S. 390

To improve the ability of the United States to respond to the international terrorist threat.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10 (legislative day, JANUARY 30), 1995

Mr. BIDEN (for himself, Mr. SPECTER, Mr. KOHL, Mr. KERREY, and Mr. D’AMATO) (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve the ability of the United States to respond to the international terrorist threat.

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

SECTION 1. SHORT TITLE.

This Act may be cited as “the Omnibus Counterterrorism Act of 1995”.

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1 SEC. 3. FINDINGS AND PURPOSES.

2 (a) The Congress finds and declares:
(1) International terrorism remains a serious and deadly problem which threatens the interests of the United States both overseas and within its territory. States or organizations that practice terrorism or actively support it should not be allowed to do so without serious consequence.

(2) International terrorism directed against United States interests must be confronted by the appropriate use of the full array of tools available to the President, including diplomatic, military, economic and prosecutive actions.

(3) The Nation’s security interests are seriously impacted by terrorist attacks carried out overseas against United States Government facilities, officials and other American citizens present in foreign countries.

(4) United States foreign policy interests are profoundly affected by terrorist acts overseas especially those directed against friendly foreign governments and their people and those intended to undermine the peaceful resolution of disputes in the Middle East and other troubled regions.

(5) Since the Iranian Revolution of 1979, the defeat of the Soviet Union in Afghanistan, the peace initiative in the Middle East, and the fall of com-
munism throughout Eastern Europe and the former Soviet Union, international terrorism has become a more complex problem, with new alliances emerging among terrorist organizations.

(6) Violent crime is a pervasive international problem and is exacerbated by the free international movement of drugs, firearms, explosives and individuals dedicated to performing acts of international terrorism who travel using false or fraudulent documentation.

(7) While international terrorists move freely from country to country, ordinary citizens and foreign visitors often fear to travel to or through certain parts of the world due to concern about terrorist violence.

(8) In addition to the destruction of property and devastation to human life, the occurrence of an international terrorist event results in a decline of tourism and affects the marketplace, thereby having an adverse impact on interstate and foreign commerce and economies of friendly nations.

(9) International terrorists, violating the sovereignty of foreign countries, attack dissidents and former colleagues living in foreign countries, including the United States.
International terrorists, both inside and outside the United States, carefully plan attacks and carry them out in foreign countries against innocent victims.

There are increasing intelligence indications of networking between different international terrorist organizations leading to their increased cooperation and sharing of information and resources in areas of common interest.

In response, increased international coordination of legal and enforcement issues is required, pursuant, for example, to the numerous multilateral conventions in force providing universal prosecutive jurisdiction over persons involved in a variety of terrorist acts, including hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage.

Until recently, United States asylum processing procedures have been complicated and often duplicative, providing a powerful incentive for individuals, including terrorists, without a genuine claim, to apply for asylum and remain in the United States.

The United States Constitution grants Congress the power to establish a uniform rule of
naturalization and to make all laws necessary and proper thereto.

(15) Part of that power authorizes the Congress to establish laws directly applicable to alien conduct within the United States that harms the foreign relations, domestic tranquility or national security of the United States.

(16) While the vast majority of aliens justify the trust placed in them by United States immigration policies, an dangerous few utilized access to the United States to carry out their terrorist activity to the detriment of this Nation’s national security and foreign policy interests. Accordingly, international terrorist organizations have been able to create significant infrastructures and cells in the United States among aliens who are in this country either temporarily or as permanent resident aliens.

(17) International terrorist organizations, acting through affiliated groups and/or individuals, have been raising significant funds within the United States, often through misrepresentation of their purposes or subtle forms of extortion, or using the United States as a conduit for transferring funds among countries.
(18) The provision of funds to organizations that engage in terrorism serves to facilitate their terrorist activities regardless of whether the funds, in whole or in part, are intended or claimed to be used for non-violent purposes.

(19) Certain foreign governments and international terrorist organizations have directed their members or sympathizers residing in the United States to take measures in support of terrorist acts, either within or outside the United States.

(20) Present Federal law does not adequately reach all terrorist activity likely to be engaged in by aliens within the United States.

(21) Law enforcement officials have been hindered in using current immigration law to deport alien terrorists because the law fails to provide procedures to protect classified intelligence sources and information. Moreover, a few high ranking members of terrorist organizations have been naturalized as United States citizens because denial of such naturalizations would have necessitated public disclosure of highly classified sources and methods. Furthermore, deportation hearings frequently extend over several years, thus hampering the expeditious removal of aliens engaging in terrorist activity.
(22) Present immigration law is inadequate to protect the United States from terrorist attacks by certain aliens. New procedures are needed to permit expeditious removal of alien terrorists from the United States, thereby reducing the threat that such aliens pose to the national security and other vital interests of the United States.

(23) International terrorist organizations that have infrastructure support within the United States are believed to have been responsible for—

(A) conspiring in 1982 to bomb the Turkish Honorary Consulate in Philadelphia, Pennsylvania;

(B) bombing the Marine barracks in Lebanon in 1983;

(C) holding Americans hostage in Lebanon from 1984-1991;

(D) hijacking in 1984 Kuwait Airlines Flight 221 during which two American employees of the Agency for International Development were murdered;

(E) hijacking in 1985 TWA Flight 847 during which a United States Navy diver was murdered;
(F) murdering in 1985 an American tourist aboard the Achille Lauro cruise liner;

(G) hijacking in 1985 Egypt Air Flight 648 during which one American and one Israeli were killed;

(H) murdering in 1985 four members of the United States Marine Corps in El Salvador;

(I) attacking in December 1985 the Rome and Vienna airports resulting in the death of a young American girl;

(J) hijacking in 1986 Pan Am Flight 73 in Karachi, Pakistan, in which 44 Americans were held hostage and two were killed;

(K) conspiring in 1986 in New York City to bomb an Air India aircraft;

(L) bombing in April 1988 the USO club in Naples, Italy, killing one American service-woman and injuring four American servicemen;

(M) attacking in 1988 the Greek cruise ship “City of Poros”;

(N) bombing in 1988 Pan Am Flight 103 resulting in 270 deaths;

(O) bombing in 1989 UTA Flight 772 resulting in 171 deaths, including seven Americans;
(P) murdering in 1989 a United States Marine Corps officer assigned to the United Nations Truce Supervisory Organization in Lebanon;

(Q) downing in January 1991 a United States military helicopter in El Salvador causing the death of a United States military crewman as a result of the crash and subsequently murdering its two surviving United States military crewmen;

(R) bombing in February 1992 the United States Ambassador’s residence in Lima, Peru;

(S) bombing in February 1993 a cafe in Cairo, Egypt, which wounded two United States citizens;

(T) bombing in February 1993 the World Trade Center in New York City, resulting in six deaths;

(U) conspiring in the New York City area in 1993 to destroy several government buildings and tunnels;

(V) wounding in October 1994 two United States citizens on a crowded street in Jerusalem, Israel;
(W) kidnapping and subsequently murdering in October 1994 a dual citizen of the United States and Israel; and

(X) numerous bombings and murders in Northern Ireland over the past decade.

(24) Nuclear materials, including byproduct materials, can be used to create radioactive dispersal devices which are capable of causing serious bodily injury as well as substantial damage to property and the environment.

(25) The potential use of nuclear materials, including byproduct materials, enhances the threat posed by terrorist activities and thereby has a greater effect on the security interests of the United States.

(26) Due to the widespread hazards presented by the threat of nuclear contamination, as well as nuclear bombs, the United States has strong interest in assuring that persons who are engaged in the illegal acquisition and use of nuclear materials, including byproduct materials, are prosecuted for their offenses.

(27) The threat that the nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially due to
international developments in the years since the enactment in 1982 of the legislation which implemented the Convention of the Physical Protection of Nuclear Material, codified at section 831 of title 18, United States Code.

(28) The successful effort to obtain agreements from other countries to dismantle and destroy nuclear weapons has resulted in increased packaging and transportation of nuclear materials, thereby creating more opportunities for their unlawful diversion or theft;

(29) The illicit trafficking in the relatively more common, commercially available and useable nuclear and byproduct materials poses a potential to cause significant loss of life and/or environmental damage.

(30) Reported trafficking incidents in the early 1990’s suggest that the individuals involved in trafficking these materials from Eurasia and Eastern Europe frequently conducted their black market sales within the Federal Republic of Germany, the Baltic States, and to a lesser extent in the Middle European countries.

(31) The international community has become increasingly concerned over the illegal possession of nuclear and nuclear byproduct materials.
(32) The potentially disastrous ramifications of increased access by terrorists to nuclear and nuclear byproduct material pose such a significant future threat that the United States must use all lawful methods available to combat the illegal use of such materials.

(33) The United States has an interest in encouraging United States corporations to do business in the countries which comprised the former Soviet Union, as well as in other developing democracies; protection of such corporations from threats created by the unlawful use of nuclear materials is important to encourage such business ventures, and to further the foreign relations and commerce of the United States.

(34) The nature of nuclear contamination is such that it may affect the health, environment, and property of United States nationals even if the acts which constitute the illegal activity occur outside the territory of the United States, and are primarily directed toward non-nationals of the United States.

(35) Plastic explosives were used by terrorists in the bombings of Pan Am flight 103 in December 1988 and UTA flight 772 in September 1989.
Plastic explosives currently can be used with little likelihood of detection for acts of unlawful interference with civil aviation, maritime navigation, and other modes of transportation.

The marking of plastic explosives for the purpose of detection would contribute significantly to the prevention and punishment of such unlawful acts.

In order to deter and detect the unlawful use of plastic explosives, the Convention on the Marking of Plastic Explosives for Purpose of Detection, done at Montreal on 1 March 1991, requires each contracting State to adopt appropriate measures to ensure that plastic explosives are duly marked and controlled.

The Congress further finds:

Such international terrorist offenses place innocent lives in jeopardy, endanger national security, affect domestic tranquility, and gravely impact on interstate and foreign commerce.

Such international terrorist offenses involved international associations, communication, and mobility which can often be addressed effectively only at the Federal law enforcement level.
(41) There previously has been no Federal criminal statute which provides a comprehensive basis for addressing acts of international terrorism carried out within the United States.

