

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

# H. R. 3556

To provide for, and to provide constitutional procedures for the imposition of, the death penalty for causing death through the use of a bomb or other destructive device.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1993

Mr. FRANKS of Connecticut introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To provide for, and to provide constitutional procedures for the imposition of, the death penalty for causing death through the use of a bomb or other destructive device.

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 “Bombing Homicide  
5 Death Penalty Act”.

1 **SEC. 2. DEATH PENALTY AUTHORIZATIONS AND PROCE-**  
2 **DURES.**

3 Section 924 of title 18, United States Code, is  
4 amended by adding at the end the following new sub-  
5 section:

6 “(i) CAUSING DEATH THROUGH THE USE OF A  
7 BOMB OR OTHER DESTRUCTIVE DEVICE.—

8 “(1) PENALTY.—

9 “(A) IN GENERAL.—Subject to subpara-  
10 graph (B), a person who intentionally or with  
11 reckless disregard for human life causes the  
12 death of a person through the use of a bomb or  
13 other destructive device shall be sentenced to  
14 life imprisonment without release or to death if,  
15 after consideration of the factors listed in para-  
16 graph (2) in the course of a hearing held pursu-  
17 ant to paragraph (3), it is determined that im-  
18 position of a sentence of death is justified.

19 “(B) LIMITATION.—No person may be  
20 sentenced to the death penalty who was less  
21 than 18 years of age at the time of the offense.

22 “(2) FACTORS TO BE CONSIDERED IN DETER-  
23 MINING WHETHER A SENTENCE OF DEATH IS JUSTI-  
24 FIED.—

25 “(A) MITIGATING FACTORS.—In determin-  
26 ing whether a sentence of death is justified for

1 an offense described in paragraph (1), the jury,  
2 or if there is no jury, the court, shall consider  
3 each of the following mitigating factors and de-  
4 termine which, if any exists:

5 “(i) MENTAL CAPACITY.—The defend-  
6 ant’s mental capacity to appreciate the  
7 wrongfulness of his or her conduct or to  
8 conform his or her conduct to the require-  
9 ments of law was significantly impaired,  
10 regardless of whether the capacity was so  
11 impaired as to constitute a defense to the  
12 charge.

13 “(ii) DURESS.—The defendant was  
14 under unusual and substantial duress, re-  
15 gardless of whether the duress was of such  
16 a degree as to constitute a defense to the  
17 charge.

18 “(iii) PARTICIPATION IN OFFENSE  
19 MINOR.—The defendant’s participation in  
20 the offense, which was committed by an-  
21 other, was relatively minor, although not  
22 so minor as to constitute a defense to the  
23 charge.

24 The jury, or if there is no jury, the court, shall  
25 consider whether any other aspect of the de-

1            defendant’s character or record or any other cir-  
2            cumstance of the offense that the defendant  
3            may proffer as a mitigating factor exists.

4            “(B) AGGRAVATING FACTORS.—In deter-  
5            mining whether a sentence of death is justified  
6            for an offense described in paragraph (1), the  
7            jury, or if there is no jury, the court, shall con-  
8            sider each of the following aggravating factors  
9            and determine which, if any, exist—

10            “(i) PREVIOUS CONVICTION OF OF-  
11            FENSE FOR WHICH A SENTENCE OF DEATH  
12            OR LIFE IMPRISONMENT WAS AUTHOR-  
13            IZED.—The defendant has previously been  
14            convicted of another Federal or State of-  
15            fense resulting in the death of a person,  
16            for which a sentence of life imprisonment  
17            or death was authorized by statute.

18            “(ii) PREVIOUS CONVICTIONS OF VIO-  
19            LENT OFFENSES.—The defendant has pre-  
20            viously been convicted of 2 or more Fed-  
21            eral or State offenses, each punishable by  
22            a term of imprisonment of more than 1  
23            year, committed on different occasions, in-  
24            volving the infliction or attempted inflic-

1           tion of serious bodily injury or death upon  
2           another person.

3           “(iii) PREVIOUS CONVICTIONS OF  
4           DRUG OFFENSES.—The defendant has pre-  
5           viously been convicted of 2 or more Fed-  
6           eral or State offenses, each punishable by  
7           a term of imprisonment of more than 1  
8           year, committed on different occasions, in-  
9           volving the importation, manufacture, or  
10          distribution of a controlled substance (as  
11          defined in section 102 of the Controlled  
12          Substances Act (21 U.S.C. 802)).

