenses to the money laundering statute.
- Sec. 109. Expansion of Federal jurisdiction over bomb threats.
- Sec. 110. Clarification of maritime violence jurisdiction.
- Sec. 111. Possession of stolen explosives prohibited.
- Sec. 112. Study to determine standards for determining what ammunition is capable of penetrating police body armor.

#### TITLE II—INCREASED PENALTIES

- Sec. 201. Mandatory minimum for certain explosives offenses.
- Sec. 202. Increased penalty for explosive conspiracies.
- Sec. 203. Increased and alternate conspiracy penalties for terrorism offenses.
- Sec. 204. Mandatory penalty for transferring a firearm knowing that it will be used to commit a crime of violence.
- Sec. 205. Mandatory penalty for transferring an explosive material knowing that it will be used to commit a crime of violence.
- Sec. 206. Directions to Sentencing Commission.

#### TITLE III—INVESTIGATIVE TOOLS

- Sec. 301. Pen registers and trap and trace devices in foreign counterintelligence investigations.
- Sec. 302. Disclosure of certain consumer reports to the Federal Bureau of Investigation.
- Sec. 303. Disclosure of business records held by third parties in foreign counterintelligence cases.
- Sec. 304. Study of tagging explosive materials, detection of explosives and explosive materials, rendering explosive components inert, and imposing controls of precursors of explosives.
- Sec. 305. Application of statutory exclusionary rule concerning intercepted wire or oral communications.
- Sec. 306. Exclusion of certain types of information from wiretap-related definitions.
- Sec. 307. Access to telephone billing records.
- Sec. 308. Requirement to preserve record evidence.
- Sec. 309. Detention hearing.
- Sec. 310. Reward authority of the Attorney General.
- Sec. 311. Protection of Federal Government buildings in the District of Columbia.
- Sec. 312. Study of thefts from armories; report to the Congress.

#### TITLE IV—NUCLEAR MATERIALS

- Sec. 401. Expansion of nuclear materials prohibitions.

#### TITLE V—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

- Sec. 501. Definitions.
- Sec. 502. Requirement of detection agents for plastic explosives.
- Sec. 503. Criminal sanctions.
- Sec. 504. Exceptions.
- Sec. 505. Effective date.

## TITLE VI—IMMIGRATION-RELATED PROVISIONS

## Subtitle A—Removal of Alien Terrorists

## PART 1—REMOVAL PROCEDURES FOR ALIEN TERRORISTS

- Sec. 601. Removal procedures for alien terrorists.
- Sec. 602. Funding for detention and removal of alien terrorists.

## PART 2—EXCLUSION AND DENIAL OF ASYLUM FOR ALIEN TERRORISTS

- Sec. 611. Membership in terrorist organization as ground for exclusion.
- Sec. 612. Denial of asylum to alien terrorists.
- Sec. 613. Denial of other relief for alien terrorists.

## Subtitle B—Expedited Exclusion

- Sec. 621. Inspection and exclusion by immigration officers.
- Sec. 622. Judicial review.
- Sec. 623. Exclusion of aliens who have not been inspected and admitted.

## Subtitle C—Improved Information and Processing

## PART 1—IMMIGRATION PROCEDURES

- Sec. 631. Access to certain confidential INS files through court order.
- Sec. 632. Waiver authority concerning notice of denial of application for visas.

## PART 2—ASSET FORFEITURE FOR PASSPORT AND VISA OFFENSES

- Sec. 641. Criminal forfeiture for passport and visa related offenses.
- Sec. 642. Subpoenas for bank records.
- Sec. 643. Effective date.

## Subtitle D—Employee Verification by Security Services Companies

- Sec. 651. Permitting security services companies to request additional documentation.

## Subtitle E—Criminal Alien Deportation Improvements

- Sec. 661. Short title.
- Sec. 662. Additional expansion of definition of aggravated felony.
- Sec. 663. Deportation procedures for certain criminal aliens who are not permanent residents.
- Sec. 664. Restricting the defense to exclusion based on 7 years permanent residence for certain criminal aliens.
- Sec. 665. Limitation on collateral attacks on underlying deportation order.
- Sec. 666. Criminal alien identification system.
- Sec. 667. Establishing certain alien smuggling-related crimes as RICO-predicate offenses.
- Sec. 668. Authority for alien smuggling investigations.
- Sec. 669. Expansion of criteria for deportation for crimes of moral turpitude.
- Sec. 670. Payments to political subdivisions for costs of incarcerating illegal aliens.
- Sec. 671. Miscellaneous provisions.
- Sec. 672. Construction of expedited deportation requirements.
- Sec. 673. Study of prisoner transfer treaty with Mexico.

- Sec. 674. Justice Department assistance in bringing to justice aliens who flee prosecution for crimes in the United States.
- Sec. 675. Prisoner transfer treaties.
- Sec. 676. Interior repatriation program.
- Sec. 677. Deportation of nonviolent offenders prior to completion of sentence of imprisonment.

#### TITLE VII—AUTHORIZATION AND FUNDING

- Sec. 701. Firefighter and emergency services training.
- Sec. 702. Assistance to foreign countries to procure explosive detection devices and other counter-terrorism technology.
- Sec. 703. Research and development to support counter-terrorism technologies.

#### TITLE VIII—MISCELLANEOUS

- Sec. 801. Study of State licensing requirements for the purchase and use of high explosives.
- Sec. 802. Compensation of victims of terrorism.
- Sec. 803. Jurisdiction for lawsuits against terrorist States.
- Sec. 804. Study of publicly available instructional material on the making of bombs, destructive devices, and weapons of mass destruction.
- Sec. 805. Compilation of statistics relating to intimidation of Government employees.
- Sec. 806. Victim Restitution Act of 1995.

#### TITLE IX—HABEAS CORPUS REFORM

- Sec. 901. Filing deadlines.
- Sec. 902. Appeal.
- Sec. 903. Amendment of Federal rules of appellate procedure.
- Sec. 904. Section 2254 amendments.
- Sec. 905. Section 2255 amendments.
- Sec. 906. Limits on second or successive applications.
- Sec. 907. Death penalty litigation procedures.
- Sec. 908. Technical amendment.
- Sec. 909. Severability.

## 1           **TITLE I—CRIMINAL ACTS**

### 2   **SEC. 101. PROTECTION OF FEDERAL EMPLOYEES.**

3           (a) HOMICIDE.—Section 1114 of title 18, United  
4 States Code, is amended to read as follows:

#### 5   **“§1114. Protection of officers and employees of the** 6                                   **United States**

7           “Whoever kills or attempts to kill any officer or em-  
8 ployee of the United States or of any agency in any branch  
9 of the United States Government (including any member

1 of the uniformed services) while such officer or employee  
2 is engaged in or on account of the performance of official  
3 duties, or any person assisting such an officer or employee  
4 in the performance of such duties or on account of that  
5 assistance, shall be punished, in the case of murder, as  
6 provided under section 1111, or in the case of man-  
7 slaughter, as provided under section 1112, or, in the case  
8 of attempted murder or manslaughter, as provided in sec-  
9 tion 1113.”.

10 (b) THREATS AGAINST FORMER OFFICERS AND EM-  
11 PLOYEES.—Section 115(a)(2) of title 18, United States  
12 Code, is amended by inserting “, or threatens to assault,  
13 kidnap, or murder, any person who formerly served as a  
14 person designated in paragraph (1), or” after “assaults,  
15 kidnaps, or murders, or attempts to kidnap or murder”.

16 **SEC. 102. PROHIBITING MATERIAL SUPPORT TO TERROR-**  
17 **IST ORGANIZATIONS.**

18 (a) IN GENERAL.—That chapter 113B of title 18,  
19 United States Code, that relates to terrorism is amended  
20 by adding at the end the following:

21 **“§ 2339B. Providing material support to terrorist or-**  
22 **ganizations**

23 “(a) OFFENSE.—Whoever, within the United States,  
24 knowingly provides material support or resources in or af-  
25 fecting interstate or foreign commerce, to any organization

1 which the person knows or should have known is a terror-  
2 ist organization that has been designated under section  
3 212(a)(3)(B)(iv) of the Immigration and Nationality Act  
4 as a terrorist organization shall be fined under this title  
5 or imprisoned not more than 10 years, or both.

6 “(b) DEFINITION.—As used in this section, the term  
7 ‘material support or resources’ has the meaning given that  
8 term in section 2339A of this title.”.

9 (b) CLERICAL AMENDMENT.—The table of sections  
10 at the beginning of chapter 113B of title 18, United  
11 States Code, is amended by adding at the end the follow-  
12 ing new item:

“2339B. Providing material support to terrorist organizations.”.

13 **SEC. 103. MODIFICATION OF MATERIAL SUPPORT PROVI-**  
14 **SION.**

15 Section 2339A of title 18, United States Code, is  
16 amended read as follows:

17 **“§ 2339A. Providing material support to terrorists**

18 “(a) OFFENSE.—Whoever, within the United States,  
19 provides material support or resources or conceals or dis-  
20 guises the nature, location, source, or ownership of mate-  
21 rial support or resources, knowing or intending that they  
22 are to be used in preparation for or in carrying out, a  
23 violation of section 32, 37, 351, 844(f) or (i), 956, 1114,  
24 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, 2332a,  
25 or 2332b of this title or section 46502 of title 49, or in

1 preparation for or in carrying out the concealment or an  
2 escape from the commission of any such violation, shall  
3 be fined under this title, imprisoned not more than ten  
4 years, or both.

5 “(b) DEFINITION.—In this section, the term ‘mate-  
6 rial support or resources’ means currency or other finan-  
7 cial securities, financial services, lodging, training,  
8 safehouses, false documentation or identification, commu-  
9 nications equipment, facilities, weapons, lethal substances,  
10 explosives, personnel, transportation, and other physical  
11 assets, except medicine or religious materials.”.

12 **SEC. 104. ACTS OF TERRORISM TRANSCENDING NATIONAL**  
13 **BOUNDARIES.**

14 (a) OFFENSE.—Title 18, United States Code, is  
15 amended by inserting after section 2332a the following:

16 **“§2332b. Acts of terrorism transcending national**  
17 **boundaries**

18 “(a) PROHIBITED ACTS.—

19 “(1) Whoever, involving any conduct transcend-  
20 ing national boundaries and in a circumstance de-  
21 scribed in subsection (b)—

22 “(A) kills, kidnaps, maims, commits an as-  
23 sault resulting in serious bodily injury, or as-  
24 saults with a dangerous weapon any individual  
25 within the United States; or

1           “(B) creates a substantial risk of serious  
2           bodily injury to any other person by destroying  
3           or damaging any structure, conveyance, or  
4           other real or personal property within the  
5           United States or by attempting or conspiring to  
6           destroy or damage any structure, conveyance,  
7           or other real or personal property within the  
8           United States;

9           in violation of the laws of any State or the United  
10          States shall be punished as prescribed in subsection  
11          (c).

12           “(2) Whoever threatens to commit an offense  
13          under paragraph (1), or attempts or conspires to do  
14          so, shall be punished as prescribed in subsection (c).

15          “(b) JURISDICTIONAL BASES.—The circumstances  
16          referred to in subsection (a) are—

17           “(1) any of the offenders travels in, or uses the  
18          mail or any facility of, interstate or foreign com-  
19          merce in furtherance of the offense or to escape ap-  
20          prehension after the commission of the offense;

21           “(2) the offense obstructs, delays, or affects  
22          interstate or foreign commerce, or would have so ob-  
23          structed, delayed, or affected interstate or foreign  
24          commerce if the offense had been consummated;

1           “(3) the victim, or intended victim, is the Unit-  
2           ed States Government, a member of the uniformed  
3           services, or any official, officer, employee, or agent  
4           of the legislative, executive, or judicial branches, or  
5           of any department or agency, of the United States;

6           “(4) the structure, conveyance, or other real or  
7           personal property is, in whole or in part, owned, pos-  
8           sessed, used by, or leased to the United States, or  
9           any department or agency thereof;

10           “(5) the offense is committed in the territorial  
11           sea (including the airspace above and the seabed and  
12           subsoil below, and artificial islands and fixed struc-  
13           tures erected thereon) of the United States; or

14           “(6) the offense is committed in those places  
15           within the United States that are in the special mar-  
16           itime and territorial jurisdiction of the United  
17           States.

18           Jurisdiction shall exist over all principals and co-conspira-  
19           tors of an offense under this section, and accessories after  
20           the fact to any offense under this section, if at least one  
21           of such circumstances is applicable to at least one of-  
22           fender.

23           “(c) PENALTIES.—

24           “(1) Whoever violates this section shall be pun-  
25           ished—

1           “(A) for a killing or if death results to any  
2 person from any other conduct prohibited by  
3 this section by death, or by imprisonment for  
4 any term of years or for life;

5           “(B) for kidnapping, by imprisonment for  
6 any term of years or for life;

7           “(C) for maiming, by imprisonment for not  
8 more than 35 years;

9           “(D) for assault with a dangerous weapon  
10 or assault resulting in serious bodily injury, by  
11 imprisonment for not more than 30 years;

12           “(E) for destroying or damaging any  
13 structure, conveyance, or other real or personal  
14 property, by imprisonment for not more than  
15 25 years;

16           “(F) for attempting or conspiring to com-  
17 mit an offense, for any term of years up to the  
18 maximum punishment that would have applied  
19 had the offense been completed; and

20           “(G) for threatening to commit an offense  
21 under this section, by imprisonment for not  
22 more than 10 years.

23           “(2) Notwithstanding any other provision of  
24 law, the court shall not place on probation any per-  
25 son convicted of a violation of this section; nor shall

1 the term of imprisonment imposed under this section  
2 run concurrently with any other term of imprison-  
3 ment.

4 “(d) LIMITATION ON PROSECUTION.—No indictment  
5 shall be sought nor any information filed for any offense  
6 described in this section until the Attorney General, or the  
7 highest ranking subordinate of the Attorney General with  
8 responsibility for criminal prosecutions, makes a written  
9 certification that, in the judgment of the certifying official,  
10 such offense, or any activity preparatory to or meant to  
11 conceal its commission, is a Federal crime of terrorism.

12 “(e) PROOF REQUIREMENTS.—

13 “(1) The prosecution is not required to prove  
14 knowledge by any defendant of a jurisdictional base  
15 alleged in the indictment.

16 “(2) In a prosecution under this section that is  
17 based upon the adoption of State law, only the ele-  
18 ments of the offense under State law, and not any  
19 provisions pertaining to criminal procedure or evi-  
20 dence, are adopted.

21 “(f) EXTRATERRITORIAL JURISDICTION.—There is  
22 extraterritorial Federal jurisdiction—

23 “(1) over any offense under subsection (a), in-  
24 cluding any threat, attempt, or conspiracy to commit  
25 such offense; and

1           “(2) over conduct which, under section 3 of this  
2 title, renders any person an accessory after the fact  
3 to an offense under subsection (a).

4           “(g) DEFINITIONS.—As used in this section—

5           “(1) the term ‘conduct transcending national  
6 boundaries’ means conduct occurring outside the  
7 United States in addition to the conduct occurring  
8 in the United States;

9           “(2) the term ‘facility of interstate or foreign  
10 commerce’ has the meaning given that term in sec-  
11 tion 1958(b)(2) of this title;

12           “(3) the term ‘serious bodily injury’ has the  
13 meaning prescribed in section 1365(g)(3) of this  
14 title;

15           “(4) the term ‘territorial sea of the United  
16 States’ means all waters extending seaward to 12  
17 nautical miles from the baselines of the United  
18 States determined in accordance with international  
19 law; and

20           “(5) the term ‘Federal crime of terrorism’  
21 means an offense that—

22           “(A) is calculated to influence or affect the  
23 conduct of government by intimidation or coer-  
24 cion, or to retaliate against government con-  
25 duct; and

1 “(B) is a violation of—

2 “(i) section 32 (relating to destruction  
3 of aircraft or aircraft facilities), 37 (relat-  
4 ing to violence at international airports),  
5 81 (relating to arson within special mari-  
6 time and territorial jurisdiction), 175 (re-  
7 lating to biological weapons), 351 (relating  
8 to congressional, cabinet, and Supreme  
9 Court assassination, kidnapping, and as-  
10 sault), 831 (relating to nuclear weapons),  
11 842(m) or (n) (relating to plastic explo-  
12 sives), 844(e) (relating to certain bomb-  
13 ings), 844(f) or (i) (relating to arson and  
14 bombing of certain property), 956 (relating  
15 to conspiracy to commit violent acts in for-  
16 eign countries), 1114 (relating to protec-  
17 tion of officers and employees of the Unit-  
18 ed States), 1116 (relating to murder or  
19 manslaughter of foreign officials, official  
20 guests, or internationally protected per-  
21 sons), 1203 (relating to hostage taking),  
22 1361 (relating to injury of Government  
23 property), 1362 (relating to destruction of  
24 communication lines), 1363 (relating to in-  
25 jury to buildings or property within special

1 maritime and territorial jurisdiction of the  
2 United States), 1366 (relating to destruc-  
3 tion of energy facility), 1751 (relating to  
4 Presidential and Presidential staff assas-  
5 sination, kidnapping, and assault), 2152  
6 (relating to injury of harbor defenses),  
7 2155 (relating to destruction of national  
8 defense materials, premises, or utilities),  
9 2156 (relating to production of defective  
10 national defense materials, premises, or  
11 utilities), 2280 (relating to violence against  
12 maritime navigation), 2281 (relating to vi-  
13 olence against maritime fixed platforms),  
14 2332 (relating to certain homicides and vi-  
15 olence outside the United States), 2332a  
16 (relating to use of weapons of mass de-  
17 struction), 2332b (relating to acts of ter-  
18 rorism transcending national boundaries),  
19 2339A (relating to providing material sup-  
20 port to terrorists), 2339B (relating to pro-  
21 viding material support to terrorist organi-  
22 zations), or 2340A (relating to torture) of  
23 this title;

1                   “(ii) section 236 (relating to sabotage  
2                   of nuclear facilities or fuel) of the Atomic  
3                   Energy Act of 1954; or

4                   “(iii) section 46502 (relating to air-  
5                   craft piracy), or 60123(b) (relating to de-  
6                   struction of interstate gas or hazardous  
7                   liquid pipeline facility) of title 49.

8           “(h) INVESTIGATIVE AUTHORITY.—In addition to  
9 any other investigatory authority with respect to violations  
10 of this title, the Attorney General shall have primary in-  
11 vestigative responsibility for all Federal crimes of terror-  
12 ism, and the Secretary of the Treasury shall assist the  
13 Attorney General at the request of the Attorney General.”.

14           (b) CLERICAL AMENDMENT.—The table of sections  
15 at the beginning of the chapter 113B of title 18, United  
16 States Code, that relates to terrorism is amended by in-  
17 serting after the item relating to section 2332a the follow-  
18 ing new item:

          “2332b. Acts of terrorism transcending national boundaries.”.

19           (c) STATUTE OF LIMITATIONS AMENDMENT.—Sec-  
20 tion 3286 of title 18, United States Code, is amended by—

21                   (1) striking “any offense” and inserting “any  
22                   non-capital offense”;

23                   (2) striking “36” and inserting “37”;

24                   (3) striking “2331” and inserting “2332”;

25                   (4) striking “2339” and inserting “2332a”; and

1           (5) inserting “2332b (acts of terrorism tran-  
2           scending national boundaries),” after “(use of weap-  
3           ons of mass destruction),”.

4           (d) PRESUMPTIVE DETENTION.—Section 3142(e) of  
5 title 18, United States Code, is amended by inserting “,  
6 956(a), or 2332b” after “section 924(c)”.

7           (e) CONFORMING AMENDMENT.—Section 846 of title  
8 18, United States Code, is amended by striking “In addi-  
9 tion to any other” and all that follows through the end  
10 of the section.

11 **SEC. 105. CONSPIRACY TO HARM PEOPLE AND PROPERTY**  
12 **OVERSEAS.**

13           (a) IN GENERAL.—Section 956 of chapter 45 of title  
14 18, United States Code, is amended to read as follows:

15 **“§956. Conspiracy to kill, kidnap, maim, or injure**  
16 **persons or damage property in a foreign**  
17 **country**

18           “(a)(1) Whoever, within the jurisdiction of the United  
19 States, conspires with one or more other persons, regard-  
20 less of where such other person or persons are located,  
21 to commit at any place outside the United States an act  
22 that would constitute the offense of murder, kidnapping,  
23 or maiming if committed in the special maritime and terri-  
24 torial jurisdiction of the United States shall, if any of the  
25 conspirators commits an act within the jurisdiction of the

1 United States to effect any object of the conspiracy, be  
2 punished as provided in subsection (a)(2).

3 “(2) The punishment for an offense under subsection  
4 (a)(1) of this section is—

5 “(A) imprisonment for any term of years or for  
6 life if the offense is conspiracy to murder or kidnap;  
7 and

8 “(B) imprisonment for not more than 35 years  
9 if the offense is conspiracy to maim.

10 “(b) Whoever, within the jurisdiction of the United  
11 States, conspires with one or more persons, regardless of  
12 where such other person or persons are located, to damage  
13 or destroy specific property situated within a foreign coun-  
14 try and belonging to a foreign government or to any politi-  
15 cal subdivision thereof with which the United States is at  
16 peace, or any railroad, canal, bridge, airport, airfield, or  
17 other public utility, public conveyance, or public structure,  
18 or any religious, educational, or cultural property so situ-  
19 ated, shall, if any of the conspirators commits an act with-  
20 in the jurisdiction of the United States to effect any object  
21 of the conspiracy, be imprisoned not more than 25 years.”.

22 (b) CLERICAL AMENDMENT.—The item relating to  
23 section 956 in the table of sections at the beginning of

1 chapter 45 of title 18, United States Code, is amended  
2 to read as follows:

“956. Conspiracy to kill, kidnap, maim, or injure persons or damage property  
in a foreign country.”.

3 **SEC. 106. CLARIFICATION AND EXTENSION OF CRIMINAL**  
4 **JURISDICTION OVER CERTAIN TERRORISM**  
5 **OFFENSES OVERSEAS.**

6 (a) AIRCRAFT PIRACY.—Section 46502(b) of title 49,  
7 United States Code, is amended—

8 (1) in paragraph (1), by striking “and later  
9 found in the United States”;

10 (2) so that paragraph (2) reads as follows:

11 “(2) There is jurisdiction over the offense in para-  
12 graph (1) if—

13 “(A) a national of the United States was  
14 aboard the aircraft;

15 “(B) an offender is a national of the United  
16 States; or

17 “(C) an offender is afterwards found in the  
18 United States.”; and

19 (3) by inserting after paragraph (2) the follow-  
20 ing:

21 “(3) For purposes of this subsection, the term ‘na-  
22 tional of the United States’ has the meaning prescribed  
23 in section 101(a)(22) of the Immigration and Nationality  
24 Act (8 U.S.C. 1101(a)(22)).”.

1 (b) DESTRUCTION OF AIRCRAFT OR AIRCRAFT FA-  
2 CILITIES.—Section 32(b) of title 18, United States Code,  
3 is amended—

4 (1) by striking “, if the offender is later found  
5 in the United States,”; and

6 (2) by inserting at the end the following:  
7 “There is jurisdiction over an offense under this  
8 subsection if a national of the United States was on  
9 board, or would have been on board, the aircraft; an  
10 offender is a national of the United States; or an of-  
11 fender is afterwards found in the United States. For  
12 purposes of this subsection, the term ‘national of the  
13 United States’ has the meaning prescribed in section  
14 101(a)(22) of the Immigration and Nationality  
15 Act.”.

16 (c) MURDER OF FOREIGN OFFICIALS AND CERTAIN  
17 OTHER PERSONS.—Section 1116 of title 18, United  
18 States Code, is amended—

19 (1) in subsection (b), by adding at the end the  
20 following:

21 “(7) ‘National of the United States’ has the  
22 meaning prescribed in section 101(a)(22) of the Im-  
23 migration and Nationality Act (8 U.S.C.  
24 1101(a)(22)).”; and

1           (2) in subsection (c), by striking the first sen-  
2           tence and inserting the following: “If the victim of  
3           an offense under subsection (a) is an internationally  
4           protected person outside the United States, the  
5           United States may exercise jurisdiction over the of-  
6           fense if (1) the victim is a representative, officer,  
7           employee, or agent of the United States, (2) an of-  
8           fender is a national of the United States, or (3) an  
9           offender is afterwards found in the United States.”.

