

104TH CONGRESS
1ST SESSION

H. R. 2768

To combat terrorism.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 1995

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

A BILL

To combat terrorism.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Effective Death Pen-
5 alty and Antiterrorism Act of 1995”.

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

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

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—CRIMINAL ACTS

Sec. 101. Protection of Federal employees.

Sec. 102. Prohibiting material support to terrorist organizations.

Sec. 103. Modification of material support provision.

Sec. 104. Acts of terrorism transcending national boundaries.

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

TITLE II—INCREASED PENALTIES

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

TITLE III—INVESTIGATIVE TOOLS

- Sec. 301. Pen registers and trap and trace devices in foreign counterintelligence investigations.
- Sec. 302. Disclosure of certain consumer reports to the Federal Bureau of Investigation.
- Sec. 303. Disclosure of business records held by third parties in foreign counterintelligence cases.
- Sec. 304. Study of tagging explosive materials, detection of explosives and explosive materials, rendering explosive components inert, and imposing controls of precursors of explosives.
- Sec. 305. Application of statutory exclusionary rule concerning intercepted wire or oral communications.
- Sec. 306. Exclusion of certain types of information from wiretap-related definitions.
- Sec. 307. Requirement for periodic report.
- Sec. 308. Access to telephone billing records.
- Sec. 309. Requirement to preserve record evidence.
- Sec. 310. Detention hearing.
- Sec. 311. Reward authority of the Attorney General.
- Sec. 312. Protection of Federal Government buildings in the District of Columbia.
- Sec. 313. Study of thefts from armories; report to the Congress.

TITLE IV—NUCLEAR MATERIALS

- Sec. 401. Expansion of nuclear materials prohibitions.

TITLE V—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

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

Sec. 505. Effective date.

TITLE VI—IMMIGRATION-RELATED PROVISIONS

Subtitle A—Removal of Alien Terrorists

PART 1—REMOVAL PROCEDURES FOR ALIEN TERRORISTS

Sec. 601. Removal procedures for alien terrorists.

Sec. 602. Funding for detention and removal of alien terrorists.

PART 2—EXCLUSION AND DENIAL OF ASYLUM FOR ALIEN TERRORISTS

Sec. 611. Membership in terrorist organization as ground for exclusion.

Sec. 612. Denial of asylum to alien terrorists.

Sec. 613. Denial of other relief for alien terrorists.

Subtitle B—Expedited Exclusion

Sec. 621. Inspection and exclusion by immigration officers.

Sec. 622. Judicial review.

Sec. 623. Exclusion of aliens who have not been inspected and admitted.

Subtitle C—Improved Information and Processing

PART 1—IMMIGRATION PROCEDURES

Sec. 631. Access to certain confidential INS files through court order.

Sec. 632. Waiver authority concerning notice of denial of application for visas.

PART 2—ASSET FORFEITURE FOR PASSPORT AND VISA OFFENSES

Sec. 641. Criminal forfeiture for passport and visa related offenses.

Sec. 642. Subpoenas for bank records.

Sec. 643. Effective date.

Subtitle D—Employee Verification by Security Services Companies

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

Subtitle E—Criminal Alien Deportation Improvements

Sec. 661. Short title.

Sec. 662. Additional expansion of definition of aggravated felony.

Sec. 663. Deportation procedures for certain criminal aliens who are not permanent residents.

Sec. 664. Restricting the defense to exclusion based on 7 years permanent residence for certain criminal aliens.

Sec. 665. Limitation on collateral attacks on underlying deportation order.

Sec. 666. Criminal alien identification system.

Sec. 667. Establishing certain alien smuggling-related crimes as RICO-predicate offenses.

Sec. 668. Authority for alien smuggling investigations.

Sec. 669. Expansion of criteria for deportation for crimes of moral turpitude.

Sec. 670. Payments to political subdivisions for costs of incarcerating illegal aliens.

Sec. 671. Miscellaneous provisions.

Sec. 672. Construction of expedited deportation requirements.

- Sec. 673. Study of prisoner transfer treaty with Mexico.
 Sec. 674. Justice Department assistance in bringing to justice aliens who flee prosecution for crimes in the United States.
 Sec. 675. Prisoner transfer treaties.
 Sec. 676. Interior repatriation program.
 Sec. 677. Deportation of nonviolent offenders prior to completion of sentence of imprisonment.

TITLE VII—AUTHORIZATION AND FUNDING

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

TITLE VIII—MISCELLANEOUS

- Sec. 801. Study of State licensing requirements for the purchase and use of high explosives.
 Sec. 802. Compensation of victims of terrorism.
 Sec. 803. Jurisdiction for lawsuits against terrorist States.
 Sec. 804. Study of publicly available instructional material on the making of bombs, destructive devices, and weapons of mass destruction.
 Sec. 805. Compilation of statistics relating to intimidation of government employees.
 Sec. 806. Victim Restitution Act of 1995.
 Sec. 807. Authority for overseas law enforcement training activities.

TITLE IX—HABEAS CORPUS REFORM

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

1 **TITLE I—CRIMINAL ACTS**

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

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

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

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

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

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

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

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

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

24 “(a) OFFENSE.—Whoever, within the United States,
25 knowingly provides material support or resources in or af-

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

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

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

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

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

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

18 **“§ 2339A. Providing material support to terrorists**

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

1 or 2332b of this title or section 46502 of title 49, or in
2 preparation for or in carrying out the concealment or an
3 escape from the commission of any such violation, shall
4 be fined under this title, imprisoned not more than ten
5 years, or both.

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

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

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

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

19 “(a) PROHIBITED ACTS.—

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

23 “(A) kills, kidnaps, maims, commits an as-
24 sault resulting in serious bodily injury, or as-

1 saults with a dangerous weapon any individual
2 within the United States; or

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

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

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

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

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

23 “(2) the offense obstructs, delays, or affects
24 interstate or foreign commerce, or would have so ob-

1 structured, delayed, or affected interstate or foreign
2 commerce if the offense had been consummated;

3 “(3) the victim, or intended victim, is the
4 United States Government, a member of the uni-
5 formed services, or any official, officer, employee, or
6 agent of the legislative, executive, or judicial
7 branches, or of any department or agency, of the
8 United States;

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

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

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

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

1 “(c) PENALTIES.—

2 “(1) Whoever violates this section shall be pun-
3 ished—

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

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

10 “(C) for maiming, by imprisonment for not
11 more than 35 years;

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

15 “(E) for destroying or damaging any
16 structure, conveyance, or other real or personal
17 property, by imprisonment for not more than
18 25 years;

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

23 “(G) for threatening to commit an offense
24 under this section, by imprisonment for not
25 more than 10 years.

1 “(2) Notwithstanding any other provision of
2 law, the court shall not place on probation any per-
3 son convicted of a violation of this section; nor shall
4 the term of imprisonment imposed under this section
5 run concurrently with any other term of imprison-
6 ment.

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

15 “(e) PROOF REQUIREMENTS.—

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

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

24 “(f) EXTRATERRITORIAL JURISDICTION.—There is
25 extraterritorial Federal jurisdiction—

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

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

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

8 “(1) the term ‘conduct transcending national
9 boundaries’ means conduct occurring outside the
10 United States in addition to the conduct occurring
11 in the United States;

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

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

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

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

1 “(A) is calculated to influence or affect the
2 conduct of government by intimidation or coer-
3 cion, or to retaliate against government con-
4 duct; and

5 “(B) is a violation of—

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

1 1361 (relating to injury of Government
2 property), 1362 (relating to destruction of
3 communication lines), 1363 (relating to in-
4 jury to buildings or property within special
5 maritime and territorial jurisdiction of the
6 United States), 1366 (relating to destruc-
7 tion of energy facility), 1751 (relating to
8 Presidential and Presidential staff assas-
9 sination, kidnapping, and assault), 2152
10 (relating to injury of harbor defenses),
11 2155 (relating to destruction of national
12 defense materials, premises, or utilities),
13 2156 (relating to production of defective
14 national defense materials, premises, or
15 utilities), 2280 (relating to violence against
16 maritime navigation), 2281 (relating to vi-
17 olence against maritime fixed platforms),
18 2332 (relating to certain homicides and vi-
19 olence outside the United States), 2332a
20 (relating to use of weapons of mass de-
21 struction), 2332b (relating to acts of ter-
22 rorism transcending national boundaries),
23 2339A (relating to providing material sup-
24 port to terrorists), 2339B (relating to pro-
25 viding material support to terrorist organi-

1 zations), or 2340A (relating to torture) of
2 this title;

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

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

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

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

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

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

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

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

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

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

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

6 (d) PRESUMPTIVE DETENTION.—Section 3142(e) of
7 title 18, United States Code, is amended by inserting “,
8 956(a), or 2332b” after “section 924(c)”.

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

13 **SEC. 105. CONSPIRACY TO HARM PEOPLE AND PROPERTY**
14 **OVERSEAS.**

15 (a) IN GENERAL.—Section 956 of chapter 45 of title
16 18, United States Code, is amended to read as follows:

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

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

1 torial jurisdiction of the United States shall, if any of the
2 conspirators commits an act within the jurisdiction of the
3 United States to effect any object of the conspiracy, be
4 punished as provided in subsection (a)(2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **“§ 3295. Arson offenses**

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

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

“3295. Arson offenses.”.