(42) There previously has been no Federal provision that specifically prohibits fund raising within the United States on behalf of international terrorist organizations.

(43) There previously has been no adequate procedure under the immigration law that permits the expeditious removal of resident and non-resident alien terrorists.

(44) There previously has been no Federal criminal statute which provides adequate protection to United States interests from non-weapons grade, yet hazardous radioactive material, and from the illegal diversion of nuclear materials which are held for other than peaceful purposes.

(45) There previously has been no Federal law that requires the marking of plastic explosives to improve their detectability.

(46) Congress has the power under the inter-state and foreign commerce clause, and other provisions of the Constitution, to enact the following
measures against international terrorism in order to help ensure the integrity and safety of the Nation.

(b) The purposes of this Act are to provide—

(1) Federal law enforcement the necessary tools and fullest possible basis allowed under the Constitution of the United States to address, pursuant to the rule of law, acts of international terrorism occurring within the United States, or directed against the United States or its nationals anywhere in the world;

(2) the Federal Government the fullest possible basis, consistent with the Constitution, of the United States, to prevent persons and organizations within the jurisdiction of the United States from providing funds, directly or indirectly, to organizations, including subordinate or affiliated persons, designated by the President as engaging in terrorism, unless authorized under this Act;

(3) procedures which, consistent with principles of fundamental fairness, will allow the government to deport resident and non-resident alien terrorists promptly without compromising intelligence sources and methods;

(4) provide Federal law enforcement the necessary tools and fullest possible basis allowed under
the Constitution of the United States to combat the threat of nuclear contamination and proliferation which may result from illegal possession and use of radioactive materials; and

(5) fully implement the Convention on the Marking or Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991.

TITLE I—SUBSTANTIVE CRIMINAL LAW ENHANCEMENTS

SEC. 101. ACTS OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.

(a) OFFENSE.—Chapter 113B of title 18, United States Code, is amended by inserting after section 2332a this new section:

§ 2332b. Acts of terrorism transcending national boundaries

“(a) FINDINGS AND PURPOSE.—

“(1) The Congress hereby finds that—

“(A) international terrorism is a serious and deadly problem which threatens the interests of this Nation not only overseas but also within our territory;

“(B) international terrorists have demonstrated their intention and capability of carrying out attacks within the United States by,
for example, bombing The World Trade Center in New York and undertaking attacks, including assassinations, against former colleagues and opponents who have taken up residence in this country;

“(C) United States foreign policy interests are seriously affected by terrorist acts within the United States directed against foreign governments and their people;

“(D) such offenses place innocent lives in jeopardy, endanger national security, affect domestic tranquility, and gravely impact on interstate and foreign commerce;

“(E) such offenses involve international associations, communication, and mobility which often can be addressed effectively only at the Federal law enforcement level; and

“(F) there previously has been no Federal criminal statute which provides a comprehensive basis for addressing acts of international terrorism carried out within the United States.

“(2) The purpose of this section is to provide Federal law enforcement the fullest possible basis allowed under the Constitution to address acts of
international terrorism occurring within the United States.

“(b) PROHIBITED ACTS.—

“(1) Whoever, in a circumstance described in subsection (c),

“(A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any individual within the United States; or

“(B) destroys or damages any structure, conveyance or other real or personal property within the United States in violation of the laws of any State or the United States shall be punished as prescribed in subsection (d).

“(2) Whoever threatens to commit an offense under subsection (b)(1), or attempts or conspires so to do, shall be punished as prescribed in subsection (d).

“(c) JURISDICTIONAL BASES.—The circumstances referred to in subsection (b) are—

“(1) any of the offenders travels in commerce with the intent to commit the offense or to escape apprehension after the commission of such offense;
“(2) the mail, or any facility utilized in any manner in commerce, is used in furtherance of the commission of the offense or to effect the escape of any offender after the commission of such offense;

“(3) the offense obstructs, delays or affects commerce in any way or degree or would have so obstructed, delayed or affected commerce if the offense had been consummated;

“(4) the victim, or intended victim, is the United States Government or any official, officer, employee or agent of the legislative, executive or judicial branches, or of any department or agency, of the United States;

“(5) the structure, conveyance or other real or personal property (A) was used in commerce or in any activity affecting commerce, or (B) was in whole or in part owned, possessed, or used by, or leased to (I) the United States, or any department or agency thereof, or (II) any institution or organization receiving Federal financial assistance or insured by any department or agency of the United States;

“(6) any victim, or intended victim, of the offense is, at the time of the offense, traveling in commerce;
“(7) any victim, intended victim or offender is not a national of the United States;

“(8) the offense is committed in the territorial sea (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) of the United States; or

“(9) the offense is committed in those places within the United States that are in the special maritime and territorial jurisdiction of the United States.

Jurisdiction shall exist over all principals and coconspirators of an offense under subsection (b), and accessories after the fact to any offense based upon subsection (b), if at least one of the above circumstances is applicable to at least one offender.

“(d) Penalties.—Whoever violates this section shall, in addition to the punishment provided for any other crime charged in the indictment, be punished—

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

“(2) for kidnapping, by imprisonment for any term of years or for life;
“(3) for maiming, by imprisonment for not more than thirty-five years;

“(4) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than thirty years;

“(5) for destroying or damaging any structure, conveyance or other real or personal property, by imprisonment for not more than twenty-five years;

“(6) for attempting or conspiring to commit an offense, for any term of years up to the maximum punishment that would have applied had the offense been completed; and

“(7) for threatening to commit an offense under this section, by imprisonment for not more than ten years.

Notwithstanding any other provision of law, the court shall not place on probation any person convicted of a violation of this section; nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment.

“(e) LIMITATION ON PROSECUTION.—No indictment for any offense described in this section shall be sought by the United States except after the Attorney General, or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions, has
made a written certification that, in the judgment of the
certifying official, such offense, or any activity preparatory
to its commission, transcended national boundaries and
that the offense appears to have been intended to coerce,
imintidate, or retaliate against a government or a civilian
population, including any segment thereof.

“(f) INVESTIGATIVE RESPONSIBILITY.—Violations of
this section shall be investigated by the Attorney General.
Assistance may be requested from any Federal, State or
local agency, including the Army, Navy, and Air Force,
any statute, rule, or regulation to the contrary notwith-

standing.

“(g) EVIDENCE.—

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

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

“(h) EXTRATERRITORIAL JURISDICTION.—There is
extraterritorial Federal jurisdiction (1) over any offense
under subsection (b), including any threat, attempt, or
conspiracy to commit such offense, and (2) over conduct
which, under section 3 of this title, renders any person an accessory after the fact to an offense under subsection (b).

“(i) Definitions.—As used in this section, the term—

“(1) ‘commerce’ has the meaning given such term in section 1951(b)(3) of this title;

“(2) ‘facility utilized in any manner in commerce’ includes means of transportation, communication, and transmission;

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

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

“(5) ‘State’ includes a State of the United States, the District of Columbia, and any commonwealth, territory or possession of the United States; and

“(6) ‘territorial sea of the United States’ means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.”.
(b) **Technical Amendment.**—The chapter analysis for Chapter 113B of title 18, United States Code, is amended by inserting after “2332a. Use of Weapons of Mass Destruction.” the following:

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

(c) **Statute of Limitations Amendment.**—Section 3286 of title 18, United States Code, is amended by—

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

(2) striking “36” and inserting “37”;

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

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

(5) inserting “2332b (acts of terrorism transcending national boundaries),” after “(use of weapons of mass destruction),”.

(d) **Presumptive Detention.**—Section 3142(e) of title 18, United States Code, is amended by inserting “or section 2332b” after “section 924(c)”.

(e) **Wiretap Amendment.**—Section 2518(11)(b)(ii) of title 18, United States Code, is amended by—

(1) inserting “(A)” before “thwart” and

(2) inserting “or (B) commit a violation of section 2332b of this title” after “facilities.”
SEC. 102. CONSPIRACY TO HARM PEOPLE AND PROPERTY OVERSEAS.

(a) Section 956 of chapter 45 of title 18, United States Code, is amended to read as follows:

"§ 956. Conspiracy to kill, kidnap, maim, or injure certain property in a foreign country

 "(a)(1) Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if he or any such other person commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).

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

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

 "(B) imprisonment for not more than thirty-five years if the offense is conspiracy to maim.

 "(b) Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons are located, to
or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield or other public utility, public conveyance or public structure, or any religious, educational or cultural property so situated, shall, if he or any such other person commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than twenty-five years.”.

(b) The chapter analysis for chapter 45 of title 18, United States Code, is amended by striking “956. Conspiracy to injure property of foreign government.” and inserting in lieu thereof:

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

(c) Section 2339A of title 18, United States Code, is amended by—

(1) striking “36” and inserting in lieu thereof “37”;

(2) striking “2331” and inserting in lieu thereof “2332”;

(3) striking “2339” and inserting in lieu thereof “2332a”;

(4) striking “of an escape” and inserting in lieu thereof “or an escape”; and
SEC. 103. CLARIFICATION AND EXTENSION OF CRIMINAL JURISDICTION OVER CERTAIN TERRORISM OFFENSES OVERSEAS.

(a) Section 46502(b) of title 49, United States Code, is amended by—

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

(2) amending paragraph (2) to read as follows:

“(2) There is jurisdiction over the offense in paragraph (1) if—

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

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

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

(3) inserting a new paragraph (3) as follows:

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

(b) Section 32(b) of title 18, United States Code, is amended by—
(1) striking "", if the offender is later found in
the United States,"; and
(2) adding at the end the following two new
paragraphs:
``(5) There is jurisdiction over an offense in this
subsection if—
``(A) a national of the United States was
on board, or would have been on board, the air-
craft;
``(B) an offender is a national of the Unit-
ed States; or
``(C) an offender is afterwards found in the
United States.
``(6) For purposes of this subsection, the term
‘national of the United States’ has the meaning pre-
scribed in section 101(a)(22) of the Immigration
and Nationality Act (8 U.S.C. 1101(a)(22)).’’.
(c) Section 1116 of title 18, United States Code, is
amended by—
(1) in subsection (b), adding at the end a new
paragraph (7) as follows:
``(7) ‘‘national of the United States’’ has the
meaning prescribed in section 101(a)(22) of the Im-
migration and Nationality Act (8 U.S.C.
1101(a)(22)).’’; and
(2) in subsection (c), striking the first sentence and inserting the following: “If the victim of an of-
fense under subsection (a) is an internationally pro-
tected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.”.