10          (d) PROTECTION OF FOREIGN OFFICIALS AND CER-  
11          TAIN OTHER PERSONS.—Section 112 of title 18, United  
12          States Code, is amended—

13               (1) in subsection (c), by inserting “‘national of  
14               the United States’,” before “and”; and

15               (2) in subsection (e), by striking the first sen-  
16               tence and inserting the following: “If the victim of  
17               an offense under subsection (a) is an internationally  
18               protected person outside the United States, the  
19               United States may exercise jurisdiction over the of-  
20               fense if (1) the victim is a representative, officer,  
21               employee, or agent of the United States, (2) an of-  
22               fender is a national of the United States, or (3) an  
23               offender is afterwards found in the United States.”.

1 (e) THREATS AND EXTORTION AGAINST FOREIGN  
2 OFFICIALS AND CERTAIN OTHER PERSONS.—Section 878  
3 of title 18, United States Code, is amended—

4 (1) in subsection (c), by inserting “‘national of  
5 the United States’,” before “and”; and

6 (2) in subsection (d), by striking the first sen-  
7 tence and inserting the following: “If the victim of  
8 an offense under subsection (a) is an internationally  
9 protected person outside the United States, the  
10 United States may exercise jurisdiction over the of-  
11 fense if (1) the victim is a representative, officer,  
12 employee, or agent of the United States, (2) an of-  
13 fender is a national of the United States, or (3) an  
14 offender is afterwards found in the United States.”.

15 (f) KIDNAPPING OF INTERNATIONALLY PROTECTED  
16 PERSONS.—Section 1201(e) of title 18, United States  
17 Code, is amended—

18 (1) by striking the first sentence and inserting  
19 the following: “If the victim of an offense under sub-  
20 section (a) is an internationally protected person  
21 outside the United States, the United States may  
22 exercise jurisdiction over the offense if (1) the victim  
23 is a representative, officer, employee, or agent of the  
24 United States, (2) an offender is a national of the

1 United States, or (3) an offender is afterwards  
2 found in the United States.”; and

3 (2) by adding at the end the following: “For  
4 purposes of this subsection, the term ‘national of the  
5 United States’ has the meaning prescribed in section  
6 101(a)(22) of the Immigration and Nationality Act  
7 (8 U.S.C. 1101(a)(22)).”.

8 (g) VIOLENCE AT INTERNATIONAL AIRPORTS.—Sec-  
9 tion 37(b)(2) of title 18, United States Code, is  
10 amended—

11 (1) by inserting “(A)” before “the offender is  
12 later found in the United States”; and

13 (2) by inserting “; or (B) an offender or a vic-  
14 tim is a national of the United States (as defined in  
15 section 101(a)(22) of the Immigration and National-  
16 ity Act (8 U.S.C. 1101(a)(22)))” after “the offender  
17 is later found in the United States”.

18 (h) BIOLOGICAL WEAPONS.—Section 178 of title 18,  
19 United States Code, is amended—

20 (1) by striking “and” at the end of paragraph  
21 (3);

22 (2) by striking the period at the end of para-  
23 graph (4) and inserting “; and”; and

24 (3) by adding the following at the end:

1           “(5) the term ‘national of the United States’  
2           has the meaning prescribed in section 101(a)(22) of  
3           the Immigration and Nationality Act (8 U.S.C.  
4           1101(a)(22)).”.

5 **SEC. 107. EXPANSION AND MODIFICATION OF WEAPONS OF**  
6 **MASS DESTRUCTION STATUTE.**

7           Section 2332a of title 18, United States Code, is  
8 amended—

9           (1) in subsection (a)—

10                 (A) by inserting “AGAINST A NATIONAL  
11                 OR WITHIN THE UNITED STATES” after “OF-  
12                 FENSE”;

13                 (B) by inserting “, without lawful author-  
14                 ity” after “A person who”;

15                 (C) by inserting “threatens,” before “at-  
16                 tempts or conspires to use, a weapon of mass  
17                 destruction”; and

18                 (D) by inserting “and the results of such  
19                 use affect interstate or foreign commerce or, in  
20                 the case of a threat, attempt, or conspiracy,  
21                 would have affected interstate or foreign com-  
22                 merce” before the semicolon at the end of para-  
23                 graph (2);

1 (2) in subsection (b)(2)(A), by striking “section  
2 921” and inserting “section 921(a)(4) (other than  
3 subparagraphs (B) and (C))”;

4 (3) in subsection (b), so that subparagraph (B)  
5 of paragraph (2) reads as follows:

6 “(B) any weapon that is designed to cause  
7 death or serious bodily injury through the re-  
8 lease, dissemination, or impact of toxic or poi-  
9 sonous chemicals, or their precursors;”;

10 (4) by redesignating subsection (b) as sub-  
11 section (c); and

12 (5) by inserting after subsection (a) the follow-  
13 ing new subsection:

14 “(b) OFFENSE BY NATIONAL OUTSIDE THE UNITED  
15 STATES.—Any national of the United States who, without  
16 lawful authority and outside the United States, uses, or  
17 threatens, attempts, or conspires to use, a weapon of mass  
18 destruction shall be imprisoned for any term of years or  
19 for life, and if death results, shall be punished by death,  
20 or by imprisonment for any term of years or for life.”.

21 **SEC. 108. ADDITION OF OFFENSES TO THE MONEY LAUN-**  
22 **DERING STATUTE.**

23 (a) MURDER AND DESTRUCTION OF PROPERTY.—  
24 Section 1956(c)(7)(B)(ii) of title 18, United States Code,  
25 is amended by striking “or extortion;” and inserting “ex-

1 tortion, murder, or destruction of property by means of  
2 explosive or fire;”.

3 (b) SPECIFIC OFFENSES.—Section 1956(c)(7)(D) of  
4 title 18, United States Code, is amended—

5 (1) by inserting after “an offense under” the  
6 following: “section 32 (relating to the destruction of  
7 aircraft), section 37 (relating to violence at inter-  
8 national airports), section 115 (relating to influenc-  
9 ing, impeding, or retaliating against a Federal offi-  
10 cial by threatening or injuring a family member),”;

11 (2) by inserting after “section 215 (relating to  
12 commissions or gifts for procuring loans),” the fol-  
13 lowing: “section 351 (relating to Congressional or  
14 Cabinet officer assassination),”;

15 (3) by inserting after “section 793, 794, or 798  
16 (relating to espionage),” the following: “section 831  
17 (relating to prohibited transactions involving nuclear  
18 materials), section 844 (f) or (i) (relating to destruc-  
19 tion by explosives or fire of Government property or  
20 property affecting interstate or foreign commerce),”;

21 (4) by inserting after “section 875 (relating to  
22 interstate communications),” the following: “section  
23 956 (relating to conspiracy to kill, kidnap, maim, or  
24 injure certain property in a foreign country),”;

1           (5) by inserting after “1032 (relating to con-  
2           cealment of assets from conservator, receiver, or liq-  
3           uidating agent of financial institution),” the follow-  
4           ing: “section 1111 (relating to murder), section  
5           1114 (relating to protection of officers and employ-  
6           ees of the United States), section 1116 (relating to  
7           murder of foreign officials, official guests, or inter-  
8           nationally protected persons),”;

9           (6) by inserting after “section 1203 (relating to  
10          hostage taking),” the following: “section 1361 (relat-  
11          ing to willful injury of Government property), sec-  
12          tion 1363 (relating to destruction of property within  
13          the special maritime and territorial jurisdiction),”;

14          (7) by inserting after “section 1708 (theft from  
15          the mail),” the following: “section 1751 (relating to  
16          Presidential assassination),”;

17          (8) by inserting after “2114 (relating to bank  
18          and postal robbery and theft),” the following: “sec-  
19          tion 2280 (relating to violence against maritime  
20          navigation), section 2281 (relating to violence  
21          against maritime fixed platforms),”;

22          (9) by striking “of this title” and inserting the  
23          following: “section 2332 (relating to terrorist acts  
24          abroad against United States nationals), section  
25          2332a (relating to use of weapons of mass destruc-

1 tion), section 2332b (relating to international terror-  
2 ist acts transcending national boundaries), section  
3 2339A (relating to providing material support to ter-  
4 rorists) of this title, section 46502 of title 49, Unit-  
5 ed States Code”.

6 **SEC. 109. EXPANSION OF FEDERAL JURISDICTION OVER**  
7 **BOMB THREATS.**

8 Section 844(e) of title 18, United States Code, is  
9 amended by striking “commerce,” and inserting “inter-  
10 state or foreign commerce, or in or affecting interstate or  
11 foreign commerce,”.

12 **SEC. 110. CLARIFICATION OF MARITIME VIOLENCE JURIS-**  
13 **DICTION.**

14 Section 2280(b)(1)(A) of title 18, United States  
15 Code, is amended—

16 (1) in clause (ii), by striking “and the activity  
17 is not prohibited as a crime by the State in which  
18 the activity takes place”; and

19 (2) in clause (iii), by striking “the activity takes  
20 place on a ship flying the flag of a foreign country  
21 or outside the United States,”.

22 **SEC. 111. POSSESSION OF STOLEN EXPLOSIVES PROHIB-**  
23 **ITED.**

24 Section 842(h) of title 18, United States Code, is  
25 amended to read as follows:

1       “(h) It shall be unlawful for any person to receive,  
2 possess, transport, ship, conceal, store, barter, sell, dispose  
3 of, or pledge or accept as security for a loan, any stolen  
4 explosive materials which are moving as, which are part  
5 of, which constitute, or which have been shipped or trans-  
6 ported in, interstate or foreign commerce, either before or  
7 after such materials were stolen, knowing or having rea-  
8 sonable cause to believe that the explosive materials were  
9 stolen.”.

10 **SEC. 112. STUDY TO DETERMINE STANDARDS FOR DETER-**  
11 **MINING WHAT AMMUNITION IS CAPABLE OF**  
12 **PENETRATING POLICE BODY ARMOR.**

13       The National Institute of Justice is directed to per-  
14 form a study of, and to recommend to Congress, a meth-  
15 odology for determining what ammunition, designed for  
16 handguns, is capable of penetrating police body armor.  
17 Not later than 6 months after the date of the enactment  
18 of this Act, the National Institute of Justice shall report  
19 to Congress the results of such study and such rec-  
20 ommendations.

1                   **TITLE II—INCREASED**  
2                   **PENALTIES**

3   **SEC. 201. MANDATORY MINIMUM FOR CERTAIN EXPLO-**  
4                   **SIVES OFFENSES.**

5           (a) INCREASED PENALTIES FOR DAMAGING CERTAIN  
6 PROPERTY.—Section 844(f) of title 18, United States  
7 Code, is amended to read as follows:

8           “(f) Whoever damages or destroys, or attempts to  
9 damage or destroy, by means of fire or an explosive, any  
10 personal or real property in whole or in part owned, pos-  
11 sessed, or used by, or leased to, the United States, or any  
12 department or agency thereof, or any institution or organi-  
13 zation receiving Federal financial assistance shall be fined  
14 under this title or imprisoned for not more than 25 years,  
15 or both, but—

16           “(1) if personal injury results to any person  
17 other than the offender, the term of imprisonment  
18 shall be not more than 40 years;

19           “(2) if fire or an explosive is used and its use  
20 creates a substantial risk of serious bodily injury to  
21 any person other than the offender, the term of im-  
22 prisonment shall not be less than 20 years; and

23           “(3) if death results to any person other than  
24 the offender, the offender shall be subject to the

1 death penalty or imprisonment for any term of years  
2 not less than 30, or for life.”.

3 (b) CONFORMING AMENDMENT.—Section 81 of title  
4 18, United States Code, is amended by striking “fined  
5 under this title or imprisoned not more than five years,  
6 or both” and inserting “imprisoned not more than 25  
7 years or fined the greater of the fine under this title or  
8 the cost of repairing or replacing any property that is  
9 damaged or destroyed, or both”.

10 (c) STATUTE OF LIMITATION FOR ARSON OF-  
11 FENSES.—

12 (1) Chapter 213 of title 18, United States  
13 Code, is amended by adding at the end the follow-  
14 ing:

15 **“§ 3295. Arson offenses**

16 “No person shall be prosecuted, tried, or punished  
17 for any non-capital offense under section 81 or subsection  
18 (f), (h), or (i) of section 844 of this title unless the indict-  
19 ment is found or the information is instituted within 7  
20 years after the date on which the offense was committed.”.

21 (2) The table of sections at the beginning of  
22 chapter 213 of title 18, United States Code, is  
23 amended by adding at the end the following new  
24 item:

“3295. Arson offenses.”.

1           (3) Section 844(i) of title 18, United States  
2           Code, is amended by striking the last sentence.

3   **SEC. 202. INCREASED PENALTY FOR EXPLOSIVE CONSPIR-**  
4                                   **ACIES.**

5           Section 844 of title 18, United States Code, is  
6           amended by adding at the end the following:

7           “(n) Except as otherwise provided in this section, a  
8           person who conspires to commit any offense defined in this  
9           chapter shall be subject to the same penalties (other than  
10          the penalty of death) as those prescribed for the offense  
11          the commission of which was the object of the conspir-  
12          acy.”.

13   **SEC. 203. INCREASED AND ALTERNATE CONSPIRACY PEN-**  
14                                   **ALTIES FOR TERRORISM OFFENSES.**

15          (a) TITLE 18 OFFENSES.—

16                 (1) Sections 32(a)(7), 32(b)(4), 37(a),  
17                 115(a)(1)(A), 115(a)(2), 1203(a), 2280(a)(1)(H),  
18                 and 2281(a)(1)(F) of title 18, United States Code,  
19                 are each amended by inserting “or conspires” after  
20                 “attempts”.

21                 (2) Section 115(b)(2) of title 18, United States  
22                 Code, is amended by striking “or attempted kidnap-  
23                 ping” both places it appears and inserting “, at-  
24                 tempted kidnapping, or conspiracy to kidnap”.

1           (3)(A) Section 115(b)(3) of title 18, United  
2 States Code, is amended by striking “or attempted  
3 murder” and inserting “, attempted murder, or con-  
4 spiracy to murder”.

5           (B) Section 115(b)(3) of title 18, United States  
6 Code, is amended by striking “and 1113” and in-  
7 serting “, 1113, and 1117”.

8           (4) Section 175(a) of title 18, United States  
9 Code, is amended by inserting “or conspires to do  
10 so,” after “any organization to do so,”.

11 (b) AIRCRAFT PIRACY.—

12           (1) Section 46502(a)(2) of title 49, United  
13 States Code, is amended by inserting “or conspir-  
14 ing” after “attempting”.

15           (2) Section 46502(b)(1) of title 49, United  
16 States Code, is amended by inserting “or conspiring  
17 to commit” after “committing”.

18 **SEC. 204. MANDATORY PENALTY FOR TRANSFERRING A**  
19 **FIREARM KNOWING THAT IT WILL BE USED**  
20 **TO COMMIT A CRIME OF VIOLENCE.**

21 Section 924(h) of title 18, United States Code, is  
22 amended—

23           (1) by inserting “or having reasonable cause to  
24 believe” after “knowing”; and

1           (2) by striking “imprisoned not more than 10  
2           years, fined in accordance with this title, or both.”  
3           and inserting “subject to the same penalties as may  
4           be imposed under subsection (c) for a first convic-  
5           tion for the use or carrying of the firearm.”.

6 **SEC. 205. MANDATORY PENALTY FOR TRANSFERRING AN**  
7                           **EXPLOSIVE MATERIAL KNOWING THAT IT**  
8                           **WILL BE USED TO COMMIT A CRIME OF VIO-**  
9                           **LENCE.**

10          Section 844 of title 18, United States Code, is  
11          amended by adding at the end the following:

12          “(o) Whoever knowingly transfers any explosive ma-  
13          terials, knowing or having reasonable cause to believe that  
14          such explosive materials will be used to commit a crime  
15          of violence (as defined in section 924(c)(3) of this title)  
16          or drug trafficking crime (as defined in section 924(c)(2)  
17          of this title) shall be subject to the same penalties as may  
18          be imposed under subsection (h) for a first conviction for  
19          the use or carrying of the explosive materials.”.

20 **SEC. 206. DIRECTIONS TO SENTENCING COMMISSION.**

21          The United States Sentencing Commission shall  
22          forthwith, in accordance with the procedures set forth in  
23          section 21(a) of the Sentencing Act of 1987, as though  
24          the authority under that section had not expired, amend  
25          the sentencing guidelines so that the chapter 3 adjustment

1 relating to international terrorism only applies to Federal  
2 crimes of terrorism, as defined in section 2332b(g) of title  
3 18, United States Code.

## 4           **TITLE III—INVESTIGATIVE** 5                           **TOOLS**

### 6 **SEC. 301. PEN REGISTERS AND TRAP AND TRACE DEVICES** 7                           **IN FOREIGN COUNTERINTELLIGENCE INVES-** 8                           **TIGATIONS.**

9           (a) APPLICATION.—Section 3122(b)(2) of title 18,  
10 United States Code, is amended by inserting “or foreign  
11 counterintelligence” after “criminal”.

12           (b) ORDER.—

13                 (1) Section 3123(a) of title 18, United States  
14 Code, is amended by inserting “or foreign counter-  
15 intelligence” after “criminal”.

16                 (2) Section 3123(b)(1) of title 18, United  
17 States Code, is amended in subparagraph (B), by  
18 striking “criminal”.

### 19 **SEC. 302. DISCLOSURE OF CERTAIN CONSUMER REPORTS** 20                           **TO THE FEDERAL BUREAU OF INVESTIGA-** 21                           **TION.**

22           (a) IN GENERAL.—The Fair Credit Reporting Act  
23 (15 U.S.C. 1681 et seq.) is amended by adding after sec-  
24 tion 623 the following:

1 **“SEC. 624. DISCLOSURES TO THE FEDERAL BUREAU OF IN-**  
2 **VESTIGATION FOR FOREIGN COUNTERINTEL-**  
3 **LIGENCE PURPOSES.**

4 “(a) IDENTITY OF FINANCIAL INSTITUTIONS.—(1)  
5 Notwithstanding section 604 or any other provision of this  
6 title, a court or magistrate judge may issue an order ex  
7 parte, upon application by the Director of the Federal Bu-  
8 reau of Investigation (or the Director’s designee, whose  
9 rank shall be no lower than Assistant Special Agent in  
10 Charge), directing a consumer reporting agency to furnish  
11 to the Federal Bureau of Investigation the names and ad-  
12 dresses of all financial institutions (as that term is defined  
13 in section 1101 of the Right to Financial Privacy Act of  
14 1978) at which a consumer maintains or has maintained  
15 an account, to the extent that information is in the files  
16 of the agency. The court or magistrate judge shall issue  
17 the order if the court or magistrate judge finds, that—

18 “(A) such information is necessary for the con-  
19 duct of an authorized foreign counterintelligence in-  
20 vestigation; and

21 “(B) there are specific and articulable facts giv-  
22 ing reason to believe that the consumer—

23 “(i) is a foreign power (as defined in sec-  
24 tion 101 of the Foreign Intelligence Surveil-  
25 lance Act of 1978) or a person who is not a  
26 United States person (as defined in such sec-

1           tion 101) and is an official of a foreign power;  
2           or

3           “(ii) is an agent of a foreign power and is  
4           engaging or has engaged in international terror-  
5           ism (as that term is defined in section 101(c)  
6           of the Foreign Intelligence Surveillance Act of  
7           1978) or clandestine intelligence activities that  
8           involve or may involve a violation of criminal  
9           statutes of the United States.

10          “(2) An order issued under this subsection shall not  
11         disclose that it is issued for purposes of a counterintel-  
12         ligence investigation.

13          “(b) IDENTIFYING INFORMATION.—(1) Notwith-  
14         standing section 604 or any other provision of this title,  
15         a court or magistrate judge shall issue an order ex parte,  
16         upon application by the Director of the Federal Bureau  
17         of Investigation (or the Director’s designee, whose rank  
18         shall be no lower than Assistant Special Agent in Charge),  
19         directing a consumer reporting agency to furnish identify-  
20         ing information respecting a consumer, limited to name,  
21         address, former addresses, places of employment, or  
22         former places of employment, to the Federal Bureau of  
23         Investigation. The court or magistrate judge shall issue  
24         the order if the court or magistrate judge finds, that—

1           “(A) such information is necessary to the con-  
2           duct of an authorized foreign counterintelligence in-  
3           vestigation; and

4           “(B) there is information giving reason to be-  
5           lieve that the consumer has been, or is, in contact  
6           with a foreign power or an agent of a foreign power  
7           (as defined in section 101 of the Foreign Intelligence  
8           Surveillance Act of 1978).

9           “(2) An order issued under this subsection shall not  
10          disclose that it is issued for purposes of a counterintel-  
11          ligence investigation.

12          “(c) COURT ORDER FOR DISCLOSURE OF CONSUMER  
13          REPORTS.—(1) Notwithstanding section 604 or any other  
14          provision of this title, if requested in writing by the Direc-  
15          tor of the Federal Bureau of Investigation (or the Direc-  
16          tor’s designee, whose rank shall be no lower than Assistant  
17          Special Agent in Charge), a court may issue an order ex  
18          parte directing a consumer reporting agency to furnish a  
19          consumer report to the Federal Bureau of Investigation,  
20          after the court or magistrate finds, in a proceeding in  
21          camera, that—

22                 “(A) the consumer report is necessary for the  
23                 conduct of an authorized foreign counterintelligence  
24                 investigation; and

1           “(B) there are specific and articulable facts giving  
2           reason to believe that the consumer whose  
3           consumer report is sought—

4                   “(i) is an agent of a foreign power; and

5                   “(ii) is engaging or has engaged in international terrorism (as that term is defined in  
6           section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a  
7           violation of criminal statutes of the United  
8           States.  
9           States.

12           “(2) An order issued under this subsection shall not  
13           disclose that it is issued for purposes of a counterintelligence investigation.

15           “(d) CONFIDENTIALITY.—(1) No consumer reporting  
16           agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person, other than officers,  
17           employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to  
18           the Federal Bureau of Investigation under this section,  
19           that the Federal Bureau of Investigation has sought or  
20           obtained the identity of financial institutions or a  
21           consumer report respecting any consumer under sub-  
22           section (a), (b), or (c).  
23             
24

1       “(2) No consumer reporting agency or officer, em-  
2 ployee, or agent of a consumer reporting agency shall in-  
3 clude in any consumer report any information that would  
4 indicate that the Federal Bureau of Investigation has  
5 sought or obtained such information or a consumer report.

6       “(e) PAYMENT OF FEES.—The Federal Bureau of  
7 Investigation is authorized, subject to the availability of  
8 appropriations, pay to the consumer reporting agency as-  
9 sembling or providing reports or information in accord-  
10 ance with procedures established under this section, a fee  
11 for reimbursement for such costs as are reasonably nec-  
12 essary and which have been directly incurred in searching,  
13 reproducing, or transporting books, papers, records, or  
14 other data required or requested to be produced under this  
15 section.

16       “(f) LIMIT ON DISSEMINATION.—The Federal Bu-  
17 reau of Investigation may not disseminate information ob-  
18 tained pursuant to this section outside of the Federal Bu-  
19 reau of Investigation, except—

20               “(1) to the Department of Justice or any other  
21 law enforcement agency, as may be necessary for the  
22 approval or conduct of a foreign counterintelligence  
23 investigation; or

24               “(2) where the information concerns a person  
25 subject to the Uniform Code of Military Justice, to

1 appropriate investigative authorities within the mili-  
2 tary department concerned as may be necessary for  
3 the conduct of a joint foreign counterintelligence in-  
4 vestigation.

5 “(g) RULES OF CONSTRUCTION.—Nothing in this  
6 section shall be construed to prohibit information from  
7 being furnished by the Federal Bureau of Investigation  
8 pursuant to a subpoena or court order, or in connection  
9 with a judicial or administrative proceeding to enforce the  
10 provisions of this Act. Nothing in this section shall be con-  
11 strued to authorize or permit the withholding of informa-  
12 tion from the Congress.

13 “(h) REPORTS TO CONGRESS.—On an annual basis,  
14 the Attorney General shall fully inform the Permanent Se-  
15 lect Committee on Intelligence and the Committee on  
16 Banking and Financial Services of the House of Rep-  
17 resentatives, and the Select Committee on Intelligence and  
18 the Committee on Banking, Housing, and Urban Affairs  
19 of the Senate concerning all requests made pursuant to  
20 subsections (a), (b), and (c).

21 “(i) DAMAGES.—Any agency or department of the  
22 United States obtaining or disclosing any consumer re-  
23 ports, records, or information contained therein in viola-  
24 tion of this section is liable to any person harmed by the  
25 violation in an amount equal to the sum of—

1           “(1) \$100, without regard to the volume of  
2           consumer reports, records, or information involved;

3           “(2) any actual damages sustained by the per-  
4           son harmed as a result of the disclosure;

5           “(3) if the violation is found to have been will-  
6           ful or intentional, such punitive damages as a court  
7           may allow; and

8           “(4) in the case of any successful action to en-  
9           force liability under this subsection, the costs of the  
10          action, together with reasonable attorney fees, as de-  
11          termined by the court.