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

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

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

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

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

15 (a) TITLE 18 OFFENSES.—

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

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

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

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

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

11 (b) AIRCRAFT PIRACY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (b) ORDER.—

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

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

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

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

1 **“§ 624. Disclosures to FBI for counterintelligence**
2 **purposes**

3 “(a) IDENTITY OF FINANCIAL INSTITUTIONS.—Not-
4 withstanding section 604 or any other provision of this
5 title, a consumer reporting agency shall furnish to the
6 Federal Bureau of Investigation the names and addresses
7 of all financial institutions (as that term is defined in sec-
8 tion 1101 of the Right to Financial Privacy Act of 1978)
9 at which a consumer maintains or has maintained an ac-
10 count, to the extent that information is in the files of the
11 agency, when presented with a written request for that
12 information, signed by the Director of the Federal Bureau
13 of Investigation, or the Director’s designee, which certifies
14 compliance with this section. The Director or the Direc-
15 tor’s designee may make such a certification only if the
16 Director or the Director’s designee has determined in writ-
17 ing that—

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

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

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

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

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

10 “(b) IDENTIFYING INFORMATION.—Notwithstanding
11 the provisions of section 604 or any other provision of this
12 title, a consumer reporting agency shall furnish identifying
13 information respecting a consumer, limited to name, ad-
14 dress, former addresses, places of employment, or former
15 places of employment, to the Federal Bureau of Investiga-
16 tion when presented with a written request, signed by the
17 Director or the Director’s designee, which certifies compli-
18 ance with this subsection. The Director or the Director’s
19 designee may make such a certification only if the Director
20 or the Director’s designee has determined in writing
21 that—

22 “(1) such information is necessary to the con-
23 duct of an authorized counterintelligence investiga-
24 tion; and

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

6 “(c) COURT ORDER FOR DISCLOSURE OF CONSUMER
7 REPORTS.—Notwithstanding section 604 or any other
8 provision of this title, if requested in writing by the Direc-
9 tor of the Federal Bureau of Investigation, or a designee
10 of the Director, a court may issue an order ex parte direct-
11 ing a consumer reporting agency to furnish a consumer
12 report to the Federal Bureau of Investigation, upon a
13 showing in camera that—

14 “(1) the consumer report is necessary for the
15 conduct of an authorized foreign counterintelligence
16 investigation; and

17 “(2) there are specific and articulable facts giv-
18 ing reason to believe that the consumer whose
19 consumer report is sought—

20 “(A) is an agent of a foreign power; and

21 “(B) is engaging or has engaged in inter-
22 national terrorism (as that term is defined in
23 section 101(e) of the Foreign Intelligence Sur-
24 veillance Act of 1978) or clandestine intel-
25 ligence activities that involve or may involve a

1 violation of criminal statutes of the United
2 States.

3 The terms of an order issued under this subsection shall
4 not disclose that the order is issued for purposes of a
5 counterintelligence investigation.

6 “(d) CONFIDENTIALITY.—No consumer reporting
7 agency or officer, employee, or agent of a consumer report-
8 ing agency shall disclose to any person, other than those
9 officers, employees, or agents of a consumer reporting
10 agency necessary to fulfill the requirement to disclose in-
11 formation to the Federal Bureau of Investigation under
12 this section, that the Federal Bureau of Investigation has
13 sought or obtained the identity of financial institutions or
14 a consumer report respecting any consumer under sub-
15 section (a), (b), or (c) and no consumer reporting agency
16 or officer, employee, or agent of a consumer reporting
17 agency shall include in any consumer report any informa-
18 tion that would indicate that the Federal Bureau of Inves-
19 tigation has sought or obtained such information or a
20 consumer report.

21 “(e) PAYMENT OF FEES.—The Federal Bureau of
22 Investigation shall, subject to the availability of appropria-
23 tions, pay to the consumer reporting agency assembling
24 or providing reports or information in accordance with
25 procedures established under this section, a fee for reim-

1 bursement for such costs as are reasonably necessary and
2 which have been directly incurred in searching, reproduc-
3 ing, or transporting books, papers, records, or other data
4 required or requested to be produced under this section.

5 “(f) LIMIT ON DISSEMINATION.—The Federal Bu-
6 reau of Investigation may not disseminate information ob-
7 tained pursuant to this section outside of the Federal Bu-
8 reau of Investigation, except to other Federal agencies as
9 may be necessary for the approval or conduct of a foreign
10 counterintelligence investigation, or, where the informa-
11 tion concerns a person subject to the Uniform Code of
12 Military Justice, to appropriate investigative authorities
13 within the military department concerned as may be nec-
14 essary for the conduct of a joint foreign counterintel-
15 ligence investigation.

16 “(g) RULES OF CONSTRUCTION.—Nothing in this
17 section shall be construed to prohibit information from
18 being furnished by the Federal Bureau of Investigation
19 pursuant to a subpoena or court order, or in connection
20 with a judicial or administrative proceeding to enforce the
21 provisions of this Act. Nothing in this section shall be con-
22 strued to authorize or permit the withholding or informa-
23 tion from the Congress.

24 “(h) REPORTS TO CONGRESS.—On a semiannual
25 basis, the Attorney General of the United States shall fully

1 inform the Permanent Select Committee on Intelligence
2 and the Committee on Banking and Financial Services of
3 the House of Representatives, and the Select Committee
4 on Intelligence and the Committee on Banking, Housing,
5 and Urban Affairs of the Senate concerning all requests
6 made pursuant to subsections (a), (b), and (c).

7 “(i) DAMAGES.—Any agency or department of the
8 United States obtaining or disclosing any consumer re-
9 ports, records, or information contained therein in viola-
10 tion of this section is liable to the consumer to whom such
11 consumer reports, records, or information relate in an
12 amount equal to the sum of—

13 “(1) \$100, without regard to the volume of
14 consumer reports, records, or information involved;

15 “(2) any actual damages sustained by the
16 consumer as a result of the disclosure;

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

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

24 “(j) DISCIPLINARY ACTIONS FOR VIOLATIONS.—If a
25 court determines that any agency or department of the

1 United States has violated any provision of this section
2 and the court finds that the circumstances surrounding
3 the violation raise questions of whether or not an officer
4 or employee of the agency or department acted willfully
5 or intentionally with respect to the violation, the agency
6 or department shall promptly initiate a proceeding to de-
7 termine whether or not disciplinary action is warranted
8 against the officer or employee who was responsible for
9 the violation.

10 “(k) GOOD-FAITH EXCEPTION.—Notwithstanding
11 any other provision of this title, any consumer reporting
12 agency or agent or employee thereof making disclosure of
13 consumer reports or identifying information pursuant to
14 this subsection in good-faith reliance upon a certification
15 of the Federal Bureau of Investigation pursuant to provi-
16 sions of this section shall not be liable to any person for
17 such disclosure under this title, the constitution of any
18 State, or any law or regulation of any State or any politi-
19 cal subdivision of any State.

20 “(l) LIMITATION OF REMEDIES.—Notwithstanding
21 any other provision of this title, the remedies and sanc-
22 tions set forth in this section shall be the only judicial
23 remedies and sanctions for violation of this section.

24 “(m) INJUNCTIVE RELIEF.—In addition to any other
25 remedy contained in this section, injunctive relief shall be

1 available to require compliance with the procedures of this
 2 section. In the event of any successful action under this
 3 subsection, costs together with reasonable attorney fees,
 4 as determined by the court, may be recovered.”.

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

“624. Disclosures to FBI for counterintelligence purposes.”.

9 **SEC. 303. DISCLOSURE OF BUSINESS RECORDS HELD BY**
 10 **THIRD PARTIES IN FOREIGN COUNTERINTEL-**
 11 **LIGENCE CASES.**

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

14 **“CHAPTER 122—ACCESS TO CERTAIN**
 15 **RECORDS**

“Sec.

“2720. Disclosure of business records held by third parties in foreign counter-
 intelligence cases.

16 **“§ 2720. Disclosure of business records held by third**
 17 **parties in foreign counterintelligence**
 18 **cases**

19 “(a)(1) A court or magistrate judge may issue an
 20 order ex parte, upon application by the Director of the
 21 Federal Bureau of Investigation (or the Director’s des-
 22 ignee, whose rank shall be no lower than Assistant Special
 23 Agent in Charge), directing any common carrier, public

1 accommodation facility, physical storage facility, or vehicle
2 rental facility to furnish any records in its possession to
3 the Federal Bureau of Investigation. The court or mag-
4 istrate judge shall issue the order if the court or mag-
5 istrate judge finds that—

6 “(A) such records are necessary for counter-ter-
7 rorism or foreign counterintelligence purposes; and

8 “(B) there are specific and articulable facts giv-
9 ing reason to believe that the person to whom the
10 records pertain is—

11 “(i) a foreign power; or

12 “(ii) an agent of a foreign power and is en-
13 gaging or has engaged in international terror-
14 ism (as that term is defined in section 101(c)
15 of the Foreign Intelligence Surveillance Act of
16 1978) or clandestine intelligence activities that
17 involve or may involve a violation of criminal
18 statutes of the United States.

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

22 “(b) No common carrier, public accommodation facil-
23 ity, physical storage facility, or vehicle rental facility, or
24 any officer, employee, or agent of such common carrier,
25 public accommodation facility, physical storage facility, or

1 vehicle rental facility, shall disclose to any person, other
2 than those officers, agents, or employees of the common
3 carrier, public accommodation facility, physical storage fa-
4 cility, or vehicle rental facility necessary to fulfill the re-
5 quirement to disclose the information to the Federal Bu-
6 reau of Investigation under this section.