(d) Section 112 of title 18, United States Code, is amended by—

(1) in subsection (c), inserting “national of the United States,” before “and”; and

(2) in subsection (e), striking the first sentence and inserting the following: “If the victim of an of-
fense under subsection (a) is an internationally pro-
tected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.”.

(e) Section 878 of title 18, United States Code, is amended by—
(1) in subsection (c), inserting “national of the United States,” before “and”; and

(2) in subsection (d) striking the first sentence and inserting the following: “If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.”

(f) Section 1201(e) of title 18, United States Code, is amended by—

(1) striking the first sentence and inserting the following: “If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.”; and

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

(g) Section 37(b)(2) of title 18, United States Code, is amended—

(1) by inserting ``(A)'' before ``the offender is later found in the United States''; and

(2) by inserting ``; or (B) an offender or a victim is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)))'' after ``the offender is later found in the United States''.

(h) Section 178 of title 18, United States Code, is amended by—

(1) striking the ``and'' at the end of paragraph (3);

(2) striking the ``period'' at the end of paragraph (4) and inserting in lieu thereof ``; and''; and

(3) adding the following at the end thereof:

``(5) the term `national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''.

S 390 IS
TITLE II—IMMIGRATION LAW

IMPROVEMENTS

SEC. 201. ALIEN TERRORIST REMOVAL PROCEDURES.

(a) FINDINGS AND PURPOSE.—

(1) The Congress hereby finds that—

(A) international terrorism is a serious and deadly problem which threatens the interests of this Nation overseas and within our territory;

(B) until recently, United States asylum processing procedures have been complicated and often duplicative, providing a powerful incentive for individuals, including terrorists, without a genuine claim, to apply for asylum and remain in the United States;

(C) while most aliens justify the trust placed in them by our immigration policies, a dangerous few utilized access to the United States to create significant infrastructures and cells in the United States in order to carry out their terrorist activity to the detriment of the Nation’s national security and foreign policy interests;

(D) the bombing of the World Trade Center exemplifies the danger posed to the United States and its citizens by alien terrorists;
(E) similarly, some foreign terrorist organizations utilize associated aliens within the United States to raise funds to facilitate their overseas terrorist acts against United States nationals as well as against foreign governments and their citizens; and

(F) current immigration laws and procedures are not effective in addressing the alien terrorist problem, as they require the government to place sensitive intelligence sources and methods at risk and allow the alien to remain within the United States for the prolonged period necessary to pursue a deportation action. Moreover, under the current statutory framework a few high ranking members of terrorist organizations have been naturalized as United States citizens because denial of such naturalizations would have necessitated public disclosure of highly classified sources and methods.

(2) The purpose of this section is to provide procedures which, consistent with principles of fundamental fairness, will allow the government to deport alien terrorists promptly without compromising intelligence sources and methods.
(b) **ALIEN REMOVAL PROCEDURES.**—The Immigration and Nationality Act is amended—

(1) by adding at the end of the table of contents the following:

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TITLE V—ALIEN TERRORIST REMOVAL PROCEDURES
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Sec. 501. Applicability.
Sec. 502. Special removal hearing.
Sec. 503. Designation of judges.
Sec. 504. Miscellaneous provisions.
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and

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

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TITLE V—ALIEN TERRORIST REMOVAL PROCEDURES
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APPLICABILITY
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Sec. 501. (a) The provisions of this title may be followed in the discretion of the Department of Justice whenever the Department of Justice has classified information that an alien described in paragraph 4(B) of section 241(a), as amended, is subject to deportation because of such section. For purposes of this title, the terms ‘classified information’ and ‘national security’ shall have the meaning prescribed in section 1 of the Classified Information Procedures Act, 18 U.S.C. App. III 1.
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Sec. 502. Whenever an official of the Department of Justice files, under section 502, an application with the court established under section 503 for authorization to seek removal pursuant to the provisions of this title, the alien's
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rights regarding removal and expulsion shall be governed solely by the provisions of this title. Except as they are specifically referenced, no other provisions of the Immigration and Nationality Act shall be applicable. An alien subject to removal under these provisions shall have no right of discovery of information derived from electronic surveillance authorized under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.) or otherwise for national security purposes. Nor shall such alien have the right to seek suppression of evidence. Further, the government is authorized to use, in the removal proceedings, the fruits of electronic surveillance and/or unconsented physical searches authorized under the Foreign Intelligence Surveillance Act without regard to subsections 106(c), (e), (f), (g), and (h) of that Act. The provisions and requirements of section 3504 of title 18, United States Code, shall not apply to procedures under this title.

“(c) This title is enacted in response to findings of Congress that aliens described in paragraph 4(B) of section 241(a), as amended, represent a unique threat to the security of the United States. It is the intention of Congress that such aliens be promptly removed from the United States following—

“(1) a judicial determination of probable cause to believe that such person is such an alien; and
“(2) a judicial determination pursuant to the provisions of this title that an alien is removable on the grounds that he or she is an alien described in paragraph 4(B) of section 241(a), as amended.

The Congress furthers intends that, other than as provided by this title, such aliens shall not be given a deportation hearing and are ineligible for any discretionary relief from deportation or for relief under section 243(h).

“SPECIAL REMOVAL HEARING

“SEC. 502. (a) Whenever removal of an alien is sought pursuant to the provisions of this title, a written application upon oath or affirmation shall be submitted in camera and ex parte to the court established under section 503 for an order authorizing such a procedure. Each application shall require the approval of the Attorney General or the Deputy Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this title. Each application shall include—

“(1) the identity of the Department of Justice attorney making the application;

“(2) the approval of the Attorney General or the Deputy Attorney General for the making of the application;
“(3) the identity of the alien for whom authorization for the special removal procedure is sought; and

“(4) a statement of the facts and circumstances relied on by the Department of Justice to establish that—

“(A) the alien is an alien as described in paragraph 4(B) of section 214(a), as amended, and is physically present in the United States; and

“(B) with respect to such alien, adherence to the provisions of title II regarding the deportation of aliens would pose a risk to the national security of the United States.

“(b)(1) The application shall be filed under seal with the court established under section 503. The Attorney General may take into custody any alien with respect to whom such an application has been filed and, notwithstanding any other provision of law, may retain such an alien in custody in accordance with the procedures authorized by this title.

“(2) An alien lawfully admitted for permanent residence (hereafter referred to as resident alien) shall be entitled to a release hearing before the judge assigned to the special removal case pursuant to section 503(a). The resi-
dent alien shall be granted release pending the special re-
moval hearing, upon such terms and conditions prescribed
by the court (including the posting of any monetary
amount), if the alien demonstrates to the court that the
alien, if released, is not likely to flee and that the alien’s
release will not endanger national security or the safety
of any person or the community. The judge may consider
classified information submitted in camera and ex parte
in making his determination.

“(c) In accordance with the rules of the court estab-
lished under section 503, the judge shall consider the ap-
plication and may consider other information, including
classified information, presented under oath or affirmation
at an in camera and ex parte hearing on the application.
A verbatim record shall be maintained of such a hearing.
The application and any other evidence shall be considered
by a single judge of that court who shall enter an ex parte
order as requested if he finds, on the basis of the facts
submitted in the application and any other information
provided by the Department of Justice at the in camera
and ex parte hearing, there is probable cause to believe
that—

“(1) the alien who is the subject of the applica-
tion has been correctly identified and is an alien as
described in paragraph 4(B) of section 241(a), as amended; and

“(2) adherence to the provisions of title II regarding the deportation of the identified alien would pose a risk to the national security of the United States.

“(d)(1) In any case in which the application for the order is denied, the judge shall prepare a written statement of his reasons for the denial and the Department of Justice may seek a review of the denial by the United States Court of Appeals for the District of Columbia Circuit by notice of appeal which must be filed within twenty days. In such a case the entire record of the proceeding shall be transmitted to the Court of Appeals under seal and the Court of Appeals shall hear the matter ex parte.

“(2) If the Department of Justice does not seek review, the alien shall be released from custody, unless such alien may be arrested and taken into custody pursuant to title II as an alien subject to deportation, in which case such alien shall be treated in accordance with the provisions of this Act concerning the deportation of aliens.

“(3) If the application for the order is denied because the judge has not found probable cause to believe that the alien who is the subject of the application has been correctly identified or is an alien as described in paragraph
4(B) of section 241(a), as amended, and the Department
of Justice seeks review, the alien shall be released from
custody unless such alien may be arrested and taken into
custody pursuant to title II as an alien subject to deporta-
tion, in which case such alien shall be treated in accord-
ance with the provisions of this Act concerning the depor-
tation of aliens simultaneously with the application of this
title.

“(4) If the application for the order is denied be-
cause, although the judge found probable cause to believe
that the alien who is the subject of the application has
been correctly identified and is an alien as described in
paragraph 4(B) of section 241(a), as amended, the judge
has found that there is not probable cause to believe that
adherence to the provisions of title II regarding the depor-
tation of the identified alien would pose a risk to the na-
tional security of the United States, the judge shall release
the alien from custody subject to the least restrictive con-
dition or combination of conditions of release described in
section 3142(b) and (c)(1)(B) (i) through (xiv) of title 18,
United States Code, that will reasonably assure the ap-
pearance of the alien at any future proceeding pursuant
to this title and will not endanger the safety of any other
person or the Community; but if the judge finds no such
condition or combination of conditions the alien shall re-
main in custody until the completion of any appeal authorized by this title. The provisions of sections 3145 through 3148 of title 18, United States Code, pertaining to review and appeal of a release or detention order, penalties for failure to appear, penalties for an offense committed while on release, and sanctions for violation of a release condition shall apply to an alien to whom the previous sentence applies and—

“(A) for purposes of section 3145 of such title an appeal shall be taken to the United States Court of Appeals for the District of Columbia Circuit; and

“(B) for purposes of section 3146 of such title the alien shall be considered released in connection with a charge of an offense punishable by life imprisonment.

