

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3135

To amend title 18, United States Code, to provide a death penalty for the murder of foreign visitors.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 1993

Mr. GEKAS introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to provide a death penalty for the murder of foreign visitors.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Foreign Tourist Pro-  
5 tection Act of 1993”.

6 **SEC. 2. DEATH PENALTY PROCEDURES.**

7 (a) IN GENERAL.—Chapter 51 of title 18, United  
8 States Code, is amended by adding at the end the follow-  
9 ing:

1 **“§ 1118. Protection of foreign tourists and visitors**

2 “(a) IN GENERAL.—Whoever kills an individual  
3 who—

4 “(1) is not a national of the United States;

5 “(2) is legally in the United States, as a tourist  
6 or otherwise; and

7 “(3) does not have the right permanently to re-  
8 side in the United States;

9 shall be punished as provided in sections 1111 and 1112  
10 of this title, except that if the killing is a murder in the  
11 first degree, the defendant shall also be subject to the  
12 death penalty under this section. No person may be sen-  
13 tenced to death under this section who was less than 18  
14 years of age at the time of the offense or who is mentally  
15 retarded.

16 “(b) FACTORS TO BE CONSIDERED IN DETERMINING  
17 WHETHER A SENTENCE OF DEATH IS JUSTIFIED.—

18 “(1) MITIGATING FACTORS.—In determining  
19 whether a sentence of death is justified, the jury, or  
20 if there is no jury, the court, shall consider each of  
21 the following mitigating factors and determine  
22 which, if any, exist:

23 “(A) MENTAL CAPACITY.—The defendant’s  
24 mental capacity to appreciate the wrongfulness  
25 of his conduct or to conform his conduct to the  
26 requirements of law was significantly impaired,

1           regardless of whether the capacity was so im-  
2           paired as to constitute a defense to the charge.

3           “(B) DURESS.—The defendant was under  
4           unusual and substantial duress, regardless of  
5           whether the duress was of such a degree as to  
6           constitute a defense to the charge.

7           “(C) PARTICIPATION IN OFFENSE  
8           MINOR.—The defendant’s participation in the  
9           offense, which was committed by another, was  
10          relatively minor, regardless of whether the par-  
11          ticipation was so minor as to constitute a de-  
12          fense to the charge.

13          “(D) NO SIGNIFICANT CRIMINAL HIS-  
14          TORY.—The defendant did not have a signifi-  
15          cant history of other criminal conduct.

16          “(E) DISTURBANCE.—The defendant com-  
17          mitted the offense under severe mental or emo-  
18          tional disturbance.

19          “(F) VICTIM’S CONSENT.—The victim con-  
20          sented to the criminal conduct that resulted in  
21          the victim’s death.

22          The jury, or if there is no jury, the court, shall consider  
23          whether any other aspect of the defendant’s background,  
24          character or record or any other circumstance of the of-

1 fense that the defendant may proffer as a mitigating fac-  
2 tor exists.

3 “(2) AGGRAVATING FACTORS.—In determining  
4 whether a sentence of death is justified, the jury, or  
5 if there is no jury, the court, shall consider each of  
6 the following aggravating factors and determine  
7 which, if any, exist:

8 “(A) CONDUCT OCCURRED DURING COM-  
9 MISSION OF SPECIFIED CRIMES.—The conduct  
10 resulting in death occurred during the commis-  
11 sion or attempted commission of, or during the  
12 immediate flight from the commission of, an of-  
13 fense under section 32 (destruction of aircraft  
14 or aircraft facilities), section 33 (destruction of  
15 motor vehicles or motor vehicle facilities), sec-  
16 tion 36 (violence at international airports), sec-  
17 tion 751 (prisoners in custody of institution or  
18 officer), section 844(d) (transportation of explo-  
19 sives in interstate commerce for certain pur-  
20 poses), section 844(f) (destruction of Govern-  
21 ment property by explosives), section 844(i)  
22 (destruction of property affecting interstate  
23 commerce by explosives), section 1116 (killing  
24 or attempted killing of diplomats), section 1201  
25 (kidnapping), section 1203 (hostage taking),

1 section 1992 (wrecking trains), section 2332  
2 (terrorism), or section 902 (i) or (n) of the  
3 Federal Aviation Act of 1958, as amended (49  
4 U.S.C. App. 1472 (i) or (n) (aircraft piracy)).