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

10 “(A) to the Department of Justice or any other
11 law enforcement agency, as may be necessary for the
12 approval or conduct of a foreign counterintelligence
13 investigation; or

14 “(B) where the information concerns a person
15 subject to the Uniform Code of Military Justice, to
16 appropriate investigative authorities within the mili-
17 tary department concerned as may be necessary for
18 the conduct of a joint foreign counterintelligence in-
19 vestigation.

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

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

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

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

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

9 “(d) If a court determines that any agency or depart-
10 ment of the United States has violated any provision of
11 this section and the court finds that the circumstances
12 surrounding the violation raise questions of whether or not
13 an officer or employee of the agency or department acted
14 willfully or intentionally with respect to the violation, the
15 agency or department shall promptly initiate a proceeding
16 to determine whether or not disciplinary action is war-
17 ranted against the officer or employee who was responsible
18 for the violation.

19 “(e) As used in this section—

20 “(1) the term ‘common carrier’ means a loco-
21 motive, rail carrier, bus carrying passengers, water
22 common carrier, air common carrier, or private com-
23 mercial interstate carrier for the delivery of pack-
24 ages and other objects;

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

4 “(3) the term ‘physical storage facility’ means
5 any business or entity that provides space for the
6 storage of goods or materials, or services related to
7 the storage of goods or materials, to the public or
8 any segment thereof; and

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

13 (b) CLERICAL AMENDMENT.—The table of chapters
14 at the beginning of part I of title 18, United States Code,
15 is amended by inserting after the item relating to chapter
16 121 the following new item:

“122. Access to certain records 2720”.

17 **SEC. 304. STUDY OF TAGGING EXPLOSIVE MATERIALS, DE-**
18 **TECTION OF EXPLOSIVES AND EXPLOSIVE**
19 **MATERIALS, RENDERING EXPLOSIVE COMPO-**
20 **NENTS INERT, AND IMPOSING CONTROLS OF**
21 **PRECURSORS OF EXPLOSIVES.**

22 (a) STUDY.—The Attorney General, in consultation
23 with other Federal, State and local officials with expertise
24 in this area and such other individuals as the Attorney

1 General deems appropriate, shall conduct a study concern-
2 ing—

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

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

7 (3) whether common chemicals used to manu-
8 facture explosive materials can be rendered inert and
9 whether it is feasible to require it; and

10 (4) whether controls can be imposed on certain
11 precursor chemicals used to manufacture explosive
12 materials and whether it is feasible to require it.

13 (b) REPORT.—Not later than 180 days after the date
14 of the enactment of this Act, the Attorney General shall
15 submit to the Congress a report that contains the results
16 of the study required by this section. The Attorney Gen-
17 eral shall make the report available to the public.

18 **SEC. 305. APPLICATION OF STATUTORY EXCLUSIONARY**
19 **RULE CONCERNING INTERCEPTED WIRE OR**
20 **ORAL COMMUNICATIONS.**

21 Section 2515 of title 18, United States Code, is
22 amended by adding at the end the following: “This section
23 shall not apply to the disclosure by the United States in
24 a criminal trial or hearing or before a grand jury of the
25 contents of a wire or oral communication, or evidence de-

1 rived therefrom, if any law enforcement officers who inter-
2 cepted the communication or gathered the evidence de-
3 rived therefrom acted with the reasonably objective belief
4 that their actions were in compliance with this chapter.”.

5 **SEC. 306. EXCLUSION OF CERTAIN TYPES OF INFORMATION**
6 **FROM WIRETAP-RELATED DEFINITIONS.**

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

10 (1) by striking “or” at the end of subparagraph
11 (B);

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

14 (3) by adding a new subparagraph (D), as fol-
15 lows:

16 “(D) information stored in a communica-
17 tions system used for the electronic storage and
18 transfer of funds;”

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

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

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

1 (3) by striking subparagraph (F).

2 **SEC. 307. REQUIREMENT FOR PERIODIC REPORT.**

3 Subsection (6) of section 2518 of title 18, United
4 States Code is amended to read as follows:

5 “(6) Whenever an order authorizing interception is
6 entered under this chapter, the order shall require the at-
7 torney for the Government to file a report with the judge
8 who issued the order showing what progress has been
9 made toward achievement of the authorized objective and
10 the need for continued interception. Such report shall be
11 made 15 days after the interception has begun. No other
12 reports shall be made to the judge under this subsection.”.

13 **SEC. 308. ACCESS TO TELEPHONE BILLING RECORDS.**

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

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

18 (2) by striking “and” at the end of paragraph
19 (1);

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

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

24 “(3) request the name, address, length of serv-
25 ice, and local and long distance toll billing records

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

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

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

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

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

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

24 “(f) DISCIPLINARY ACTIONS FOR VIOLATIONS.—If a
25 court determines that any agency or department of the

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

9 **SEC. 309. REQUIREMENT TO PRESERVE RECORD EVI-**
10 **DENCE.**

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

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

22 **SEC. 310. DETENTION HEARING.**

23 Section 3142(f) of title 18, United States Code, is
24 amended by inserting “(not including any intermediate

1 Saturday, Sunday, or legal holiday)” after “five days” and
2 after “three days”.

3 **SEC. 311. REWARD AUTHORITY OF THE ATTORNEY GEN-**
4 **ERAL.**

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

8 **“§ 3059. Reward authority of the Attorney General**

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

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

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

23 “(d) If the Attorney General determines that the
24 identity of the recipient of a reward or of the members
25 of the recipient’s immediate family must be protected, the

1 Attorney General may take such measures in connection
2 with the payment of the reward as the Attorney General
3 deems necessary to effect such protection.

4 “(e) No officer or employee of any governmental en-
5 tity may receive a reward under this section for conduct
6 in performance of his or her official duties.

7 “(f) Any individual (and the immediate family of such
8 individual) who furnishes information which would justify
9 a reward under this section or a reward by the Secretary
10 of State under section 36 of the State Department Basic
11 Authorities Act of 1956 may, in the discretion of the At-
12 torney General, participate in the Attorney General’s wit-
13 ness security program under chapter 224 of this title.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 at the beginning of chapter 203 of title 18, United States
16 Code, is amended by striking the items relating to section
17 3059 and 3059A and inserting the following new item:

“3059. Reward authority of the Attorney General.”.

18 (c) CONFORMING AMENDMENT.—Section 1751 of
19 title 18, United States Code, is amended by striking sub-
20 section (g).

21 **SEC. 312. PROTECTION OF FEDERAL GOVERNMENT BUILD-**
22 **INGS IN THE DISTRICT OF COLUMBIA.**

23 The Attorney General is authorized—

24 (1) to prohibit vehicles from parking or stand-
25 ing on any street or roadway adjacent to any build-

1 ing in the District of Columbia which is in whole or
2 in part owned, possessed, used by, or leased to the
3 Federal Government and used by Federal law en-
4 forcement authorities; and

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

8 **SEC. 313. STUDY OF THEFTS FROM ARMORIES; REPORT TO**
9 **THE CONGRESS.**

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

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

19 **TITLE IV—NUCLEAR MATERIALS**

20 **SEC. 401. EXPANSION OF NUCLEAR MATERIALS PROHIBI-**
21 **TIONS.**

22 Section 831 of title 18, United States Code, is
23 amended—

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

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

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

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

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

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

16 “(2) an offender or a victim is a national of the
17 United States or a United States corporation or
18 other legal entity;”;

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

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

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

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

6 (10) by adding at the end of subsection (c) the
7 following:

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

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

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

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

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

21 “(2) the term ‘nuclear byproduct material’
22 means any material containing any radioactive iso-
23 tope created through an irradiation process in the
24 operation of a nuclear reactor or accelerator.”;

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

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

6 (17) by adding at the end of subsection (f) the
7 following:

8 “(6) the term ‘national of the United States’
9 has the meaning prescribed in section 101(a)(22) of
10 the Immigration and Nationality Act (8 U.S.C.
11 1101(a)(22)); and

12 “(7) the term ‘United States corporation or
13 other legal entity’ means any corporation or other
14 entity organized under the laws of the United States
15 or any State, district, commonwealth, territory or
16 possession of the United States.”.

17 **TITLE V—CONVENTION ON THE**
18 **MARKING OF PLASTIC EXPL-**
19 **SIVES**

20 **SEC. 501. DEFINITIONS.**

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

23 “(o) ‘Convention on the Marking of Plastic Ex-
24 plosives’ means the Convention on the Marking of

1 Plastic Explosives for the Purpose of Detection,
2 Done at Montreal on 1 March 1991.

3 “(p) ‘Detection agent’ means any one of the
4 substances specified in this subsection when intro-
5 duced into a plastic explosive or formulated in such
6 explosive as a part of the manufacturing process in
7 such a manner as to achieve homogeneous distribu-
8 tion in the finished explosive, including—

9 “(1) Ethylene glycol dinitrate (EGDN),
10 $C_2H_4(NO_3)_2$, molecular weight 152, when the
11 minimum concentration in the finished explosive
12 is 0.2 percent by mass;

13 “(2) 2,3-Dimethyl-2,3-dinitrobutane
14 (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176,
15 when the minimum concentration in the fin-
16 ished explosive is 0.1 percent by mass;

17 “(3) Para-Mononitrotoluene (p-MNT),
18 $C_7H_7NO_2$, molecular weight 137, when the min-
19 imum concentration in the finished explosive is
20 0.5 percent by mass;

21 “(4) Ortho-Mononitrotoluene (o-MNT),
22 $C_7H_7NO_2$, molecular weight 137, when the min-
23 imum concentration in the finished explosive is
24 0.5 percent by mass; and

1 “(5) any other substance in the concentra-
2 tion specified by the Secretary, after consulta-
3 tion with the Secretary of State and the Sec-
4 retary of Defense, which has been added to the
5 table in part 2 of the Technical Annex to the
6 Convention on the Marking of Plastic Explo-
7 sives.