“(e)(1) In any case in which the application for the order authorizing the special procedures of this title is approved, the judge who granted the order shall consider each item of classified information the Department of Justice proposes to introduce in camera and ex parte at the special removal hearing and shall order the introduction of such information pursuant to subsection (j) if he determines the information to be relevant. The Department of Justice shall prepare a written summary of such classified information which does not pose a risk to national security
and the judge shall approve the summary if he finds the
summary is sufficient to inform the alien of the general
nature of the evidence that he is an alien as described in
paragraph 4(B) of section 241(a), as amended, and to per-
mit the alien to prepare a defense. The Department of
Justice shall cause to be delivered to the alien a copy of
the summary.

“(2) If the written summary is not approved by the
court, the Department shall be afforded reasonable oppor-
tunity to correct the deficiencies identified by the court
and submit a revised summary. Thereafter, if the written
summary is not approved by the court, the special removal
hearing shall be terminated unless the court issues a find-
ing that—

“(A) the continued presence of the alien in the
United States, or
“(B) the provision of the required summary
would likely cause serious and irreparable harm to
the national security or death or serious bodily in-
jury to any person. If such finding is issued, the spe-
cial removal hearing shall continue, the Department
of Justice shall cause to be delivered to the alien a
statement that no summary is possible, and the clas-
sified information submitted in camera and ex parte
may be used pursuant to subsection (j).
“(3) The Department of Justice may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of—

“(A) any determination by the judge pursuant to paragraph (1)—

“(I) concerning whether an item of evidence may be introduced in camera and ex parte; or

“(II) concerning the contents of any summary of evidence to be introduced in camera and ex parte prepared pursuant to paragraph (1); or

“(B) the refusal of the court to make the finding permitted by paragraph (2);

In any interlocutory appeal taken pursuant to this paragraph, the entire record, including any proposed order of the judge or summary of evidence, shall be transmitted to the Court of Appeals under seal and the matter shall be heard ex parte. The Court of Appeals shall consider the appeal as expeditiously as possible.

“(f) In any case in which the application for the order is approved, the special removal hearing authorized by this section shall be conducted for the purpose of determining if the alien to whom the order pertains should be removed from the United States on the grounds that he is an alien
as described in paragraph 4(B) of section 241(a), as amended. In accordance with subsection (e), the alien shall be given reasonable notice of the nature of the charges against him and a general account of the basis for the charges. The alien shall be given notice, reasonable under all the circumstances, of the time and place at which the hearing will be held. The hearing shall be held as expeditiously as possible.

“(g) The special removal hearing shall be held before the same judge who granted the order pursuant to subsection (e) unless that judge is deemed unavailable due to illness or disability by the chief judge of the court established pursuant to section 503, or has died, in which case the chief judge shall assign another judge to conduct the special removal hearing. A decision by the chief judge pursuant to the preceding sentence shall not be subject to review by either the alien or the Department of Justice.

“(h) The special removal hearing shall be open to the public. The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent him. Such counsel shall be appointed by the judge pursuant to the plan for furnishing representation for any person financially unable to obtain adequate representation for the district in which the hear-
ing is conducted, as provided for in section 3006A of title
18, United States Code. All provisions of that section shall
apply and, for purposes of determining the maximum
amount of compensation, the matter shall be treated as
if a felony was charged. The alien may be called as a wit-
ness by the Department of Justice. The alien shall have
a right to introduce evidence on his own behalf. Except
as provided in subsection (j), the alien shall have a reason-
able opportunity to examine the evidence against him and
to cross-examine any witness. A verbatim record of the
proceedings and of all testimony and evidence offered or
produced at such a hearing shall be kept. The decision
of the judge shall be based only on the evidence introduced
at the hearing, including evidence introduced under sub-
section (j).

“(i) At any time prior to the conclusion of the special
removal hearing, either the alien or the Department of
Justice may request the judge to issue a subpoena for the
presence of a named witness (which subpoena may also
command the person to whom it is directed to produce
books, papers, documents, or other objects designated
therein) upon a satisfactory showing that the presence of
the witness is necessary for the determination of any ma-
terial matter. Such a request may be made ex parte except
that the judge shall inform the Department of Justice of
any request for a subpoena by the alien for a witness or material if compliance with such a subpoena would reveal evidence or the source of evidence which has been introduced, or which the Department of Justice has received permission to introduce, in camera and ex parte pursuant to subsection (j), and the Department of Justice shall be given a reasonable opportunity to oppose the issuance of such a subpoena. If an application for a subpoena by the alien also makes a showing that the alien is financially unable to pay for the attendance of a witness so requested, the court may order the costs incurred by the process and the fees of the witness so subpoenaed to be paid for from funds appropriated for the enforcement of title II. A subpoena under this subsection may be served anywhere in the United States. A witness subpoenaed under this subsection shall receive the same fees and expenses as a witness subpoenaed in connection with a civil proceeding in a court of the United States. Nothing in this subsection is intended to allow an alien to have access to classified information.

“(j) When classified information has been summarized pursuant to subsection (e)(1) or where a finding has been made under subsection (e)(2) that no summary is possible, classified information shall be introduced (either in writing or through testimony) in camera and ex parte
and neither the alien nor the public shall be informed of such evidence or its sources other than through reference to the summary provided pursuant to subsection (e)(1).

Notwithstanding the previous sentence, the Department of Justice may, in its discretion and, in the case of classified information, after coordination with the originating agency, elect to introduce such evidence in open session.

“(k) Evidence introduced at the special removal hearing, either in open session or in camera and ex parte, may, in the discretion of the Department of Justice, include all or part of the information presented under subsections (a) through (c) used to obtain the order for the hearing under this section.

“(l) Following the receipt of evidence, the attorneys for the Department of Justice and for the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien. The attorney for the Department of Justice shall open the argument. The attorney for the alien shall be permitted to reply. The attorney for the Department of Justice shall then be permitted to reply in rebuttal. The judge may allow any part of the argument that refers to evidence received in camera and ex parte to be heard in camera and ex parte.
“(m) The Department of Justice has the burden of showing by clear and convincing evidence that the alien is subject to removal because he is an alien as described in paragraph 4(B) of subsection 241(a) of this Act (8 U.S.C. 1251(a)(4)(B)), as amended. If the judge finds that the Department of Justice has met this burden, the judge shall order the alien removed and, if the alien is a resident alien who was released pending the special removal hearing, order the Attorney General to take the alien into custody.

“(n)(1) At the time of rendering a decision as to whether the alien shall be removed, the judge shall prepare a written order containing a statement of facts found and conclusions of law. Any portion of the order that would reveal the substance or source of information received in camera and ex parte pursuant to subsection (j) shall not be made available to the alien or the public.

“(2) The decision of the judge may be appealed by either the alien or the Department of Justice to the United States Court of Appeals for the District of Columbia Circuit by notice of appeal which must be filed within twenty days, during which time such order shall not be executed. In any case appealed pursuant to this subsection, the entire record shall be transmitted to the Court of Appeals and information received pursuant to subsection (j), and
any portion of the judge's order that would reveal the sub-
stance or source of such information shall be transmitted
under seal. The Court of Appeals shall consider the case
as expeditiously as possible.

“(3) In an appeal to the Court of Appeals pursuant
to either subsection (d) or (e) of this section, the Court
of Appeals shall review questions of law de novo, but a
prior finding on any question of fact shall not be set aside
unless such finding was clearly erroneous.

“(o) If the judge decides pursuant to subsection (n)
that the alien should not be removed, the alien shall be
released from custody unless such alien may be arrested
and taken into custody pursuant to title II of this Act
as an alien subject to deportation, in which case, for pur-
poses of detention, such alien may be treated in accord-
ance with the provisions of this Act concerning the depor-
tation of aliens.

“(p) Following a decision by the Court of Appeals
pursuant to either subsection (d) or (n), either the alien
or the Department of Justice may petition the Supreme
Court for a writ of certiorari. In any such case, any infor-
mation transmitted to the Court of Appeals under seal
shall, if such information is also submitted to the Supreme
Court, be transmitted under seal. Any order of removal
shall not be stayed pending disposition of a writ of certio-
rari except as provided by the Court of Appeals or a Justice of the Supreme Court.

"(q) The Department of Justice retains the right to dismiss a removal action at any stage of the proceeding.

"(r) Nothing in this section shall prevent the United States from seeking protective orders and/or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and state secrets privileges.

"Designation of Judges

"Sec. 503. (a) The Chief Justice of the United States shall publicly designate five district court judges from five of the United States judicial circuits who shall constitute a court which shall have jurisdiction to conduct all matters and proceedings authorized by section 502. The Chief Justice shall publicly designate one of the judges so appointed as the chief judge. The chief judge shall promulgate rules to facilitate the functioning of the court and shall be responsible for assigning the consideration of cases to the various judges.

"(b) Proceedings under section 502 shall be conducted as expeditiously as possible. The Chief Justice, in consultation with the Attorney General, the Director of Central Intelligence and other appropriate Federal offi-
cials, shall, consistent with the objectives of this title, provide for the maintenance of appropriate security measures for applications for ex parte orders to conduct the special removal hearings authorized by section 502, the orders themselves, and evidence received in camera and ex parte, and for such other actions as are necessary to protect information concerning matters before the court from harming the national security of the United States.

"(c) Each judge designated under this section shall serve for a term of five years and shall be eligible for re-designation, except that the four associate judges first designated under subsection (a) shall be designated for terms of from one to four years so that the term of one judge shall expire each year.

"MISCELLANEOUS PROVISIONS

"SEC. 504. (a)(1) Following a determination pursuant to this title that an alien shall be removed, and after the conclusion of any judicial review thereof, the Attorney General may retain the alien in custody or, if the alien was released pursuant to subsection 502(o), may return the alien to custody, and shall cause the alien to be transported to any country which the alien shall designate provided such designation does not, in the judgment of the Attorney General, in consultation with the Secretary of State, impair the obligation of the United States under
any treaty (including a treaty pertaining to extradition) or otherwise adversely affect the foreign policy of the United States.

“(2) If the alien refuses to choose a country to which he wishes to be transported, or if the Attorney General, in consultation with the Secretary of State, determines that removal of the alien to the country so selected would impair a treaty obligation or adversely affect United States foreign policy, the Attorney General shall cause the alien to be transported to any country willing to receive such alien.