12          “(j) DISCIPLINARY ACTIONS FOR VIOLATIONS.—If a  
13          court determines that any agency or department of the  
14          United States has violated any provision of this section  
15          and the court finds that the circumstances surrounding  
16          the violation raise questions of whether or not an officer  
17          or employee of the agency or department acted willfully  
18          or intentionally with respect to the violation, the agency  
19          or department shall promptly initiate a proceeding to de-  
20          termine whether or not disciplinary action is warranted  
21          against the officer or employee who was responsible for  
22          the violation.

23          “(k) GOOD-FAITH EXCEPTION.—Notwithstanding  
24          any other provision of this title, any consumer reporting  
25          agency or agent or employee thereof making disclosure of

1 consumer reports or identifying information pursuant to  
2 this subsection in good-faith reliance upon a certification  
3 of the Federal Bureau of Investigation pursuant to provi-  
4 sions of this section shall not be liable to any person for  
5 such disclosure under this title, the constitution of any  
6 State, or any law or regulation of any State or any politi-  
7 cal subdivision of any State notwithstanding.

8 “(l) INJUNCTIVE RELIEF.—In addition to any other  
9 remedy contained in this section, injunctive relief shall be  
10 available to require compliance with the procedures of this  
11 section. In the event of any successful action under this  
12 subsection, costs together with reasonable attorney fees,  
13 as determined by the court, may be recovered.”.

14 (b) CLERICAL AMENDMENT.—The table of sections  
15 at the beginning of the Fair Credit Reporting Act (15  
16 U.S.C. 1681a et seq.) is amended by adding after the item  
17 relating to section 623 the following new item:

“624. Disclosures to the Federal Bureau of Investigation for foreign counter-  
intelligence purposes.”.

18 **SEC. 303. DISCLOSURE OF BUSINESS RECORDS HELD BY**  
19 **THIRD PARTIES IN FOREIGN COUNTERINTEL-**  
20 **LIGENCE CASES.**

21 (a) IN GENERAL.—Title 18, United States Code, is  
22 amended by inserting after chapter 121 the following:



1 of the Foreign Intelligence Surveillance Act of  
2 1978) or clandestine intelligence activities that  
3 involve or may involve a violation of criminal  
4 statutes of the United States.

5 “(2) An order issued under this subsection shall not  
6 disclose that it is issued for purposes of a counterintel-  
7 ligence investigation.

8 “(b) No common carrier, public accommodation facil-  
9 ity, physical storage facility, or vehicle rental facility, or  
10 any officer, employee, or agent of such common carrier,  
11 public accommodation facility, physical storage facility, or  
12 vehicle rental facility, shall disclose to any person, other  
13 than those officers, agents, or employees of the common  
14 carrier, public accommodation facility, physical storage fa-  
15 cility, or vehicle rental facility necessary to fulfill the re-  
16 quirement to disclose the information to the Federal Bu-  
17 reau of Investigation under this section.

18 “(c)(1) The Federal Bureau of Investigation may not  
19 disseminate information obtained pursuant to this section  
20 outside the Federal Bureau of Investigation, except—

21 “(A) to the Department of Justice or any other  
22 law enforcement agency, as may be necessary for the  
23 approval or conduct of a foreign counterintelligence  
24 investigation; or

1           “(B) where the information concerns a person  
2           subject to the Uniform Code of Military Justice, to  
3           appropriate investigative authorities within the mili-  
4           tary department concerned as may be necessary for  
5           the conduct of a joint foreign counterintelligence in-  
6           vestigation.

7           “(2) Any agency or department of the United States  
8           obtaining or disclosing any information in violation of this  
9           paragraph shall be liable to any person harmed by the vio-  
10          lation in an amount equal to the sum of—

11           “(A) \$100 without regard to the volume of in-  
12          formation involved;

13           “(B) any actual damages sustained by the per-  
14          son harmed as a result of the violation;

15           “(C) if the violation is willful or intentional,  
16          such punitive damages as a court may allow; and

17           “(D) in the case of any successful action to en-  
18          force liability under this paragraph, the costs of the  
19          action, together with reasonable attorney fees, as de-  
20          termined by the court.

21          “(d) If a court determines that any agency or depart-  
22          ment of the United States has violated any provision of  
23          this section and the court finds that the circumstances  
24          surrounding the violation raise questions of whether or not  
25          an officer or employee of the agency or department acted

1 willfully or intentionally with respect to the violation, the  
2 agency or department shall promptly initiate a proceeding  
3 to determine whether or not disciplinary action is war-  
4 ranted against the officer or employee who was responsible  
5 for the violation.

6 “(e) As used in this section—

7 “(1) the term ‘common carrier’ means a loco-  
8 motive, rail carrier, bus carrying passengers, water  
9 common carrier, air common carrier, or private com-  
10 mercial interstate carrier for the delivery of pack-  
11 ages and other objects;

12 “(2) the term ‘public accommodation facility’  
13 means any inn, hotel, motel, or other establishment  
14 that provides lodging to transient guests;

15 “(3) the term ‘physical storage facility’ means  
16 any business or entity that provides space for the  
17 storage of goods or materials, or services related to  
18 the storage of goods or materials, to the public or  
19 any segment thereof; and

20 “(4) the term ‘vehicle rental facility’ means any  
21 person or entity that provides vehicles for rent,  
22 lease, loan, or other similar use, to the public or any  
23 segment thereof.”.

24 (b) CLERICAL AMENDMENT.—The table of chapters  
25 at the beginning of part I of title 18, United States Code,

1 is amended by inserting after the item relating to chapter  
2 121 the following new item:

“**122. Access to certain records** ..... **2720**”.

3 **SEC. 304. STUDY OF TAGGING EXPLOSIVE MATERIALS, DE-**  
4 **TECTION OF EXPLOSIVES AND EXPLOSIVE**  
5 **MATERIALS, RENDERING EXPLOSIVE COMPO-**  
6 **NENTS INERT, AND IMPOSING CONTROLS OF**  
7 **PRECURSORS OF EXPLOSIVES.**

8 (a) **STUDY.**—The Attorney General, in consultation  
9 with other Federal, State and local officials with expertise  
10 in this area and such other individuals as the Attorney  
11 General deems appropriate, shall conduct a study concern-  
12 ing—

13 (1) the tagging of explosive materials for pur-  
14 poses of detection and identification;

15 (2) technology for devices to improve the detec-  
16 tion of explosives materials;

17 (3) whether common chemicals used to manu-  
18 facture explosive materials can be rendered inert and  
19 whether it is feasible to require it; and

20 (4) whether controls can be imposed on certain  
21 precursor chemicals used to manufacture explosive  
22 materials and whether it is feasible to require it.

23 (b) **REPORT.**—Not later than 180 days after the date  
24 of the enactment of this Act, the Attorney General shall  
25 submit to the Congress a report that contains the results

1 of the study required by this section. The Attorney Gen-  
2 eral shall make the report available to the public.

3 **SEC. 305. APPLICATION OF STATUTORY EXCLUSIONARY**  
4 **RULE CONCERNING INTERCEPTED WIRE OR**  
5 **ORAL COMMUNICATIONS.**

6 Section 2515 of title 18, United States Code, is  
7 amended by adding at the end the following: “This section  
8 shall not apply to the disclosure by the United States in  
9 a criminal trial or hearing or before a grand jury of the  
10 contents of a wire or oral communication, or evidence de-  
11 rived therefrom, if any law enforcement officers who inter-  
12 cepted the communication or gathered the evidence de-  
13 rived therefrom acted with the reasonably objective belief  
14 that their actions were in compliance with this chapter.”.

15 **SEC. 306. EXCLUSION OF CERTAIN TYPES OF INFORMATION**  
16 **FROM WIRETAP-RELATED DEFINITIONS.**

17 (a) DEFINITION OF “ELECTRONIC COMMUNICA-  
18 TION”.—Section 2510(12) of title 18, United States Code,  
19 is amended—

20 (1) by striking “or” at the end of subparagraph

21 (B);

22 (2) by inserting “or” at the end of subpara-  
23 graph (C); and

24 (3) by adding a new subparagraph (D), as fol-  
25 lows:

1           “(D) information stored in a communica-  
2           tions system used for the electronic storage and  
3           transfer of funds;”

4           (b) DEFINITION OF “READILY ACCESSIBLE TO THE  
5 GENERAL PUBLIC”.—Section 2510(16) of title 18, United  
6 States Code, is amended—

7           (1) by inserting “or” at the end of subpara-  
8           graph (D);

9           (2) by striking “or” at the end of subparagraph  
10          (E); and

11          (3) by striking subparagraph (F).

12 **SEC. 307. ACCESS TO TELEPHONE BILLING RECORDS.**

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

15          (1) in paragraph (1)(A), by inserting “local and  
16          long distance” before “toll billing records”;

17          (2) by striking “and” at the end of paragraph  
18          (1);

19          (3) by striking the period at the end of para-  
20          graph (2) and inserting “; and”; and

21          (4) by adding at the end a new paragraph (3),  
22          as follows:

23                 “(3) request the name, address, length of serv-  
24                 ice, and local and long distance toll billing records  
25                 of a person or entity if the Director or the Director’s

1       designee (in a position not lower than Deputy As-  
2       sistant Director) certifies in writing to the wire or  
3       electronic communication service provider to which  
4       the request is made that the information sought is  
5       relevant to an authorized international terrorism in-  
6       vestigation (as defined in section 2331 of this  
7       title).”.

8       (b) SECTION 2703.—Section 2703(c)(1)(C) of title  
9       18, United States Code, is amended by inserting “local  
10      and long distance” before “telephone toll billing records”.

11      (c) CIVIL REMEDY.—Section 2707 of title 18, United  
12      States Code, is amended—

13           (1) in subsection (a), by striking “customer”  
14           and inserting “any other person”;

15           (2) in subsection (c), inserting before the period  
16           at the end the following: “, and if the violation is  
17           willful or intentional, such punitive damages as the  
18           court may allow, and, in the case of any successful  
19           action to enforce liability under this section, the  
20           costs of the action, together with reasonable attorney  
21           fees, as determined by the court”; and

22           (3) by adding at the end the following:

23      “(f) DISCIPLINARY ACTIONS FOR VIOLATIONS.—If a  
24      court determines that any agency or department of the  
25      United States has violated this chapter and the court finds

1 that the circumstances surrounding the violation raise  
2 questions of whether or not an officer or employee of the  
3 agency or department acted willfully or intentionally with  
4 respect to the violation, the agency or department shall  
5 promptly initiate a proceeding to determine whether or not  
6 disciplinary action is warranted against the officer or em-  
7 ployee who was responsible for the violation.”.

8 **SEC. 308. REQUIREMENT TO PRESERVE RECORD EVI-**  
9 **DENCE.**

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

12 “(f) REQUIREMENT TO PRESERVE EVIDENCE.—A  
13 provider of wire or electronic communication services or  
14 a remote computing service, upon the request of a govern-  
15 mental entity, shall take all necessary steps to preserve  
16 records, and other evidence in its possession pending the  
17 issuance of a court order or other process. Such records  
18 shall be retained for a period of 90 days, which period  
19 shall be extended for an additional 90-day period upon a  
20 renewed request by the governmental entity.”.

21 **SEC. 309. DETENTION HEARING.**

22 Section 3142(f) of title 18, United States Code, is  
23 amended by inserting “(not including any intermediate  
24 Saturday, Sunday, or legal holiday)” after “five days” and  
25 after “three days”.

1 **SEC. 310. REWARD AUTHORITY OF THE ATTORNEY GEN-**  
2 **ERAL.**

3 (a) IN GENERAL.—Title 18, United States Code, is  
4 amended by striking sections 3059 through 3059A and in-  
5 serting the following:

6 **“§ 3059. Reward authority of the Attorney General**

7 “(a) The Attorney General may pay rewards and re-  
8 ceive from any department or agency, funds for the pay-  
9 ment of rewards under this section, to any individual who  
10 provides any information unknown to the Government  
11 leading to the arrest or prosecution of any individual for  
12 Federal felony offenses.

13 “(b) If the reward exceeds \$100,000, the Attorney  
14 General shall give notice of that fact to the Senate and  
15 the House of Representatives not later than 30 days be-  
16 fore authorizing the payment of the reward.

17 “(c) A determination made by the Attorney General  
18 as to whether to authorize an award under this section  
19 and as to the amount of any reward authorized shall not  
20 be subject to judicial review.

21 “(d) If the Attorney General determines that the  
22 identity of the recipient of a reward or of the members  
23 of the recipient’s immediate family must be protected, the  
24 Attorney General may take such measures in connection  
25 with the payment of the reward as the Attorney General  
26 deems necessary to effect such protection.



1 Federal Government and used by Federal law en-  
2 forcement authorities; and

3 (2) to prohibit any person or entity from con-  
4 ducting business on any property immediately adja-  
5 cent to any such building.

6 **SEC. 312. STUDY OF THEFTS FROM ARMORIES; REPORT TO**  
7 **THE CONGRESS.**

8 (a) STUDY.—The Attorney General of the United  
9 States shall conduct a study of the extent of thefts from  
10 military arsenals (including National Guard armories) of  
11 firearms, explosives, and other materials that are poten-  
12 tially useful to terrorists.

13 (b) REPORT TO THE CONGRESS.—Within 6 months  
14 after the date of the enactment of this Act, the Attorney  
15 General shall submit to the Congress a report on the study  
16 required by subsection (a).

17 **TITLE IV—NUCLEAR MATERIALS**

18 **SEC. 401. EXPANSION OF NUCLEAR MATERIALS PROHIBI-**  
19 **TIONS.**

20 Section 831 of title 18, United States Code, is  
21 amended—

22 (1) in subsection (a), by striking “nuclear mate-  
23 rial” each place it appears and inserting “nuclear  
24 material or nuclear byproduct material”;

1           (2) in subsection (a)(1)(A), by inserting “or the  
2 environment” after “property”;

3           (3) so that subsection (a)(1)(B) reads as fol-  
4 lows:

5                   “(B)(i) circumstances exist which are likely  
6 to cause the death of or serious bodily injury to  
7 any person or substantial damage to property  
8 or the environment; or (ii) such circumstances  
9 are represented to the defendant to exist;”;

10          (4) in subsection (a)(6), by inserting “or the  
11 environment” after “property”;

12          (5) so that subsection (c)(2) reads as follows:

13                   “(2) an offender or a victim is a national of the  
14 United States or a United States corporation or  
15 other legal entity;”;

16          (6) in subsection (c)(3), by striking “at the  
17 time of the offense the nuclear material is in use,  
18 storage, or transport, for peaceful purposes, and”;

19          (7) by striking “or” at the end of subsection  
20 (c)(3);

21          (8) in subsection (c)(4), by striking “nuclear  
22 material for peaceful purposes” and inserting “nu-  
23 clear material or nuclear byproduct material”;

24          (9) by striking the period at the end of sub-  
25 section (c)(4) and inserting “; or”;

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

3           “(5) the governmental entity under subsection  
4 (a)(5) is the United States or the threat under sub-  
5 section (a)(6) is directed at the United States.”;

6           (11) in subsection (f)(1)(A), by striking “with  
7 an isotopic concentration not in excess of 80 percent  
8 plutonium 238”;

9           (12) in subsection (f)(1)(C) by inserting “en-  
10 riched uranium, defined as” before “uranium”;

11           (13) in subsection (f), by redesignating para-  
12 graphs (2), (3), and (4) as paragraphs (3), (4), and  
13 (5), respectively;

14           (14) by inserting after subsection (f)(1) the  
15 following:

16           “(2) the term ‘nuclear byproduct material’  
17 means any material containing any radioactive iso-  
18 tope created through an irradiation process in the  
19 operation of a nuclear reactor or accelerator;”;

20           (15) by striking “and” at the end of subsection  
21 (f)(4), as redesignated;

22           (16) by striking the period at the end of sub-  
23 section (f)(5), as redesignated, and inserting a semi-  
24 colon; and

1           (17) by adding at the end of subsection (f) the  
2 following:

3           “(6) the term ‘national of the United States’  
4 has the meaning prescribed in section 101(a)(22) of  
5 the Immigration and Nationality Act (8 U.S.C.  
6 1101(a)(22)); and

7           “(7) the term ‘United States corporation or  
8 other legal entity’ means any corporation or other  
9 entity organized under the laws of the United States  
10 or any State, district, commonwealth, territory or  
11 possession of the United States.”.

12 **TITLE V—CONVENTION ON THE**  
13 **MARKING OF PLASTIC EXPLO-**  
14 **SIVES**

15 **SEC. 501. DEFINITIONS.**

16       Section 841 of title 18, United States Code, is  
17 amended by adding at the end the following:

18           “(o) ‘Convention on the Marking of Plastic Ex-  
19 plosives’ means the Convention on the Marking of  
20 Plastic Explosives for the Purpose of Detection,  
21 Done at Montreal on 1 March 1991.

22           “(p) ‘Detection agent’ means any one of the  
23 substances specified in this subsection when intro-  
24 duced into a plastic explosive or formulated in such  
25 explosive as a part of the manufacturing process in

1 such a manner as to achieve homogeneous distribu-  
2 tion in the finished explosive, including—

3 “(1) Ethylene glycol dinitrate (EGDN),  
4  $C_2H_4(NO_3)_2$ , molecular weight 152, when the  
5 minimum concentration in the finished explosive  
6 is 0.2 percent by mass;

7 “(2) 2,3-Dimethyl-2,3-dinitrobutane  
8 (DMNB),  $C_6H_{12}(NO_2)_2$ , molecular weight 176,  
9 when the minimum concentration in the fin-  
10 ished explosive is 0.1 percent by mass;

11 “(3) Para-Mononitrotoluene (p-MNT),  
12  $C_7H_7NO_2$ , molecular weight 137, when the min-  
13 imum concentration in the finished explosive is  
14 0.5 percent by mass;

15 “(4) Ortho-Mononitrotoluene (o-MNT),  
16  $C_7H_7NO_2$ , molecular weight 137, when the min-  
17 imum concentration in the finished explosive is  
18 0.5 percent by mass; and

19 “(5) any other substance in the concentra-  
20 tion specified by the Secretary, after consulta-  
21 tion with the Secretary of State and the Sec-  
22 retary of Defense, which has been added to the  
23 table in part 2 of the Technical Annex to the  
24 Convention on the Marking of Plastic Explo-  
25 sives.

1           “(q) ‘Plastic explosive’ means an explosive ma-  
2           terial in flexible or elastic sheet form formulated  
3           with one or more high explosives which in their pure  
4           form have a vapor pressure less than  $10^{-4}$  Pa at a  
5           temperature of 25°C., is formulated with a binder  
6           material, and is as a mixture malleable or flexible at  
7           normal room temperature.”.

8   **SEC. 502. REQUIREMENT OF DETECTION AGENTS FOR**  
9                                   **PLASTIC EXPLOSIVES.**

10          Section 842 of title 18, United States Code, is  
11          amended by adding at the end the following:

12          “(l) It shall be unlawful for any person to manufac-  
13          ture any plastic explosive which does not contain a detec-  
14          tion agent.

15          “(m)(1) it shall be unlawful for any person to import  
16          or bring into the United States, or export from the United  
17          States, any plastic explosive which does not contain a de-  
18          tection agent.

19          “(2) Until the 15-year period that begins with the  
20          date of entry into force of the Convention on the Marking  
21          of Plastic Explosives with respect to the United States has  
22          expired, paragraph (1) shall not apply to the importation  
23          or bringing into the United States, or the exportation from  
24          the United States, of any plastic explosive which was im-  
25          ported, brought into, or manufactured in the United

1 States before the effective date of this subsection by or  
2 on behalf of any agency of the United States performing  
3 military or police functions (including any military Re-  
4 serve component) or by or on behalf of the National Guard  
5 of any State.

6 “(n)(1) It shall be unlawful for any person to ship,  
7 transport, transfer, receive, or possess any plastic explo-  
8 sive which does not contain a detection agent.

9 “(2)(A) During the 3-year period that begins on the  
10 effective date of this subsection, paragraph (1) shall not  
11 apply to the shipment, transportation, transfer, receipt, or  
12 possession of any plastic explosive, which was imported,  
13 brought into, or manufactured in the United States before  
14 such effective date by any person.

15 “(B) Until the 15-year period that begins on the date  
16 of entry into force of the Convention on the Marking of  
17 Plastic Explosives with respect to the United States has  
18 expired, paragraph (1) shall not apply to the shipment,  
19 transportation, transfer, receipt, or possession of any plas-  
20 tic explosive, which was imported, brought into, or manu-  
21 factured in the United States before the effective date of  
22 this subsection by or on behalf of any agency of the United  
23 States performing a military or police function (including  
24 any military reserve component) or by or on behalf of the  
25 National Guard of any State.

1       “(o) It shall be unlawful for any person, other than  
2 an agency of the United States (including any military re-  
3 serve component) or the National Guard of any State, pos-  
4 sessed any plastic explosive on the effective date of this  
5 subsection, to fail to report to the Secretary within 120  
6 days after the effective date of this subsection the quantity  
7 of such explosives possessed, the manufacturer or im-  
8 porter, any marks of identification on such explosives, and  
9 such other information as the Secretary may by regula-  
10 tions prescribe.”.

11 **SEC. 503. CRIMINAL SANCTIONS.**

12       Section 844(a) of title 18, United States Code, is  
13 amended to read as follows:

14       “(a) Any person who violates subsections (a) through  
15 (i) or (l) through (o) of section 842 of this title shall be  
16 fined under this title, imprisoned not more than 10 years,  
17 or both.”.

18 **SEC. 504. EXCEPTIONS.**

19       Section 845 of title 18, United States Code, is  
20 amended—

21             (1) in subsection (a), by inserting “(l), (m), (n),  
22 or (o) of section 842 and subsections” after “sub-  
23 sections”;

24             (2) in subsection (a)(1), by inserting “and  
25 which pertains to safety” before the semicolon; and

1 (3) by adding at the end the following:

2 “(c) It is an affirmative defense against any proceed-  
3 ing involving subsection (l), (m), (n), or (o) of section 842  
4 of this title if the proponent proves by a preponderance  
5 of the evidence that the plastic explosive—

6 “(1) consisted of a small amount of plastic ex-  
7 plosive intended for and utilized solely in lawful—

8 “(A) research, development, or testing of  
9 new or modified explosive materials;

10 “(B) training in explosives detection or de-  
11 velopment or testing of explosives detection  
12 equipment; or

13 “(C) forensic science purposes; or

14 “(2) was plastic explosive which, within 3 years  
15 after the effective date of this paragraph, will be or  
16 is incorporated in a military device within the terri-  
17 tory of the United States and remains an integral  
18 part of such military device, or is intended to be, or  
19 is incorporated in, and remains an integral part of  
20 a military device that is intended to become, or has  
21 become, the property of any agency of the United  
22 States performing military or police functions (in-  
23 cluding any military reserve component) or the Na-  
24 tional Guard of any State, wherever such device is  
25 located. For purposes of this subsection, the term

1 ‘military device’ includes shells, bombs, projectiles,  
 2 mines, missiles, rockets, shaped charges, grenades,  
 3 perforators, and similar devices lawfully manufac-  
 4 tured exclusively for military or police purposes.”.

5 **SEC. 505. EFFECTIVE DATE.**

6 The amendments made by this title shall take effect  
 7 1 year after the date of the enactment of this Act.

8 **TITLE VI—IMMIGRATION-**  
 9 **RELATED PROVISIONS**  
 10 **Subtitle A—Removal of Alien**  
 11 **Terrorists**

12 **PART 1—REMOVAL PROCEDURES FOR ALIEN**  
 13 **TERRORISTS**

14 **SEC. 601. REMOVAL PROCEDURES FOR ALIEN TERRORISTS.**

15 (a) IN GENERAL.—The Immigration and Nationality  
 16 Act is amended—

17 (1) by adding at the end of the table of con-  
 18 tents the following:

“TITLE V—SPECIAL REMOVAL PROCEDURES FOR ALIEN TERRORISTS

“Sec. 501. Definitions.

“Sec. 502. Establishment of special removal court; panel of attorneys to assist  
 with classified information.

“Sec. 503. Application for initiation of special removal proceeding.

“Sec. 504. Consideration of application.

“Sec. 505. Special removal hearings.

“Sec. 506. Consideration of classified information.

“Sec. 507. Appeals.