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

15 **SEC. 502. REQUIREMENT OF DETECTION AGENTS FOR**
16 **PLASTIC EXPLOSIVES.**

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

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

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

1 “(2) Until the 15-year period that begins with the
2 date of entry into force of the Convention on the Marking
3 of Plastic Explosives with respect to the United States has
4 expired, paragraph (1) shall not apply to the importation
5 or bringing into the United States, or the exportation from
6 the United States, of any plastic explosive which was im-
7 ported, brought into, or manufactured in the United
8 States before the effective date of this subsection by or
9 on behalf of any agency of the United States performing
10 military or police functions (including any military Re-
11 serve component) or by or on behalf of the National Guard
12 of any State.

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

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

22 “(B) Until the 15-year period that begins on the date
23 of entry into force of the Convention on the Marking of
24 Plastic Explosives with respect to the United States has
25 expired, paragraph (1) shall not apply to the shipment,

1 transportation, transfer, receipt, or possession of any plas-
2 tic explosive, which was imported, brought into, or manu-
3 factured in the United States before the effective date of
4 this subsection by or on behalf of any agency of the United
5 States performing a military or police function (including
6 any military reserve component) or by or on behalf of the
7 National Guard of any State.

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

18 **SEC. 503. CRIMINAL SANCTIONS.**

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

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

1 **SEC. 504. EXCEPTIONS.**

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

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

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

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

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

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

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

18 “(B) training in explosives detection or de-
19 velopment or testing of explosives detection
20 equipment; or

21 “(C) forensic science purposes; or

22 “(2) was plastic explosive which, within 3 years
23 after the effective date of this paragraph, will be or
24 is incorporated in a military device within the terri-
25 tory of the United States and remains an integral
26 part of such military device, or is intended to be, or

1 is incorporated in, and remains an integral part of
 2 a military device that is intended to become, or has
 3 become, the property of any agency of the United
 4 States performing military or police functions (in-
 5 cluding any military reserve component) or the Na-
 6 tional Guard of any State, wherever such device is
 7 located. For purposes of this subsection, the term
 8 ‘military device’ includes shells, bombs, projectiles,
 9 mines, missiles, rockets, shaped charges, grenades,
 10 perforators, and similar devices lawfully manufac-
 11 tured exclusively for military or police purposes.”.

12 **SEC. 505. EFFECTIVE DATE.**

13 The amendments made by this title shall take effect
 14 1 year after the date of the enactment of this Act.

15 **TITLE VI—IMMIGRATION-**
 16 **RELATED PROVISIONS**
 17 **Subtitle A—Removal of Alien**
 18 **Terrorists**

19 **PART 1—REMOVAL PROCEDURES FOR ALIEN**
 20 **TERRORISTS**

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

22 (a) IN GENERAL.—The Immigration and Nationality
 23 Act is amended—

24 (1) by adding at the end of the table of con-
 25 tents the following:

“TITLE V—SPECIAL REMOVAL PROCEDURES FOR ALIEN TERRORISTS

“Sec. 501. Definitions.

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

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

“Sec. 504. Consideration of application.

“Sec. 505. Special removal hearings.

“Sec. 506. Consideration of classified information.

“Sec. 507. Appeals.

“Sec. 508. Detention and custody.”;

1 and

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

3 “TITLE V—SPECIAL REMOVAL PROCEDURES

4 FOR ALIEN TERRORISTS

5 “DEFINITIONS

6 “SEC. 501. In this title:

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

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

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

15 “(4) The term ‘special attorney’ means an at-
16 torney who is on the panel established under section
17 502(e).

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

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

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

3 “ESTABLISHMENT OF SPECIAL REMOVAL COURT; PANEL
4 OF ATTORNEYS TO ASSIST WITH CLASSIFIED INFOR-
5 MATION

6 “SEC. 502. (a) IN GENERAL.—The Chief Justice of
7 the United States shall publicly designate 5 district court
8 judges from 5 of the United States judicial circuits who
9 shall constitute a court which shall have jurisdiction to
10 conduct all special removal proceedings.

11 “(b) TERMS.—Each judge designated under sub-
12 section (a) shall serve for a term of 5 years and shall be
13 eligible for redesignation, except that the four associate
14 judges first so designated shall be designated for terms
15 of one, two, three, and four years so that the term of one
16 judge shall expire each year.

17 “(c) CHIEF JUDGE.—The Chief Justice shall publicly
18 designate one of the judges of the special removal court
19 to be the chief judge of the court. The chief judge shall
20 promulgate rules to facilitate the functioning of the court
21 and shall be responsible for assigning the consideration
22 of cases to the various judges.

23 “(d) EXPEDITIOUS AND CONFIDENTIAL NATURE OF
24 PROCEEDINGS.—The provisions of section 103(c) of the
25 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.

1 1803(c)) shall apply to proceedings under this title in the
2 same manner as they apply to proceedings under such Act.

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

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

8 “(2) has agreed to represent permanent resi-
9 dent aliens with respect to classified information
10 under sections 506 and 507(c)(2)(B) in accordance
11 with (and subject to the penalties under) this title.

12 “APPLICATION FOR INITIATION OF SPECIAL REMOVAL
13 PROCEEDING

14 “SEC. 503. (a) IN GENERAL.—Whenever the Attor-
15 ney General has classified information that an alien is an
16 alien terrorist, the Attorney General, in the Attorney Gen-
17 eral’s discretion, may seek removal of the alien under this
18 title through the filing with the special removal court of
19 a written application described in subsection (b) that seeks
20 an order authorizing a special removal proceeding under
21 this title. The application shall be submitted in camera
22 and ex parte and shall be filed under seal with the court.

23 “(b) CONTENTS OF APPLICATION.—Each application
24 for a special removal proceeding shall include all of the
25 following:

1 “(1) The identity of the Department of Justice
2 attorney making the application.

3 “(2) The approval of the Attorney General or
4 the Deputy Attorney General for the filing of the ap-
5 plication based upon a finding by that individual
6 that the application satisfies the criteria and re-
7 quirements of this title.

8 “(3) The identity of the alien for whom author-
9 ization for the special removal proceeding is sought.

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

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

15 “(B) with respect to such alien, adherence
16 to the provisions of title II regarding the depor-
17 tation of aliens would pose a risk to the na-
18 tional security of the United States.

19 “(5) An oath or affirmation respecting each of
20 the facts and statements described in the previous
21 paragraphs.

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

1 “CONSIDERATION OF APPLICATION

2 “SEC. 504. (a) IN GENERAL.—In the case of an ap-
3 plication under section 503 to the special removal court,
4 a single judge of the court shall be assigned to consider
5 the application. The judge, in accordance with the rules
6 of the court, shall consider the application and may con-
7 sider other information, including classified information,
8 presented under oath or affirmation. The judge shall con-
9 sider the application (and any hearing thereof) in camera
10 and ex parte. A verbatim record shall be maintained of
11 any such hearing.

12 “(b) APPROVAL OF ORDER.—The judge shall enter
13 ex parte the order requested in the application if the judge
14 finds, on the basis of such application and such other in-
15 formation (if any), that there is probable cause to believe
16 that—

17 “(1) the alien who is the subject of the applica-
18 tion has been correctly identified and is an alien ter-
19 rorist, and

20 “(2) adherence to the provisions of title II re-
21 garding the deportation of the identified alien would
22 pose a risk to the national security of the United
23 States.

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

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

6 “(1) the alien’s rights regarding removal and
7 expulsion shall be governed solely by the provisions
8 of this title, and

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

11 “SPECIAL REMOVAL HEARINGS

12 “SEC. 505. (a) IN GENERAL.—In any case in which
13 the application for the order is approved under section
14 504, a special removal hearing shall be conducted under
15 this section for the purpose of determining whether the
16 alien to whom the order pertains should be removed from
17 the United States on the grounds that the alien is an alien
18 terrorist. Consistent with section 506, the alien shall be
19 given reasonable notice of the nature of the charges
20 against the alien and a general account of the basis for
21 the charges. The alien shall be given notice, reasonable
22 under all the circumstances, of the time and place at which
23 the hearing will be held. The hearing shall be held as expe-
24 ditiously as possible.

25 “(b) USE OF SAME JUDGE.—The special removal
26 hearing shall be held before the same judge who granted

1 the order pursuant to section 504 unless that judge is
2 deemed unavailable due to illness or disability by the chief
3 judge of the special removal court, or has died, in which
4 case the chief judge shall assign another judge to conduct
5 the special removal hearing. A decision by the chief judge
6 pursuant to the preceding sentence shall not be subject
7 to review by either the alien or the Department of Justice.