“(3) Before an alien is transported out of the United States pursuant to paragraph (1) or (2) or pursuant to an order of exclusion because such alien is excludable under paragraph 212(a)(3)(B) of this Act (8 U.S.C. 1182(a)(3)(B)), as amended, he shall be photographed and fingerprinted, and shall be advised of the provisions of subsection 276(b) of this Act (8 U.S.C. 1326(b)).

“(4) If no country is willing to receive such an alien, the Attorney General may, notwithstanding any other provision of law, retain the alien in custody. The Attorney General, in coordination with the Secretary of State, shall make periodic efforts to reach agreement with other countries to accept such an alien and at least every six months shall provide to the alien a written report on his efforts.
Any alien in custody pursuant to this subsection shall be
released from custody solely at the discretion of the Attor-
ney General and subject to such conditions as the Attorney
General shall deem appropriate. The determinations and
actions of the Attorney General pursuant to this sub-
section shall not be subject to judicial review, including
application for a writ of habeas corpus, except for a claim
by the alien that continued detention violates his rights
under the Constitution. Jurisdiction over any such chal-
lenge shall lie exclusively in the United States Court of
Appeals for the District of Columbia Circuit.

“(b)(1) Notwithstanding the provisions of subsection
(a), the Attorney General may hold in abeyance the re-
moval of an alien who has been ordered removed pursuant
to this title to allow the trial of such alien on any Federal
or State criminal charge and the service of any sentence
of confinement resulting from such a trial.

“(2) Pending the commencement of any service of a
sentence of confinement by an alien described in para-
graph (1), such an alien shall remain in the custody of
the Attorney General, unless the Attorney General deter-
mines that temporary release of the alien to the custody
of State authorities for confinement in a State facility is
appropriate and would not endanger national security or
public safety.
“(3) Following the completion of a sentence of confinement by an alien described in paragraph (1) or following the completion of State criminal proceedings which do not result in a sentence of confinement of an alien released to the custody of State authorities pursuant to paragraph (2), such an alien shall be returned to the custody of the Attorney General who shall proceed to carry out the provisions of subsection (a) concerning removal of the alien.

“(c) For purposes of section 751 and 752 of title 18, United States Code, an alien in the custody of the Attorney General pursuant to this title shall be subject to the penalties provided by those sections in relation to a person committed to the custody of the Attorney General by virtue of an arrest on a charge of felony.

“(d)(1) An alien in the custody of the Attorney General pursuant to this title shall be given reasonable opportunity to communicate with and receive visits from members of his family, and to contact, retain, and communicate with an attorney.

“(2) An alien in the custody of the Attorney General pursuant to this title shall have the right to contact an appropriate diplomatic or consular official of the alien’s country of citizenship or nationality or of any country providing representation services therefor. The Attorney Gen-
eral shall notify the appropriate embassy, mission, or con-

ular office of the alien’s detention.”.

(c) ADDITIONAL AMENDMENTS TO INA.—(1) Sub-

section 106(b) of the Immigration and Nationality Act (8

U.S.C. 1105a(b)) is amended by adding at the end thereof
the following sentence: “Jurisdiction to review an order
entered pursuant to the provisions of section 235(c) of this
Act concerning an alien excludable under paragraph 3(B)
of subsection 212(a) (8 U.S.C. 1182(a)), as amended,
shall rest exclusively in the United States Court of Appeals
for the District of Columbia Circuit.”.

(2) Section 276(b) of the Immigration and National-

ity Act (8 U.S.C. 1326(b)) is amended by deleting the
word “or” at the end of subparagraph (b)(1), by replacing
the period at the end of subparagraph (b)(2) with a semi-
colon followed by the word “or”, and by adding at the
end of paragraph (b) the following subparagraph:

“(3) who has been excluded from the United
States pursuant to subsection 235(c) of this Act (8
U.S.C. 1225(c)) because such alien was excludable
under paragraph 3(B) of subsection 212(a) thereof
(8 U.S.C. 1182(a)(2)(B)), as amended, or who has
been removed from the United States pursuant to
the provisions of title V of the Immigration and Na-
tionality Act, and who thereafter, without the per-
mission of the Attorney General, enters the United States or attempts to do so shall be fined under title 18, United States Code, and imprisoned for a period of ten years which sentence shall not run concurrently with any other sentence.”

(3) Section 106(a) of the Immigration and Nationality Act (8 U.S.C. 1105a(a)) is amended by striking from the end of subparagraph 9 the semicolon and the word “and” and inserting a period in lieu thereof, and by striking subparagraph 10.

(d) **Effective Date.**—The provisions of this Act shall be effective upon enactment, and shall apply to all aliens without regard to the date of entry or attempted entry into the United States.

**SEC. 202. CHANGES TO THE IMMIGRATION AND NATIONALITY ACT TO FACILITATE REMOVAL OF ALIEN TERRORISTS.**

(a) Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended to read as follows:

“(B) **Terrorism Activities.**—

“(i) **In General.**—Any alien who—

“(I) has engaged in a terrorism activity, or
“(II) a consular officer or the Attorney General knows, or has reason to believe, is likely to engage after entry in any terrorism activity (as defined in clause (iii)), is excludable. An alien who is a representative of the Palestine Liberation Organization, or any terrorist organization designated by proclamation by the President after he has found such organization to be detrimental to the interest of the United States, is considered, for purposes of this Act, to be engaged in a terrorism activity. As used in clause (B)(i), the term “representative” includes an officer, official, or spokesman of the organization and any person who directs, counsels, commands or induces such organization or its members to engage in terrorism activity. For purposes of subparagraph (3)(B)(i), the determination by the Secretary of State or the Attorney General that an alien is a representative of the organization shall be controlling and shall not be subject to review by any court.
“(ii) TERRORISM ACTIVITY DEFINED.—As used in this Act, the term ‘terrorism activity’ means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State), and which involves any of the following:

“(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

“(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

“(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title...
18, United States Code) or upon the liberty of such a person.

“(IV) An assassination.
“(V) The use of any—
“(aa) biological agent, chemical agent, or nuclear weapon or device, or
“(bb) explosive, firearm, or other weapon (other than for mere personal monetary gain), with intent to endanger, directly, or indirectly, the safety of one or more individuals or to cause substantial damage to property.
“(VI) A threat, attempt, or conspiracy to do any of the foregoing.
“(iii) **Engage in Terrorism Activity Defined.**—As used in this Act, the term ‘engage in terrorism activity’ means to commit, in an individual capacity or as a member of an organization, an act of terrorism activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government which the actor
knows or reasonably should know has com-
mitted or plans to commit terrorism activ-
ity, including any of the following acts:

“(I) The preparation or planning of terrorism activity.

“(II) The gathering of information on potential targets for terrorism activity.

“(III) The providing of any type of material support, including a safe house, transportation, communications, funds, false documentation or identification, weapons, explosives, or training.

“(IV) The soliciting of funds or other things of value for terrorism activity or for any terrorist organization.

“(V) The solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in a terrorism activity.

“(iv) TERRORIST ORGANIZATION DEFINED.—As used in this Act, the term ‘ter-
orrist organization’ means any organization engaged, or which has a significant
subgroup which engages, in terrorism activity, regardless of any legitimate activities conducted by the organization or its subgroups.

"(v) TERRORISM DEFINED.—As used in this Act, the term ‘terrorism’ means premeditated, politically motivated violence perpetrated against noncombatant targets."

(b) Section 241(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(4)(B)) is amended to read as follows:

"(B) TERRORISM ACTIVITIES.—Any alien who has engaged, is engaged, or at any time after entry engages in any terrorism activity (as defined in section 212(a)(3)(B))."

(c) Section 291 of the Immigration and Nationality Act (8 U.S.C. 1361) is amended by adding after ""custody of the Service."" this new sentence: ""The limited production authorized by this provision shall not extend to the records of any other agency or department of the Government or to any documents that do not pertain to the respondent's entry."

(d) Section 242(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)) is amended by inserting
after “Government” the following: “. In the case of an alien who is not lawfully admitted for permanent residence and notwithstanding the provisions of any other law, reasonable opportunity shall not comprehend access to classified information, whether or not introduced in evidence against him. The provisions and requirements of 18 U.S.C. 3504 and 50 U.S.C. 1801 et seq. shall not apply in such cases.”

SEC. 203. ACCESS TO CERTAIN CONFIDENTIAL INS FILES THROUGH COURT ORDER.

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

(1) inserting “(i)” after “except the Attorney General”; and

(2) inserting after “Title 13” the following:

“and

“(ii) may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used:

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

“(II) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the legalization application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant.”.

(b)(1) Section 210(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1160(b)(5)) is amended by inserting “, except as allowed by a court order issued pursuant to paragraph (6) of this subsection” after “consent of the alien”.

(2) Section 210(b)(6) of the Immigration and Nationality Act (8 U.S.C. 1160 (b)(6)) is amended by inserting the following sentence before “Anyone who uses”: “Except the Attorney General may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant an order authorizing disclosure
of information contained in the application of the alien to be used:

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

“(F) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the special agricultural worker application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant.”.

TITLE III—CONTROLS OVER TERRORIST FUND-RAISING

SEC. 301. TERRORIST FUND-RAISING PROHIBITED.

(a) Chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following new section:

“§ 2339B. Fund-raising for terrorist organizations

“(a) FINDINGS AND PURPOSE.—

“(1) The Congress hereby finds that—

“(A) terrorism is a serious and deadly problem which threatens the interests of the
United States both overseas and within our territory;

“(B) the Nation’s security interests are gravely impacted by terrorist attacks carried out overseas against United States Government facilities and officials, as well as against other American citizens present in foreign countries;

“(C) United States foreign policy interests are profoundly affected by terrorist acts overseas directed against foreign governments and their people;

“(D) United States economic interests are significantly impacted by terrorist attacks carried out in foreign countries against United States citizens and businesses;

“(E) international cooperation is required for an effective response to terrorism, as demonstrated by the numerous multilateral conventions in force providing universal prosecutive jurisdiction over persons involved in a variety of terrorist acts, e.g., hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage;

“(F) some foreign terrorist organizations, acting through affiliated groups or individuals,
raise significant funds within the United States or use the United States as a conduit for their receipt of funds raised in other nations; and

"(G) the provision of funds to organizations that engage in terrorism serves to facilitate their terrorist endeavors, regardless of whether the funds, in whole or in part, are intended or claimed to be used for non-violent purposes.