“Sec. 508. Detention and custody.”;

19 and

20 (2) by adding at the end the following new title:

1 “TITLE V—SPECIAL REMOVAL PROCEDURES  
2 FOR ALIEN TERRORISTS

3 “DEFINITIONS

4 “SEC. 501. In this title:

5 “(1) The term ‘alien terrorist’ means an alien  
6 described in section 241(a)(4)(B).

7 “(2) The term ‘classified information’ has the  
8 meaning given such term in section 1(a) of the Clas-  
9 sified Information Procedures Act (18 U.S.C. App.).

10 “(3) The term ‘national security’ has the mean-  
11 ing given such term in section 1(b) of the Classified  
12 Information Procedures Act (18 U.S.C. App.).

13 “(4) The term ‘special attorney’ means an at-  
14 torney who is on the panel established under section  
15 502(e).

16 “(5) The term ‘special removal court’ means  
17 the court established under section 502(a).

18 “(6) The term ‘special removal hearing’ means  
19 a hearing under section 505.

20 “(7) The term ‘special removal proceeding’  
21 means a proceeding under this title.

22 “ESTABLISHMENT OF SPECIAL REMOVAL COURT; PANEL  
23 OF ATTORNEYS TO ASSIST WITH CLASSIFIED INFOR-  
24 MATION

25 “SEC. 502. (a) IN GENERAL.—The Chief Justice of  
26 the United States shall publicly designate 5 district court

1 judges from 5 of the United States judicial circuits who  
2 shall constitute a court which shall have jurisdiction to  
3 conduct all special removal proceedings.

4 “(b) TERMS.—Each judge designated under sub-  
5 section (a) shall serve for a term of 5 years and shall be  
6 eligible for redesignation, except that the four associate  
7 judges first so designated shall be designated for terms  
8 of one, two, three, and four years so that the term of one  
9 judge shall expire each year.

10 “(c) CHIEF JUDGE.—The Chief Justice shall publicly  
11 designate one of the judges of the special removal court  
12 to be the chief judge of the court. The chief judge shall  
13 promulgate rules to facilitate the functioning of the court  
14 and shall be responsible for assigning the consideration  
15 of cases to the various judges.

16 “(d) EXPEDITIOUS AND CONFIDENTIAL NATURE OF  
17 PROCEEDINGS.—The provisions of section 103(c) of the  
18 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.  
19 1803(c)) shall apply to proceedings under this title in the  
20 same manner as they apply to proceedings under such Act.

21 “(e) ESTABLISHMENT OF PANEL OF SPECIAL AT-  
22 TORNEYS.—The special removal court shall provide for the  
23 designation of a panel of attorneys each of whom—

24 “(1) has a security clearance which affords the  
25 attorney access to classified information, and



1           “(3) The identity of the alien for whom author-  
2           zation for the special removal proceeding is sought.

3           “(4) A statement of the facts and cir-  
4           cumstances relied on by the Department of Justice  
5           to establish that—

6                   “(A) the alien is an alien terrorist and is  
7                   physically present in the United States, and

8                   “(B) with respect to such alien, adherence  
9                   to the provisions of title II regarding the depor-  
10                  tation of aliens would pose a risk to the na-  
11                  tional security of the United States.

12           “(5) An oath or affirmation respecting each of  
13           the facts and statements described in the previous  
14           paragraphs.

15           “(c) RIGHT TO DISMISS.—The Department of Jus-  
16           tice retains the right to dismiss a removal action under  
17           this title at any stage of the proceeding.

18                   “CONSIDERATION OF APPLICATION

19           “SEC. 504. (a) IN GENERAL.—In the case of an ap-  
20           plication under section 503 to the special removal court,  
21           a single judge of the court shall be assigned to consider  
22           the application. The judge, in accordance with the rules  
23           of the court, shall consider the application and may con-  
24           sider other information, including classified information,  
25           presented under oath or affirmation. The judge shall con-  
26           sider the application (and any hearing thereof) in camera

1 and ex parte. A verbatim record shall be maintained of  
2 any such hearing.

3 “(b) APPROVAL OF ORDER.—The judge shall enter  
4 ex parte the order requested in the application if the judge  
5 finds, on the basis of such application and such other in-  
6 formation (if any), that there is probable cause to believe  
7 that—

8 “(1) the alien who is the subject of the applica-  
9 tion has been correctly identified and is an alien ter-  
10 rorist, and

11 “(2) adherence to the provisions of title II re-  
12 garding the deportation of the identified alien would  
13 pose a risk to the national security of the United  
14 States.

15 “(c) DENIAL OF ORDER.—If the judge denies the  
16 order requested in the application, the judge shall prepare  
17 a written statement of the judge’s reasons for the denial.

18 “(d) EXCLUSIVE PROVISIONS.—Whenever an order is  
19 issued under this section with respect to an alien—

20 “(1) the alien’s rights regarding removal and  
21 expulsion shall be governed solely by the provisions  
22 of this title, and

23 “(2) except as they are specifically referenced,  
24 no other provisions of this Act shall be applicable.

1                   “SPECIAL REMOVAL HEARINGS

2           “SEC. 505. (a) IN GENERAL.—In any case in which  
3 the application for the order is approved under section  
4 504, a special removal hearing shall be conducted under  
5 this section for the purpose of determining whether the  
6 alien to whom the order pertains should be removed from  
7 the United States on the grounds that the alien is an alien  
8 terrorist. Consistent with section 506, the alien shall be  
9 given reasonable notice of the nature of the charges  
10 against the alien and a general account of the basis for  
11 the charges. The alien shall be given notice, reasonable  
12 under all the circumstances, of the time and place at which  
13 the hearing will be held. The hearing shall be held as expe-  
14 ditiously as possible.

15           “(b) USE OF SAME JUDGE.—The special removal  
16 hearing shall be held before the same judge who granted  
17 the order pursuant to section 504 unless that judge is  
18 deemed unavailable due to illness or disability by the chief  
19 judge of the special removal court, or has died, in which  
20 case the chief judge shall assign another judge to conduct  
21 the special removal hearing. A decision by the chief judge  
22 pursuant to the preceding sentence shall not be subject  
23 to review by either the alien or the Department of Justice.

24           “(c) RIGHTS IN HEARING.—

1           “(1) PUBLIC HEARING.—The special removal  
2 hearing shall be open to the public.

3           “(2) RIGHT OF COUNSEL.—The alien shall have  
4 a right to be present at such hearing and to be rep-  
5 resented by counsel. Any alien financially unable to  
6 obtain counsel shall be entitled to have counsel as-  
7 signed to represent the alien. Such counsel shall be  
8 appointed by the judge pursuant to the plan for fur-  
9 nishing representation for any person financially un-  
10 able to obtain adequate representation for the dis-  
11 trict in which the hearing is conducted, as provided  
12 for in section 3006A of title 18, United States Code.  
13 All provisions of that section shall apply and, for  
14 purposes of determining the maximum amount of  
15 compensation, the matter shall be treated as if a fel-  
16 ony was charged.

17           “(3) INTRODUCTION OF EVIDENCE.—The alien  
18 shall have a right to introduce evidence on the  
19 alien’s own behalf.

20           “(4) EXAMINATION OF WITNESSES.—Except as  
21 provided in section 506, the alien shall have a rea-  
22 sonable opportunity to examine the evidence against  
23 the alien and to cross-examine any witness.

1           “(5) RECORD.—A verbatim record of the pro-  
2           ceedings and of all testimony and evidence offered or  
3           produced at such a hearing shall be kept.

4           “(6) DECISION BASED ON EVIDENCE AT HEAR-  
5           ING.—The decision of the judge in the hearing shall  
6           be based only on the evidence introduced at the  
7           hearing, including evidence introduced under sub-  
8           section (e).

9           “(7) NO RIGHT TO ANCILLARY RELIEF.—In the  
10          hearing, the judge is not authorized to consider or  
11          provide for relief from removal based on any of the  
12          following:

13                   “(A) Asylum under section 208.

14                   “(B) Withholding of deportation under sec-  
15                   tion 243(h).

16                   “(C) Suspension of deportation under sec-  
17                   tion 244(a) or 244(e).

18                   “(D) Adjustment of status under section  
19                   245.

20                   “(E) Registry under section 249.

21          “(d) SUBPOENAS.—

22                   “(1) REQUEST.—At any time prior to the con-  
23                   clusion of the special removal hearing, either the  
24                   alien or the Department of Justice may request the  
25                   judge to issue a subpoena for the presence of a

1 named witness (which subpoena may also command  
2 the person to whom it is directed to produce books,  
3 papers, documents, or other objects designated  
4 therein) upon a satisfactory showing that the pres-  
5 ence of the witness is necessary for the determina-  
6 tion of any material matter. Such a request may be  
7 made ex parte except that the judge shall inform the  
8 Department of Justice of any request for a subpoena  
9 by the alien for a witness or material if compliance  
10 with such a subpoena would reveal evidence or the  
11 source of evidence which has been introduced, or  
12 which the Department of Justice has received per-  
13 mission to introduce, in camera and ex parte pursu-  
14 ant to subsection (e) and section 506, and the De-  
15 partment of Justice shall be given a reasonable op-  
16 portunity to oppose the issuance of such a subpoena.

17 “(2) PAYMENT FOR ATTENDANCE.—If an appli-  
18 cation for a subpoena by the alien also makes a  
19 showing that the alien is financially unable to pay  
20 for the attendance of a witness so requested, the  
21 court may order the costs incurred by the process  
22 and the fees of the witness so subpoenaed to be paid  
23 from funds appropriated for the enforcement of title  
24 II.

1           “(3) NATIONWIDE SERVICE.—A subpoena  
2 under this subsection may be served anywhere in the  
3 United States.

4           “(4) WITNESS FEES.—A witness subpoenaed  
5 under this subsection shall receive the same fees and  
6 expenses as a witness subpoenaed in connection with  
7 a civil proceeding in a court of the United States.

8           “(5) NO ACCESS TO CLASSIFIED INFORMA-  
9 TION.—Nothing in this subsection is intended to  
10 allow an alien to have access to classified informa-  
11 tion.

12           “(e) INTRODUCTION OF CLASSIFIED INFORMA-  
13 TION.—

14           “(1) IN GENERAL.—Classified information that  
15 has been summarized pursuant to section 506(b)  
16 and classified information for which findings de-  
17 scribed in section 506(b)(4)(B) have been made and  
18 for which no summary is provided shall be intro-  
19 duced (either in writing or through testimony) in  
20 camera and ex parte and neither the alien nor the  
21 public shall be informed of such evidence or its  
22 sources other than through reference to the sum-  
23 mary (if any) provided pursuant to such section.  
24 Notwithstanding the previous sentence, the Depart-  
25 ment of Justice may, in its discretion and after co-

1 ordination with the originating agency, elect to in-  
2 troduce such evidence in open session.

3 “(2) TREATMENT OF ELECTRONIC SURVEIL-  
4 LANCE INFORMATION.—

5 “(A) USE OF ELECTRONIC SURVEIL-  
6 LANCE.—The Government is authorized to use  
7 in a special removal proceeding the fruits of  
8 electronic surveillance and unconsented physical  
9 searches authorized under the Foreign Intel-  
10 ligence Surveillance Act of 1978 (50 U.S.C.  
11 1801 et seq.) without regard to subsections (c),  
12 (e), (f), (g), and (h) of section 106 of that Act.

13 “(B) NO DISCOVERY OF ELECTRONIC SUR-  
14 VEILLANCE INFORMATION.—An alien subject to  
15 removal under this title shall have no right of  
16 discovery of information derived from electronic  
17 surveillance authorized under the Foreign Intel-  
18 ligence Surveillance Act of 1978 or otherwise  
19 for national security purposes. Nor shall such  
20 alien have the right to seek suppression of evi-  
21 dence.

22 “(C) CERTAIN PROCEDURES NOT APPLICA-  
23 BLE.—The provisions and requirements of sec-  
24 tion 3504 of title 18, United States Code, shall  
25 not apply to procedures under this title.

1           “(3) RIGHTS OF UNITED STATES.—Nothing in  
2           this section shall prevent the United States from  
3           seeking protective orders and from asserting privi-  
4           leges ordinarily available to the United States to  
5           protect against the disclosure of classified informa-  
6           tion, including the invocation of the military and  
7           state secrets privileges.

8           “(f) INCLUSION OF CERTAIN EVIDENCE.—The Fed-  
9           eral Rules of Evidence shall not apply to hearings under  
10          this section. Evidence introduced at the special removal  
11          hearing, either in open session or in camera and ex parte,  
12          may, in the discretion of the Department of Justice, in-  
13          clude all or part of the information presented under sec-  
14          tion 504 used to obtain the order for the hearing under  
15          this section.

16          “(g) ARGUMENTS.—Following the receipt of evi-  
17          dence, the attorneys for the Department of Justice and  
18          for the alien shall be given fair opportunity to present ar-  
19          gument as to whether the evidence is sufficient to justify  
20          the removal of the alien. The attorney for the Department  
21          of Justice shall open the argument. The attorney for the  
22          alien shall be permitted to reply. The attorney for the De-  
23          partment of Justice shall then be permitted to reply in  
24          rebuttal. The judge may allow any part of the argument

1 that refers to evidence received in camera and ex parte  
2 to be heard in camera and ex parte.

3 “(h) BURDEN OF PROOF.—In the hearing the De-  
4 partment of Justice has the burden of showing by clear  
5 and convincing evidence that the alien is subject to re-  
6 moval because the alien is an alien terrorist. If the judge  
7 finds that the Department of Justice has met this burden,  
8 the judge shall order the alien removed and detained pend-  
9 ing removal from the United States. If the alien was re-  
10 leased pending the special removal hearing, the judge shall  
11 order the Attorney General to take the alien into custody.

12 “(i) WRITTEN ORDER.—At the time of rendering a  
13 decision as to whether the alien shall be removed, the  
14 judge shall prepare a written order containing a statement  
15 of facts found and conclusions of law. Any portion of the  
16 order that would reveal the substance or source of infor-  
17 mation received in camera and ex parte pursuant to sub-  
18 section (e) shall not be made available to the alien or the  
19 public.

20 “CONSIDERATION OF CLASSIFIED INFORMATION

21 “SEC. 506. (a) CONSIDERATION IN CAMERA AND EX  
22 PARTE.—In any case in which the application for the  
23 order authorizing the special procedures of this title is ap-  
24 proved, the judge who granted the order shall consider  
25 each item of classified information the Department of Jus-  
26 tice proposes to introduce in camera and ex parte at the

1 special removal hearing and shall order the introduction  
2 of such information pursuant to section 505(e) if the judge  
3 determines the information to be relevant.

4 “(b) PREPARATION AND PROVISION OF WRITTEN  
5 SUMMARY.—

6 “(1) PREPARATION.—The Department of Jus-  
7 tice shall prepare a written summary of such classi-  
8 fied information which does not pose a risk to na-  
9 tional security.

10 “(2) CONDITIONS FOR APPROVAL BY JUDGE  
11 AND PROVISION TO ALIEN.—The judge shall approve  
12 the summary so long as the judge finds that the  
13 summary is sufficient—

14 “(A) to inform the alien of the general na-  
15 ture of the evidence that the alien is an alien  
16 terrorist, and

17 “(B) to permit the alien to prepare a de-  
18 fense against deportation.

19 The Department of Justice shall cause to be deliv-  
20 ered to the alien a copy of the summary.

21 “(3) OPPORTUNITY FOR CORRECTION AND  
22 RESUBMITTAL.—If the judge does not approve the  
23 summary, the judge shall provide the Department a  
24 reasonable opportunity to correct the deficiencies

1 identified by the court and to submit a revised sum-  
2 mary.

3 “(4) CONDITIONS FOR TERMINATION OF PRO-  
4 CEEDINGS IF SUMMARY NOT APPROVED.—

5 “(A) IN GENERAL.—If, subsequent to the  
6 opportunity described in paragraph (3), the  
7 judge does not approve the summary, the judge  
8 shall terminate the special removal hearing un-  
9 less the judge makes the findings described in  
10 subparagraph (B).

11 “(B) FINDINGS.—The findings described  
12 in this subparagraph are, with respect to an  
13 alien, that—

14 “(i) the continued presence of the  
15 alien in the United States, and

16 “(ii) the provision of the required  
17 summary,

18 would likely cause serious and irreparable harm  
19 to the national security or death or serious bod-  
20 ily injury to any person.

21 “(5) CONTINUATION OF HEARING WITHOUT  
22 SUMMARY.—If a judge makes the findings described  
23 in paragraph (4)(B)—

24 “(A) if the alien involved is an alien law-  
25 fully admitted for permanent residence, the pro-

1           cedures described in subsection (c) shall apply;  
2           and

3                   “(B) in all cases the special removal hear-  
4           ing shall continue, the Department of Justice  
5           shall cause to be delivered to the alien a state-  
6           ment that no summary is possible, and the clas-  
7           sified information submitted in camera and ex  
8           parte may be used pursuant to section 505(e).

9           “(c) SPECIAL PROCEDURES FOR ACCESS AND CHAL-  
10          LENGES TO CLASSIFIED INFORMATION BY SPECIAL AT-  
11          TORNEYS IN CASE OF LAWFUL PERMANENT ALIENS.—

12                   “(1) IN GENERAL.—The procedures described  
13          in this subsection are that the judge (under rules of  
14          the special removal court) shall designate a special  
15          attorney (as defined in section 501(4)), (and the  
16          alien facing deportation under these procedures, may  
17          choose which special attorney shall be so designated,  
18          if the alien makes that choice not later than 45 days  
19          after the date on which the alien receives notice that  
20          the Government intends to use such procedures) to  
21          assist the alien and the court—

22                   “(A) by reviewing in camera the classified  
23          information on behalf of the alien, and



1 de novo, but a prior finding on any question of fact shall  
2 not be set aside unless such finding was clearly erroneous.

3 “(b) APPEALS OF DETERMINATIONS ABOUT SUM-  
4 MARIES OF CLASSIFIED INFORMATION.—Either party  
5 may take an interlocutory appeal to the United States  
6 Court of Appeals for the District of Columbia Circuit of—

7 “(1) any determination by the judge pursuant  
8 to section 506(a)—

9 “(A) concerning whether an item of evi-  
10 dence may be introduced in camera and ex  
11 parte, or

12 “(B) concerning the contents of any sum-  
13 mary of evidence to be introduced in camera  
14 and ex parte prepared pursuant to section  
15 506(b); or

16 “(2) the refusal of the court to make the find-  
17 ings permitted by section 506(b)(4)(B).

18 In any interlocutory appeal taken pursuant to this sub-  
19 section, the entire record, including any proposed order  
20 of the judge or summary of evidence, shall be transmitted  
21 to the Court of Appeals under seal and the matter shall  
22 be heard ex parte.

23 “(c) APPEALS OF DECISION IN HEARING.—

24 “(1) IN GENERAL.—Subject to paragraph (2),  
25 the decision of the judge after a special removal

1 hearing may be appealed by either the alien or the  
2 Department of Justice to the United States Court of  
3 Appeals for the District of Columbia Circuit by no-  
4 tice of appeal.

5 “(2) AUTOMATIC APPEALS IN CASES OF PERMA-  
6 NENT RESIDENT ALIENS IN WHICH NO SUMMARY  
7 PROVIDED.—

8 “(A) IN GENERAL.—Unless the alien  
9 waives the right to a review under this para-  
10 graph, in any case involving an alien lawfully  
11 admitted for permanent residence who is denied  
12 a written summary of classified information  
13 under section 506(b)(4) and with respect to  
14 which the procedures described in section  
15 506(c) apply, any order issued by the judge  
16 shall be reviewed by the Court of Appeals for  
17 the District of Columbia Circuit.

18 “(B) USE OF SPECIAL ATTORNEY.—With  
19 respect to any issue relating to classified infor-  
20 mation that arises in such review, the alien  
21 shall be represented only by the special attorney  
22 designated under section 506(c)(1) on behalf of  
23 the alien.

24 “(d) GENERAL PROVISIONS RELATING TO AP-  
25 PEALS.—

1           “(1) NOTICE.—A notice of appeal pursuant to  
2 subsection (b) or (c) (other than under subsection  
3 (c)(2)) must be filed within 20 days after the date  
4 of the order with respect to which the appeal is  
5 sought, during which time the order shall not be exe-  
6 cuted.

7           “(2) TRANSMITTAL OF RECORD.—In an appeal  
8 or review to the Court of Appeals pursuant to sub-  
9 section (b) or (c)—

10                   “(A) the entire record shall be transmitted  
11 to the Court of Appeals, and

12                   “(B) information received pursuant to sec-  
13 tion 505(e), and any portion of the judge’s  
14 order that would reveal the substance or source  
15 of such information, shall be transmitted under  
16 seal.

17           “(3) EXPEDITED APPELLATE PROCEEDING.—In  
18 an appeal or review to the Court of Appeals pursu-  
19 ant to subsection (b) or (c):

20                   “(A) REVIEW.—The appeal or review shall  
21 be heard as expeditiously as practicable and the  
22 Court may dispense with full briefing and hear  
23 the matter solely on the record of the judge of  
24 the special removal court and on such briefs or

1 motions as the Court may require to be filed by  
2 the parties.

3 “(B) DISPOSITION.—The Court shall up-  
4 hold or reverse the judge’s order within 60 days  
5 after the date of the issuance of the judge’s  
6 final order.

7 “(4) STANDARD FOR REVIEW.—In an appeal or  
8 review to the Court of Appeals pursuant to sub-  
9 section (b) or (c):

10 “(A) QUESTIONS OF LAW.—The Court of  
11 Appeals shall review all questions of law de  
12 novo.

13 “(B) QUESTIONS OF FACT.—(i) Subject to  
14 clause (ii), a prior finding on any question of  
15 fact shall not be set aside unless such finding  
16 was clearly erroneous.

17 “(ii) In the case of a review under sub-  
18 section (c)(2) in which an alien lawfully admit-  
19 ted for permanent residence was denied a writ-  
20 ten summary of classified information under  
21 section 506(b)(4), the Court of Appeals shall  
22 review questions of fact de novo.

23 “(e) CERTIORARI.—Following a decision by the Court  
24 of Appeals pursuant to subsection (b) or (c), either the  
25 alien or the Department of Justice may petition the Su-

1 preme Court for a writ of certiorari. In any such case,  
2 any information transmitted to the Court of Appeals  
3 under seal shall, if such information is also submitted to  
4 the Supreme Court, be transmitted under seal. Any order  
5 of removal shall not be stayed pending disposition of a  
6 writ of certiorari except as provided by the Court of Ap-  
7 peals or a Justice of the Supreme Court.

8 “(f) APPEALS OF DETENTION ORDERS.—

9 “(1) IN GENERAL.— The provisions of sections  
10 3145 through 3148 of title 18, United States Code,  
11 pertaining to review and appeal of a release or de-  
12 tention order, penalties for failure to appear, pen-  
13 alties for an offense committed while on release, and  
14 sanctions for violation of a release condition shall  
15 apply to an alien to whom section 508(b)(1) applies.  
16 In applying the previous sentence—

17 “(A) for purposes of section 3145 of such  
18 title an appeal shall be taken to the United  
19 States Court of Appeals for the District of Co-  
20 lumbia Circuit, and

21 “(B) for purposes of section 3146 of such  
22 title the alien shall be considered released in  
23 connection with a charge of an offense punish-  
24 able by life imprisonment.

1           “(2) NO REVIEW OF CONTINUED DETENTION.—  
2           The determinations and actions of the Attorney  
3           General pursuant to section 508(c)(2)(C) shall not  
4           be subject to judicial review, including application  
5           for a writ of habeas corpus, except for a claim by  
6           the alien that continued detention violates the alien’s  
7           rights under the Constitution. Jurisdiction over any  
8           such challenge shall lie exclusively in the United  
9           States Court of Appeals for the District of Columbia  
10          Circuit.

11                           “DETENTION AND CUSTODY

12           “SEC. 508. (a) INITIAL CUSTODY.—

13                           “(1) UPON FILING APPLICATION.—Subject to  
14           paragraphs (2) and (3), the Attorney General may  
15           take into custody any alien with respect to whom an  
16           application under section 503 has been filed and,  
17           notwithstanding any other provision of law, may re-  
18           tain such an alien in custody in accordance with the  
19           procedures authorized by this title.

20                           “(2) SPECIAL RULES FOR PERMANENT RESI-  
21           DENT ALIENS.—An alien lawfully admitted for per-  
22           manent residence shall be entitled to a release hear-  
23           ing before the judge assigned to hear the special re-  
24           moval hearing. Such an alien shall be detained pend-  
25           ing the special removal hearing, unless the alien  
26           demonstrates to the court that—

1           “(A) the alien, if released upon such terms  
2           and conditions as the court may prescribe (in-  
3           cluding the posting of any monetary amount),  
4           is not likely to flee, and

5           “(B) the alien’s release will not endanger  
6           national security or the safety of any person or  
7           the community.