5 “(B) INVOLVEMENT OF FIREARM OR PRE-  
6 VIOUS CONVICTION OF VIOLENT FELONY IN-  
7 VOLVING FIREARM.—The defendant—

8 “(i) during and in relation to the com-  
9 mission of the offense or in escaping or at-  
10 tempting to escape apprehension used or  
11 possessed a firearm as defined in section  
12 921 of this title; or

13 “(ii) has previously been convicted of  
14 a Federal or State offense punishable by a  
15 term of imprisonment of more than one  
16 year, involving the use of attempted or  
17 threatened use of a firearm, as defined in  
18 section 921 of this title, against another  
19 person.

20 “(C) PREVIOUS CONVICTION OF OFFENSE  
21 FOR WHICH A SENTENCE OF DEATH OR LIFE  
22 IMPRISONMENT WAS AUTHORIZED.—The de-  
23 fendant has previously been convicted of an-  
24 other Federal or State offense resulting in the  
25 death of a person, for which a sentence of life

1 imprisonment or death was authorized by stat-  
2 ute.

3 “(D) PREVIOUS CONVICTION OF OTHER  
4 SERIOUS OFFENSES.—The defendant has pre-  
5 viously been convicted of two or more Federal  
6 or State offenses, each punishable by a term of  
7 imprisonment of more than one year, committed  
8 on different occasions, involving the importa-  
9 tion, manufacture, or distribution of a con-  
10 trolled substance (as defined in section 102 of  
11 the Controlled Substances Act (21 U.S.C. 802))  
12 or the infliction of, or attempted infliction of,  
13 serious bodily injury or death upon another  
14 person.

15 “(E) GRAVE RISK OF DEATH TO ADDI-  
16 TIONAL PERSONS.—The defendant, in the com-  
17 mission of the offense or in escaping or at-  
18 tempting to escape apprehension, knowingly  
19 created a grave risk of death to one or more  
20 persons in addition to the victim of the offense.

21 “(F) HEINOUS, CRUEL, OR DEPRAVED  
22 MANNER OF COMMISSION.—The defendant com-  
23 mitted the offense in an especially heinous,  
24 cruel, or depraved manner in that it involved  
25 torture or serious physical abuse to the victim.

1           “(G) PROCUREMENT OF OFFENSE BY PAY-  
2           MENT.—The defendant procured the commis-  
3           sion of the offense by payment, or promise of  
4           payment, of anything of pecuniary value.

5           “(H) COMMISSION OF THE OFFENSE FOR  
6           PECUNIARY GAIN.—The defendant committed  
7           the offense as consideration for the receipt, or  
8           in the expectation of the receipt, of anything of  
9           pecuniary value.

10          “(I) SUBSTANTIAL PLANNING AND  
11          PREMEDITATION.—The defendant committed  
12          the offense after substantial planning and  
13          premeditation.

14          “(J) VULNERABILITY OF VICTIM.—The  
15          victim was particularly vulnerable due to old  
16          age, youth, infirmity, or inability to commu-  
17          nicate in or understand English.

18          The jury, or if there is no jury, the court, may consider  
19          whether any other aggravating factor exists.