"(2) The purpose of this section is to provide the Federal Government the fullest possible basis, consistent with the Constitution, to prevent persons within the United States or subject to the jurisdiction of the United States from providing funds, directly or indirectly, to foreign organizations, including subordinate or affiliated persons, designated by the President as engaging in terrorism, unless authorized under this section.

"(b) Authority.—Notwithstanding any other provision of law, the President is authorized, under such regulations as he may prescribe, to regulate or prohibit—

"(1) fund-raising or the provision of funds for use by or for the benefit of any foreign organization, including persons assisting such organization in fund-raising, that the President has designated pur-
suant to subsection (c) as being engaged in terrorism activities, or
“(2) financial transactions with any such foreign organization,
within the United States or by any person subject to the
jurisdiction of the United States anywhere.
“(c) DESIGNATION.—
“(1) Pursuant to the authority granted in subsection (b), the President is authorized to designate any foreign organization based on finding that—
“(A) the organization engages in terrorism activity as defined in section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)); and
“(B) the organization’s terrorism activities threaten the national security, foreign policy, or economy of the United States.
“(2) Pursuant to the authority granted in subsection (b), the President is also authorized to designate persons which are raising funds for, or acting for or on behalf of, any organization designated pursuant to subsection (c)(1) above.
“(3) If the President finds that the conditions which were the basis for any designation issued under this subsection have changed in such a man-
ner as to warrant revocation of such designation, or that the national security, foreign relations, or economic interests of the United States so warrant, he may revoke such designation in whole or in part.

"(4) Any designation, or revocation thereof, issued pursuant to this subsection shall be published in the Federal Register and shall become effective immediately on publication.

"(5) Any revocation of a designation shall not affect any action or proceeding based on any conduct committed prior to the effective date of such revocation.

"(6) Any finding made in any designation issued pursuant to paragraph (1) of this subsection that a foreign organization engages in terrorism activity shall be conclusive. No question concerning the validity of the issuance of such designation may be raised by a defendant in a criminal prosecution as a defense in or as an objection to any trial or hearing if such designation was issued and published in the Federal Register in accordance with this subsection.

"(d) PROHIBITED ACTIVITIES.—

"(1) Except as authorized pursuant to the procedures in subsection (e), it shall be unlawful for
any person within the United States, or any person subject to the jurisdiction of the United States anywhere, to directly or indirectly, raise, receive or collect on behalf of, or furnish, give, transmit, transfer or provide funds to or for an organization or person designated by the President under subsection (c), or to attempt to do any of the foregoing.

“(2) It shall be unlawful for any person within the United States or any person subject to the jurisdiction of the United States anywhere, acting for or on behalf of any organization or person designated under subsection (c), (A) to transmit, transfer, or receive any funds raised in violation of subsection (d)(1), or (B) to transmit, transfer or dispose of any funds in which any organization or person designated pursuant to subsection (c) has an interest.

“(e) AUTHORIZED TRANSACTIONS.—

“(1) The Secretary shall publish regulations, consistent with the provisions of this subsection, setting forth the procedures to be followed by persons seeking to raise or provide funds for an organization designated under subsection (c)(1).

“(2) Any person within the United States, or any person subject to the jurisdiction of the United States anywhere, who seeks to solicit funds for or to
transfer funds to any organization or person designated under subsection (c) shall, regardless of whether it has an agency relationship with the designated organization or person, first obtain a license from the Secretary and may thereafter solicit funds or transfer funds to a designated organization or person only as permitted under the terms of a license issued by the Secretary.

“(3) The Secretary shall grant a license only after the person establishes to the satisfaction of the Secretary that—

“(A) the funds are intended to be used exclusively for religious, charitable, literary, or educational purposes; and

“(B) all recipient organizations in any fund-raising chain have effective procedures in place to ensure that the funds (i) will be used exclusively for religious, charitable, literary, or educational purposes, and (ii) will not be used to offset a transfer of funds to be used in terrorist activity.

“(4) Any person granted a license shall maintain books and records, as required by the Secretary, that establish the source of all funds it receives, expenses it incurs, and disbursements it makes. Such
books and records shall be made available for inspection within two business days of a request by the Secretary. Any person granted a license shall also have an agreement with any recipient organization or person that such organization’s or person’s books and records, wherever located, must be made available for inspection of the Secretary upon a request of the Secretary at a place and time agreeable to that organization or person and the Secretary.

“(5) The Secretary may also provide by regulation procedures for the licensing of transactions otherwise prohibited by this section in cases found by the Secretary to be consistent with the statement of purpose in subsection (a)(2).

“(f) SPECIAL REQUIREMENTS FOR FINANCIAL INSTITUTIONS.—

“(1) Except as authorized by the Secretary by means of directives, regulations, or licenses, any financial institution which becomes aware that it has possession of or control over any funds in which an organization or person designated under subsection (c) has an interest, shall—

“(A) retain possession of or maintain control over such funds; and
“(B) report to the Secretary the existence of such funds in accordance with the regulations prescribed by the Secretary.

“(2) Any financial institution that fails to report to the Secretary the existence of such funds shall be subject to a civil penalty of $250 per day for each day that it fails to report to the Secretary—

“(A) in the case of funds being possessed or controlled at the time of the designation of the organization or person, within ten days after the designation; and

“(B) in the case of funds whose possession of or control over arose after the designation of the organization or person, within ten days after the financial institution obtained possession of or control over the funds.

“(g) INVESTIGATIONS.—Any investigation emanating from a possible violation of this section, or of any license, order, or regulation issued pursuant to this section, shall be conducted by the Attorney General, except that investigations relating to (1) a licensee’s compliance with the terms of a license issued by the Secretary pursuant to subsection (e) of this section, (2) a financial institution’s compliance with the requirements of subsection (f) of this sec-
tion, and (3) civil penalty proceedings authorized pursuant to subsection (i) of this section, shall be conducted in coordination with the Attorney General by the office within the Department of the Treasury responsible for licensing and civil penalty proceedings authorized by this section. Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other Federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action.

``(h) RECORDKEEPING AND REPORTING; CIVIL PROCEDURES.—

``(1) Notwithstanding any other provision of law, in exercising the authorities granted by this section, the Secretary and the Attorney General may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this section either before, during, or after the completion thereof, or relative to any funds referred to in this section, or as may be necessary to enforce the terms of this section. In any
case in which a report by a person could be required under this subsection, the Secretary or the Attorney General may require the production of any books of account, records, contracts, letters, memoranda, or other papers or documents, whether maintained in hard copy or electronically, in the control or custody of such person.

“(2) Compliance with any regulation, instruction, or direction issued under this section shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this section, or any regulation, instruction, or direction issued under this section.

“(3) In carrying out their function under this section, the Secretary and the Attorney General may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence.

“(4) In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the inves-
tigation is carried on or of which the subpoenaed person is an inhabitant, or in which the subpoenaed person carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the agency issuing the subpoena, or other order or direction, to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

``(i) PENALTIES.—

``(1) Any person who knowingly violates subsection (d) shall be fined under this title, or imprisoned for up to ten years, or both.

``(2)(A) Any person who fails to maintain or to make available to the Secretary upon his request or demand the books or records required by subsection (e), or by regulations promulgated thereunder, shall be subject to a civil penalty of $50,000 or twice the amount of money which would have been documented had the books and records been properly maintained, whichever is greater.
“(B) Any person who fails to take the actions required of financial institutions pursuant to subsection (f)(1), or by regulations promulgated thereunder, shall be subject to a civil penalty of $50,000 per violation, or twice the amount of money of which the financial institution was required to retain possession or control, whichever is greater.

“(C) Except as otherwise specified in this section, any person who violates any license, order, direction, or regulation issued pursuant to this section shall be subject to a civil penalty of $50,000 per violation, or twice the value of the violation, whichever is greater.

“(3) Any person who intentionally fails to maintain or to make available to the Secretary the books or records required by subsection (e), or by regulations promulgated thereunder, shall be fined under this title, or imprisoned for up to five years, or both.

“(4) Any organization convicted of an offense under (h) (1) or (3) of this section shall, upon conviction, forfeit any charitable designation it might have received under the Internal Revenue Code.

“(j) INJUNCTION.—

“(1) Whenever it appears to the Secretary or the Attorney General that any person is engaged in,
or is about to engage in, any act which constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

"(2) A proceeding under this subsection is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

"(k) [EXTRATERRITORIAL JURISDICTION.—] There is extraterritorial Federal jurisdiction over an offense under this section.

"(l) [CLASSIFIED INFORMATION IN CIVIL PROCEEDINGS BROUGHT BY THE UNITED STATES.—]

"(1) [DISCOVERY OF CLASSIFIED INFORMATION BY DEFENDANTS.—] A court, upon a sufficient showing, may authorize the United States to delete specified items of classified information from documents to be introduced into evidence and/or made available to the defendant through discovery under the Federal Rules of Civil Procedure, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would
tend to prove. The court shall permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal. If the court enters an order denying relief to the United States under this provision, the United States may take an immediate, interlocutory appeal in accordance with the provisions of paragraph (3) of this subsection. In the event of such an appeal, the entire text of the underlying written statement of the United States, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

“(2) INTRODUCTION OF CLASSIFIED INFORMATION; PRECAUTIONS BY COURT.—

“(A) EXHIBITS.—The United States, in order to prevent unnecessary or inadvertent disclosure of classified information in a civil trial or other proceeding brought by the United
States under this section, may petition the court ex parte to admit, in lieu of classified writings, recordings or photographs, one or more of the following: (i) copies of those items from which classified information has been deleted, (ii) stipulations admitting relevant facts that specific classified information would tend to prove, or (iii) a summary of the specific classified information. The court shall grant such a motion of the United States if it finds that the redacted item, stipulation, or summary will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information.

"(B) Taking of Trial Testimony.—During the examination of a witness in any civil proceeding brought by the United States under this section, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible. Following such an objection, the court shall take suitable action to determine whether the response is admissible and, in doing so, shall take precautions to guard against the compromise of any classi-
fied information. Such action may include permit-
mitting the United States to provide the court,
ex parte, with a proffer of the witness’s re-
response to the question or line of inquiry, and
requiring the defendant to provide the court
with a proffer of the nature of the information
he seeks to elicit.