13          “(iv) PREVIOUS CONVICTIONS OF VIO-  
14          LENT DRUG OFFENSES.—The defendant  
15          has previously been convicted of a Federal  
16          or State offense, punishable by a term of  
17          imprisonment of more than 1 year, involv-  
18          ing the infliction of, or attempted infliction  
19          of, serious bodily injury or death upon an-  
20          other person, and has previously been con-  
21          victed of a Federal or State offense,  
22          committed on a different occasion and  
23          punishable by a term of imprisonment of  
24          more than 1 year, involving the importa-  
25          tion, manufacture, or distribution of a con-

1 trolled substance (as defined in section 102  
2 of the Controlled Substances Act (21  
3 U.S.C. 802)).

4 “(v) SERIOUS DRUG FELONY CONVICT-  
5 TION.—The defendant has previously been  
6 convicted of another Federal or State of-  
7 fense involving the manufacture, distribu-  
8 tion, importation, or possession of a con-  
9 trolled substance (as defined in section 102  
10 of the Controlled Substances Act (21  
11 U.S.C. 802)) for which a sentence of 5 or  
12 more years of imprisonment was author-  
13 ized by statute.

14 “(vi) PREVIOUS CONVICTION OF A  
15 VIOLENT FELONY INVOLVING A FIRE-  
16 ARM.—The defendant has previously been  
17 convicted of a Federal or State offense  
18 punishable by a term of imprisonment of  
19 more than 1 year involving the use or at-  
20 tempted use of a firearm to threaten, in-  
21 timidate, assault or injure a person.

22 “(3) SPECIAL HEARING TO DETERMINE  
23 WHETHER A SENTENCE OF DEATH IS JUSTIFIED.—

24 “(A) NOTICE BY THE GOVERNMENT.—

25 When the Government intends to seek the death

1 penalty for an offense described in paragraph  
2 (1), the attorney for the Government, a reason-  
3 able time before the trial, or before acceptance  
4 by the court of a plea of guilty, or at such time  
5 thereafter as the court may permit upon a  
6 showing of good cause, shall sign and file with  
7 the court, and serve on the defendant, a no-  
8 tice—

9 “(i) stating that the Government in  
10 the event of conviction will seek the sen-  
11 tence of death; and

12 “(ii) setting forth the aggravating fac-  
13 tor or factors listed in paragraph (2)(B)  
14 and any other aggravating factor not listed  
15 in paragraph (2)(B) that the Government,  
16 if the defendant is convicted, will seek to  
17 prove as the basis for the death penalty.

18 The court may permit the attorney for the Gov-  
19 ernment to amend the notice upon a showing of  
20 good cause.

21 “(B) HEARING BEFORE A COURT OR  
22 JURY.—When the attorney for the Government  
23 has filed a notice as required under subpara-  
24 graph (A) and the defendant is found guilty of  
25 an offense described in paragraph (1), the

1 judge who presided at the trial or before whom  
2 the guilty plea was entered, or another judge if  
3 that judge is unavailable, shall conduct a sepa-  
4 rate sentencing hearing to determine the pun-  
5 ishment to be imposed. Prior to such a hearing,  
6 no presentence report shall be prepared by the  
7 United States Probation Service, notwithstand-  
8 ing the provisions of the Federal Rules of  
9 Criminal Procedure. The hearing shall be con-  
10 ducted—

11 “(i) before the jury that determined  
12 the defendant’s guilt;

13 “(ii) before a jury impaneled for the  
14 purpose of the hearing if—

15 “(I) the defendant was convicted  
16 upon a plea of guilty;

17 “(II) the defendant was convicted  
18 after a trial before the court sitting  
19 without a jury;

20 “(III) the jury that determined  
21 the defendant’s guilt was discharged  
22 for good cause; or

23 “(IV) after initial imposition of a  
24 sentence under this section, reconsid-

1                   eration of the sentence under the sec-  
2                   tion is necessary; or

3                   “(iii) before the court alone, upon mo-  
4                   tion of the defendant and with the ap-  
5                   proval of the attorney for the Government.