20          “(c) SPECIAL HEARING TO DETERMINE WHETHER  
21          A SENTENCE OF DEATH IS JUSTIFIED.—

22          “(1) NOTICE BY THE GOVERNMENT.—When-  
23          ever the Government intends to seek the death pen-  
24          alty for an offense under this section, the attorney  
25          for the Government, a reasonable time before the

1 trial, or before acceptance by the court of a plea of  
2 guilty, or at such time thereafter as the court may  
3 permit upon a showing of good cause, shall sign and  
4 file with the court, and serve on the defendant, a no-  
5 tice that the Government in the event of conviction  
6 will seek the sentence of death. The notice shall set  
7 forth the aggravating factor or factors enumerated  
8 in this section, and any other aggravating factor not  
9 specifically enumerated in this section, that the Gov-  
10 ernment, if the defendant is convicted, will seek to  
11 prove as the basis for the death penalty. The factors  
12 for which notice is provided under this subsection  
13 may include factors concerning the effect of the of-  
14 fense on the victim and the victim's family. The  
15 court may permit the attorney for the Government  
16 to amend the notice upon a showing of good cause.

17       “(2) HEARING BEFORE A COURT OR JURY.—  
18 When the attorney for the Government has filed a  
19 notice under paragraph (1) and the defendant is  
20 found guilty of an offense under this section, the  
21 judge who presided at the trial or before whom the  
22 guilty plea was entered, or another judge if that  
23 judge is unavailable, shall conduct a separate sen-  
24 tencing hearing to determine the punishment to be  
25 imposed. Before such a hearing, no presentence re-

1 port shall be prepared by the United States Proba-  
2 tion Service, notwithstanding the provisions of the  
3 Federal Rules of Criminal Procedure. The hearing  
4 shall be conducted—

5 “(A) before the jury that determined the  
6 defendant’s guilt;

7 “(B) before a jury impaneled for the pur-  
8 pose of the hearing if—

9 “(i) the defendant was convicted upon  
10 a plea of guilty;

11 “(ii) the defendant was convicted after  
12 a trial before the court sitting without a  
13 jury;

14 “(iii) the jury that determined the de-  
15 fendant’s guilt was discharged for good  
16 cause; or

17 “(iv) after initial imposition of a sen-  
18 tence under this section, reconsideration of  
19 the sentence under the section is nec-  
20 essary; or

21 “(C) before the court alone, upon motion  
22 of the defendant and with the approval of the  
23 attorney for the Government.

24 A jury impaneled pursuant to subparagraph (B)  
25 shall consist of 12 members, unless, at any time be-

1 fore the conclusion of the hearing, the parties stipu-  
2 late, with the approval of the court, that it shall con-  
3 sist of a lesser number.

4 “(3) PROOF OF MITIGATING AND AGGRAVATING  
5 FACTORS.—At the hearing, information may be pre-  
6 sented as to—

7 “(A) any matter relating to any mitigating  
8 factor listed in this section and any other miti-  
9 gating factor; and

10 “(B) any matter relating to any aggravat-  
11 ing factor listed in this section for which notice  
12 has been provided under paragraph (1) and (if  
13 information is presented relating to such a list-  
14 ed factor) any other aggravating factor for  
15 which notice has been so provided.

16 The information presented may include the trial  
17 transcript and exhibits. Any other information rel-  
18 evant to such mitigating or aggravating factors may  
19 be presented by either the Government or the de-  
20 fendant. The information presented by the Govern-  
21 ment in support of factors concerning the effect of  
22 the offense on the victim and the victim’s family  
23 may include oral testimony, a victim impact state-  
24 ment that identifies the victim of the offense and the  
25 nature and extent of harm and loss suffered by the