"(C) APPEAL.—If the court enters an
order denying relief to the United States under
this subsection, the United States may take an
immediate interlocutory appeal in accordance
with paragraph (3) of this subsection.

"(3) INTERLOCUTORY APPEAL.—

"(A) An interlocutory appeal by the United
States shall lie to a court of appeals from a de-
cision or order of a district court authorizing
the disclosure of classified information, impos-
ing sanctions for nondisclosure of classified in-
formation, or refusing a protective order sought
by the United States to prevent the disclosure
of classified information.

"(B) An appeal taken pursuant to this sec-
tion either before or during trial shall be expe-
dited by the court of appeals. Prior to trial, an
appeal shall be taken within ten days after the
decision or order appealed from and the trial
shall not commence until the appeal is resolved.

If an appeal is taken during trial, the trial
court shall adjourn the trial until the appeal is
resolved and the court of appeals (1) shall hear
argument on such appeal within four days of
the adjournment of the trial, (2) may dispense
with written briefs other than the supporting
materials previously submitted to the trial
court, (3) shall render its decision within four
days of argument on appeal, and (4) may dis-
pense with the issuance of a written opinion in
rendering its decision. Such appeal and decision
shall not affect the right of the defendant, in a
subsequent appeal from a final judgment, to
claim as error reversal by the trial court on re-
mand of a ruling appealed from during trial.

“(4) Nothing in this subsection shall prevent
the United States from seeking protective orders
and/or asserting privileges ordinarily available to the
United States to protect against the disclosure of
classified information, including the invocation of the
military and State secrets privilege.

“(m) Definitions.—As used in this section, the

term—
“(1) ‘classified information’ means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y));

“(2) ‘financial institution’ has the meaning prescribed in section 5312(a)(2) of title 31, United States Code, including any regulations promulgated thereunder;

“(3) ‘funds’ includes coin or currency of the United States or any other country, traveler’s checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;

“(4) ‘national security’ means the national defense and foreign relations of the United States;

“(5) ‘person’ includes an individual, partnership, association, group, corporation, or other organization;

“(6) ‘Secretary’ means the Secretary of the Treasury; and
“(7) ‘United States’, when used in a geographical sense, includes all commonwealths, territories, and possessions of the United States.”.

(b) **Technical Amendment.**—The analysis for chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following:

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(c) Section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)), as amended by section 202(a) of this Act, is further amended by inserting after the phrase “Palestine Liberation Organization” the following: “, an organization designated by the President under section 2339B of title 18, United States Code”.

(d) The provisions of section 2339B(k) of title 18, United States Code (relating to classified information in civil proceedings brought by the United States), shall also be applicable to civil proceedings brought by the United States under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

**TITLE IV—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES**

**SEC. 401. SHORT TITLE.**

This title may be cited as the “Marking of Plastic Explosives for Detection Act.”
SEC. 402. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) plastic explosives were used by terrorists in the bombings of Pan Am flight 103 in December 1988 and UTA flight 772 in September 1989;

(2) plastic explosives can be used with little likelihood of detection for acts of unlawful interference with civil aviation, maritime navigation, and other modes of transportation;

(3) the criminal use of plastic explosives places innocent lives in jeopardy, endangers national security, affects domestic tranquillity, and gravely affects interstate and foreign commerce;

(4) the marking of plastic explosives for the purpose of detection would contribute significantly to the prevention and punishment of such unlawful acts; and

(5) for the purpose of deterring and detecting such unlawful acts, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991, requires each contracting State to adopt appropriate measures to ensure that plastic explosives are duly marked and controlled.

(b) PURPOSE.—The purpose of this Act is to fully implement the Convention on the Marking of Plastic Exp-
Section 841 of title 18, United States Code, is amended by adding at the end the following new subsections:


“(p) ‘Detection agent’ means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

“(1) Ethylene glycol dinitrate (EGDN), \(\text{C}_2\text{H}_4(\text{NO}_3)_2\), molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

“(2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), \(\text{C}_6\text{H}_{12}(\text{NO}_2)_2\), molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;
“(3) Para-Mononitrotoluene (p-MNT), C₇H₇NO₂, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

“(4) Ortho-Mononitrotoluene (o-MNT), C₇H₇NO₂, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

“(5) any other substance in the concentration specified by the Secretary, after consultation with the Secretary of State and the Secretary of Defense, which has been added to the table in part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

“(q) ‘Plastic explosive’ means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form have a vapor pressure less than 10⁻⁴ Pa at a temperature of 25°C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.”.
SEC. 404. REQUIREMENT OF DETECTION AGENTS FOR PLASTIC EXPLOSIVES.

Section 842 of title 18, United States Code, is amended by adding after subsection (k) the following new subsections:

"(l) It shall be unlawful for any person to manufacture any plastic explosive which does not contain a detection agent.

"(m)(1) It shall be unlawful for any person to import or bring into the United States, or export from the United States, any plastic explosive which does not contain a detection agent.

"(2) This subsection does not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive which was imported, brought into, or manufactured in the United States prior to the effective date of the Marking of Plastic Explosives for Detection Act by or on behalf of any agency of the United States performing military or police functions (including any military Reserve component) or by or on behalf of the National Guard of any State, not later than fifteen years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States."
“(n)(1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive which does not contain a detection agent.

“(2) This subsection does not apply to—

“(A) the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States prior to the effective date of this Act by any person during a period not exceeding three years after the effective date of this Act; or

“(B) the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States prior to the effective date of this Act by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than fifteen years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

“(o) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the effective date of this
Act, to fail to report to the Secretary within one hundred twenty days from the effective date of this Act the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may by regulations prescribe.”.

SEC. 405. CRIMINAL SANCTIONS.

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

“(a) Any person who violates subsections (a) through (i) or (1) through (o) of section 842 of this chapter shall be fined under this title or imprisoned not more than ten years, or both.”.

SEC. 406. EXCEPTIONS.

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

(1) in subsection (a), by inserting “(l), (m), (n), or (o) of section 842 and subsections” after “subsections”; 

(2) by adding at the end of subsection (a)(1) “and which pertains to safety”; and 

(3) by adding at the end the following new subsection:

“(c) It is an affirmative defense against any proceeding involving sections 842 (l) through (o) if the proponent
proves by a preponderance of the evidence that the plastic explosive—

“(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

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

“(B) training in explosives detection or development or testing of explosives detection equipment; or

“(C) forensic science purposes; or

“(2) was plastic explosive which, within three years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located. For purposes of this subsection, the term ‘military device’ includes, but is not restricted to,
shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.’’.

SEC. 407. INVESTIGATIVE AUTHORITY.

Section 846 of title 18, United States Code, is amended—

(1) by inserting in the last sentence before the “subsection” the phrase “subsection (m) or (n) of section 842 or;”, and

(2) by adding at the end the following: “The Attorney General shall exercise authority over violations of subsection (m) or (n) of section 842 only when they are committed by a member of a terrorist or revolutionary group. In any matter involving a terrorist or revolutionary group or individual, as determined by the Attorney General, the Attorney General shall have primary investigative responsibility and the Secretary shall assist the Attorney General as requested.”.

SEC. 408. EFFECTIVE DATE.

The amendments made by this title shall take effect one year after the date of the enactment of this Act.
TITLE V—NUCLEAR MATERIALS

SEC. 501. EXPANSION OF NUCLEAR MATERIALS PROHIBITIONS.

(a)(1) FINDINGS.—The Congress finds and declares:

(A) Nuclear materials, including byproduct materials, can be used to create radioactive dispersal devices which are capable of causing serious bodily injury as well as substantial damage to property and the environment.

(B) The potential use of nuclear materials, including byproduct materials, enhances the threat posed by terrorist activities and thereby has a greater effect on the security interests of the United States.

(C) Due to the widespread hazards presented by the threat of nuclear contamination, as well as nuclear bombs, the United States has a strong interest in assuring that persons who are engaged in the illegal acquisition and use of nuclear materials, including byproduct materials, are prosecuted for their offenses.

(D) The threat that nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially since the enactment in 1982 of the legislation which imple-
mented the Convention on the Physical Protection of Nuclear Material, codified at section 831 of title 18, United States Code.

(E) The successful efforts to obtain agreements from other countries to dismantle nuclear weapons have resulted in increased packaging and transportation of nuclear materials, thereby decreasing the security of such materials by increasing the opportunity for unlawful diversion and theft.

(F) The illicit trafficking in the relatively more common, commercially available and usable nuclear and byproduct materials poses a potential to cause significant loss of life and/or environmental damage.

(G) Reported trafficking incidents in the early 1990's suggest that the individuals involved in trafficking these materials from Eurasia and Eastern Europe frequently conducted their black market sales of these materials within the Federal Republic of Germany, the Baltic States, and to a lesser extent in the Middle European countries.

(H) The international community has become increasingly concerned over the illegal possession of nuclear and nuclear byproduct materials.

(I) The potentially disastrous ramifications of increased access to nuclear and nuclear byproduct
materials pose such a significant future threat that the United States must use all lawful methods available to combat the illegal use of such materials.

(J) The United States has an interest in encouraging United States corporations to do business in the countries which comprised the former Soviet Union, as well as in other developing democracies; protection of such United States corporations from threats created by the unlawful use of nuclear materials is important to the success of the effort to encourage such business ventures, and to further the foreign relations and commerce of the United States.

(K) The nature of nuclear contamination is such that it may affect the health, environment, and property of United States nationals even if the acts which constitute the illegal activity occur outside the territory of the United States, and are primarily directed toward non-United States nationals.

(L) There is presently no Federal criminal statute which provides adequate protection to United States interests from non-weapons grade, yet hazardous radioactive material, and from the illegal diversion of nuclear materials which are held for other than peaceful purposes.
(2) PURPOSE.—The purpose of the Act is to provide Federal law enforcement the necessary tools and fullest possible basis allowed under the Constitution of the United States to combat the threat of nuclear contamination and proliferation which may result from illegal possession and use of radioactive materials.