6                   A jury impaneled pursuant to clause (ii) shall  
7                   consist of 12 members unless, at any time be-  
8                   fore the conclusion of the hearing, the parties  
9                   stipulate, with the approval of the court, that it  
10                  shall consist of a lesser number.

11                  “(C) PROOF OF MITIGATING AND AGGRA-  
12                  VATING FACTORS.—At the hearing, information  
13                  may be presented concerning—

14                  “(i) any matter relating to any miti-  
15                  gating factor listed in paragraph (2)(A)  
16                  and any other mitigating factor; and

17                  “(ii) any matter relating to any ag-  
18                  gravating factor listed in paragraph (2)(B)  
19                  for which notice has been provided under  
20                  paragraph (3)(A) and (if information is  
21                  presented relating to such a listed factor)  
22                  any other aggravating factor for which no-  
23                  tice has been so provided.

24                  Information presented may include the trial  
25                  transcript and exhibits. Any other information

1 relevant to such mitigating or aggravating fac-  
2 tors may be presented by the Government or  
3 the defendant, regardless of its admissibility  
4 under the rules governing admission of evidence  
5 at criminal trials, except that information may  
6 be excluded if its probative value is outweighed  
7 by the danger of creating unfair prejudice, con-  
8 fusing the issues, or misleading the jury. The  
9 attorney for the Government and the attorney  
10 for the defendant shall be permitted to rebut  
11 any information received at the hearing, and  
12 shall be given fair opportunity to present argu-  
13 ment as to the adequacy of the information to  
14 establish the existence of any aggravating or  
15 mitigating factor and as to the appropriateness  
16 in that case of imposing a sentence of death.  
17 The attorney for the Government shall open the  
18 argument. The defendant shall be permitted to  
19 reply. The Government shall then be permitted  
20 to reply in rebuttal. The burden of establishing  
21 the existence of an aggravating factor is on the  
22 Government, and is not satisfied unless the ex-  
23 istence of such a factor is established beyond a  
24 reasonable doubt. The burden of establishing  
25 the existence of any mitigating factor is on the

1 defendant, and is not satisfied unless the exist-  
2 ence of such a factor is established by a prepon-  
3 derance of the evidence.

4 “(D) RETURN OF SPECIAL FINDINGS.—  
5 The jury, or if there is no jury, the court, shall  
6 consider all the information received during the  
7 hearing. It shall return special findings identify-  
8 ing any aggravating factor or factors set forth  
9 in paragraph (2)(B) found to exist and any  
10 other aggravating factor for which notice has  
11 been provided under paragraph (3)(A) found to  
12 exist. A finding with respect to a mitigating  
13 factor may be made by 1 or more members of  
14 the jury, and any member of the jury who finds  
15 the existence of a mitigating factor may con-  
16 sider such factor established for purposes of  
17 this section regardless of the number of jurors  
18 who concur that the factor has been estab-  
19 lished. A finding with respect to any aggravat-  
20 ing factor must be unanimous. If no aggravat-  
21 ing factor listed in paragraph (2)(B) is found to  
22 exist, the court shall impose a sentence other  
23 than death authorized by law.

24 “(E) RETURN OF A FINDING CONCERNING  
25 A SENTENCE OF DEATH.—If an aggravating

1 factor required to be considered under para-  
2 graph (2)(B) is found to exist, the jury, or if  
3 there is no jury, the court, shall consider wheth-  
4 er the aggravating factor or factors found to  
5 exist outweigh any mitigating factor or factors.  
6 The jury, or if there is no jury, the court, shall  
7 recommend a sentence of death if it unani-  
8 mously finds at least 1 aggravating factor and  
9 no mitigating factor or if it finds 1 or more ag-  
10 gravating factors that outweigh any mitigating  
11 factors. In any other case, it shall not rec-  
12 ommend a sentence of death. The jury shall be  
13 instructed that it must avoid any influence of  
14 sympathy, sentiment, passion, prejudice, or  
15 other arbitrary factors in its decision, and  
16 should make such a recommendation as the in-  
17 formation warrants.