1 victim and the victim's family, and other relevant in-  
2 formation. Information is admissible regardless of its  
3 admissibility under the rules governing admission of  
4 evidence at criminal trials, except that information  
5 may be excluded if its probative value is outweighed  
6 by the danger of creating unfair prejudice, confusing  
7 the issues, or misleading the jury. The attorney for  
8 the Government and for the defendant shall be per-  
9 mitted to rebut any information received at the  
10 hearing, and shall be given fair opportunity to  
11 present argument as to the adequacy of the informa-  
12 tion to establish the existence of any aggravating or  
13 mitigating factor, and as to the appropriateness in  
14 that case of imposing a sentence of death. The attor-  
15 ney for the Government shall open the argument.  
16 The defendant shall be permitted to reply. The Gov-  
17 ernment shall then be permitted to reply in rebuttal.  
18 The burden of establishing the existence of an ag-  
19 gravating factor is on the Government, and is not  
20 satisfied unless the existence of such a factor is es-  
21 tablished beyond a reasonable doubt. The burden of  
22 establishing the existence of any mitigating factor is  
23 on the defendant, and is not satisfied unless the ex-  
24 istence of such a factor is established by a prepon-  
25 derance of the evidence.

1           “(4) RETURN OF SPECIAL FINDINGS.—The  
2 jury, or if there is no jury, the court, shall consider  
3 all the information received during the hearing. It  
4 shall return special findings identifying any aggra-  
5 vating factor or factors set forth in this section  
6 found to exist and any other aggravating factor, for  
7 which notice has been provided under this section,  
8 found to exist. A finding with respect to a mitigating  
9 factor may be made by one or more members of the  
10 jury, and any member of the jury who finds the ex-  
11 istence of a mitigating factor may consider such fac-  
12 tor established for purposes of this section regard-  
13 less of the number of jurors who concur that the  
14 factor has been established. A finding with respect  
15 to any aggravating factor must be unanimous. If no  
16 aggravating factor set forth in this section is found  
17 to exist, the court shall impose a sentence other than  
18 death authorized by law.

19           “(5) RETURN OF A FINDING CONCERNING A  
20 SENTENCE OF DEATH.—If an aggravating factor re-  
21 quired to be considered under this section is found  
22 to exist, the jury, or if there is no jury, the court,  
23 shall then consider whether the aggravating factor  
24 or factors found to exist outweigh any mitigating  
25 factor or factors. The jury, or if there is no jury, the

1 court shall recommend a sentence of death if it  
2 unanimously finds at least one aggravating factor  
3 and no mitigating factor or if it finds one or more  
4 aggravating factors which outweigh any mitigating  
5 factors. In any other case, it shall not recommend a  
6 sentence of death. The jury shall be instructed that  
7 it must avoid any influence of sympathy, sentiment,  
8 passion, prejudice, or other arbitrary factors in its  
9 decision, and should make such a recommendation  
10 as the information warrants.

11 “(6) SPECIAL PRECAUTION TO ASSURE AGAINST  
12 DISCRIMINATION.—In a hearing held before a jury,  
13 the court, before the return of a finding under para-  
14 graph (5), shall instruct the jury that, in considering  
15 whether a sentence of death is justified, it shall not  
16 be influenced by prejudice or bias relating to the  
17 race, color, religion, national origin, or sex of the de-  
18 fendant or of any victim and that the jury is not to  
19 recommend a sentence of death unless it has con-  
20 cluded that it would recommend a sentence of death  
21 for the crime in question no matter what the race,  
22 color, religion, national origin, or sex of the defend-  
23 ant or of any victim may be. The jury, upon return  
24 of a finding under paragraph (5), shall also return  
25 to the court a certificate, signed by each juror, that

1 prejudice or bias relating to the race, color, religion,  
2 national origin, or sex of the defendant or any victim  
3 was not involved in reaching his or her individual de-  
4 cision and that the individual juror would have made  
5 the same recommendation regarding a sentence for  
6 the crime in question no matter what the race, color,  
7 religion, national origin, or sex of the defendant or  
8 any victim may be.

9 “(d) IMPOSITION OF A SENTENCE OF DEATH.—Upon  
10 the recommendation under section 3593(e) that a sentence  
11 of death be imposed, the court shall sentence the defend-  
12 ant to death. Otherwise the court shall impose a sentence,  
13 other than death, authorized by law. Notwithstanding any  
14 other provision of law, if the maximum term of imprison-  
15 ment for the offense is life imprisonment, the court may  
16 impose a sentence of life imprisonment without the possi-  
17 bility of release.