8           The judge may consider classified information sub-  
9           mitted in camera and ex parte in making a deter-  
10          mination under this paragraph.

11          “(3) RELEASE IF ORDER DENIED AND NO RE-  
12          VIEW SOUGHT.—

13                 “(A) IN GENERAL.—Subject to subpara-  
14                 graph (B), if a judge of the special removal  
15                 court denies the order sought in an application  
16                 with respect to an alien and the Department of  
17                 Justice does not seek review of such denial, the  
18                 alien shall be released from custody.

19                 “(B) APPLICATION OF REGULAR PROCE-  
20                 DURES.—Subparagraph (A) shall not prevent  
21                 the arrest and detention of the alien pursuant  
22                 to title II.

23          “(b) CONDITIONAL RELEASE IF ORDER DENIED AND  
24          REVIEW SOUGHT.—

1           “(1) IN GENERAL.—If a judge of the special re-  
2           moval court denies the order sought in an applica-  
3           tion with respect to an alien and the Department of  
4           Justice seeks review of such denial, the judge shall  
5           release the alien from custody subject to the least re-  
6           strictive condition or combination of conditions of re-  
7           lease described in section 3142(b) and clauses (i)  
8           through (xiv) of section 3142(c)(1)(B) of title 18,  
9           United States Code, that will reasonably assure the  
10          appearance of the alien at any future proceeding  
11          pursuant to this title and will not endanger the safe-  
12          ty of any other person or the community.

13           “(2) NO RELEASE FOR CERTAIN ALIENS.—If  
14          the judge finds no such condition or combination of  
15          conditions, the alien shall remain in custody until  
16          the completion of any appeal authorized by this title.

17          “(c) CUSTODY AND RELEASE AFTER HEARING.—

18           “(1) RELEASE.—

19           “(A) IN GENERAL.—Subject to subpara-  
20          graph (B), if the judge decides pursuant to sec-  
21          tion 505(i) that an alien should not be removed,  
22          the alien shall be released from custody.

23           “(B) CUSTODY PENDING APPEAL.—If the  
24          Attorney General takes an appeal from such de-  
25          cision, the alien shall remain in custody, subject

1 to the provisions of section 3142 of title 18,  
2 United States Code.

3 “(2) CUSTODY AND REMOVAL.—

4 “(A) CUSTODY.—If the judge decides pur-  
5 suant to section 505(i) that an alien shall be re-  
6 moved, the alien shall be detained pending the  
7 outcome of any appeal. After the conclusion of  
8 any judicial review thereof which affirms the re-  
9 moval order, the Attorney General shall retain  
10 the alien in custody and remove the alien to a  
11 country specified under subparagraph (B).

12 “(B) REMOVAL.—

13 “(i) IN GENERAL.—The removal of an  
14 alien shall be to any country which the  
15 alien shall designate if such designation  
16 does not, in the judgment of the Attorney  
17 General, in consultation with the Secretary  
18 of State, impair the obligation of the  
19 United States under any treaty (including  
20 a treaty pertaining to extradition) or other-  
21 wise adversely affect the foreign policy of  
22 the United States.

23 “(ii) ALTERNATE COUNTRIES.—If the  
24 alien refuses to designate a country to  
25 which the alien wishes to be removed or if

1           the Attorney General, in consultation with  
2           the Secretary of State, determines that re-  
3           moval of the alien to the country so des-  
4           ignated would impair a treaty obligation or  
5           adversely affect United States foreign pol-  
6           icy, the Attorney General shall cause the  
7           alien to be removed to any country willing  
8           to receive such alien.

9           “(C) CONTINUED DETENTION.—If no  
10          country is willing to receive such an alien, the  
11          Attorney General may, notwithstanding any  
12          other provision of law, retain the alien in cus-  
13          tody. The Attorney General, in coordination  
14          with the Secretary of State, shall make periodic  
15          efforts to reach agreement with other countries  
16          to accept such an alien and at least every 6  
17          months shall provide to the attorney represent-  
18          ing the alien at the special removal hearing a  
19          written report on the Attorney General’s ef-  
20          forts. Any alien in custody pursuant to this  
21          subparagraph shall be released from custody  
22          solely at the discretion of the Attorney General  
23          and subject to such conditions as the Attorney  
24          General shall deem appropriate.

1           “(D) FINGERPRINTING.—Before an alien  
2           is transported out of the United States pursu-  
3           ant to this subsection, or pursuant to an order  
4           of exclusion because such alien is excludable  
5           under section 212(a)(3)(B), the alien shall be  
6           photographed and fingerprinted, and shall be  
7           advised of the provisions of section 276(b).

8           “(d) CONTINUED DETENTION PENDING TRIAL.—

9           “(1) DELAY IN REMOVAL.—Notwithstanding  
10          the provisions of subsection (c)(2), the Attorney  
11          General may hold in abeyance the removal of an  
12          alien who has been ordered removed pursuant to this  
13          title to allow the trial of such alien on any Federal  
14          or State criminal charge and the service of any sen-  
15          tence of confinement resulting from such a trial.

16          “(2) MAINTENANCE OF CUSTODY.—Pending the  
17          commencement of any service of a sentence of con-  
18          finement by an alien described in paragraph (1),  
19          such an alien shall remain in the custody of the At-  
20          torney General, unless the Attorney General deter-  
21          mines that temporary release of the alien to the cus-  
22          tody of State authorities for confinement in a State  
23          facility is appropriate and would not endanger na-  
24          tional security or public safety.

1           “(3) SUBSEQUENT REMOVAL.—Following the  
2 completion of a sentence of confinement by an alien  
3 described in paragraph (1) or following the comple-  
4 tion of State criminal proceedings which do not re-  
5 sult in a sentence of confinement of an alien released  
6 to the custody of State authorities pursuant to para-  
7 graph (2), such an alien shall be returned to the  
8 custody of the Attorney General who shall proceed  
9 to carry out the provisions of subsection (c)(2) con-  
10 cerning removal of the alien.

11           “(e) APPLICATION OF CERTAIN PROVISIONS RELAT-  
12 ING TO ESCAPE OF PRISONERS.—For purposes of sections  
13 751 and 752 of title 18, United States Code, an alien in  
14 the custody of the Attorney General pursuant to this title  
15 shall be subject to the penalties provided by those sections  
16 in relation to a person committed to the custody of the  
17 Attorney General by virtue of an arrest on a charge of  
18 a felony.

19           “(f) RIGHTS OF ALIENS IN CUSTODY.—

20           “(1) FAMILY AND ATTORNEY VISITS.—An alien  
21 in the custody of the Attorney General pursuant to  
22 this title shall be given reasonable opportunity to  
23 communicate with and receive visits from members  
24 of the alien’s family, and to contact, retain, and  
25 communicate with an attorney.

1           “(2) DIPLOMATIC CONTACT.—An alien in the  
2           custody of the Attorney General pursuant to this  
3           title shall have the right to contact an appropriate  
4           diplomatic or consular official of the alien’s country  
5           of citizenship or nationality or of any country pro-  
6           viding representation services therefore. The Attor-  
7           ney General shall notify the appropriate embassy,  
8           mission, or consular office of the alien’s detention.”.

9           (b) JURISDICTION OVER EXCLUSION ORDERS FOR  
10          ALIEN TERRORISTS.—Section 106(b) of the Immigration  
11          and Nationality Act (8 U.S.C. 1105a(b)) is amended by  
12          adding at the end the following sentence: “Jurisdiction to  
13          review an order entered pursuant to the provisions of sec-  
14          tion 235(c) concerning an alien excludable under section  
15          212(a)(3)(B) shall rest exclusively in the United States  
16          Court of Appeals for the District of Columbia Circuit.”.

17          (c) CRIMINAL PENALTY FOR REENTRY OF ALIEN  
18          TERRORISTS.—Section 276(b) of such Act (8 U.S.C.  
19          1326(b)) is amended—

20                 (1) by striking “or” at the end of paragraph

21                 (1),

22                 (2) by striking the period at the end of para-  
23                 graph (2) and inserting “; or”, and

24                 (3) by inserting after paragraph (2) the follow-  
25                 ing new paragraph:

1           “(3) who has been excluded from the United  
2 States pursuant to section 235(c) because the alien  
3 was excludable under section 212(a)(3)(B) or who  
4 has been removed from the United States pursuant  
5 to the provisions of title V, and who thereafter, with-  
6 out the permission of the Attorney General, enters  
7 the United States or attempts to do so shall be fined  
8 under title 18, United States Code, and imprisoned  
9 for a period of 10 years, which sentence shall not  
10 run concurrently with any other sentence.”.

11           (d) ELIMINATION OF CUSTODY REVIEW BY HABEAS  
12 CORPUS.—Section 106(a) of such Act (8 U.S.C.  
13 1105a(a)) is amended—

14           (1) by adding “and” at the end of paragraph  
15 (8),

16           (2) by striking “; and” at the end of paragraph  
17 (9) and inserting a period, and

18           (3) by striking paragraph (10).

19           (e) EFFECTIVE DATE.—The amendments made by  
20 this section shall take effect on the date of the enactment  
21 of this Act and shall apply to all aliens without regard  
22 to the date of entry or attempted entry into the United  
23 States.

1 **SEC. 602. FUNDING FOR DETENTION AND REMOVAL OF**  
 2 **ALIEN TERRORISTS.**

3 In addition to amounts otherwise appropriated, there  
 4 are authorized to be appropriated for each fiscal year (be-  
 5 ginning with fiscal year 1996) \$5,000,000 to the Immigra-  
 6 tion and Naturalization Service for the purpose of detain-  
 7 ing and removing alien terrorists.

8 **PART 2—EXCLUSION AND DENIAL OF ASYLUM**  
 9 **FOR ALIEN TERRORISTS**

10 **SEC. 611. MEMBERSHIP IN TERRORIST ORGANIZATION AS**  
 11 **GROUND FOR EXCLUSION.**

12 (a) IN GENERAL.—Section 212(a)(3)(B) of the Im-  
 13 migration and Nationality Act (8 U.S.C. 1182(a)(3)(B))  
 14 is amended—

15 (1) in clause (i)—

16 (A) by striking “or” at the end of  
 17 subclause (I),

18 (B) in subclause (II), by inserting “en-  
 19 gaged in or” after “believe,” and

20 (C) by inserting after subclause (II) the  
 21 following:

22 “(III) is a representative of a ter-  
 23 rorist organization, or

24 “(IV) is a member of a terrorist  
 25 organization which the alien knows or

1                   should have known is a terrorist orga-  
2                   nization,”; and

3                   (2) by adding at the end the following:

4                   “(iv) TERRORIST ORGANIZATION DE-  
5                   FINED.—

6                   “(I) DESIGNATION.—For pur-  
7                   poses of this Act, the term ‘terrorist  
8                   organization’ means a foreign organi-  
9                   zation designated in the Federal Reg-  
10                  ister as a terrorist organization by the  
11                  Secretary of State, in consultation  
12                  with the Attorney General, based  
13                  upon a finding that the organization  
14                  engages in, or has engaged in, terror-  
15                  ist activity that threatens the national  
16                  security of the United States.

17                  “(II) PROCESS.—At least 3 days  
18                  before designating an organization as  
19                  a terrorist organization through publi-  
20                  cation in the Federal Register, the  
21                  Secretary of State, in consultation  
22                  with the Attorney General, shall notify  
23                  the Committees on the Judiciary of  
24                  the House of Representatives and the  
25                  Senate of the intent to make such

1 designation and the findings and basis  
2 for designation. The Secretary of  
3 State, in consultation with the Attor-  
4 ney General, shall create an adminis-  
5 trative record and may use classified  
6 information in making such a designa-  
7 tion. Such information is not subject  
8 to disclosure so long as it remains  
9 classified, except that it may be dis-  
10 closed to a court ex parte and in cam-  
11 era under subclause (III) for purposes  
12 of judicial review of such a designa-  
13 tion. The Secretary of State, in con-  
14 sultation with the Attorney General,  
15 shall provide notice and an oppor-  
16 tunity for public comment prior to the  
17 creation of the administrative record  
18 under this subclause.

19 “(III) JUDICIAL REVIEW.—Any  
20 organization designated as a terrorist  
21 organization under the preceding pro-  
22 visions of this clause may, not later  
23 than 30 days after the date of the  
24 designation, seek judicial review there-  
25 of in the United States Court of Ap-

1 peals for the District of Columbia Cir-  
2 cuit. Such review shall be based solely  
3 upon the administrative record, except  
4 that the Government may submit, for  
5 ex parte and in camera review, classi-  
6 fied information considered in making  
7 the designation. The court shall hold  
8 unlawful and set aside the designation  
9 if the court finds the designation to be  
10 arbitrary, capricious, an abuse of dis-  
11 cretion, or otherwise not in accord-  
12 ance with law, lacking substantial  
13 support in the administrative record  
14 taken as a whole or in classified infor-  
15 mation submitted to the court under  
16 the previous sentence, contrary to  
17 constitutional right, power, privilege,  
18 or immunity, or not in accord with the  
19 procedures required by law.

20 “(IV) CONGRESSIONAL AUTHOR-  
21 ITY TO REMOVE DESIGNATION.—The  
22 Congress reserves the authority to re-  
23 move, by law, the designation of an  
24 organization as a terrorist organiza-  
25 tion for purposes of this Act.

1                   “(V) SUNSET.—Subject to  
2 subclause (IV), the designation under  
3 this clause of an organization as a  
4 terrorist organization shall be effective  
5 for a period of 2 years from the date  
6 of the initial publication of the terror-  
7 ist organization designation by the  
8 Secretary of State. At the end of such  
9 period (but no sooner than 60 days  
10 prior to the termination of the 2-year-  
11 designation period), the Secretary of  
12 State, in consultation with the Attor-  
13 ney General, may redesignate the or-  
14 ganization in conformity with the re-  
15 quirements of this clause for designa-  
16 tion of the organization.

17                   “(VI) OTHER AUTHORITY TO RE-  
18 MOVE DESIGNATION.—The Secretary  
19 of State, in consultation with the At-  
20 torney General, may remove the ter-  
21 rorist organization designation from  
22 any organization previously designated  
23 as such an organization, at any time,  
24 so long as the Secretary publishes no-  
25 tice of the removal in the Federal

1 Register. The Secretary is not re-  
2 quired to report to Congress prior to  
3 so removing such designation.

4 “(v) REPRESENTATIVE DEFINED.—In  
5 this subparagraph, the term ‘representa-  
6 tive’ includes an officer, official, or spokes-  
7 man of the organization and any person  
8 who directs, counsels, commands or in-  
9 duces the organization or its members to  
10 engage in terrorist activity. The determina-  
11 tion by the Secretary of State or the Attor-  
12 ney General that an alien is a representa-  
13 tive of a terrorist organization shall be  
14 subject to judicial review.”.

15 (b) EFFECTIVE DATE.—The amendments made by  
16 this section shall take effect on the date of the enactment  
17 of this Act.

18 **SEC. 612. DENIAL OF ASYLUM TO ALIEN TERRORISTS.**

19 (a) IN GENERAL.—Section 208(a) of the Immigra-  
20 tion and Nationality Act (8 U.S.C. 1158(a)) is amended  
21 by adding at the end the following: “The Attorney General  
22 may not grant an alien asylum if the Attorney General  
23 determines that the alien is excludable under subclause  
24 (I), (II), or (III) of section 212(a)(3)(B)(i) or deportable  
25 under section 241(a)(4)(B).”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall take effect on the date of the enact-  
3 ment of this Act and apply to asylum determinations made  
4 on or after such date.

5 **SEC. 613. DENIAL OF OTHER RELIEF FOR ALIEN TERROR-**  
6 **ISTS.**

7 (a) WITHHOLDING OF DEPORTATION.—Section  
8 243(h)(2) of the Immigration and Nationality Act (8  
9 U.S.C. 1253(h)(2)) is amended by adding at the end the  
10 following new sentence: “For purposes of subparagraph  
11 (D), an alien who is described in section 241(a)(4)(B)  
12 shall be considered to be an alien for whom there are rea-  
13 sonable grounds for regarding as a danger to the security  
14 of the United States.”.

15 (b) SUSPENSION OF DEPORTATION.—Section 244(a)  
16 of such Act (8 U.S.C. 1254(a)) is amended by striking  
17 “section 241(a)(4)(D)” and inserting “subparagraph (B)  
18 or (D) of section 241(a)(4)”.

19 (c) VOLUNTARY DEPARTURE.—Section 244(e)(2) of  
20 such Act (8 U.S.C. 1254(e)(2)) is amended by inserting  
21 “under section 241(a)(4)(B) or” after “who is deport-  
22 able”.

23 (d) ADJUSTMENT OF STATUS.—Section 245(c) of  
24 such Act (8 U.S.C. 1255(c)) is amended—

25 (1) by striking “or” before “(5)”, and

1           (2) by inserting before the period at the end the  
2 following: “, or (6) an alien who is deportable under  
3 section 241(a)(4)(B)”.

4           (e) REGISTRY.—Section 249(d) of such Act (8 U.S.C.  
5 1259(d)) is amended by inserting “and is not deportable  
6 under section 241(a)(4)(B)” after “ineligible to citizen-  
7 ship”.

8           (f) EFFECTIVE DATE.—The amendments made by  
9 this section shall take effect on the date of the enactment  
10 of this Act and shall apply to applications filed before, on,  
11 or after such date if final action has not been taken on  
12 them before such date.

## 13       **Subtitle B—Expedited Exclusion**

### 14       **SEC. 621. INSPECTION AND EXCLUSION BY IMMIGRATION**

#### 15                       **OFFICERS.**

16           (a) IN GENERAL.—Subsection (b) of section 235 of  
17 the Immigration and Nationality Act (8 U.S.C. 1225) is  
18 amended to read as follows:

19           “(b)(1)(A) If the examining immigration officer de-  
20 termines that an alien seeking entry—

21                       “(i) is excludable under section 212(a)(6)(C) or  
22                       212(a)(7), and

23                       “(ii) does not indicate either an intention to  
24                       apply for asylum under section 208 or a fear of per-  
25                       secution,

1 the officer shall order the alien excluded from the United  
2 States without further hearing or review.

3 “(B) The examining immigration officer shall refer  
4 for an interview by an asylum officer under subparagraph  
5 (C) any alien who is excludable under section 212(a)(6)(C)  
6 or 212(a)(7) and has indicated an intention to apply for  
7 asylum under section 208 or a fear of persecution.

8 “(C)(i) An asylum officer shall promptly conduct  
9 interviews of aliens referred under subparagraph (B).

10 “(ii) If the officer determines at the time of the inter-  
11 view that an alien has a credible fear of persecution (as  
12 defined in clause (v)), the alien shall be detained for an  
13 asylum hearing before an asylum officer under section  
14 208.

15 “(iii)(I) Subject to subclause (II), if the officer deter-  
16 mines that the alien does not have a credible fear of perse-  
17 cution, the officer shall order the alien excluded from the  
18 United States without further hearing or review.

19 “(II) The Attorney General shall promulgate regula-  
20 tions to provide for the immediate review by a supervisory  
21 asylum office at the port of entry of a determination under  
22 subclause (I).

23 “(iv) The Attorney General shall provide information  
24 concerning the asylum interview described in this subpara-  
25 graph to aliens who may be eligible. An alien who is eligi-

1 ble for such interview may consult with a person or per-  
2 sons of the alien's choosing prior to the interview or any  
3 review thereof, according to regulations prescribed by the  
4 Attorney General. Such consultation shall be at no expense  
5 to the Government and shall not delay the process.

6       “(v) For purposes of this subparagraph, the term  
7 ‘credible fear of persecution’ means (I) that it is more  
8 probable than not that the statements made by the alien  
9 in support of the alien's claim are true, and (II) that there  
10 is a significant possibility, in light of such statements and  
11 of such other facts as are known to the officer, that the  
12 alien could establish eligibility for asylum under section  
13 208.

14       “(D) As used in this paragraph, the term ‘asylum of-  
15 ficer’ means an immigration officer who—

16               “(i) has had professional training in country  
17 conditions, asylum law, and interview techniques;  
18 and

19               “(ii) is supervised by an officer who meets the  
20 condition in clause (i).

21       “(E)(i) An exclusion order entered in accordance with  
22 subparagraph (A) is not subject to administrative appeal,  
23 except that the Attorney General shall provide by regula-  
24 tion for prompt review of such an order against an alien  
25 who claims under oath, or as permitted under penalty of

1 perjury under section 1746 of title 28, United States  
2 Code, after having been warned of the penalties for falsely  
3 making such claim under such conditions, to have been  
4 lawfully admitted for permanent residence.

5 “(ii) In any action brought against an alien under  
6 section 275(a) or section 276, the court shall not have ju-  
7 risdiction to hear any claim attacking the validity of an  
8 order of exclusion entered under subparagraph (A).

9 “(2)(A) Except as provided in subparagraph (B), if  
10 the examining immigration officer determines that an  
11 alien seeking entry is not clearly and beyond a doubt enti-  
12 tled to enter, the alien shall be detained for a hearing be-  
13 fore a special inquiry officer.

14 “(B) The provisions of subparagraph (A) shall not  
15 apply—

16 “(i) to an alien crewman,

17 “(ii) to an alien described in paragraph (1)(A)  
18 or (1)(C)(iii)(I), or

19 “(iii) if the conditions described in section  
20 273(d) exist.

21 “(3) The decision of the examining immigration offi-  
22 cer, if favorable to the admission of any alien, shall be  
23 subject to challenge by any other immigration officer and  
24 such challenge shall operate to take the alien whose privi-

1 lege to enter is so challenged, before a special inquiry offi-  
2 cer for a hearing on exclusion of the alien.”.

3 (b) CONFORMING AMENDMENT.—Section 237(a) of  
4 such Act (8 U.S.C. 1227(a)) is amended—

5 (1) in the second sentence of paragraph (1), by  
6 striking “Deportation” and inserting “Subject to  
7 section 235(b)(1), deportation”, and

8 (2) in the first sentence of paragraph (2), by  
9 striking “If” and inserting “Subject to section  
10 235(b)(1), if”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall take effect on the first day of the first  
13 month that begins more than 90 days after the date of  
14 the enactment of this Act.

15 **SEC. 622. JUDICIAL REVIEW.**

16 (a) PRECLUSION OF JUDICIAL REVIEW.—Section  
17 106 of the Immigration and Nationality Act (8 U.S.C.  
18 1105a) is amended—

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

21 “JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND  
22 EXCLUSION, AND SPECIAL EXCLUSION”; and

23 (2) by adding at the end the following new sub-  
24 section:

25 “(e)(1) Notwithstanding any other provision of law,  
26 and except as provided in this subsection, no court shall

1 have jurisdiction to review any individual determination,  
2 or to entertain any other cause or claim, arising from or  
3 relating to the implementation or operation of section  
4 235(b)(1). Regardless of the nature of the action or claim,  
5 or the party or parties bringing the action, no court shall  
6 have jurisdiction or authority to enter declaratory, injunc-  
7 tive, or other equitable relief not specifically authorized in  
8 this subsection nor to certify a class under Rule 23 of the  
9 Federal Rules of Civil Procedure.

10 “(2) Judicial review of any cause, claim, or individual  
11 determination covered under paragraph (1) shall only be  
12 available in habeas corpus proceedings, and shall be lim-  
13 ited to determinations of—

14 “(A) whether the petitioner is an alien, if the  
15 petitioner makes a showing that the petitioner’s  
16 claim of United States nationality is not frivolous;

17 “(B) whether the petitioner was ordered spe-  
18 cially excluded under section 235(b)(1)(A); and

19 “(C) whether the petitioner can prove by a pre-  
20 ponderance of the evidence that the petitioner is an  
21 alien lawfully admitted for permanent residence and  
22 is entitled to such review as is provided by the Attor-  
23 ney General pursuant to section 235(b)(1)(E)(i).

24 “(3) In any case where the court determines that an  
25 alien was not ordered specially excluded, or was not prop-

1 erly subject to special exclusion under the regulations  
2 adopted by the Attorney General, the court may order no  
3 relief beyond requiring that the alien receive a hearing in  
4 accordance with section 236, or a determination in accord-  
5 ance with section 235(e) or 273(d).

6 “(4) In determining whether an alien has been or-  
7 dered specially excluded, the court’s inquiry shall be lim-  
8 ited to whether such an order was in fact issued and  
9 whether it relates to the petitioner.”.