18 “(F) SPECIAL PRECAUTION TO ENSURE  
19 AGAINST DISCRIMINATION.—In a hearing held  
20 before a jury, the court, prior to the return of  
21 a finding under subparagraph (E), shall in-  
22 struct the jury that, in considering whether a  
23 sentence of death is justified, it shall not con-  
24 sider the race, color, religious beliefs, national  
25 origin, or sex of the defendant or of any victim

1 and that the jury is not to recommend a sen-  
2 tence of death unless it has concluded that it  
3 would recommend a sentence of death for the  
4 crime in question no matter what the race,  
5 color, religious beliefs, national origin, or sex of  
6 the defendant or of any victim may be. The  
7 jury, upon return of a finding under subpara-  
8 graph (E), shall also return to the court a cer-  
9 tificate, signed by each juror, that consideration  
10 of the race, color, religious beliefs, national ori-  
11 gin, or sex of the defendant or any victim was  
12 not involved in reaching his or her individual  
13 decision and that the individual juror would  
14 have made the same recommendation regarding  
15 a sentence for the crime in question no matter  
16 what the race, color, religious beliefs, national  
17 origin, or sex of the defendant or any victim  
18 may be.

19 “(4) IMPOSITION OF A SENTENCE OF DEATH.—  
20 Upon the recommendation under paragraph (3)(E)  
21 that a sentence of death be imposed, the court shall  
22 sentence the defendant to death. Otherwise the court  
23 shall impose a sentence, other than death, author-  
24 ized by law.

25 “(5) REVIEW OF A SENTENCE OF DEATH.—

1           “(A) APPEAL.—In a case in which a sen-  
2           tence of death is imposed, the sentence shall be  
3           subject to review by the court of appeals upon  
4           appeal by the defendant. Notice of appeal of the  
5           sentence shall be filed within the time specified  
6           for the filing of a notice of appeal of the judg-  
7           ment of conviction. An appeal of the sentence  
8           under this subsection may be consolidated with  
9           an appeal of the judgment of conviction and  
10          shall have priority over all other cases.

11          “(B) REVIEW.—The court of appeals shall  
12          review the entire record in the case, including—

13                 “(i) the evidence submitted during the  
14                 trial;

15                 “(ii) the information submitted during  
16                 the sentencing hearing;

17                 “(iii) the procedures employed in the  
18                 sentencing hearing; and

19                 “(iv) the special findings returned  
20                 under paragraph (3)(D).

21          “(C) DECISION AND DISPOSITION.—

22                 “(i) If the court of appeals determines  
23                 that—

24                         “(I) the sentence of death was  
25                         not imposed under the influence of

1 passion, prejudice, or any other arbitrary factor;  
2

3 “(II) the evidence and information support the special findings of  
4 the existence of an aggravating factor  
5 or factors; and  
6

7 “(III) the proceedings did not involve any other prejudicial error requiring reversal of the sentence that  
8 was properly preserved for and raised  
9 on appeal,  
10

11 the court it shall affirm the sentence.  
12

13 “(ii) In any other case, the court of appeals shall remand the case for reconsideration or for imposition of another authorized sentence as appropriate.  
14  
15

16 “(iii) The court of appeals shall state  
17 in writing the reasons for its disposition of  
18 an appeal of sentence of death under this  
19 subsection.  
20

21 “(6) IMPLEMENTATION OF SENTENCE OF  
22 DEATH.—

23 “(A) PROCEDURE.— A person who has  
24 been sentenced to death pursuant to this subsection shall be committed to the custody of the  
25

1 Attorney General until exhaustion of the proce-  
2 dures for appeal of the judgment of conviction  
3 and for review of the sentence. When the sen-  
4 tence is to be implemented, the Attorney Gen-  
5 eral shall release the person sentenced to death  
6 to the custody of a United States marshal, who  
7 shall supervise implementation of the sentence  
8 in the manner prescribed by the law of the  
9 State in which the sentence is imposed. If the  
10 law of that State does not provide for imple-  
11 mentation of a sentence of death, the court  
12 shall designate another State, the law of which  
13 does so provide, and the sentence shall be im-  
14 plemented in the manner prescribed by such  
15 law.

16 “(B) LIMITATION.—A sentence of death  
17 shall not be carried out upon a person who  
18 lacks the mental capacity to understand the  
19 death penalty and why it was imposed on that  
20 person, or upon a woman while she is pregnant.