18 “(e) REVIEW OF A SENTENCE OF DEATH.—

19 “(1) APPEAL.—In a case in which a sentence of  
20 death is imposed, the sentence shall be subject to re-  
21 view by the court of appeals upon appeal by the de-  
22 fendant. Notice of appeal of the sentence must be  
23 filed within the time specified for the filing of a no-  
24 tice of appeal of the judgment of conviction. An ap-  
25 peal of the sentence under this section may be con-

1 solidated with an appeal of the judgment of conviction and shall have priority over all other cases.

2  
3 “(2) REVIEW.—The court of appeals shall review the entire record in the case, including—

4  
5 “(A) the evidence submitted during the trial;

6  
7 “(B) the information submitted during the sentencing hearing;

8  
9 “(C) the procedures employed in the sentencing hearing; and

10  
11 “(D) the special findings returned under this section.

12  
13 “(3) DECISION AND DISPOSITION.—

14  
15 “(A) If the court of appeals determines that—

16 “(i) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor;

17  
18 “(ii) the evidence and information support the special findings of the existence of an aggravating factor or factors; and

19  
20 “(iii) the proceedings did not involve any other prejudicial error requiring rever-

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23  
24

1           sal of the sentence that was properly pre-  
2           served for and raised on appeal;  
3           it shall affirm the sentence.

4           “(B) In any other case, the court of ap-  
5           peals shall remand the case for reconsideration  
6           under this section or for imposition of another  
7           authorized sentence as appropriate, except that  
8           the court shall not reverse a sentence of death  
9           on the ground that an aggravating factor was  
10          invalid or was not supported by the evidence  
11          and information if at least one aggravating fac-  
12          tor required to be considered under this section  
13          remains which was found to exist and the court,  
14          on the basis of the evidence submitted at trial  
15          and the information submitted at the sentenc-  
16          ing hearing, finds no mitigating factor or finds  
17          that the remaining aggravating factor or factors  
18          which were found to exist outweigh any mitigat-  
19          ing factors.

20          “(C) The court of appeals shall state in  
21          writing the reasons for its disposition of an ap-  
22          peal of a sentence of death under this section.

23          “(f) IMPLEMENTATION OF A SENTENCE OF  
24          DEATH.—

1           “(1) IN GENERAL.—A person who has been  
2 sentenced to death under this section shall be com-  
3 mitted to the custody of the Attorney General until  
4 exhaustion of the procedures for appeal of the judg-  
5 ment of conviction and for review of the sentence.  
6 When the sentence is to be implemented, the Attor-  
7 ney General shall release the person sentenced to  
8 death to the custody of a United States Marshal,  
9 who shall supervise implementation of the sentence  
10 in the manner prescribed by the law of the State in  
11 which the sentence is imposed. If the law of such  
12 State does not provide for implementation of a sen-  
13 tence of death, the court shall designate another  
14 State, the law of which does so provide, and the sen-  
15 tence shall be implemented in the manner prescribed  
16 by such law.

17           “(2) SPECIAL BARS TO EXECUTION.—A sen-  
18 tence of death shall not be carried out upon a person  
19 who lacks the mental capacity to understand the  
20 death penalty and why it was imposed on that per-  
21 son, or upon a woman while she is pregnant.

22           “(3) EMPLOYEES MAY DECLINE TO PARTICI-  
23 PATE.—No employee of any State department of  
24 corrections, the Federal Bureau of Prisons, or the  
25 United States Marshals Service, and no employee

1 providing services to that department, bureau, or  
2 service under contract shall be required, as a condi-  
3 tion of that employment or contractual obligation, to  
4 be in attendance at or to participate in any execu-  
5 tion carried out under this section if such participa-  
6 tion is contrary to the moral or religious convictions  
7 of the employee. For purposes of this subsection, the  
8 term ‘participate in any execution’ includes personal  
9 preparation of the condemned individual and the ap-  
10 paratus used for the execution, and supervision of  
11 the activities of other personnel in carrying out such  
12 activities.