8 “(c) RIGHTS IN HEARING.—

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

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

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

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

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

11 “(6) DECISION BASED ON EVIDENCE AT HEAR-
12 ING.—The decision of the judge in the hearing shall
13 be based only on the evidence introduced at the
14 hearing, including evidence introduced under sub-
15 section (e).

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

20 “(A) Asylum under section 208.

21 “(B) Withholding of deportation under sec-
22 tion 243(h).

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

1 “(D) Adjustment of status under section
2 245.

3 “(E) Registry under section 249.

4 “(d) SUBPOENAS.—

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

1 “(2) PAYMENT FOR ATTENDANCE.—If an appli-
2 cation for a subpoena by the alien also makes a
3 showing that the alien is financially unable to pay
4 for the attendance of a witness so requested, the
5 court may order the costs incurred by the process
6 and the fees of the witness so subpoenaed to be paid
7 from funds appropriated for the enforcement of title
8 II.

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

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

16 “(5) NO ACCESS TO CLASSIFIED INFORMA-
17 TION.—Nothing in this subsection is intended to
18 allow an alien to have access to classified informa-
19 tion.

20 “(e) INTRODUCTION OF CLASSIFIED INFORMA-
21 TION.—

22 “(1) IN GENERAL.—Classified information that
23 has been summarized pursuant to section 506(b)
24 and classified information for which findings de-
25 scribed in section 506(b)(4)(B) have been made and

1 for which no summary is provided shall be intro-
2 duced (either in writing or through testimony) in
3 camera and ex parte and neither the alien nor the
4 public shall be informed of such evidence or its
5 sources other than through reference to the sum-
6 mary (if any) provided pursuant to such section.
7 Notwithstanding the previous sentence, the Depart-
8 ment of Justice may, in its discretion and after co-
9 ordination with the originating agency, elect to in-
10 troduce such evidence in open session.

11 “(2) TREATMENT OF ELECTRONIC SURVEIL-
12 LANCE INFORMATION.—

13 “(A) USE OF ELECTRONIC SURVEIL-
14 LANCE.—The Government is authorized to use
15 in a special removal proceeding the fruits of
16 electronic surveillance and unconsented physical
17 searches authorized under the Foreign Intel-
18 ligence Surveillance Act of 1978 (50 U.S.C.
19 1801 et seq.) without regard to subsections (c),
20 (e), (f), (g), and (h) of section 106 of that Act.

21 “(B) NO DISCOVERY OF ELECTRONIC SUR-
22 VEILLANCE INFORMATION.—An alien subject to
23 removal under this title shall have no right of
24 discovery of information derived from electronic
25 surveillance authorized under the Foreign Intel-

1 ligence Surveillance Act of 1978 or otherwise
2 for national security purposes. Nor shall such
3 alien have the right to seek suppression of evi-
4 dence.

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

9 “(3) RIGHTS OF UNITED STATES.—Nothing in
10 this section shall prevent the United States from
11 seeking protective orders and from asserting privi-
12 leges ordinarily available to the United States to
13 protect against the disclosure of classified informa-
14 tion, including the invocation of the military and
15 state secrets privileges.

16 “(f) INCLUSION OF CERTAIN EVIDENCE.—The Fed-
17 eral Rules of Evidence shall not apply to hearings under
18 this section. Evidence introduced at the special removal
19 hearing, either in open session or in camera and ex parte,
20 may, in the discretion of the Department of Justice, in-
21 clude all or part of the information presented under sec-
22 tion 504 used to obtain the order for the hearing under
23 this section.

24 “(g) ARGUMENTS.—Following the receipt of evi-
25 dence, the attorneys for the Department of Justice and

1 for the alien shall be given fair opportunity to present ar-
2 gument as to whether the evidence is sufficient to justify
3 the removal of the alien. The attorney for the Department
4 of Justice shall open the argument. The attorney for the
5 alien shall be permitted to reply. The attorney for the De-
6 partment of Justice shall then be permitted to reply in
7 rebuttal. The judge may allow any part of the argument
8 that refers to evidence received in camera and ex parte
9 to be heard in camera and ex parte.

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

19 “(i) WRITTEN ORDER.—At the time of rendering a
20 decision as to whether the alien shall be removed, the
21 judge shall prepare a written order containing a statement
22 of facts found and conclusions of law. Any portion of the
23 order that would reveal the substance or source of infor-
24 mation received in camera and ex parte pursuant to sub-

1 section (e) shall not be made available to the alien or the
2 public.

3 “CONSIDERATION OF CLASSIFIED INFORMATION

4 “SEC. 506. (a) CONSIDERATION IN CAMERA AND EX
5 PARTE.—In any case in which the application for the
6 order authorizing the special procedures of this title is ap-
7 proved, the judge who granted the order shall consider
8 each item of classified information the Department of Jus-
9 tice proposes to introduce in camera and ex parte at the
10 special removal hearing and shall order the introduction
11 of such information pursuant to section 505(e) if the judge
12 determines the information to be relevant.

13 “(b) PREPARATION AND PROVISION OF WRITTEN
14 SUMMARY.—

15 “(1) PREPARATION.—The Department of Jus-
16 tice shall prepare a written summary of such classi-
17 fied information which does not pose a risk to na-
18 tional security.

19 “(2) CONDITIONS FOR APPROVAL BY JUDGE
20 AND PROVISION TO ALIEN.—The judge shall approve
21 the summary so long as the judge finds that the
22 summary is sufficient—

23 “(A) to inform the alien of the general na-
24 ture of the evidence that the alien is an alien
25 terrorist, and

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

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

5 “(3) OPPORTUNITY FOR CORRECTION AND
6 RESUBMITTAL.—If the judge does not approve the
7 summary, the judge shall provide the Department a
8 reasonable opportunity to correct the deficiencies
9 identified by the court and to submit a revised sum-
10 mary.

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

13 “(A) IN GENERAL.—If, subsequent to the
14 opportunity described in paragraph (3), the
15 judge does not approve the summary, the judge
16 shall terminate the special removal hearing un-
17 less the judge makes the findings described in
18 subparagraph (B).

19 “(B) FINDINGS.—The findings described
20 in this subparagraph are, with respect to an
21 alien, that—

22 “(i) the continued presence of the
23 alien in the United States, and

24 “(ii) the provision of the required
25 summary,

1 would likely cause serious and irreparable harm
2 to the national security or death or serious bod-
3 ily injury to any person.

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

7 “(A) if the alien involved is an alien law-
8 fully admitted for permanent residence, the pro-
9 cedures described in subsection (c) shall apply;
10 and

11 “(B) in all cases the special removal hear-
12 ing shall continue, the Department of Justice
13 shall cause to be delivered to the alien a state-
14 ment that no summary is possible, and the clas-
15 sified information submitted in camera and ex
16 parte may be used pursuant to section 505(e).

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

20 “(1) IN GENERAL.—The procedures described
21 in this subsection are that the judge (under rules of
22 the special removal court) shall designate a special
23 attorney (as defined in section 501(4)), (and the
24 alien facing deportation under these procedures, may
25 choose which special attorney shall be so designated,

1 if the alien makes that choice not later than 45 days
2 after the date on which the alien receives notice that
3 the Government intends to use such procedures) to
4 assist the alien and the court—

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

7 “(B) by challenging through an in camera
8 proceeding the veracity of the evidence con-
9 tained in the classified information.

10 “(2) RESTRICTIONS ON DISCLOSURE.—A spe-
11 cial attorney receiving classified information under
12 paragraph (1)—

13 “(A) shall not disclosure the information to
14 the alien or to any other attorney representing
15 the alien, and

16 “(B) who discloses such information in vio-
17 lation of subparagraph (A) shall be subject to
18 a fine under title 18, United States Code, and
19 imprisoned for not less than 10 years nor more
20 than 25 years.

21 “APPEALS

22 “SEC. 507. (a) APPEALS OF DENIALS OF APPLICA-
23 TIONS FOR ORDERS.—The Department of Justice may
24 seek a review of the denial of an order sought in an appli-
25 cation by the United States Court of Appeals for the Dis-
26 trict of Columbia Circuit by notice of appeal which must

1 be filed within 20 days after the date of such denial. In
2 such a case the entire record of the proceeding shall be
3 transmitted to the Court of Appeals under seal and the
4 Court of Appeals shall hear the matter ex parte. In such
5 a case the Court of Appeals shall review questions of law
6 de novo, but a prior finding on any question of fact shall
7 not be set aside unless such finding was clearly erroneous.

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

12 “(1) any determination by the judge pursuant
13 to section 506(a)—

14 “(A) concerning whether an item of evi-
15 dence may be introduced in camera and ex
16 parte, or

17 “(B) concerning the contents of any sum-
18 mary of evidence to be introduced in camera
19 and ex parte prepared pursuant to section
20 506(b); or

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

23 In any interlocutory appeal taken pursuant to this sub-
24 section, the entire record, including any proposed order
25 of the judge or summary of evidence, shall be transmitted

1 to the Court of Appeals under seal and the matter shall
2 be heard ex parte.

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

4 “(1) IN GENERAL.—Subject to paragraph (2),
5 the decision of the judge after a special removal
6 hearing may be appealed by either the alien or the
7 Department of Justice to the United States Court
8 of Appeals for the District of Columbia Circuit by
9 notice of appeal.