10 (b) PRECLUSION OF COLLATERAL ATTACKS.—Sec-  
11 tion 235 of such Act (8 U.S.C. 1225) is amended by add-  
12 ing at the end the following new subsection:

13 “(d) In any action brought for the assessment of pen-  
14 alties for improper entry or re-entry of an alien under sec-  
15 tion 275 or section 276, no court shall have jurisdiction  
16 to hear claims collaterally attacking the validity of orders  
17 of exclusion, special exclusion, or deportation entered  
18 under this section or sections 236 and 242.”.

19 (c) CLERICAL AMENDMENT.—The item relating to  
20 section 106 in the table of contents of such Act is amended  
21 to read as follows:

“Sec. 106. Judicial review of orders of deportation and exclusion, and special  
exclusion.”.

1 **SEC. 623. EXCLUSION OF ALIENS WHO HAVE NOT BEEN IN-**  
2 **SPECTED AND ADMITTED.**

3 (a) IN GENERAL.—Section 241 of the Immigration  
4 and Nationality Act (8 U.S.C. 1251) is amended by add-  
5 ing at the end the following new subsection:

6 “(d) Notwithstanding any other provision of this title,  
7 an alien found in the United States who has not been ad-  
8 mitted to the United States after inspection in accordance  
9 with section 235 is deemed for purposes of this Act to  
10 be seeking entry and admission to the United States and  
11 shall be subject to examination and exclusion by the Attor-  
12 ney General under chapter 4. In the case of such an alien  
13 the Attorney General shall provide by regulation an oppor-  
14 tunity for the alien to establish that the alien was so ad-  
15 mitted.”.

16 (b) EFFECTIVE DATE.—The amendment made by  
17 subsection (a) shall take effect on the first day of the first  
18 month beginning more than 90 days after the date of the  
19 enactment of this Act.

1     **Subtitle C—Improved Information**  
2                     **and Processing**

3                     **PART 1—IMMIGRATION PROCEDURES**

4     **SEC. 631. ACCESS TO CERTAIN CONFIDENTIAL INS FILES**  
5                     **THROUGH COURT ORDER.**

6             (a) LEGALIZATION PROGRAM.—Section 245A(c)(5)  
7 of the Immigration and Nationality Act (8 U.S.C.  
8 1255a(c)(5)) is amended—

9                     (1) by inserting “(i)” after “except that the At-  
10             torney General”, and

11                     (2) by inserting after “title 13, United States  
12             Code” the following: “and (ii) may authorize an ap-  
13             plication to a Federal court of competent jurisdiction  
14             for, and a judge of such court may grant, an order  
15             authorizing disclosure of information contained in  
16             the application of the alien to be used—

17                             “(I) for identification of the alien when  
18                             there is reason to believe that the alien has  
19                             been killed or severely incapacitated; or

20                             “(II) for criminal law enforcement pur-  
21                             poses against the alien whose application is to  
22                             be disclosed if the alleged criminal activity oc-  
23                             curred after the legalization application was  
24                             filed and such activity involves terrorist activity  
25                             or poses either an immediate risk to life or to

1 national security, or would be prosecutable as  
2 an aggravated felony, but without regard to the  
3 length of sentence that could be imposed on the  
4 applicant”.

5 (b) SPECIAL AGRICULTURAL WORKER PROGRAM.—  
6 Section 210(b) of such Act (8 U.S.C. 1160(b)) is amend-  
7 ed—

8 (1) in paragraph (5), by inserting “, except as  
9 allowed by a court order issued pursuant to para-  
10 graph (6)” after “consent of the alien”, and

11 (2) in paragraph (6), by inserting after sub-  
12 paragraph (C) the following:

13 “Notwithstanding the previous sentence, the Attor-  
14 ney General may authorize an application to a Fed-  
15 eral court of competent jurisdiction for, and a judge  
16 of such court may grant, an order authorizing dis-  
17 closure of information contained in the application of  
18 the alien to be used (i) for identification of the alien  
19 when there is reason to believe that the alien has  
20 been killed or severely incapacitated, or (ii) for  
21 criminal law enforcement purposes against the alien  
22 whose application is to be disclosed if the alleged  
23 criminal activity occurred after the special agricul-  
24 tural worker application was filed and such activity  
25 involves terrorist activity or poses either an imme-

1 diate risk to life or to national security, or would be  
2 prosecutable as an aggravated felony, but without  
3 regard to the length of sentence that could be im-  
4 posed on the applicant.”.

5 **SEC. 632. WAIVER AUTHORITY CONCERNING NOTICE OF**  
6 **DENIAL OF APPLICATION FOR VISAS.**

7 Section 212(b) of the Immigration and Nationality  
8 Act (8 U.S.C. 1182(b)) is amended—

9 (1) by redesignating paragraphs (1) and (2) as  
10 subparagraphs (A) and (B);

11 (2) by striking “If” and inserting “(1) Subject  
12 to paragraph (2), if”; and

13 (3) by adding at the end the following new  
14 paragraph:

15 “(2) With respect to applications for visas, the Sec-  
16 retary of State may waive the application of paragraph  
17 (1) in the case of a particular alien or any class or classes  
18 of aliens excludable under subsection (a)(2) or (a)(3).”.

19 **PART 2—ASSET FORFEITURE FOR PASSPORT**  
20 **AND VISA OFFENSES**

21 **SEC. 641. CRIMINAL FORFEITURE FOR PASSPORT AND VISA**  
22 **RELATED OFFENSES.**

23 Section 982 of title 18, United States Code, is  
24 amended—

1           (1) in subsection (a), by inserting after para-  
2           graph (5) the following new paragraph:

3           “(6) The court, in imposing sentence on a person con-  
4           victed of a violation of, or conspiracy to violate, section  
5           1541, 1542, 1543, 1544, or 1546 of this title, or a viola-  
6           tion of, or conspiracy to violate, section 1028 of this title  
7           if committed in connection with passport or visa issuance  
8           or use, shall order that the person forfeit to the United  
9           States any property, real or personal, which the person  
10          used, or intended to be used, in committing, or facilitating  
11          the commission of, the violation, and any property con-  
12          stituting, or derived from, or traceable to, any proceeds  
13          the person obtained, directly or indirectly, as a result of  
14          such violation.”; and

15           (2) in subsection (b)(1)(B), by inserting “or  
16          (a)(6)” after “(a)(2)”.

17   **SEC. 642. SUBPOENAS FOR BANK RECORDS.**

18          Section 986(a) of title 18, United States Code, is  
19          amended by inserting “1028, 1541, 1542, 1543, 1544,  
20          1546,” before “1956”.

21   **SEC. 643. EFFECTIVE DATE.**

22          The amendments made by this subtitle shall take ef-  
23          fect on the first day of the first month that begins more  
24          than 90 days after the date of the enactment of this Act.

1 **Subtitle D—Employee Verification**  
2 **by Security Services Companies**

3 **SEC. 651. PERMITTING SECURITY SERVICES COMPANIES TO**  
4 **REQUEST ADDITIONAL DOCUMENTATION.**

5 (a) IN GENERAL.—Section 274B(a)(6) of the Immi-  
6 gration and Nationality Act (8 U.S.C. 1324b(a)(6)) is  
7 amended—

8 (1) by striking “For purposes” and inserting  
9 “(A) Except as provided in subparagraph (B), for  
10 purposes”, and

11 (2) by adding at the end the following new sub-  
12 paragraph:

13 “(B) Subparagraph (A) shall not apply to a re-  
14 quest made in connection with an individual seeking  
15 employment in a company (or division of a company)  
16 engaged in the business of providing security serv-  
17 ices to protect persons, institutions, buildings, or  
18 other possible targets of international terrorism (as  
19 defined in section 2331(1) of title 18, United States  
20 Code).”.

21 (b) EFFECTIVE DATE.—The amendments made by  
22 subsection (a) shall apply to requests for documents made  
23 on or after the date of the enactment of this Act with  
24 respect to individuals who are or were hired before, on,  
25 or after the date of the enactment of this Act.

1           **Subtitle E—Criminal Alien**  
2           **Deportation Improvements**

3   **SEC. 661. SHORT TITLE.**

4           This subtitle may be cited as the “Criminal Alien De-  
5   portation Improvements Act of 1995”.

6   **SEC. 662. ADDITIONAL EXPANSION OF DEFINITION OF AG-**  
7           **GRAVATED FELONY.**

8           (a) IN GENERAL.—Section 101(a)(43) of the Immi-  
9   gration and Nationality Act (8 U.S.C. 1101(a)(43)), as  
10   amended by section 222 of the Immigration and National-  
11   ity Technical Corrections Act of 1994 (Public Law 103-  
12   416), is amended—

13           (1) in subparagraph (J), by inserting “, or an  
14   offense described in section 1084 (if it is a second  
15   or subsequent offense) or 1955 of that title (relating  
16   to gambling offenses),” after “corrupt organiza-  
17   tions”);

18           (2) in subparagraph (K)—

19           (A) by striking “or” at the end of clause

20           (i),

21           (B) by redesignating clause (ii) as clause

22           (iii), and

23           (C) by inserting after clause (i) the follow-

24           ing new clause:

1           “(ii) is described in section 2421,  
2           2422, or 2423 of title 18, United States  
3           Code (relating to transportation for the  
4           purpose of prostitution) for commercial ad-  
5           vantage; or”;

6           (3) by amending subparagraph (N) to read as  
7 follows:

8           “(N) an offense described in paragraph  
9           (1)(A) or (2) of section 274(a) (relating to alien  
10           smuggling) for which the term of imprisonment  
11           imposed (regardless of any suspension of im-  
12           prisonment) is at least 5 years;”;

13           (4) by amending subparagraph (O) to read as  
14 follows:

15           “(O) an offense (i) which either is falsely  
16           making, forging, counterfeiting, mutilating, or  
17           altering a passport or instrument in violation of  
18           section 1543 of title 18, United States Code, or  
19           is described in section 1546(a) of such title (re-  
20           lating to document fraud) and (ii) for which the  
21           term of imprisonment imposed (regardless of  
22           any suspension of such imprisonment) is at  
23           least 18 months;”

1           (5) in subparagraph (P), by striking “15 years”  
2           and inserting “5 years”, and by striking “and” at  
3           the end;

4           (6) by redesignating subparagraphs (O), (P),  
5           and (Q) as subparagraphs (P), (Q), and (U), respec-  
6           tively;

7           (7) by inserting after subparagraph (N) the fol-  
8           lowing new subparagraph:

9                     “(O) an offense described in section 275(a)  
10                    or 276 committed by an alien who was pre-  
11                    viously deported on the basis of a conviction for  
12                    an offense described in another subparagraph  
13                    of this paragraph;”;

14           (8) by inserting after subparagraph (Q), as so  
15           redesignated, the following new subparagraphs:

16                    “(R) an offense relating to commercial  
17                    bribery, counterfeiting, forgery, or trafficking in  
18                    vehicles the identification numbers of which  
19                    have been altered for which a sentence of 5  
20                    years’ imprisonment or more may be imposed;

21                    “(S) an offense relating to obstruction of  
22                    justice, perjury or subornation of perjury, or  
23                    bribery of a witness, for which a sentence of 5  
24                    years’ imprisonment or more may be imposed;



1           “(B) had permanent resident status on a  
2           conditional basis (as described in section 216)  
3           at the time that proceedings under this section  
4           commenced.”;

5           (2) in paragraph (3), by striking “30 calendar  
6           days” and inserting “14 calendar days”;

7           (3) in paragraph (4)(B), by striking  
8           “proceedings” and inserting “proceedings”;

9           (4) in paragraph (4)—

10           (A) by redesignating subparagraphs (D)  
11           and (E) as subparagraphs (F) and (G), respec-  
12           tively; and

13           (B) by adding after subparagraph (C) the  
14           following new subparagraphs:

15           “(D) such proceedings are conducted in, or  
16           translated for the alien into, a language the  
17           alien understands;

18           “(E) a determination is made for the  
19           record at such proceedings that the individual  
20           who appears to respond in such a proceeding is  
21           an alien subject to such an expedited proceed-  
22           ing under this section and is, in fact, the alien  
23           named in the notice for such proceeding;”.

24           (5) by adding at the end the following new  
25           paragraph:

1           “(5) No alien described in this section shall be  
2           eligible for any relief from deportation that the At-  
3           torney General may grant in the Attorney General’s  
4           discretion.”.

5           (b) LIMIT ON JUDICIAL REVIEW.—Subsection (d) of  
6           section 106 of the Immigration and Nationality Act (8  
7           U.S.C. 1105a), as added by section 130004(b) of the Vio-  
8           lent Crime Control and Law Enforcement Act of 1994  
9           (Public Law 103–322), is amended to read as follows:

10          “(d) Notwithstanding subsection (c), a petition for  
11          review or for habeas corpus on behalf of an alien described  
12          in section 242A(c) may only challenge whether the alien  
13          is in fact an alien described in such section, and no court  
14          shall have jurisdiction to review any other issue.”.

15          (c) PRESUMPTION OF DEPORTABILITY.—Section  
16          242A of the Immigration and Nationality Act (8 U.S.C.  
17          1252a) is amended by inserting after subsection (b) the  
18          following new subsection:

19          “(c) PRESUMPTION OF DEPORTABILITY.—An alien  
20          convicted of an aggravated felony shall be conclusively pre-  
21          sumed to be deportable from the United States.”.

22          (d) EFFECTIVE DATE.—The amendments made by  
23          this section shall apply to all aliens against whom deporta-  
24          tion proceedings are initiated after the date of the enact-  
25          ment of this Act.

1 **SEC. 664. RESTRICTING THE DEFENSE TO EXCLUSION**  
2 **BASED ON 7 YEARS PERMANENT RESIDENCE**  
3 **FOR CERTAIN CRIMINAL ALIENS.**

4 The last sentence of section 212(c) of the Immigra-  
5 tion and Nationality Act (8 U.S.C. 1182(c)) is amended  
6 by striking “has served for such felony or felonies” and  
7 all that follows through the period and inserting “has been  
8 sentenced for such felony or felonies to a term of imprison-  
9 ment of at least 5 years, if the time for appealing such  
10 conviction or sentence has expired and the sentence has  
11 become final.”.

12 **SEC. 665. LIMITATION ON COLLATERAL ATTACKS ON UN-**  
13 **DERLYING DEPORTATION ORDER.**

14 (a) IN GENERAL.—Section 276 of the Immigration  
15 and Nationality Act (8 U.S.C. 1326) is amended by add-  
16 ing at the end the following new subsection:

17 “(c) In a criminal proceeding under this section, an  
18 alien may not challenge the validity of the deportation  
19 order described in subsection (a)(1) or subsection (b) un-  
20 less the alien demonstrates that—

21 “(1) the alien exhausted any administrative  
22 remedies that may have been available to seek relief  
23 against the order;

24 “(2) the deportation proceedings at which the  
25 order was issued improperly deprived the alien of the  
26 opportunity for judicial review; and



1        fication documents) if the act indictable under sec-  
2        tion 1028 was committed for the purpose of finan-  
3        cial gain,” before “section 1029”;

4            (2) by inserting “section 1542 (relating to false  
5        statement in application and use of passport) if the  
6        act indictable under section 1542 was committed for  
7        the purpose of financial gain, section 1543 (relating  
8        to forgery or false use of passport) if the act indict-  
9        able under section 1543 was committed for the pur-  
10       pose of financial gain, section 1544 (relating to mis-  
11       use of passport) if the act indictable under section  
12       1544 was committed for the purpose of financial  
13       gain, section 1546 (relating to fraud and misuse of  
14       visas, permits, and other documents) if the act in-  
15       dictable under section 1546 was committed for the  
16       purpose of financial gain, sections 1581–1588 (relat-  
17       ing to peonage and slavery),” after “section 1513  
18       (relating to retaliating against a witness, victim, or  
19       an informant),”;

20            (3) by striking “or” before “(E)”; and

21            (4) by inserting before the period at the end the  
22        following: “, or (F) any act which is indictable under  
23        the Immigration and Nationality Act, section 274  
24        (relating to bringing in and harboring certain  
25        aliens), section 277 (relating to aiding or assisting

1 certain aliens to enter the United States), or section  
2 278 (relating to importation of alien for immoral  
3 purpose) if the act indictable under such section of  
4 such Act was committed for the purpose of financial  
5 gain”.

6 **SEC. 668. AUTHORITY FOR ALIEN SMUGGLING INVESTIGA-**  
7 **TIONS.**

8 Section 2516(1) of title 18, United States Code, is  
9 amended—

10 (1) by striking “and” at the end of paragraph  
11 (n),

12 (2) by redesignating paragraph (o) as para-  
13 graph (p), and

14 (3) by inserting after paragraph (n) the follow-  
15 ing new paragraph:

16 “(o) a felony violation of section 1028 (relating  
17 to production of false identification documents), sec-  
18 tion 1542 (relating to false statements in passport  
19 applications), section 1546 (relating to fraud and  
20 misuse of visas, permits, and other documents) of  
21 this title or a violation of section 274, 277, or 278  
22 of the Immigration and Nationality Act (relating to  
23 the smuggling of aliens); or”.

1 **SEC. 669. EXPANSION OF CRITERIA FOR DEPORTATION FOR**  
2 **CRIMES OF MORAL TURPITUDE.**

3 (a) IN GENERAL.—Section 241(a)(2)(A)(i)(II) of the  
4 Immigration and Nationality Act (8 U.S.C.  
5 1251(a)(2)(A)(i)(II)) is amended to read as follows:

6 “(II) is convicted of a crime for  
7 which a sentence of one year or longer  
8 may be imposed,”.

9 (b) EFFECTIVE DATE.—The amendment made by  
10 subsection (a) shall apply to aliens against whom deporta-  
11 tion proceedings are initiated after the date of the enact-  
12 ment of this Act.

13 **SEC. 670. PAYMENTS TO POLITICAL SUBDIVISIONS FOR**  
14 **COSTS OF INCARCERATING ILLEGAL ALIENS.**

15 Amounts appropriated to carry out section 501 of the  
16 Immigration Reform and Control Act of 1986 for fiscal  
17 year 1995 shall be available to carry out section 242(j)  
18 of the Immigration and Nationality Act in that fiscal year  
19 with respect to undocumented criminal aliens incarcerated  
20 under the authority of political subdivisions of a State.

21 **SEC. 671. MISCELLANEOUS PROVISIONS.**

22 (a) USE OF ELECTRONIC AND TELEPHONIC MEDIA  
23 IN DEPORTATION HEARINGS.—The second sentence of  
24 section 242(b) of the Immigration and Nationality Act (8  
25 U.S.C. 1252(b)) is amended by inserting before the period  
26 the following: “; except that nothing in this subsection

1 shall preclude the Attorney General from authorizing pro-  
2 ceedings by electronic or telephonic media (with the con-  
3 sent of the alien) or, where waived or agreed to by the  
4 parties, in the absence of the alien”.

5 (b) CODIFICATION.—

6 (1) Section 242(i) of such Act (8 U.S.C.  
7 1252(i)) is amended by adding at the end the follow-  
8 ing: “Nothing in this subsection shall be construed  
9 to create any substantive or procedural right or ben-  
10 efit that is legally enforceable by any party against  
11 the United States or its agencies or officers or any  
12 other person.”.

13 (2) Section 225 of the Immigration and Nation-  
14 ality Technical Corrections Act of 1994 (Public Law  
15 103–416) is amended by striking “and nothing in”  
16 and all that follows through “1252(i)”.

17 (3) The amendments made by this subsection  
18 shall take effect as if included in the enactment of  
19 the Immigration and Nationality Technical Correc-  
20 tions Act of 1994 (Public Law 103–416).

21 **SEC. 672. CONSTRUCTION OF EXPEDITED DEPORTATION**  
22 **REQUIREMENTS.**

23 No amendment made by this Act shall be construed  
24 to create any substantive or procedural right or benefit

1 that is legally enforceable by any party against the United  
2 States or its agencies or officers or any other person.

3 **SEC. 673. STUDY OF PRISONER TRANSFER TREATY WITH**  
4 **MEXICO.**

5 (a) REPORT TO CONGRESS.—Not later than 180 days  
6 after the date of the enactment of this Act, the Secretary  
7 of State and the Attorney General shall submit to the Con-  
8 gress a report that describes the use and effectiveness of  
9 the Prisoner Transfer Treaty with Mexico (in this section  
10 referred to as the “Treaty”) to remove from the United  
11 States aliens who have been convicted of crimes in the  
12 United States.

13 (b) USE OF TREATY.—The report under subsection  
14 (a) shall include the following information:

15 (1) The number of aliens convicted of a crimi-  
16 nal offense in the United States since November 30,  
17 1977, who would have been or are eligible for trans-  
18 fer pursuant to the Treaty.

19 (2) The number of aliens described in para-  
20 graph (1) who have been transferred pursuant to the  
21 Treaty.

22 (3) The number of aliens described in para-  
23 graph (2) who have been incarcerated in full compli-  
24 ance with the Treaty.

1           (4) The number of aliens who are incarcerated  
2           in a penal institution in the United States who are  
3           eligible for transfer pursuant to the Treaty.

4           (5) The number of aliens described in para-  
5           graph (4) who are incarcerated in State and local  
6           penal institutions.

7           (c) EFFECTIVENESS OF TREATY.—The report under  
8           subsection (a) shall include the recommendations of the  
9           Secretary of State and the Attorney General to increase  
10          the effectiveness and use of, and full compliance with, the  
11          Treaty. In considering the recommendations under this  
12          subsection, the Secretary and the Attorney General shall  
13          consult with such State and local officials in areas dis-  
14          proportionately impacted by aliens convicted of criminal  
15          offenses as the Secretary and the Attorney General con-  
16          sider appropriate. Such recommendations shall address  
17          the following areas:

18               (1) Changes in Federal laws, regulations, and  
19               policies affecting the identification, prosecution, and  
20               deportation of aliens who have committed a criminal  
21               offense in the United States.

22               (2) Changes in State and local laws, regula-  
23               tions, and policies affecting the identification, pros-  
24               ecution, and deportation of aliens who have commit-  
25               ted a criminal offense in the United States.

1           (3) Changes in the Treaty that may be nec-  
2           essary to increase the number of aliens convicted of  
3           crimes who may be transferred pursuant to the  
4           Treaty.

5           (4) Methods for preventing the unlawful re-  
6           entry into the United States of aliens who have been  
7           convicted of criminal offenses in the United States  
8           and transferred pursuant to the Treaty.

9           (5) Any recommendations of appropriate offi-  
10          cials of the Mexican Government on programs to  
11          achieve the goals of, and ensure full compliance  
12          with, the Treaty.

13          (6) An assessment of whether the recommenda-  
14          tions under this subsection require the renegotiation  
15          of the Treaty.

16          (7) The additional funds required to implement  
17          each recommendation under this subsection.

18 **SEC. 674. JUSTICE DEPARTMENT ASSISTANCE IN BRINGING**  
19 **TO JUSTICE ALIENS WHO FLEE PROSECU-**  
20 **TION FOR CRIMES IN THE UNITED STATES.**

21          (a) ASSISTANCE TO STATES.—The Attorney General,  
22          in cooperation with the Commissioner of Immigration and  
23          Naturalization and the Secretary of State, shall designate  
24          an office within the Department of Justice to provide tech-  
25          nical and prosecutorial assistance to States and political

1 subdivisions of States in efforts to bring to justice aliens  
2 who flee prosecution for crimes in the United States.

3 (b) REPORT TO CONGRESS.—Not later than one year  
4 after the date of the enactment of this Act, the Attorney  
5 General shall compile and submit to the Congress a report  
6 which assesses the nature and extent of the problem of  
7 bringing to justice aliens who flee prosecution for crimes  
8 in the United States.

9 **SEC. 675. PRISONER TRANSFER TREATIES.**

10 (a) NEGOTIATION.—Congress advises the President  
11 to begin to negotiate and renegotiate, not later than 90  
12 days after the date of the enactment of this Act, bilateral  
13 prisoner transfer treaties. The focus of such negotiations  
14 shall be to expedite the transfer of aliens unlawfully in  
15 the United States who are incarcerated in United States  
16 prisons, to ensure that a transferred prisoner serves the  
17 balance of the sentence imposed by the United States  
18 courts, and to eliminate any requirement of prisoner con-  
19 sent to such a transfer.

20 (b) CERTIFICATION.—The President shall submit to  
21 the Congress, annually, a certification as to whether each  
22 prisoner transfer treaty in force is effective in returning  
23 aliens unlawfully in the United States who have committed  
24 offenses for which they are incarcerated in the United

1 States to their country of nationality for further incarceration.  
2 ation.

3 **SEC. 676. INTERIOR REPATRIATION PROGRAM.**

4 Not later than 180 days after the date of enactment  
5 of this Act, the Attorney General and the Commissioner  
6 of Immigration and Naturalization shall develop and im-  
7 plement a program in which aliens who previously have  
8 illegally entered the United States not less than 3 times  
9 and are deported or returned to a country contiguous to  
10 the United States will be returned to locations not less  
11 than 500 kilometers from that country's border with the  
12 United States.