13 “(g) USE OF STATE FACILITIES.—A United States  
14 Marshal charged with supervising the implementation of  
15 a sentence of death may use appropriate State or local  
16 facilities for the purpose, may use the services of an appro-  
17 priate State or local official or of a person such an official  
18 employs for the purpose, and shall pay the costs thereof  
19 in an amount approved by the Attorney General.

20 “(h) APPOINTMENT OF COUNSEL.—

21 “(1) REPRESENTATION OF INDIGENT DEFEND-  
22 ANTS.—Notwithstanding any other provision of law,  
23 this section shall govern the appointment of counsel  
24 for any defendant against whom a sentence of death  
25 is sought, or on whom a sentence of death has been

1 imposed, for an offense against the United States,  
2 where the defendant is or becomes financially unable  
3 to obtain adequate representation. Such a defendant  
4 shall be entitled to appointment of counsel from the  
5 commencement of trial proceedings until one of the  
6 conditions specified in subsection (h)(2) has oc-  
7 curred.

8 “(2) REPRESENTATION BEFORE FINALITY OF  
9 JUDGMENT.—A defendant within the scope of this  
10 section shall have counsel appointed for trial rep-  
11 resentation as provided in section 3005 of this title.  
12 At least one counsel so appointed shall continue to  
13 represent the defendant until the conclusion of direct  
14 review of the judgment, unless replaced by the court  
15 with other qualified counsel.

16 “(3) REPRESENTATION AFTER FINALITY OF  
17 JUDGMENT.—When a judgment imposing a sentence  
18 of death has become final through affirmance by the  
19 Supreme Court on direct review, denial of certiorari  
20 by the Supreme Court on direct review, or expiration  
21 of the time for seeking direct review in the court of  
22 appeals or the Supreme Court, the Government shall  
23 promptly notify the district court that imposed the  
24 sentence. Within ten days of receipt of such notice,  
25 the district court shall proceed to make a determina-

1 tion whether the defendant is eligible under this sec-  
2 tion for appointment of counsel for subsequent pro-  
3 ceedings. On the basis of the determination, the  
4 court shall issue an order—

5 “(A) appointing one or more counsel to  
6 represent the defendant upon a finding that the  
7 defendant is financially unable to obtain ade-  
8 quate representation and wishes to have counsel  
9 appointed or is unable competently to decide  
10 whether to accept or reject appointment of  
11 counsel;

12 “(B) finding, after a hearing if necessary,  
13 that the defendant rejected appointment of  
14 counsel and made the decision with an under-  
15 standing of its legal consequences; or

16 “(C) denying the appointment of counsel  
17 upon a finding that the defendant is financially  
18 able to obtain adequate representation.

19 Counsel appointed pursuant to this subsection shall  
20 be different from the counsel who represented the  
21 defendant at trial and on direct review unless the  
22 defendant and counsel request a continuation or re-  
23 newal of the earlier representation.

24 “(4) STANDARDS FOR COMPETENCE OF COUN-  
25 SEL.—In relation to a defendant who is entitled to

1 appointment of counsel under this section, at least  
2 one counsel appointed for trial representation must  
3 have been admitted to the bar for at least five years  
4 and have at least three years of experience in the  
5 trial of felony cases in the Federal district courts. If  
6 new counsel is appointed after judgment, at least  
7 one counsel so appointed must have been admitted  
8 to the bar for at least five years and have at least  
9 three years of experience in the litigation of felony  
10 cases in the Federal courts of appeals or the Su-  
11 preme Court. The court, for good cause, may ap-  
12 point counsel who does not meet these standards,  
13 but whose background, knowledge, or experience  
14 would otherwise enable him or her to properly rep-  
15 resent the defendant, with due consideration of the  
16 seriousness of the penalty and the nature of the liti-  
17 gation.