10 “(2) AUTOMATIC APPEALS IN CASES OF PERMA-
11 NENT RESIDENT ALIENS IN WHICH NO SUMMARY
12 PROVIDED.—

13 “(A) IN GENERAL.—Unless the alien
14 waives the right to a review under this para-
15 graph, in any case involving an alien lawfully
16 admitted for permanent residence who is denied
17 a written summary of classified information
18 under section 506(b)(4) and with respect to
19 which the procedures described in section
20 506(c) apply, any order issued by the judge
21 shall be reviewed by the Court of Appeals for
22 the District of Columbia Circuit.

23 “(B) USE OF SPECIAL ATTORNEY.—With
24 respect to any issue relating to classified infor-
25 mation that arises in such review, the alien

1 shall be represented only by the special attorney
2 designated under section 506(c)(1) on behalf of
3 the alien.

4 “(d) GENERAL PROVISIONS RELATING TO AP-
5 PEALS.—

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

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

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

17 “(B) information received pursuant to sec-
18 tion 505(e), and any portion of the judge’s
19 order that would reveal the substance or source
20 of such information, shall be transmitted under
21 seal.

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

1 “(A) REVIEW.—The appeal or review shall
2 be heard as expeditiously as practicable and the
3 Court may dispense with full briefing and hear
4 the matter solely on the record of the judge of
5 the special removal court and on such briefs or
6 motions as the Court may require to be filed by
7 the parties.

8 “(B) DISPOSITION.—The Court shall up-
9 hold or reverse the judge’s order within 60 days
10 after the date of the issuance of the judge’s
11 final order.

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

15 “(A) QUESTIONS OF LAW.—The Court of
16 Appeals shall review all questions of law de
17 novo.

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

22 “(ii) In the case of a review under sub-
23 section (c)(2) in which an alien lawfully admit-
24 ted for permanent residence was denied a writ-
25 ten summary of classified information under

1 section 506(b)(4), the Court of Appeals shall
2 review questions of fact de novo.

3 “(e) CERTIORARI.—Following a decision by the Court
4 of Appeals pursuant to subsection (b) or (c), either the
5 alien or the Department of Justice may petition the Su-
6 preme Court for a writ of certiorari. In any such case,
7 any information transmitted to the Court of Appeals
8 under seal shall, if such information is also submitted to
9 the Supreme Court, be transmitted under seal. Any order
10 of removal shall not be stayed pending disposition of a
11 writ of certiorari except as provided by the Court of Ap-
12 peals or a Justice of the Supreme Court.

13 “(f) APPEALS OF DETENTION ORDERS.—

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

22 “(A) for purposes of section 3145 of such
23 title an appeal shall be taken to the United
24 States Court of Appeals for the District of Co-
25 lumbia Circuit, and

1 “(B) for purposes of section 3146 of such
2 title the alien shall be considered released in
3 connection with a charge of an offense punish-
4 able by life imprisonment.

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

15 “DETENTION AND CUSTODY

16 “SEC. 508. (a) INITIAL CUSTODY.—

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

24 “(2) SPECIAL RULES FOR PERMANENT RESI-
25 DENT ALIENS.—An alien lawfully admitted for per-
26 manent residence shall be entitled to a release hear-

1 ing before the judge assigned to hear the special re-
2 moval hearing. Such an alien shall be detained pend-
3 ing the special removal hearing, unless the alien
4 demonstrates to the court that—

5 “(A) the alien, if released upon such terms
6 and conditions as the court may prescribe (in-
7 cluding the posting of any monetary amount),
8 is not likely to flee, and

9 “(B) the alien’s release will not endanger
10 national security or the safety of any person or
11 the community.

12 The judge may consider classified information sub-
13 mitted in camera and ex parte in making a deter-
14 mination under this paragraph.

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

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

23 “(B) APPLICATION OF REGULAR PROCE-
24 DURES.—Subparagraph (A) shall not prevent

1 the arrest and detention of the alien pursuant
2 to title II.

3 “(b) CONDITIONAL RELEASE IF ORDER DENIED AND
4 REVIEW SOUGHT.—

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

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

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

22 “(1) RELEASE.—

23 “(A) IN GENERAL.—Subject to subpara-
24 graph (B), if the judge decides pursuant to sec-

1 tion 505(i) that an alien should not be removed,
2 the alien shall be released from custody.

3 “(B) CUSTODY PENDING APPEAL.—If the
4 Attorney General takes an appeal from such de-
5 cision, the alien shall remain in custody, subject
6 to the provisions of section 3142 of title 18,
7 United States Code.

8 “(2) CUSTODY AND REMOVAL.—

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

17 “(B) REMOVAL.—

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

1 wise adversely affect the foreign policy of
2 the United States.

3 “(ii) ALTERNATE COUNTRIES.—If the
4 alien refuses to designate a country to
5 which the alien wishes to be removed or if
6 the Attorney General, in consultation with
7 the Secretary of State, determines that re-
8 moval of the alien to the country so des-
9 ignated would impair a treaty obligation or
10 adversely affect United States foreign pol-
11 icy, the Attorney General shall cause the
12 alien to be removed to any country willing
13 to receive such alien.

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

1 subparagraph shall be released from custody
2 solely at the discretion of the Attorney General
3 and subject to such conditions as the Attorney
4 General shall deem appropriate.

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

12 “(d) CONTINUED DETENTION PENDING TRIAL.—

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

20 “(2) MAINTENANCE OF CUSTODY.—Pending the
21 commencement of any service of a sentence of con-
22 finement by an alien described in paragraph (1),
23 such an alien shall remain in the custody of the At-
24 torney General, unless the Attorney General deter-
25 mines that temporary release of the alien to the cus-

1 tody of State authorities for confinement in a State
2 facility is appropriate and would not endanger na-
3 tional security or public safety.

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

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

22 “(f) RIGHTS OF ALIENS IN CUSTODY.—

23 “(1) FAMILY AND ATTORNEY VISITS.—An alien
24 in the custody of the Attorney General pursuant to
25 this title shall be given reasonable opportunity to

1 communicate with and receive visits from members
2 of the alien’s family, and to contact, retain, and
3 communicate with an attorney.

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

12 (b) JURISDICTION OVER EXCLUSION ORDERS FOR
13 ALIEN TERRORISTS.—Section 106(b) of the Immigration
14 and Nationality Act (8 U.S.C. 1105a(b)) is amended by
15 adding at the end the following sentence: “Jurisdiction to
16 review an order entered pursuant to the provisions of sec-
17 tion 235(c) concerning an alien excludable under section
18 212(a)(3)(B) shall rest exclusively in the United States
19 Court of Appeals for the District of Columbia Circuit.”.

20 (c) CRIMINAL PENALTY FOR REENTRY OF ALIEN
21 TERRORISTS.—Section 276(b) of such Act (8 U.S.C.
22 1326(b)) is amended—

23 (1) by striking “or” at the end of paragraph
24 (1),

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

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

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

15 (d) ELIMINATION OF CUSTODY REVIEW BY HABEAS
16 CORPUS.—Section 106(a) of such Act (8 U.S.C.
17 1105a(a)) is amended—

18 (1) by adding “and” at the end of paragraph

19 (8),

20 (2) by striking “; and” at the end of paragraph

21 (9) and inserting a period, and

22 (3) by striking paragraph (10).

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on the date of the enactment
25 of this Act and shall apply to all aliens without regard

1 to the date of entry or attempted entry into the United
2 States.

3 **SEC. 602. FUNDING FOR DETENTION AND REMOVAL OF**
4 **ALIEN TERRORISTS.**

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

10 **PART 2—EXCLUSION AND DENIAL OF ASYLUM**
11 **FOR ALIEN TERRORISTS**

12 **SEC. 611. MEMBERSHIP IN TERRORIST ORGANIZATION AS**
13 **GROUND FOR EXCLUSION.**

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

17 (1) in clause (i)—

18 (A) by striking “or” at the end of
19 subclause (I),

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

22 (C) by inserting after subclause (II) the
23 following:

24 “(III) is a representative of a ter-
25 rorist organization, or

1 “(IV) is a member of a terrorist
2 organization which the alien knows or
3 should have known is a terrorist orga-
4 nization,”; and

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

6 “(iv) TERRORIST ORGANIZATION DE-
7 FINED.—

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

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

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

21 “(III) JUDICIAL REVIEW.—Any
22 organization designated as a terrorist
23 organization under the preceding pro-
24 visions of this clause may, not later
25 than 30 days after the date of the

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

22 “(IV) CONGRESSIONAL AUTHOR-
23 ITY TO REMOVE DESIGNATION.—The
24 Congress reserves the authority to re-
25 move, by law, the designation of an

1 organization as a terrorist organiza-
2 tion for purposes of this Act.

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

19 “(VI) OTHER AUTHORITY TO RE-
20 MOVE DESIGNATION.—The Secretary
21 of State, in consultation with the At-
22 torney General, may remove the ter-
23 rorist organization designation from
24 any organization previously designated
25 as such an organization, at any time,

1 so long as the Secretary publishes no-
2 tice of the removal in the Federal
3 Register. The Secretary is not re-
4 quired to report to Congress prior to
5 so removing such designation.