13 **SEC. 677. DEPORTATION OF NONVIOLENT OFFENDERS**  
14 **PRIOR TO COMPLETION OF SENTENCE OF IM-**  
15 **PRISONMENT.**

16 (a) IN GENERAL.—Section 242(h) of the Immigra-  
17 tion and Nationality Act (8 U.S.C. 1252(h)) is amended  
18 to read as follows:

19 “(h)(1) Except as provided in paragraph (2), an alien  
20 sentenced to imprisonment may not be deported until such  
21 imprisonment has been terminated by the release of the  
22 alien from confinement. Parole, supervised release, proba-  
23 tion, or possibility of rearrest or further confinement in  
24 respect of the same offense shall not be a ground for defer-  
25 ral of deportation.

1       “(2) The Attorney General is authorized to deport an  
2 alien in accordance with applicable procedures under this  
3 Act prior to the completion of a sentence of imprison-  
4 ment—

5           “(A) in the case of an alien in the custody of  
6 the Attorney General, if the Attorney General deter-  
7 mines that (i) the alien is confined pursuant to a  
8 final conviction for a nonviolent offense (other than  
9 alien smuggling), and (ii) such deportation of the  
10 alien is appropriate and in the best interest of the  
11 United States; or

12           “(B) in the case of an alien in the custody of  
13 a State (or a political subdivision of a State), if the  
14 chief State official exercising authority with respect  
15 to the incarceration of the alien determines that (i)  
16 the alien is confined pursuant to a final conviction  
17 for a nonviolent offense (other than alien smug-  
18 gling), (ii) such deportation is appropriate and in  
19 the best interest of the State, and (iii) submits a  
20 written request to the Attorney General that such  
21 alien be so deported.

22       “(3) Any alien deported pursuant to this subsection  
23 shall be notified of the penalties under the laws of the  
24 United States relating to the reentry of deported aliens,

1 particularly the expanded penalties for aliens deported  
2 under paragraph (2).”.

3 (b) REENTRY OF ALIEN DEPORTED PRIOR TO COM-  
4 PLETION OF TERM OF IMPRISONMENT.—Section 276 of  
5 the Immigration and Nationality Act (8 U.S.C. 1326)  
6 amended by adding at the end the following new sub-  
7 section:

8 “(c) Any alien deported pursuant to section  
9 242(h)(2) who enters, attempts to enter, or is at any time  
10 found in, the United States (unless the Attorney General  
11 has expressly consented to such alien’s reentry) shall be  
12 incarcerated for the remainder of the sentence of impris-  
13 onment which was pending at the time of deportation  
14 without any reduction for parole or supervised release.  
15 Such alien shall be subject to such other penalties relating  
16 to the reentry of deported aliens as may be available under  
17 this section or any other provision of law.”.

## 18 **TITLE VII—AUTHORIZATION AND** 19 **FUNDING**

### 20 **SEC. 701. FIREFIGHTER AND EMERGENCY SERVICES TRAIN-** 21 **ING.**

22 The Attorney General may award grants in consulta-  
23 tion with the Federal Emergency Management Agency for  
24 the purposes of providing specialized training or equip-  
25 ment to enhance the capability of metropolitan fire and

1 emergency service departments to respond to terrorist at-  
2 tacks. To carry out the purposes of this section, there is  
3 authorized to be appropriated \$5,000,000 for fiscal year  
4 1996.

5 **SEC. 702. ASSISTANCE TO FOREIGN COUNTRIES TO PRO-**  
6 **CURE EXPLOSIVE DETECTION DEVICES AND**  
7 **OTHER COUNTER-TERRORISM TECHNOLOGY.**

8 There is authorized to be appropriated not to exceed  
9 \$10,000,000 for fiscal years 1996 and 1997 to the Presi-  
10 dent to provide assistance to foreign countries facing an  
11 imminent danger of terrorist attack that threatens the na-  
12 tional interest of the United States or puts United States  
13 nationals at risk—

14 (1) in obtaining explosive detection devices and  
15 other counter-terrorism technology; and

16 (2) in conducting research and development  
17 projects on such technology.

18 **SEC. 703. RESEARCH AND DEVELOPMENT TO SUPPORT**  
19 **COUNTER-TERRORISM TECHNOLOGIES.**

20 There are authorized to be appropriated not to exceed  
21 \$10,000,000 to the National Institute of Justice Science  
22 and Technology Office—

23 (1) to develop technologies that can be used to  
24 combat terrorism, including technologies in the areas  
25 of—

1 (A) detection of weapons, explosives,  
2 chemicals, and persons;

3 (B) tracking;

4 (C) surveillance;

5 (D) vulnerability assessment; and

6 (E) information technologies;

7 (2) to develop standards to ensure the adequacy  
8 of products produced and compatibility with relevant  
9 national systems; and

10 (3) to identify and assess requirements for tech-  
11 nologies to assist State and local law enforcement in  
12 the national program to combat terrorism.

## 13 **TITLE VIII—MISCELLANEOUS**

### 14 **SEC. 801. STUDY OF STATE LICENSING REQUIREMENTS**

#### 15 **FOR THE PURCHASE AND USE OF HIGH EX-** 16 **PLOSIVES.**

17 The Secretary of the Treasury, in consultation with  
18 the Federal Bureau of Investigation, shall conduct a study  
19 of State licensing requirements for the purchase and use  
20 of commercial high explosives, including detonators, deto-  
21 nating cords, dynamite, water gel, emulsion, blasting  
22 agents, and boosters. Not later than 180 days after the  
23 date of the enactment of this Act, the Secretary shall re-  
24 port to Congress the results of this study, together with

1 any recommendations the Secretary determines are appro-  
2 priate.

3 **SEC. 802. COMPENSATION OF VICTIMS OF TERRORISM.**

4 (a) **REQUIRING COMPENSATION FOR TERRORIST**  
5 **CRIMES.**—Section 1403(d)(3) of the Victims of Crime Act  
6 of 1984 (42 U.S.C. 10603(d)(3)) is amended—

7 (1) by inserting “crimes involving terrorism,”  
8 before “driving while intoxicated”; and

9 (2) by inserting a comma after “driving while  
10 intoxicated”.

11 (b) **FOREIGN TERRORISM.**—Section 1403(b)(6)(B) of  
12 the Victims of Crime Act of 1984 (42 U.S.C.  
13 10603(b)(6)(B)) is amended by inserting “are outside the  
14 United States (if the compensable crime is terrorism, as  
15 defined in section 2331 of title 18, United States Code),  
16 or” before “are States not having”.

17 **SEC. 803. JURISDICTION FOR LAWSUITS AGAINST TERROR-**  
18 **IST STATES.**

19 (a) **EXCEPTION TO FOREIGN SOVEREIGN IMMUNITY**  
20 **FOR CERTAIN CASES.**—Section 1605 of title 28, United  
21 States Code, is amended—

22 (1) in subsection (a)—

23 (A) by striking “or” at the end of para-  
24 graph (5);

1 (B) by striking the period at the end of  
2 paragraph (6) and inserting “; or”; and

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

5 “(7) not otherwise covered by paragraph (2), in  
6 which money damages are sought against a foreign  
7 state for personal injury or death that was caused  
8 by an act of torture, extrajudicial killing, aircraft  
9 sabotage, hostage taking, or the provision of mate-  
10 rial support or resources (as defined in section  
11 2339A of title 18) for such an act if such act or pro-  
12 vision of material support is engaged in by an offi-  
13 cial, employee, or agent of such foreign state while  
14 acting within the scope of his or her office, employ-  
15 ment, or agency, except that—

16 “(A) an action under this paragraph shall  
17 not be instituted unless the claimant first af-  
18 fords the foreign state a reasonable opportunity  
19 to arbitrate the claim in accordance with ac-  
20 cepted international rules of arbitration;

21 “(B) an action under this paragraph shall  
22 not be maintained unless the act upon which  
23 the claim is based occurred while the individual  
24 bringing the claim was a national of the United  
25 States (as that term is defined in section

1           101(a)(22) of the Immigration and Nationality  
2           Act); and

3           “(C) the court shall decline to hear a claim  
4           under this paragraph if the foreign state  
5           against whom the claim has been brought es-  
6           tablishes that procedures and remedies are  
7           available in such state which comport with fun-  
8           damental fairness and due process.”; and

9           (2) by adding at the end the following new sub-  
10          section:

11          “(e) For purposes of paragraph (7) of subsection  
12          (a)—

13                 “(1) the terms ‘torture’ and ‘extrajudicial kill-  
14                 ing’ have the meaning given those terms in section  
15                 3 of the Torture Victim Protection Act of 1991;

16                 “(2) the term ‘hostage taking’ has the meaning  
17                 given that term in Article 1 of the International  
18                 Convention Against the Taking of Hostages; and

19                 “(3) the term ‘aircraft sabotage’ has the mean-  
20                 ing given that term in Article 1 of the Convention  
21                 for the Suppression of Unlawful Acts Against the  
22                 Safety of Civil Aviation.”.

23          (b) EXCEPTION TO IMMUNITY FROM ATTACH-  
24          MENT.—

1           (1) FOREIGN STATE.—Section 1610(a) of title  
2           28, United States Code, is amended—

3                   (A) by striking the period at the end of  
4                   paragraph (6) and inserting “, or”; and

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

7                   “(7) the judgment relates to a claim for which  
8                   the foreign state is not immune under section  
9                   1605(a)(7), regardless of whether the property is or  
10                  was involved with the act upon which the claim is  
11                  based.”.

12           (2) AGENCY OR INSTRUMENTALITY.—Section  
13           1610(b)(2) of such title is amended—

14                   (A) by striking “or (5)” and inserting  
15                   “(5), or (7)”; and

16                   (B) by striking “used for the activity” and  
17                   inserting “involved in the act”.

18           (c) APPLICABILITY.—The amendments made by this  
19           title shall apply to any cause of action arising before, on,  
20           or after the date of the enactment of this Act.

1 **SEC. 804. STUDY OF PUBLICLY AVAILABLE INSTRUCTIONAL**  
2 **MATERIAL ON THE MAKING OF BOMBS, DE-**  
3 **STRUCTIVE DEVICES, AND WEAPONS OF**  
4 **MASS DESTRUCTION.**

5 (a) STUDY.—The Attorney General, in consultation  
6 with such other officials and individuals as the Attorney  
7 General deems appropriate, shall conduct a study concern-  
8 ing—

9 (1) the extent to which there are available to  
10 the public material in any medium (including print,  
11 electronic, or film) that instructs how to make  
12 bombs, other destructive devices, and weapons of  
13 mass destruction;

14 (2) the extent to which information gained from  
15 such material has been used in incidents of domestic  
16 and international terrorism;

17 (3) the likelihood that such information may be  
18 used in future incidents of terrorism; and

19 (4) the application of existing Federal laws to  
20 such material, the need and utility, if any, for addi-  
21 tional laws, and an assessment of the extent to  
22 which the First Amendment protects such material  
23 and its private and commercial distribution.

24 (b) REPORT.—Not later than 180 days after the date  
25 of the enactment of this Act, the Attorney General shall  
26 submit to the Congress a report that contains the results

1 of the study required by this section. The Attorney Gen-  
2 eral shall make the report available to the public.

3 **SEC. 805. COMPILATION OF STATISTICS RELATING TO IN-**  
4 **TIMIDATION OF GOVERNMENT EMPLOYEES.**

5 (a) FINDINGS.—Congress finds that—

6 (1) threats of violence and acts of violence are  
7 mounting against Federal, State, and local govern-  
8 ment employees and their families in attempts to  
9 stop public servants from performing their lawful  
10 duties;

11 (2) these acts are a danger to our constitutional  
12 form of government; and

13 (3) more information is needed as to the extent  
14 of the danger and its nature so that steps can be  
15 taken to protect public servants at all levels of gov-  
16 ernment in the performance of their duties.

17 (b) STATISTICS.—The Attorney General shall acquire  
18 data, for the calendar year 1990 and each succeeding cal-  
19 endar year about crimes and incidents of threats of vio-  
20 lence and acts of violence against Federal, State, and local  
21 government employees in performance of their lawful du-  
22 ties. Such data shall include—

23 (1) in the case of crimes against such employ-  
24 ees, the nature of the crime; and

1           (2) in the case of incidents of threats of vio-  
2           lence and acts of violence, including verbal and im-  
3           plicit threats against such employees, whether or not  
4           criminally punishable, which deter the employees  
5           from the performance of their jobs.

6           (c) GUIDELINES.—The Attorney General shall estab-  
7           lish guidelines for the collection of such data, including  
8           what constitutes sufficient evidence of noncriminal inci-  
9           dents required to be reported.

10          (d) ANNUAL PUBLISHING.—The Attorney General  
11          shall publish an annual summary of the data acquired  
12          under this section. Otherwise such data shall be used only  
13          for research and statistical purposes.

14          (e) EXEMPTION.—The United States Secret Service  
15          is not required to participate in any statistical reporting  
16          activity under this section with respect to any direct or  
17          indirect threats made against any individual for whom the  
18          United States Secret Service is authorized to provide pro-  
19          tection.

20          **SEC. 806. VICTIM RESTITUTION ACT OF 1995.**

21          (a) ORDER OF RESTITUTION.—Section 3663 of title  
22          18, United States Code, is amended—

23                  (1) in subsection (a)—

24                          (A) in paragraph (1)—

1 (i) by striking “may order, in addition  
2 to or, in the case of a misdemeanor, in lieu  
3 of any other penalty authorized by law”  
4 and inserting “shall order”; and

5 (ii) by adding at the end the follow-  
6 ing: “The requirement of this paragraph  
7 does not affect the power of the court to  
8 impose any other penalty authorized by  
9 law. In the case of a misdemeanor, the  
10 court may impose restitution in lieu of any  
11 other penalty authorized by law.”;

12 (B) by adding at the end the following:

13 “(4) In addition to ordering restitution to the victim  
14 of the offense of which a defendant is convicted, a court  
15 may order restitution to any person who, as shown by a  
16 preponderance of evidence, was harmed physically, emo-  
17 tionally, or pecuniarily, by unlawful conduct of the defend-  
18 ant during—

19 “(A) the criminal episode during which the of-  
20 fense occurred; or

21 “(B) the course of a scheme, conspiracy, or pat-  
22 tern of unlawful activity related to the offense.”;

23 (2) in subsection (b)(1)(B) by striking “imprac-  
24 tical” and inserting “impracticable”;

1           (3) in subsection (b)(2) by inserting “emotional  
2 or” after “resulting in”;

3           (4) in subsection (b)—

4                 (A) by striking “and” at the end of para-  
5 graph (4);

6                 (B) by redesignating paragraph (5) as  
7 paragraph (6); and

8                 (C) by inserting after paragraph (4) the  
9 following new paragraph:

10                 “(5) in any case, reimburse the victim for lost  
11 income and necessary child care, transportation, and  
12 other expenses related to participation in the inves-  
13 tigation or prosecution of the offense or attendance  
14 at proceedings related to the offense; and”;

15           (5) in subsection (c) by striking “If the court  
16 decides to order restitution under this section, the”  
17 and inserting “The”;

18           (6) by striking subsections (d), (e), (f), (g), and  
19 (h);

20           (7) by redesignating subsection (i) as subsection  
21 (m); and

22           (8) by inserting after subsection (c) the follow-  
23 ing:

1       “(d)(1) The court shall order restitution to a victim  
2 in the full amount of the victim’s losses as determined by  
3 the court and without consideration of—

4           “(A) the economic circumstances of the of-  
5 fender; or

6           “(B) the fact that a victim has received or is  
7 entitled to receive compensation with respect to a  
8 loss from insurance or any other source.

9       “(2) Upon determination of the amount of restitution  
10 owed to each victim, the court shall specify in the restitu-  
11 tion order the manner in which and the schedule according  
12 to which the restitution is to be paid, in consideration of—

13           “(A) the financial resources and other assets of  
14 the offender;

15           “(B) projected earnings and other income of  
16 the offender; and

17           “(C) any financial obligations of the offender,  
18 including obligations to dependents.

19       “(3) A restitution order may direct the offender to  
20 make a single, lump-sum payment, partial payment at  
21 specified intervals, or such in-kind payments as may be  
22 agreeable to the victim and the offender. A restitution  
23 order shall direct the offender to give appropriate notice  
24 to victims and other persons in cases where there are mul-  
25 tiple victims or other persons who may receive restitution,

1 and where the identity of such victims and other persons  
2 can be reasonably determined.

3 “(4) An in-kind payment described in paragraph (3)  
4 may be in the form of—

5 “(A) return of property;

6 “(B) replacement of property; or

7 “(C) services rendered to the victim or to a per-  
8 son or organization other than the victim.

9 “(e) When the court finds that more than 1 offender  
10 has contributed to the loss of a victim, the court may make  
11 each offender liable for payment of the full amount of res-  
12 titution or may apportion liability among the offenders to  
13 reflect the level of contribution and economic cir-  
14 cumstances of each offender.

15 “(f) When the court finds that more than 1 victim  
16 has sustained a loss requiring restitution by an offender,  
17 the court shall order full restitution to each victim but  
18 may provide for different payment schedules to reflect the  
19 economic circumstances of each victim.

20 “(g)(1) If the victim has received or is entitled to re-  
21 ceive compensation with respect to a loss from insurance  
22 or any other source, the court shall order that restitution  
23 be paid to the person who provided or is obligated to pro-  
24 vide the compensation, but the restitution order shall pro-  
25 vide that all restitution to victims required by the order

1 be paid to the victims before any restitution is paid to  
2 such a provider of compensation.

3       “(2) The issuance of a restitution order shall not af-  
4 fect the entitlement of a victim to receive compensation  
5 with respect to a loss from insurance or any other source  
6 until the payments actually received by the victim under  
7 the restitution order fully compensate the victim for the  
8 loss, at which time a person that has provided compensa-  
9 tion to the victim shall be entitled to receive any payments  
10 remaining to be paid under the restitution order.

11       “(3) Any amount paid to a victim under an order of  
12 restitution shall be set off against any amount later recov-  
13 ered as compensatory damages by the victim in—

14               “(A) any Federal civil proceeding; and

15               “(B) any State civil proceeding, to the extent  
16 provided by the law of the State.

17       “(h) A restitution order shall provide that—

18               “(1) all fines, penalties, costs, restitution pay-  
19 ments and other forms of transfers of money or  
20 property made pursuant to the sentence of the court  
21 shall be made by the offender to an entity des-  
22 ignated by the Director of the Administrative Office  
23 of the United States Courts for accounting and pay-  
24 ment by the entity in accordance with this sub-  
25 section;

1           “(2) the entity designated by the Director of  
2 the Administrative Office of the United States  
3 Courts shall—

4           “(A) log all transfers in a manner that  
5 tracks the offender’s obligations and the cur-  
6 rent status in meeting those obligations, unless,  
7 after efforts have been made to enforce the res-  
8 titution order and it appears that compliance  
9 cannot be obtained, the court determines that  
10 continued recordkeeping under this subpara-  
11 graph would not be useful; and

12           “(B) notify the court and the interested  
13 parties when an offender is 30 days in arrears  
14 in meeting those obligations; and

15           “(3) the offender shall advise the entity des-  
16 igned by the Director of the Administrative Office  
17 of the United States Courts of any change in the of-  
18 fender’s address during the term of the restitution  
19 order.

20           “(i) A restitution order shall constitute a lien against  
21 all property of the offender and may be recorded in any  
22 Federal or State office for the recording of liens against  
23 real or personal property.

24           “(j) Compliance with the schedule of payment and  
25 other terms of a restitution order shall be a condition of

1 any probation, parole, or other form of release of an of-  
2 fender. If a defendant fails to comply with a restitution  
3 order, the court may revoke probation or a term of super-  
4 vised release, modify the term or conditions of probation  
5 or a term of supervised release, hold the defendant in con-  
6 tempt of court, enter a restraining order or injunction,  
7 order the sale of property of the defendant, accept a per-  
8 formance bond, or take any other action necessary to ob-  
9 tain compliance with the restitution order. In determining  
10 what action to take, the court shall consider the defend-  
11 ant's employment status, earning ability, financial re-  
12 sources, the willfulness in failing to comply with the res-  
13 titution order, and any other circumstances that may have  
14 a bearing on the defendant's ability to comply with the  
15 restitution order.

16 “(k) An order of restitution may be enforced—

17 “(1) by the United States—

18 “(A) in the manner provided for the collec-  
19 tion and payment of fines in subchapter B of  
20 chapter 229 of this title; or

21 “(B) in the same manner as a judgment in  
22 a civil action; and

23 “(2) by a victim named in the order to receive  
24 the restitution, in the same manner as a judgment  
25 in a civil action.

1       “(1) A victim or the offender may petition the court  
2 at any time to modify a restitution order as appropriate  
3 in view of a change in the economic circumstances of the  
4 offender.”.

5       (b) PROCEDURE FOR ISSUING ORDER OF RESTITU-  
6 TION.—Section 3664 of title 18, United States Code, is  
7 amended—

8           (1) by striking subsection (a);

9           (2) by redesignating subsections (b), (c), (d),  
10 and (e) as subsections (a), (b), (c), and (d);

11           (3) by amending subsection (a), as redesignated  
12 by paragraph (2), to read as follows:

13       “(a) The court may order the probation service of the  
14 court to obtain information pertaining to the amount of  
15 loss sustained by any victim as a result of the offense,  
16 the financial resources of the defendant, the financial  
17 needs and earning ability of the defendant and the defend-  
18 ant’s dependents, and such other factors as the court  
19 deems appropriate. The probation service of the court  
20 shall include the information collected in the report of  
21 presentence investigation or in a separate report, as the  
22 court directs.”; and

23           (4) by adding at the end thereof the following  
24 new subsection:

1 “(e) The court may refer any issue arising in connec-  
2 tion with a proposed order of restitution to a magistrate  
3 or special master for proposed findings of fact and rec-  
4 ommendations as to disposition, subject to a de novo de-  
5 termination of the issue by the court.”

6 **TITLE IX—HABEAS CORPUS**  
7 **REFORM**

8 **SEC. 901. FILING DEADLINES.**

9 Section 2244 of title 28, United States Code, is  
10 amended by adding at the end the following new sub-  
11 section:

12 “(d)(1) A 1-year period of limitation shall apply to  
13 an application for a writ of habeas corpus by a person  
14 in custody pursuant to the judgment of a State court. The  
15 limitation period shall run from the latest of—

16 “(A) the date on which the judgment became  
17 final by the conclusion of direct review or the expira-  
18 tion of the time for seeking such review;

19 “(B) the date on which the impediment to filing  
20 an application created by State action in violation of  
21 the Constitution or laws of the United States is re-  
22 moved, if the applicant was prevented from filing by  
23 such State action;

24 “(C) the date on which the constitutional right  
25 asserted was initially recognized by the Supreme

1 Court, if the right has been newly recognized by the  
2 Supreme Court and made retroactively applicable to  
3 cases on collateral review; or

4 “(D) the date on which the factual predicate of  
5 the claim or claims presented could have been dis-  
6 covered through the exercise of due diligence.

7 “(2) The time during which a properly filed applica-  
8 tion for State post-conviction or other collateral review  
9 with respect to the pertinent judgment or claim shall not  
10 be counted toward any period of limitation under this sub-  
11 section.”.

12 **SEC. 902. APPEAL.**

13 Section 2253 of title 28, United States Code, is  
14 amended to read as follows:

15 **“§ 2253. Appeal**

16 “(a) In a habeas corpus proceeding or a proceeding  
17 under section 2255 before a district judge, the final order  
18 shall be subject to review, on appeal, by the court of ap-  
19 peals for the circuit in which the proceeding is held.

20 “(b) There shall be no right of appeal from a final  
21 order in a proceeding to test the validity of a warrant to  
22 remove to another district or place for commitment or trial  
23 a person charged with a criminal offense against the  
24 United States, or to test the validity of such person’s de-  
25 tention pending removal proceedings.

1 “(c)(1) Unless a circuit justice or judge issues a cer-  
 2 tificate of appealability, an appeal may not be taken to  
 3 the court of appeals from—

4 “(A) the final order in a habeas corpus proceed-  
 5 ing in which the detention complained of arises out  
 6 of process issued by a State court; or

7 “(B) the final order in a proceeding under sec-  
 8 tion 2255.

9 “(2) A certificate of appealability may issue under  
 10 paragraph (1) only if the applicant has made a substantial  
 11 showing of the denial of a constitutional right.