18 “(5) APPLICABILITY OF CRIMINAL JUSTICE  
19 ACT.—Except as otherwise provided in this section,  
20 the provisions of section 3006A of this title shall  
21 apply to appointments under this section.

22 “(6) CLAIMS OF INEFFECTIVENESS OF COUN-  
23 SEL.—The ineffectiveness or incompetence of coun-  
24 sel during proceedings on a motion under section  
25 2255 of title 28 in a capital case shall not be a

1 ground for relief from the judgment or sentence in  
2 any proceeding. This limitation shall not preclude  
3 the appointment of different counsel at any stage of  
4 the proceedings.

5 “(i) COLLATERAL ATTACK ON JUDGMENT IMPOSING  
6 SENTENCE OF DEATH.—

7 “(1) TIME FOR MAKING SECTION 2255 MO-  
8 TION.—In a case in which sentence of death has  
9 been imposed, and the judgment has become final as  
10 described in subsection (g)(3), a motion in the case  
11 under section 2255 of title 28, United States Code,  
12 must be filed within 90 days of the issuance of the  
13 order relating to appointment of counsel under sub-  
14 section (g)(3) of this title. The court in which the  
15 motion is filed, for good cause shown, may extend  
16 the time for filing for a period not exceeding 60  
17 days. A motion described in this section shall have  
18 priority over all noncapital matters in the district  
19 court, and in the court of appeals on review of the  
20 district court’s decision.

21 “(2) STAY OF EXECUTION.—The execution of a  
22 sentence of death shall be stayed in the course of di-  
23 rect review of the judgment and during the litigation  
24 of an initial motion in the case under section 2255

1 of title 28. The stay shall run continuously following  
2 imposition of the sentence, and shall expire if—

3 “(A) the defendant fails to file a motion  
4 under section 2255 of title 28, within the time  
5 specified in subsection (a), or fails to make a  
6 timely application for court of appeals review  
7 following the denial of such motion by a district  
8 court;

9 “(B) upon completion of district court and  
10 court of appeals review under section 2255 of  
11 title 28, the motion under that section is denied  
12 and (i) the time for filing a petition for certio-  
13 rari has expired and no petition has been filed;  
14 (ii) a timely petition for certiorari was filed and  
15 the Supreme Court denied the petition; or (iii)  
16 a timely petition for certiorari was filed and  
17 upon consideration of the case, the Supreme  
18 Court disposed of it in a manner that left the  
19 capital sentence undisturbed; or

20 “(C) before a district court, in the pres-  
21 ence of counsel and after having been advised  
22 of the consequences of his decision, the defend-  
23 ant waives the right to file a motion under sec-  
24 tion 2255 of title 28.

1           “(3) FINALITY OF THE DECISION ON RE-  
2           VIEW.—If one of the conditions specified in sub-  
3           section (b) has occurred, no court thereafter shall  
4           have the authority to enter a stay of execution or  
5           grant relief in the case unless—

6                   “(A) the basis for the stay and request for  
7                   relief is a claim not presented in earlier pro-  
8                   ceedings;

9                   “(B) the failure to raise the claim was (i)  
10                  the result of governmental action in violation of  
11                  the Constitution or laws of the United States;  
12                  (ii) the result of the Supreme Court recognition  
13                  of a new Federal right that is retroactively ap-  
14                  plicable; or (iii) based on a factual predicate  
15                  that could not have been discovered through the  
16                  exercise of reasonable diligence in time to  
17                  present the claim in earlier proceedings; and

18                  “(C) the facts underlying the claim would  
19                  be sufficient, if proven, to undermine the  
20                  court’s confidence in the determination of guilt  
21                  on the offense or offenses for which the death  
22                  penalty was imposed.”.

23           (b) CLERICAL AMENDMENT.—The table of sections  
24           at the beginning of chapter 51 of title 18, United States  
25           Code, is amended by adding at the end the following:

“1118. Protection of foreign tourists and visitors.”.



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