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

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

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

21 (a) IN GENERAL.—Section 208(a) of the Immigra-
22 tion and Nationality Act (8 U.S.C. 1158(a)) is amended
23 by adding at the end the following: “The Attorney General
24 may not grant an alien asylum if the Attorney General
25 determines that the alien is excludable under subclause

1 (I), (II), or (III) of section 212(a)(3)(B)(i) or deportable
2 under section 241(a)(4)(B).”.

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

7 **SEC. 613. DENIAL OF OTHER RELIEF FOR ALIEN TERROR-**
8 **ISTS.**

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

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

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

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

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

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

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

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

16 **Subtitle B—Expedited Exclusion**

17 **SEC. 621. INSPECTION AND EXCLUSION BY IMMIGRATION**

18 **OFFICERS.**

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

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

24 “(i) is excludable under section 212(a)(6)(C) or
25 212(a)(7), and

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

4 the officer shall order the alien excluded from the United
5 States without further hearing or review.

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

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

13 “(ii) If the officer determines at the time of the inter-
14 view that an alien has a credible fear of persecution (as
15 defined in clause (v)), the alien shall be detained for an
16 asylum hearing before an asylum officer under section
17 208.

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

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

1 “(iv) The Attorney General shall provide information
2 concerning the asylum interview described in this subpara-
3 graph to aliens who may be eligible. An alien who is eligi-
4 ble for such interview may consult with a person or per-
5 sons of the alien’s choosing prior to the interview or any
6 review thereof, according to regulations prescribed by the
7 Attorney General. Such consultation shall be at no expense
8 to the Government and shall not delay the process.

9 “(v) For purposes of this subparagraph, the term
10 ‘credible fear of persecution’ means (I) that it is more
11 probable than not that the statements made by the alien
12 in support of the alien’s claim are true, and (II) that there
13 is a significant possibility, in light of such statements and
14 of such other facts as are known to the officer, that the
15 alien could establish eligibility for asylum under section
16 208.

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

19 “(i) has had professional training in country
20 conditions, asylum law, and interview techniques;
21 and

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

24 “(E)(i) An exclusion order entered in accordance with
25 subparagraph (A) is not subject to administrative appeal,

1 except that the Attorney General shall provide by regula-
2 tion for prompt review of such an order against an alien
3 who claims under oath, or as permitted under penalty of
4 perjury under section 1746 of title 28, United States
5 Code, after having been warned of the penalties for falsely
6 making such claim under such conditions, to have been
7 lawfully admitted for permanent residence.

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

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

17 “(B) The provisions of subparagraph (A) shall not
18 apply—

19 “(i) to an alien crewman,

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

22 “(iii) if the conditions described in section
23 273(d) exist.

24 “(3) The decision of the examining immigration offi-
25 cer, if favorable to the admission of any alien, shall be

1 subject to challenge by any other immigration officer and
2 such challenge shall operate to take the alien whose privi-
3 lege to enter is so challenged, before a special inquiry offi-
4 cer for a hearing on exclusion of the alien.”.

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

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

10 (2) in the first sentence of paragraph (2), by
11 striking “If” and inserting “Subject to section
12 235(b)(1), if”.

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

17 **SEC. 622. JUDICIAL REVIEW.**

18 (a) PRECLUSION OF JUDICIAL REVIEW.—Section
19 106 of the Immigration and Nationality Act (8 U.S.C.
20 1105a) is amended—

21 (1) by amending the section heading to read as
22 follows:

23 “JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND
24 EXCLUSION, AND SPECIAL EXCLUSION”; and

25 (2) by adding at the end the following new sub-
26 section:

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

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

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

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

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

1 “(3) In any case where the court determines that an
2 alien was not ordered specially excluded, or was not prop-
3 erly subject to special exclusion under the regulations
4 adopted by the Attorney General, the court may order no
5 relief beyond requiring that the alien receive a hearing in
6 accordance with section 236, or a determination in accord-
7 ance with section 235(e) or 273(d).

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

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

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

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

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

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

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

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

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

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

3 **PART 1—IMMIGRATION PROCEDURES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **SEC. 643. EFFECTIVE DATE.**

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

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

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

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

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

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

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

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

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

3 **SEC. 661. SHORT TITLE.**

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

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

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

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

18 (2) in subparagraph (K)—

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

20 (i),

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

22 (iii), and

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

24 ing new clause:

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

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

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

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

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

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

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

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

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

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

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

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

1 “(T) an offense relating to a failure to ap-
2 pear before a court pursuant to a court order
3 to answer to or dispose of a charge of a felony
4 for which a sentence of 2 years’ imprisonment
5 or more may be imposed; and”.

6 (b) **EFFECTIVE DATE.**—The amendments made by
7 subsection (a) shall apply to convictions entered on or
8 after the date of the enactment of this Act, except that
9 the amendment made by subsection (a)(3) shall take effect
10 as if included in the enactment of section 222 of the Immi-
11 gration and Nationality Technical Corrections Act of
12 1994.

13 **SEC. 663. DEPORTATION PROCEDURES FOR CERTAIN**
14 **CRIMINAL ALIENS WHO ARE NOT PERMA-**
15 **NENT RESIDENTS.**

16 (a) **ADMINISTRATIVE HEARINGS.**—Section 242A(b)
17 of the Immigration and Nationality Act (8 U.S.C.
18 1252a(b)), as added by section 130004(a) of the Violent
19 Crime Control and Law Enforcement Act of 1994 (Public
20 Law 103–322), is amended—

21 (1) in paragraph (2)—

22 (A) by striking “and” at the end of sub-
23 paragraph (A) and inserting “or”, and

24 (B) by amending subparagraph (B) to read
25 as follows:

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

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

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

9 (4) in paragraph (4)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (b) CODIFICATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (B) tracking;

4 (C) surveillance;

5 (D) vulnerability assessment; and

6 (E) information technologies;

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

10 (3) to identify and assess requirements for tech-
11 nologies to assist State and local law enforcement in
12 the national program to combat terrorism.

13 **TITLE VIII—MISCELLANEOUS**

14 **SEC. 801. STUDY OF STATE LICENSING REQUIREMENTS**

15 **FOR THE PURCHASE AND USE OF HIGH EX-** 16 **PLOSIVES.**

17 The Secretary of the Treasury, in consultation with
18 the Federal Bureau of Investigation, shall conduct a study
19 of State licensing requirements for the purchase and use
20 of commercial high explosives, including detonators, deto-
21 nating cords, dynamite, water gel, emulsion, blasting
22 agents, and boosters. Not later than 180 days after the
23 date of the enactment of this Act, the Secretary shall re-
24 port to Congress the results of this study, together with

1 any recommendations the Secretary determines are appro-
2 priate.

3 **SEC. 802. COMPENSATION OF VICTIMS OF TERRORISM.**

4 (a) **REQUIRING COMPENSATION FOR TERRORIST**
5 **CRIMES.**—Section 1403(d)(3) of the Victims of Crime Act
6 of 1984 (42 U.S.C. 10603(d)(3)) is amended—

7 (1) by inserting “crimes involving terrorism,”
8 before “driving while intoxicated”; and

9 (2) by inserting a comma after “driving while
10 intoxicated”.

11 (b) **FOREIGN TERRORISM.**—Section 1403(b)(6)(B) of
12 the Victims of Crime Act of 1984 (42 U.S.C.
13 10603(b)(6)(B)) is amended by inserting “are outside the
14 United States (if the compensable crime is terrorism, as
15 defined in section 2331 of title 18, United States Code),
16 or” before “are States not having”.

17 **SEC. 803. JURISDICTION FOR LAWSUITS AGAINST TERROR-**
18 **IST STATES.**

19 (a) **EXCEPTION TO FOREIGN SOVEREIGN IMMUNITY**
20 **FOR CERTAIN CASES.**—Section 1605 of title 28, United
21 States Code, is amended—

22 (1) in subsection (a)—

23 (A) by striking “or” at the end of para-
24 graph (5);

1 (B) by striking the period at the end of
2 paragraph (6) and inserting “; or”; and

3 (C) by adding at the end the following new
4 paragraph:

5 “(7) not otherwise covered by paragraph (2), in
6 which money damages are sought against a foreign
7 state for personal injury or death that was caused
8 by an act of torture, extrajudicial killing, aircraft
9 sabotage, hostage taking, or the provision of mate-
10 rial support or resources (as defined in section
11 2339A of title 18) for such an act if such act or pro-
12 vision of material support is engaged in by an offi-
13 cial, employee, or agent of such foreign state while
14 acting within the scope of his or her office, employ-
15 ment, or agency, except that—

16 “(A) an action under this paragraph shall
17 not be instituted unless the claimant first af-
18 fords the foreign state a reasonable opportunity
19 to arbitrate the claim in accordance with ac-
20 cepted international rules of arbitration;

21 “(B) an action under this paragraph shall
22 not be maintained unless the act upon which
23 the claim is based occurred while the individual
24 bringing the claim was a national of the United
25 States (as that term is defined in section

1 101(a)(22) of the Immigration and Nationality
2 Act); and

3 “(C) the court shall decline to hear a claim
4 under this paragraph if the foreign state
5 against whom the claim has been brought es-
6 tablishes that procedures and remedies are
7 available in such state which comport with fun-
8 damental fairness and due process.”; and

9 (2) by adding at the end the following new sub-
10 section:

11 “(e) For purposes of paragraph (7) of subsection
12 (a)—

13 “(1) the terms ‘torture’ and ‘extrajudicial kill-
14 ing’ have the meaning given those terms in section
15 3 of the Torture Victim Protection Act of 1991;

16 “(2) the term ‘hostage taking’ has the meaning
17 given that term in Article 1 of the International
18 Convention Against the Taking of Hostages; and

19 “(3) the term ‘aircraft sabotage’ has the mean-
20 ing given that term in Article 1 of the Convention
21 for the Suppression of Unlawful Acts Against the
22 Safety of Civil Aviation.”.