21 “(C) PARTICIPATION BY EMPLOYEES.—No  
22 employee of any State department of correc-  
23 tions or the Federal Bureau of Prisons, or the  
24 United States Marshals Service, and no em-  
25 ployee providing services to that department,

1 bureau, or service under contract shall be re-  
2 quired, as a condition of that employment or  
3 contractual obligation, to be in attendance at or  
4 to participate in any execution carried out  
5 under this subsection if such participation is  
6 contrary to the moral or religious convictions of  
7 the employee. For purposes of this subsection,  
8 the term ‘participate in any execution’ includes  
9 personal preparation of the condemned person  
10 and the apparatus used for the execution, and  
11 supervision of the activities of other personnel  
12 in carrying out such activities.

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

21 “(8) APPOINTMENT OF COUNSEL.—

22 “(A) REPRESENTATION OF INDIGENT DE-  
23 FENDANTS.—Notwithstanding any other law,  
24 this paragraph shall govern the appointment of  
25 counsel for any defendant against whom a sen-

1           tence of death is sought or on whom a sentence  
2           of death has been imposed for an offense de-  
3           scribed in paragraph (1) when the defendant is  
4           or becomes financially unable to obtain ade-  
5           quate representation. Such a defendant shall be  
6           entitled to appointment of counsel from the  
7           commencement of trial proceedings until 1 of  
8           the conditions specified in paragraph (9)(B)  
9           has occurred.

10           “(B) REPRESENTATION BEFORE FINALITY  
11           OF JUDGMENT.—A defendant within the scope  
12           of this paragraph shall have counsel appointed  
13           for trial representation as provided in section  
14           3005. At least 1 counsel so appointed shall con-  
15           tinue to represent the defendant until the con-  
16           clusion of direct review of the judgment, un-  
17           less replaced by the court with other qualified  
18           counsel.

19           “(C) REPRESENTATION AFTER FINALITY  
20           OF JUDGMENT.—When a judgment imposing a  
21           sentence of death has become final through af-  
22           firmance by the Supreme Court on direct re-  
23           view, denial of certiorari by the Supreme Court  
24           on direct review, or expiration of the time for  
25           seeking direct review in the court of appeals or

1 the Supreme Court, the Government shall  
2 promptly notify the district court that imposed  
3 the sentence. Within 10 days after receipt of  
4 such a notice, the district court shall proceed to  
5 make a determination whether the defendant is  
6 eligible under this paragraph for appointment  
7 of counsel for subsequent proceedings. On the  
8 basis of the determination, the court shall issue  
9 an order—

10 “(i) appointing 1 or more counsel to  
11 represent the defendant upon a finding  
12 that the defendant is financially unable to  
13 obtain adequate representation and wishes  
14 to have counsel appointed or is unable  
15 competently to decide whether to accept or  
16 reject appointment of counsel;

17 “(ii) finding, after a hearing if nec-  
18 essary, that the defendant rejected ap-  
19 pointment of counsel and made the deci-  
20 sion with an understanding of its legal con-  
21 sequences; or

22 “(iii) denying the appointment of  
23 counsel upon a finding that the defendant  
24 is financially able to obtain adequate rep-  
25 resentation. Counsel appointed pursuant to

1           this paragraph shall be different from the  
2           counsel who represented the defendant at  
3           trial and on direct review unless the de-  
4           fendant and counsel request a continuation  
5           or renewal of the earlier representation.

6           “(D) STANDARDS FOR COMPETENCE OF  
7           COUNSEL.—In relation to a defendant who is  
8           entitled to appointment of counsel under this  
9           subsection, at least 1 counsel appointed for trial  
10          representation shall have been admitted to the  
11          bar for at least 5 years and have at least 3  
12          years of experience in the trial of felony cases  
13          in the Federal district courts. If new counsel is  
14          appointed after judgment, at least 1 counsel so  
15          appointed shall have been admitted to the bar  
16          for at least 5 years and have at least 3 years  
17          of experience in the litigation of felony cases in  
18          the Federal courts of appeals or the Supreme  
19          Court. The court, for good cause, may appoint  
20          counsel who does not meet these standards, but  
21          whose background, knowledge, or experience  
22          would otherwise enable him or her to properly  
23          represent the defendant, with due consideration  
24          of the seriousness of the penalty and the nature  
25          of the litigation.