12 “(3) The certificate of appealability under paragraph  
 13 (1) shall indicate which specific issue or issues satisfy the  
 14 showing required by paragraph (2).”.

15 **SEC. 903. AMENDMENT OF FEDERAL RULES OF APPELLATE**  
 16 **PROCEDURE.**

17 Rule 22 of the Federal Rules of Appellate Procedure  
 18 is amended to read as follows:

19 **“Rule 22. Habeas corpus and section 2255 proceed-**  
 20 **ings**

21 “(a) APPLICATION FOR THE ORIGINAL WRIT.—An  
 22 application for a writ of habeas corpus shall be made to  
 23 the appropriate district court. If application is made to  
 24 a circuit judge, the application shall be transferred to the  
 25 appropriate district court. If an application is made to or

1 transferred to the district court and denied, renewal of the  
2 application before a circuit judge shall not be permitted.  
3 The applicant may, pursuant to section 2253 of title 28,  
4 United States Code, appeal to the appropriate court of ap-  
5 peals from the order of the district court denying the writ.

6 “(b) CERTIFICATE OF APPEALABILITY.—In a habeas  
7 corpus proceeding in which the detention complained of  
8 arises out of process issued by a State court, an appeal  
9 by the applicant for the writ may not proceed unless a  
10 district or a circuit judge issues a certificate of  
11 appealability pursuant to section 2253(c) of title 28,  
12 United States Code. If an appeal is taken by the applicant,  
13 the district judge who rendered the judgment shall either  
14 issue a certificate of appealability or state the reasons why  
15 such a certificate should not issue. The certificate or the  
16 statement shall be forwarded to the court of appeals with  
17 the notice of appeal and the file of the proceedings in the  
18 district court. If the district judge has denied the certifi-  
19 cate, the applicant for the writ may then request issuance  
20 of the certificate by a circuit judge. If such a request is  
21 addressed to the court of appeals, it shall be deemed ad-  
22 dressed to the judges thereof and shall be considered by  
23 a circuit judge or judges as the court deems appropriate.  
24 If no express request for a certificate is filed, the notice  
25 of appeal shall be deemed to constitute a request ad-

1 dressed to the judges of the court of appeals. If an appeal  
2 is taken by a State or its representative, a certificate of  
3 appealability is not required.”.

4 **SEC. 904. SECTION 2254 AMENDMENTS.**

5 Section 2254 of title 28, United States Code, is  
6 amended—

7 (1) by amending subsection (b) to read as fol-  
8 lows:

9 “(b)(1) An application for a writ of habeas corpus  
10 on behalf of a person in custody pursuant to the judgment  
11 of a State court shall not be granted unless it appears  
12 that—

13 “(A) the applicant has exhausted the remedies  
14 available in the courts of the State; or

15 “(B)(i) there is an absence of available State  
16 corrective process; or

17 “(ii) circumstances exist that render such proc-  
18 ess ineffective to protect the rights of the applicant.

19 “(2) An application for a writ of habeas corpus may  
20 be denied on the merits, notwithstanding the failure of the  
21 applicant to exhaust the remedies available in the courts  
22 of the State.

23 “(3) A State shall not be deemed to have waived the  
24 exhaustion requirement or be estopped from reliance upon

1 the requirement unless the State, through counsel, ex-  
2 pressly waives the requirement.”;

3           (2) by redesignating subsections (d), (e), and  
4           (f) as subsections (e), (f), and (g), respectively;

5           (3) by inserting after subsection (c) the follow-  
6           ing new subsection:

7           “(d) An application for a writ of habeas corpus on  
8           behalf of a person in custody pursuant to the judgment  
9           of a State court shall not be granted with respect to any  
10          claim that was adjudicated on the merits in State court  
11          proceedings unless the adjudication of the claim—

12           “(1) resulted in a decision that was contrary to,  
13           or involved an unreasonable application of, clearly  
14           established Federal law, as determined by the Su-  
15           preme Court of the United States; or

16           “(2) resulted in a decision that was based on an  
17           unreasonable determination of the facts in light of  
18           the evidence presented in the State court proceed-  
19           ing.”;

20           (4) by amending subsection (e), as redesignated  
21           by paragraph (2), to read as follows:

22           “(e)(1) In a proceeding instituted by an application  
23           for a writ of habeas corpus by a person in custody pursu-  
24           ant to the judgment of a State court, a determination of  
25           a factual issue made by a State court shall be presumed

1 to be correct. The applicant shall have the burden of re-  
2 butting the presumption of correctness by clear and con-  
3 vincing evidence.

4 “(2) If the applicant has failed to develop the factual  
5 basis of a claim in State court proceedings, the court shall  
6 not hold an evidentiary hearing on the claim unless the  
7 applicant shows that—

8 “(A) the claim relies on—

9 “(i) a new rule of constitutional law, made  
10 retroactive to cases on collateral review by the  
11 Supreme Court, that was previously unavail-  
12 able; or

13 “(ii) a factual predicate that could not  
14 have been previously discovered through the ex-  
15 ercise of due diligence; and

16 “(B) the facts underlying the claim would be  
17 sufficient to establish by clear and convincing evi-  
18 dence that but for constitutional error, no reasonable  
19 factfinder would have found the applicant guilty of  
20 the underlying offense.”; and

21 (5) by adding at the end the following new sub-  
22 sections:

23 “(h) Except as provided in section 408 of the Con-  
24 trolled Substances Act, in all proceedings brought under  
25 this section, and any subsequent proceedings on review,

1 the court may appoint counsel for an applicant who is or  
2 becomes financially unable to afford counsel, except as  
3 provided by a rule promulgated by the Supreme Court  
4 pursuant to statutory authority. Appointment of counsel  
5 under this section shall be governed by section 3006A of  
6 title 18.

7 “(i) The ineffectiveness or incompetence of counsel  
8 during Federal or State collateral post-conviction proceed-  
9 ings shall not be a ground for relief in a proceeding arising  
10 under section 2254.”.

11 **SEC. 905. SECTION 2255 AMENDMENTS.**

12 Section 2255 of title 28, United States Code, is  
13 amended—

14 (1) by striking the second and fifth undesignated  
15 paragraphs; and

16 (2) by adding at the end the following new un-  
17 designated paragraphs:

18 “A 1-year period of limitation shall apply to a motion  
19 under this section. The limitation period shall run from  
20 the latest of—

21 “(1) the date on which the judgment of conviction  
22 becomes final;

23 “(2) the date on which the impediment to making  
24 a motion created by governmental action in violation  
25 of the Constitution or laws of the United

1 States is removed, if the movant was prevented from  
2 making a motion by such governmental action;

3 “(3) the date on which the right asserted was  
4 initially recognized by the Supreme Court, if that  
5 right has been newly recognized by the Supreme  
6 Court and made retroactively applicable to cases on  
7 collateral review; or

8 “(4) the date on which the facts supporting the  
9 claim or claims presented could have been discovered  
10 through the exercise of due diligence.

11 “Except as provided in section 408 of the Controlled  
12 Substances Act, in all proceedings brought under this sec-  
13 tion, and any subsequent proceedings on review, the court  
14 may appoint counsel for a movant who is or becomes fi-  
15 nancially unable to afford counsel shall be in the discretion  
16 of the court, except as provided by a rule promulgated by  
17 the Supreme Court pursuant to statutory authority. Ap-  
18 pointment of counsel under this section shall be governed  
19 by section 3006A of title 18.

20 “A second or successive motion must be certified as  
21 provided in section 2244 by a panel of the appropriate  
22 court of appeals to contain—

23 “(1) newly discovered evidence that, if proven  
24 and viewed in light of the evidence as a whole, would  
25 be sufficient to establish by clear and convincing evi-



1 to cases on collateral review by the Supreme Court,  
2 that was previously unavailable; or

3 “(B)(i) the factual predicate for the claim could  
4 not have been discovered previously through the ex-  
5 ercise of due diligence; and

6 “(ii) the facts underlying the claim, if proven  
7 and viewed in light of the evidence as a whole, would  
8 be sufficient to establish by clear and convincing evi-  
9 dence that, but for constitutional error, no reason-  
10 able factfinder would have found the applicant guilty  
11 of the underlying offense.

12 “(3)(A) Before a second or successive application per-  
13 mitted by this section is filed in the district court, the ap-  
14 plicant shall move in the appropriate court of appeals for  
15 an order authorizing the district court to consider the ap-  
16 plication.

17 “(B) A motion in the court of appeals for an order  
18 authorizing the district court to consider a second or suc-  
19 cessive application shall be determined by a three-judge  
20 panel of the court of appeals.

21 “(C) The court of appeals may authorize the filing  
22 of a second or successive application only if it determines  
23 that the application makes a prima facie showing that the  
24 application satisfies the requirements of this subsection.

1 “(D) The court of appeals shall grant or deny the  
2 authorization to file a second or successive application not  
3 later than 30 days after the filing of the motion.

4 “(E) The grant or denial of an authorization by a  
5 court of appeals to file a second or successive application  
6 shall not be appealable and shall not be the subject of a  
7 petition for rehearing or for a writ of certiorari.

8 “(4) A district court shall dismiss any claim pre-  
9 sented in a second or successive application that the court  
10 of appeals has authorized to be filed unless the applicant  
11 shows that the claim satisfies the requirements of this sec-  
12 tion.”.

13 **SEC. 907. DEATH PENALTY LITIGATION PROCEDURES.**

14 (a) ADDITION OF CHAPTER TO TITLE 28, UNITED  
15 STATES CODE.—Title 28, United States Code, is amended  
16 by inserting after chapter 153 the following new chapter:

17 **“CHAPTER 154—SPECIAL HABEAS CORPUS**  
18 **PROCEDURES IN CAPITAL CASES**

“Sec.

“2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

“2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

“2263. Filing of habeas corpus application; time requirements; tolling rules.

“2264. Scope of Federal review; district court adjudications.

“2265. Application to State unitary review procedure.

“2266. Limitation periods for determining applications and motions.

1 **“§ 2261. Prisoners in State custody subject to capital**  
2 **sentence; appointment of counsel; re-**  
3 **quirement of rule of court or statute; pro-**  
4 **cedures for appointment**

5 “(a) This chapter shall apply to cases arising under  
6 section 2254 brought by prisoners in State custody who  
7 are subject to a capital sentence. It shall apply only if the  
8 provisions of subsections (b) and (c) are satisfied.

9 “(b) This chapter is applicable if a State establishes  
10 by statute, rule of its court of last resort, or by another  
11 agency authorized by State law, a mechanism for the ap-  
12 pointment, compensation, and payment of reasonable liti-  
13 gation expenses of competent counsel in State post-convic-  
14 tion proceedings brought by indigent prisoners whose cap-  
15 ital convictions and sentences have been upheld on direct  
16 appeal to the court of last resort in the State or have oth-  
17 erwise become final for State law purposes. The rule of  
18 court or statute must provide standards of competency for  
19 the appointment of such counsel.

20 “(c) Any mechanism for the appointment, compensa-  
21 tion, and reimbursement of counsel as provided in sub-  
22 section (b) must offer counsel to all State prisoners under  
23 capital sentence and must provide for the entry of an  
24 order by a court of record—

25 “(1) appointing one or more counsels to rep-  
26 resent the prisoner upon a finding that the prisoner

1 is indigent and accepted the offer or is unable com-  
2 petently to decide whether to accept or reject the  
3 offer;

4 “(2) finding, after a hearing if necessary, that  
5 the prisoner rejected the offer of counsel and made  
6 the decision with an understanding of its legal con-  
7 sequences; or

8 “(3) denying the appointment of counsel upon  
9 a finding that the prisoner is not indigent.

10 “(d) No counsel appointed pursuant to subsections  
11 (b) and (c) to represent a State prisoner under capital  
12 sentence shall have previously represented the prisoner at  
13 trial or on direct appeal in the case for which the appoint-  
14 ment is made unless the prisoner and counsel expressly  
15 request continued representation.

16 “(e) The ineffectiveness or incompetence of counsel  
17 during State or Federal post-conviction proceedings in a  
18 capital case shall not be a ground for relief in a proceeding  
19 arising under section 2254. This limitation shall not pre-  
20 clude the appointment of different counsel, on the court’s  
21 own motion or at the request of the prisoner, at any phase  
22 of State or Federal post-conviction proceedings on the  
23 basis of the ineffectiveness or incompetence of counsel in  
24 such proceedings.

1 **“§ 2262. Mandatory stay of execution; duration; limits**  
2 **on stays of execution; successive peti-**  
3 **tions**

4 “(a) Upon the entry in the appropriate State court  
5 of record of an order under section 2261(c), a warrant  
6 or order setting an execution date for a State prisoner  
7 shall be stayed upon application to any court that would  
8 have jurisdiction over any proceedings filed under section  
9 2254. The application shall recite that the State has in-  
10 voked the post-conviction review procedures of this chapter  
11 and that the scheduled execution is subject to stay.

12 “(b) A stay of execution granted pursuant to sub-  
13 section (a) shall expire if—

14 “(1) a State prisoner fails to file a habeas cor-  
15 pus application under section 2254 within the time  
16 required in section 2263;

17 “(2) before a court of competent jurisdiction, in  
18 the presence of counsel, unless the prisoner has com-  
19 petently and knowingly waived such counsel, and  
20 after having been advised of the consequences, a  
21 State prisoner under capital sentence waives the  
22 right to pursue habeas corpus review under section  
23 2254; or

24 “(3) a State prisoner files a habeas corpus peti-  
25 tion under section 2254 within the time required by  
26 section 2263 and fails to make a substantial showing

1 of the denial of a Federal right or is denied relief  
2 in the district court or at any subsequent stage of  
3 review.

4 “(c) If one of the conditions in subsection (b) has  
5 occurred, no Federal court thereafter shall have the au-  
6 thority to enter a stay of execution in the case, unless the  
7 court of appeals approves the filing of a second or succes-  
8 sive application under section 2244(b).

9 **“§ 2263. Filing of habeas corpus application; time re-  
10 requirements; tolling rules**

11 “(a) Any application under this chapter for habeas  
12 corpus relief under section 2254 must be filed in the ap-  
13 propriate district court not later than 180 days after final  
14 State court affirmance of the conviction and sentence on  
15 direct review or the expiration of the time for seeking such  
16 review.

17 “(b) The time requirements established by subsection  
18 (a) shall be tolled—

19 “(1) from the date that a petition for certiorari  
20 is filed in the Supreme Court until the date of final  
21 disposition of the petition if a State prisoner files  
22 the petition to secure review by the Supreme Court  
23 of the affirmance of a capital sentence on direct re-  
24 view by the court of last resort of the State or other  
25 final State court decision on direct review;

1           “(2) from the date on which the first petition  
2           for post-conviction review or other collateral relief is  
3           filed until the final State court disposition of such  
4           petition; and

5           “(3) during an additional period not to exceed  
6           30 days, if—

7                   “(A) a motion for an extension of time is  
8                   filed in the Federal district court that would  
9                   have jurisdiction over the case upon the filing  
10                  of a habeas corpus application under section  
11                  2254; and

12                   “(B) a showing of good cause is made for  
13                  the failure to file the habeas corpus application  
14                  within the time period established by this sec-  
15                  tion.

16 **“§ 2264. Scope of Federal review; district court adju-**  
17 **dications**

18           “(a) Whenever a State prisoner under capital sen-  
19           tence files a petition for habeas corpus relief to which this  
20           chapter applies, the district court shall only consider a  
21           claim or claims that have been raised and decided on the  
22           merits in the State courts, unless the failure to raise the  
23           claim properly is—

24                   “(1) the result of State action in violation of  
25                  the Constitution or laws of the United States;



1 must provide standards of competency for the appoint-  
2 ment of such counsel.

3       “(b) To qualify under this section, a unitary review  
4 procedure must include an offer of counsel following trial  
5 for the purpose of representation on unitary review, and  
6 entry of an order, as provided in section 2261(c), concern-  
7 ing appointment of counsel or waiver or denial of appoint-  
8 ment of counsel for that purpose. No counsel appointed  
9 to represent the prisoner in the unitary review proceedings  
10 shall have previously represented the prisoner at trial in  
11 the case for which the appointment is made unless the  
12 prisoner and counsel expressly request continued represen-  
13 tation.

14       “(c) Sections 2262, 2263, 2264, and 2266 shall apply  
15 in relation to cases involving a sentence of death from any  
16 State having a unitary review procedure that qualifies  
17 under this section. References to State ‘post-conviction re-  
18 view’ and ‘direct review’ in such sections shall be under-  
19 stood as referring to unitary review under the State proce-  
20 dure. The reference in section 2262(a) to ‘an order under  
21 section 2261(c)’ shall be understood as referring to the  
22 post-trial order under subsection (b) concerning represen-  
23 tation in the unitary review proceedings, but if a tran-  
24 script of the trial proceedings is unavailable at the time  
25 of the filing of such an order in the appropriate State

1 court, then the start of the 180-day limitation period  
2 under section 2263 shall be deferred until a transcript is  
3 made available to the prisoner or counsel of the prisoner.

4 **“§ 2266. Limitation periods for determining applica-**  
5 **tions and motions**

6 “(a) The adjudication of any application under sec-  
7 tion 2254 that is subject to this chapter, and the adjudica-  
8 tion of any motion under section 2255 by a person under  
9 sentence of death, shall be given priority by the district  
10 court and by the court of appeals over all noncapital mat-  
11 ters.

12 “(b)(1)(A) A district court shall render a final deter-  
13 mination and enter a final judgment on any application  
14 for a writ of habeas corpus brought under this chapter  
15 in a capital case not later than 180 days after the date  
16 on which the application is filed.

17 “(B) A district court shall afford the parties at least  
18 120 days in which to complete all actions, including the  
19 preparation of all pleadings and briefs, and if necessary,  
20 a hearing, prior to the submission of the case for decision.

21 “(C)(i) A district court may delay for not more than  
22 one additional 30-day period beyond the period specified  
23 in subparagraph (A), the rendering of a determination of  
24 an application for a writ of habeas corpus if the court is-  
25 sues a written order making a finding, and stating the

1 reasons for the finding, that the ends of justice that would  
2 be served by allowing the delay outweigh the best interests  
3 of the public and the applicant in a speedy disposition of  
4 the application.

5 “(ii) The factors, among others, that a court shall  
6 consider in determining whether a delay in the disposition  
7 of an application is warranted are as follows:

8 “(I) Whether the failure to allow the delay  
9 would be likely to result in a miscarriage of justice.

10 “(II) Whether the case is so unusual or so com-  
11 plex, due to the number of defendants, the nature of  
12 the prosecution, or the existence of novel questions  
13 of fact or law, that it is unreasonable to expect ade-  
14 quate briefing within the time limitations established  
15 by subparagraph (A).

16 “(III) Whether the failure to allow a delay in  
17 a case, that, taken as a whole, is not so unusual or  
18 so complex as described in subclause (II), but would  
19 otherwise deny the applicant reasonable time to ob-  
20 tain counsel, would unreasonably deny the applicant  
21 or the government continuity of counsel, or would  
22 deny counsel for the applicant or the government the  
23 reasonable time necessary for effective preparation,  
24 taking into account the exercise of due diligence.

1       “(iii) No delay in disposition shall be permissible be-  
2 cause of general congestion of the court’s calendar.

3       “(iv) The court shall transmit a copy of any order  
4 issued under clause (i) to the Director of the Administra-  
5 tive Office of the United States Courts for inclusion in  
6 the report under paragraph (5).

7       “(2) The time limitations under paragraph (1) shall  
8 apply to—

9           “(A) an initial application for a writ of habeas  
10 corpus;

11           “(B) any second or successive application for a  
12 writ of habeas corpus; and

13           “(C) any redetermination of an application for  
14 a writ of habeas corpus following a remand by the  
15 court of appeals or the Supreme Court for further  
16 proceedings, in which case the limitation period shall  
17 run from the date the remand is ordered.

18       “(3)(A) The time limitations under this section shall  
19 not be construed to entitle an applicant to a stay of execu-  
20 tion, to which the applicant would otherwise not be enti-  
21 tled, for the purpose of litigating any application or  
22 appeal.

23       “(B) No amendment to an application for a writ of  
24 habeas corpus under this chapter shall be permitted after

1 the filing of the answer to the application, except on the  
2 grounds specified in section 2244(b).

3 “(4)(A) The failure of a court to meet or comply with  
4 a time limitation under this section shall not be a ground  
5 for granting relief from a judgment of conviction or sen-  
6 tence.

7 “(B) The State may enforce a time limitation under  
8 this section by petitioning for a writ of mandamus to the  
9 court of appeals. The court of appeals shall act on the  
10 petition for a writ or mandamus not later than 30 days  
11 after the filing of the petition.

12 “(5)(A) The Administrative Office of United States  
13 Courts shall submit to Congress an annual report on the  
14 compliance by the district courts with the time limitations  
15 under this section.

16 “(B) The report described in subparagraph (A) shall  
17 include copies of the orders submitted by the district  
18 courts under paragraph (1)(B)(iv).

19 “(c)(1)(A) A court of appeals shall hear and render  
20 a final determination of any appeal of an order granting  
21 or denying, in whole or in part, an application brought  
22 under this chapter in a capital case not later than 120  
23 days after the date on which the reply brief is filed, or  
24 if no reply brief is filed, not later than 120 days after  
25 the date on which the answering brief is filed.

1       “(B)(i) A court of appeals shall decide whether to  
2 grant a petition for rehearing or other request for rehear-  
3 ing en banc not later than 30 days after the date on which  
4 the petition for rehearing is filed unless a responsive  
5 pleading is required, in which case the court shall decide  
6 whether to grant the petition not later than 30 days after  
7 the date on which the responsive pleading is filed.

8       “(ii) If a petition for rehearing or rehearing en banc  
9 is granted, the court of appeals shall hear and render a  
10 final determination of the appeal not later than 120 days  
11 after the date on which the order granting rehearing or  
12 rehearing en banc is entered.

13       “(2) The time limitations under paragraph (1) shall  
14 apply to—

15               “(A) an initial application for a writ of habeas  
16 corpus;

17               “(B) any second or successive application for a  
18 writ of habeas corpus; and

19               “(C) any redetermination of an application for  
20 a writ of habeas corpus or related appeal following  
21 a remand by the court of appeals en banc or the Su-  
22 preme Court for further proceedings, in which case  
23 the limitation period shall run from the date the re-  
24 mand is ordered.

1       “(3) The time limitations under this section shall not  
 2 be construed to entitle an applicant to a stay of execution,  
 3 to which the applicant would otherwise not be entitled, for  
 4 the purpose of litigating any application or appeal.

5       “(4)(A) The failure of a court to meet or comply with  
 6 a time limitation under this section shall not be a ground  
 7 for granting relief from a judgment of conviction or sen-  
 8 tence.

9       “(B) The State may enforce a time limitation under  
 10 this section by applying for a writ of mandamus to the  
 11 Supreme Court.

12       “(5) The Administrative Office of United States  
 13 Courts shall submit to Congress an annual report on the  
 14 compliance by the courts of appeals with the time limita-  
 15 tions under this section.”.

16       (b) TECHNICAL AMENDMENT.—The table of chapters  
 17 at the beginning of part VI of title 28, United States Code,  
 18 is amended by adding after the item relating to chapter  
 19 153 the following new item:

**“154. Special habeas corpus procedures in capital  
 cases ..... 2261”.**

20       (c) EFFECTIVE DATE.—Chapter 154 of title 28,  
 21 United States Code (as added by subsection (a)) shall  
 22 apply to cases pending on or after the date of enactment  
 23 of this Act.

1 **SEC. 908. TECHNICAL AMENDMENT.**

2 Section 408(q) of the Controlled Substances Act (21  
3 U.S.C. 848(q)) is amended by amending paragraph (9)  
4 to read as follows:

5 “(9) Upon a finding that investigative, expert, or  
6 other services are reasonably necessary for the representa-  
7 tion of the defendant, whether in connection with issues  
8 relating to guilt or the sentence, the court may authorize  
9 the defendant’s attorneys to obtain such services on behalf  
10 of the defendant and, if so authorized, shall order the pay-  
11 ment of fees and expenses therefor under paragraph (10).  
12 No ex parte proceeding, communication, or request may  
13 be considered pursuant to this section unless a proper  
14 showing is made concerning the need for confidentiality.  
15 Any such proceeding, communication, or request shall be  
16 transcribed and made a part of the record available for  
17 appellate review.”.

18 **SEC. 909. SEVERABILITY.**

19 If any provision of this title, an amendment made by  
20 this title, or the application of such provision or amend-  
21 ment to any person or circumstance is held to be unconsti-  
22 tutional, the remainder of this title, the amendments made  
23 by this title, and the application of the provisions of such  
24 to any person or circumstances shall not be affected there-  
25 by.



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