(b) EXPANSION OF SCOPE AND JURISDICTIONAL BASES.—Section 831 of title 18, United States Code, is amended by—

(1) in subsection (a), striking “nuclear material” each time it appears and inserting each time “nuclear material or nuclear byproduct material”;

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

(3) amending subsection (a)(1)(B) to read as follows:

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

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

(5) amending subsection (c)(2) to read as follows:
“(2) an offender or a victim is a national of the United States or a United States corporation or other legal entity;”;
(6) in subsection (c)(3), striking “at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and”;
(7) striking “or” at the end of subsection (c)(3);
(8) in subsection (c)(4), striking “nuclear material for peaceful purposes” and inserting “nuclear material or nuclear byproduct material”;
(9) striking the period at the end of subsection (c)(4) and inserting “; or”;
(10) adding at the end of subsection (c) a new paragraph as follows:
“(5) the governmental entity under subsection (a)(5) is the United States or the threat under subsection (a)(6) is directed at the United States.”;
(11) in subsection (f)(1)(A), striking “with an isotopic concentration not in excess of 80 percent plutonium 238”;
(12) inserting at the beginning of subsection (f)(1)(C) “enriched uranium, defined as”;
(13) redesignating subsections (f)(2)-(4) as (f)(3)-(5);
(14) inserting after subsection (f)(1) the following new paragraph:

“(2) the term ‘nuclear byproduct material’ means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;’’;

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

(16) striking the period at the end of subsection (f)(5), as redesignated, and inserting a semicolon; and

(17) adding at the end of subsection (f) the following new paragraphs:

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

“(7) the term ‘United States corporation or other legal entity’ means any corporation or other entity organized under the laws of the United States or any State, district, commonwealth, territory or possession of the United States.”.
TITLE VI—PROCEDURAL AND TECHNICAL CORRECTIONS AND IMPROVEMENTS

SEC. 601. CORRECTION TO MATERIAL SUPPORT PROVISION.

Section 120005 of Public Law 103–322, September 13, 1994, is amended to read at the time of its enactment on September 13, 1994, as follows:

"(a) Offense.—Chapter 113A of title 18, United States Code, is amended by adding the following new section:

§ 2339A. Providing material support to terrorists

"(a) Definition.—In this section, ‘material support or resources’ means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, but does not include humanitarian assistance to persons not directly involved in such violations.

"(b) Offense.—A person who, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, in carrying out, a violation of section 32, 37, 351, 844(f) or (i), 1114,
1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, or
2332a of this title or section 46502 of title 49, or in prepa-
ration for or carrying out the concealment or an escape
from the commission of any such violation, shall be fined
under this title, imprisoned not more than ten years, or
both.”.

SEC. 602. EXPANSION OF WEAPONS OF MASS DESTRUCTION
STATUTE.

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

(1) in subsection (a), inserting “threatens,” be-
before “attempts or conspires to use, a weapon of
mass destruction’’;

(2) by redesignating subsection (b) as sub-
section (c); and

(3) by adding the following new subsection:

“(b) Any national of the United States who outside
of the United States uses, or threatens, attempts or con-
spires to use, a weapon of mass destruction shall be im-
prisoned for any term of years or for life, and if death
results, shall be punished by death or imprisonment for
any term of years or for life.”.
SEC. 603. ADDITION OF TERRORIST OFFENSES TO THE RICO STATUTE.

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

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

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

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

(4) inserting after “sections 891-894 (relating to extortionate credit transactions),” the following: “section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),”;

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

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

(7) inserting after "section 1513 (relating to retaliating against a witness, victim, or an informant)," the following: "section 1751 (relating to Presidential assassination),";

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

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

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

SEC. 604. ADDITION OF TERRORISM OFFENSES TO THE MONEY LAUNDERING STATUTE.

(a) Section 1956(c)(7)(B)(ii) of title 18, United States Code, is amended by striking “or extortion;” and inserting “extortion, murder, or destruction of property by means of explosive or fire;”.

(b) Section 1956(c)(7)(D) of title 18, United States Code, is amended by—

(1) inserting after “an offense under” the following: “section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding or retaliating against a Federal official by threatening or injuring a family member),”;
(2) inserting after "section 215 (relating to commissions or gifts for procuring loans)," the following: "section 351 (relating to Congressional or Cabinet officer assassination),";

(3) inserting after "section 798 (relating to espionage)," the following: "section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce),";

(4) inserting after "section 875 (relating to interstate communications)," the following: "section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),";

(5) inserting after "section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution)," the following: "section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons),";

(6) inserting after "section 1203 (relating to hostage taking)" the following: "section 1361 (relating to willful injury of Government property), sec-
tion 1363 (relating to destruction of property within
the special maritime and territorial jurisdiction),

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

(8) inserting after “2114 (relating to bank and
postal robbery and theft),” the following: “section
2280 (relating to violence against maritime naviga-
tion), section 2281 (relating to violence against mar-
itime fixed platforms),”; and

(9) striking “of this title” and inserting the fol-
lowing: “section 2332 (relating to terrorist acts
abroad against United States nationals), section
2332a (relating to use of weapons of mass destruct-
tion), section 2332b (relating to international terror-
ist acts transcending national boundaries), 2339A
(relating to providing material support to terrorists)
of this title, section 46502 of title 49, United States
Code,”.

SEC. 605. AUTHORIZATION FOR INTERCEPTIONS OF COM-
MUNICATIONS IN CERTAIN TERRORISM RE-
LATED OFFENSES.

(a) Section 2516(1) of title 18, United States Code,
is amended by—
(1) striking “and” at the end of subparagraph (n);
(2) redesignating subparagraph (o) as subparagraph (q); and
(3) inserting these two new paragraphs after paragraph (n):
“(o) any violation of section 956 or section 960 of title 18, United States Code (relating to certain actions against foreign nations);
“(p) any violation of section 46502 of title 49, United States Code; and”.

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

SEC. 606. CLARIFICATION OF MARITIME VIOLENCE JURISDICTION.

Section 2280(B)(1)(A) of title 18, United States Code, is amended by—
(1) in clause (ii), striking “and the activity is not prohibited as a crime by the State in which the activity takes place”; and
(2) in clause (iii), striking “the activity takes place on a ship flying the flag of a foreign country or outside of the United States,”.

SEC. 607. EXPANSION OF FEDERAL JURISDICTION OVER BOMB THREATS.
Section 844(e) of title 18, United States Code, is amended by—
(1) inserting “(1)” before “Whoever”; and
(2) adding at the end thereof this new paragraph:
“(2) Whoever willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made to violate subsections (f) or (i) of this section or section 81 of this title shall be fined under this title or imprisoned for not more than five years, or both.

SEC. 608. INCREASED PENALTY FOR EXPLOSIVE CONSPIRACIES.
Section 844 of title 18, United States Code, is amended by adding at the end the following new subsection:
“(n) Except as otherwise provided in this section, a
person who conspires to commit any offense defined in this
chapter shall be subject to the same penalties (other than
the penalty of death) as those prescribed for the offense
the commission of which was the object of the conspir-
acy.”.

SEC. 609. AMENDMENT TO INCLUDE ASSAULTS, MURDERS,
AND THREATS AGAINST FORMER FEDERAL
OFFICIALS ON ACCOUNT OF THE PERFORM-
ANCE OF THEIR OFFICIAL DUTIES.

Section 115(a)(2) of title 18, United States Code, is
amended by inserting “, or threatens to assault, kidnap,
or murder, any person who formerly served as a person
designed in paragraph (1), or” after “assaults, kidnaps,
or murders, or attempts to kidnap or murder”.

SEC. 610. ADDITION OF CONSPIRACY TO TERRORISM OF-
FENSES.

(a)(1) Section 32(a)(7) of title 18, United States
Code, is amended by inserting “or conspires” after “at-
ttempts”.

(2) Section 32(b)(4) of title 18, United States Code,
is amended by inserting “or conspires” after “attempts”.

(b) Section 37(a) title 18, United States Code, is
amended by inserting “or conspires” after “attempts”.
(c)(1) Section 115(a)(1)(A) of title 18, United States Code, is amended by inserting “or conspires” after “attempts”.

(2) Section 115(a)(2) of title 18, United States Code, as amended by section 609, is further amended by inserting “or conspires” after “attempts”.

(3) Section 115(b)(2) of title 18, United States Code, is amended by striking both times it appears “or attempted kidnapping” and inserting both times “, attempted kidnapping or conspiracy to kidnap”.

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

(B) Section 115(b)(3) of title 18, United States Code, is further amended by striking “and 1113” and inserting “, 1113 and 1117”.

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

(e) Section 1203(a) of title 18, United States Code, is amended by inserting “or conspires” after “attempts”.

(f) Section 2280(a)(1)(H) of title 18, United States Code, is amended by inserting “or conspires” after “attempts”.

(g) Section 2281(a)(1)(F) of title 18, United States Code, is amended by inserting “or conspires” after “attempts”.

(h)(1) Section 46502(a)(2) of title 49, United States Code, is amended by inserting “or conspiring” after “attempting”.

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

**TITLE VII—ANTITERRORISM ASSISTANCE**

**SEC. 701. FINDINGS.**

Congress finds that in order to improve the effectiveness and cost efficiency of the Antiterrorism Training Assistance Program, which is administered and coordinated by the Department of State to increase the antiterrorism capabilities of friendly countries, more flexibility is needed in providing trainers and courses overseas and to provide personnel needed to enhance the administration and evaluation of the courses.

**SEC. 702. ANTITERRORISM ASSISTANCE AMENDMENTS.**

Section 573 of chapter 8 (relating to antiterrorism assistance), of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa2) is amended by:

(1) striking “30 days” in subsection (d)(1)(A) and inserting in lieu thereof “180 days”;
(2) striking the “add” after subsection (d)(1)(B);
(3) striking subsection (d)(1)(B);
(4) inserting “and” after subsection (d)(1)(A);
(5) redesignating subsection (d)(1)(C) as subsection (d)(1)(B);
(6) amending subsection (d)(2) to read as follows:

“(2) Personnel of the United States Government authorized to advise foreign countries on anti-terrorism matters shall carry out their responsibilities within the United States when determined most effective or outside the United States for periods not to exceed 180 consecutive calendar days.”; and

(7) striking subsection (f).