1           “(E) APPLICABILITY OF CRIMINAL JUS-  
2           TICE ACT.—Except as otherwise provided in  
3           this paragraph, section 3006A shall apply to  
4           appointments under this paragraph.

5           “(F) CLAIMS OF INEFFECTIVENESS OF  
6           COUNSEL.—The ineffectiveness or incompetence  
7           of counsel during proceedings on a motion  
8           under section 2255 of title 28 in a capital case  
9           shall not be a ground for relief from the judg-  
10          ment or sentence in any proceeding. The limita-  
11          tion stated in the preceding sentence shall not  
12          preclude the appointment of different counsel at  
13          any stage of the proceedings.

14          “(9) COLLATERAL ATTACK ON JUDGMENT IM-  
15          POSING SENTENCE OF DEATH.—

16          “(A) TIME FOR MAKING SECTION 2255 MO-  
17          TION.—In any case in which a sentence of  
18          death has been imposed for an offense against  
19          the United States and the judgment has become  
20          final under section 3598(a)(3), a motion in the  
21          case under section 2255 of title 28 shall be filed  
22          within 90 days after the issuance of the order  
23          relating to appointment of counsel under sec-  
24          tion 3598(a)(3). The court in which the motion  
25          is filed for good cause may extend the time for

1 filing for a period not exceeding 60 days. A mo-  
2 tion under this subparagraph shall have priority  
3 over all noncapital matters in the district court,  
4 and in the court of appeals on review of the dis-  
5 trict court's decision.

6 “(B) STAY OF EXECUTION.—The execution  
7 of a sentence of death shall be stayed in the  
8 course of direct review of the judgment and  
9 during the litigation of an initial motion in the  
10 case under section 2255 of title 28. The stay  
11 shall run continuously following imposition of  
12 the sentence, and shall expire if—

13 “(i) the defendant fails to file a mo-  
14 tion under section 2255 of title 28 within  
15 the time specified in subparagraph (A) or  
16 fails to make a timely application for court  
17 of appeals review following the denial of  
18 such a motion by a district court;

19 “(ii) upon completion of district court  
20 and court of appeals review under section  
21 2255 of title 28, the motion under that  
22 section is denied and—

23 “(I) the time for filing a petition  
24 for certiorari has expired and no peti-  
25 tion has been filed;

1           “(II) a timely petition of certio-  
2           rari was filed and the Supreme Court  
3           denied the petition; or

4           “(III) a timely petition for certio-  
5           rari was filed and upon consideration  
6           of the case,

7           the Supreme Court disposed of it in a  
8           manner that left the capital sentence un-  
9           disturbed; or

10           “(iii) before a district court, in the  
11           presence of counsel and after having been  
12           advised of the consequences of his decision,  
13           the defendant waives the right to file a mo-  
14           tion under section 2255 of title 28 .

15           “(C) FINALITY OF THE DECISION ON RE-  
16           VIEW.—If 1 of the conditions specified in sub-  
17           paragraph (B) has occurred, no court there-  
18           after shall have the authority to enter a stay of  
19           execution or grant relief in the case unless—

20           “(i) the basis for the stay and request  
21           for relief is a claim not presented in earlier  
22           proceedings;

23           “(ii) the failure to raise the claim is—

1           “(I) the result of governmental  
2           action in violation of the Constitution  
3           or laws of the United States;

4           “(II) the result of the Supreme  
5           Court recognition of a new Federal  
6           right that is retroactively applicable;  
7           or

8           “(III) based on a factual predi-  
9           cate that could not have been discov-  
10          ered through the exercise of reason-  
11          able diligence in time to present the  
12          claim in earlier proceedings; and

13          “(iii) the facts underlying the claim  
14          would be sufficient, if proven, to under-  
15          mine the court’s confidence in the deter-  
16          mination of guilt on the offense or offenses  
17          for which the death penalty was imposed.

18          “(10) JURISDICTION.—There is Federal juris-  
19          diction over an offense under this subsection if—

20                 “(A) the conduct of the offender occurred  
21                 in the course of an offense against the United  
22                 States; or

23                 “(B) a destructive device or part thereof  
24                 involved in the offense has moved at any time  
25                 in interstate or foreign commerce.”.



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