23 (b) EXCEPTION TO IMMUNITY FROM ATTACH-
24 MENT.—

1 (1) FOREIGN STATE.—Section 1610(a) of title
2 28, United States Code, is amended—

3 (A) by striking the period at the end of
4 paragraph (6) and inserting “, or”; and

5 (B) by adding at the end the following new
6 paragraph:

7 “(7) the judgment relates to a claim for which
8 the foreign state is not immune under section
9 1605(a)(7), regardless of whether the property is or
10 was involved with the act upon which the claim is
11 based.”.

12 (2) AGENCY OR INSTRUMENTALITY.—Section
13 1610(b)(2) of such title is amended—

14 (A) by striking “or (5)” and inserting
15 “(5), or (7)”; and

16 (B) by striking “used for the activity” and
17 inserting “involved in the act”.

18 (c) APPLICABILITY.—The amendments made by this
19 title shall apply to any cause of action arising before, on,
20 or after the date of the enactment of this Act.

1 **SEC. 804. STUDY OF PUBLICLY AVAILABLE INSTRUCTIONAL**
2 **MATERIAL ON THE MAKING OF BOMBS, DE-**
3 **STRUCTIVE DEVICES, AND WEAPONS OF**
4 **MASS DESTRUCTION.**

5 (a) STUDY.—The Attorney General, in consultation
6 with such other officials and individuals as the Attorney
7 General deems appropriate, shall conduct a study concern-
8 ing—

9 (1) the extent to which there are available to
10 the public material in any medium (including print,
11 electronic, or film) that instructs how to make
12 bombs, other destructive devices, and weapons of
13 mass destruction;

14 (2) the extent to which information gained from
15 such material has been used in incidents of domestic
16 and international terrorism;

17 (3) the likelihood that such information may be
18 used in future incidents of terrorism; and

19 (4) the application of existing Federal laws to
20 such material, the need and utility, if any, for addi-
21 tional laws, and an assessment of the extent to
22 which the First Amendment protects such material
23 and its private and commercial distribution.

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

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

3 **SEC. 805. COMPILATION OF STATISTICS RELATING TO IN-**
4 **TIMIDATION OF GOVERNMENT EMPLOYEES.**

5 (a) FINDINGS.—Congress finds that—

6 (1) threats of violence and acts of violence are
7 mounting against Federal, State, and local govern-
8 ment employees and their families in attempts to
9 stop public servants from performing their lawful
10 duties;

11 (2) these acts are a danger to our constitutional
12 form of government; and

13 (3) more information is needed as to the extent
14 of the danger and its nature so that steps can be
15 taken to protect public servants at all levels of gov-
16 ernment in the performance of their duties.

17 (b) STATISTICS.—The Attorney General shall acquire
18 data, for the calendar year 1990 and each succeeding cal-
19 endar year about crimes and incidents of threats of vio-
20 lence and acts of violence against Federal, State, and local
21 government employees in performance of their lawful du-
22 ties. Such data shall include—

23 (1) in the case of crimes against such employ-
24 ees, the nature of the crime; and

1 (2) in the case of incidents of threats of vio-
2 lence and acts of violence, including verbal and im-
3 plicit threats against such employees, whether or not
4 criminally punishable, which deter the employees
5 from the performance of their jobs.

6 (c) GUIDELINES.—The Attorney General shall estab-
7 lish guidelines for the collection of such data, including
8 what constitutes sufficient evidence of noncriminal inci-
9 dents required to be reported.

10 (d) ANNUAL PUBLISHING.—The Attorney General
11 shall publish an annual summary of the data acquired
12 under this section. Otherwise such data shall be used only
13 for research and statistical purposes.

14 (e) EXEMPTION.—The United States Secret Service
15 is not required to participate in any statistical reporting
16 activity under this section with respect to any direct or
17 indirect threats made against any individual for whom the
18 United States Secret Service is authorized to provide pro-
19 tection.

20 **SEC. 806. VICTIM RESTITUTION ACT OF 1995.**

21 (a) ORDER OF RESTITUTION.—Section 3663 of title
22 18, United States Code, is amended—

23 (1) in subsection (a)—

24 (A) in paragraph (1)—

1 (i) by striking “may order, in addition
2 to or, in the case of a misdemeanor, in lieu
3 of any other penalty authorized by law”
4 and inserting “shall order”; and

5 (ii) by adding at the end the follow-
6 ing: “The requirement of this paragraph
7 does not affect the power of the court to
8 impose any other penalty authorized by
9 law. In the case of a misdemeanor, the
10 court may impose restitution in lieu of any
11 other penalty authorized by law.”;

12 (B) by adding at the end the following:

13 “(4) In addition to ordering restitution to the victim
14 of the offense of which a defendant is convicted, a court
15 may order restitution to any person who, as shown by a
16 preponderance of evidence, was harmed physically, emo-
17 tionally, or pecuniarily, by unlawful conduct of the defend-
18 ant during—

19 “(A) the criminal episode during which the of-
20 fense occurred; or

21 “(B) the course of a scheme, conspiracy, or pat-
22 tern of unlawful activity related to the offense.”;

23 (2) in subsection (b)(1)(B) by striking “imprac-
24 tical” and inserting “impracticable”;

1 (3) in subsection (b)(2) by inserting “emotional
2 or” after “resulting in”;

3 (4) in subsection (b)—

4 (A) by striking “and” at the end of para-
5 graph (4);

6 (B) by redesignating paragraph (5) as
7 paragraph (6); and

8 (C) by inserting after paragraph (4) the
9 following new paragraph:

10 “(5) in any case, reimburse the victim for lost
11 income and necessary child care, transportation, and
12 other expenses related to participation in the inves-
13 tigation or prosecution of the offense or attendance
14 at proceedings related to the offense; and”;

15 (5) in subsection (c) by striking “If the court
16 decides to order restitution under this section, the”
17 and inserting “The”;

18 (6) by striking subsections (d), (e), (f), (g), and
19 (h);

20 (7) by redesignating subsection (i) as subsection
21 (m); and

22 (8) by inserting after subsection (c) the follow-
23 ing:

1 “(d)(1) The court shall order restitution to a victim
2 in the full amount of the victim’s losses as determined by
3 the court and without consideration of—

4 “(A) the economic circumstances of the of-
5 fender; or

6 “(B) the fact that a victim has received or is
7 entitled to receive compensation with respect to a
8 loss from insurance or any other source.

9 “(2) Upon determination of the amount of restitution
10 owed to each victim, the court shall specify in the restitu-
11 tion order the manner in which and the schedule according
12 to which the restitution is to be paid, in consideration of—

13 “(A) the financial resources and other assets of
14 the offender;

15 “(B) projected earnings and other income of
16 the offender; and

17 “(C) any financial obligations of the offender,
18 including obligations to dependents.

19 “(3) A restitution order may direct the offender to
20 make a single, lump-sum payment, partial payment at
21 specified intervals, or such in-kind payments as may be
22 agreeable to the victim and the offender. A restitution
23 order shall direct the offender to give appropriate notice
24 to victims and other persons in cases where there are mul-
25 tiple victims or other persons who may receive restitution,

1 and where the identity of such victims and other persons
2 can be reasonably determined.

3 “(4) An in-kind payment described in paragraph (3)
4 may be in the form of—

5 “(A) return of property;

6 “(B) replacement of property; or

7 “(C) services rendered to the victim or to a per-
8 son or organization other than the victim.

9 “(e) When the court finds that more than 1 offender
10 has contributed to the loss of a victim, the court may make
11 each offender liable for payment of the full amount of res-
12 titution or may apportion liability among the offenders to
13 reflect the level of contribution and economic cir-
14 cumstances of each offender.

15 “(f) When the court finds that more than 1 victim
16 has sustained a loss requiring restitution by an offender,
17 the court shall order full restitution to each victim but
18 may provide for different payment schedules to reflect the
19 economic circumstances of each victim.

20 “(g)(1) If the victim has received or is entitled to re-
21 ceive compensation with respect to a loss from insurance
22 or any other source, the court shall order that restitution
23 be paid to the person who provided or is obligated to pro-
24 vide the compensation, but the restitution order shall pro-
25 vide that all restitution to victims required by the order

1 be paid to the victims before any restitution is paid to
2 such a provider of compensation.

3 “(2) The issuance of a restitution order shall not af-
4 fect the entitlement of a victim to receive compensation
5 with respect to a loss from insurance or any other source
6 until the payments actually received by the victim under
7 the restitution order fully compensate the victim for the
8 loss, at which time a person that has provided compensa-
9 tion to the victim shall be entitled to receive any payments
10 remaining to be paid under the restitution order.

11 “(3) Any amount paid to a victim under an order of
12 restitution shall be set off against any amount later recov-
13 ered as compensatory damages by the victim in—

14 “(A) any Federal civil proceeding; and

15 “(B) any State civil proceeding, to the extent
16 provided by the law of the State.

17 “(h) A restitution order shall provide that—

18 “(1) all fines, penalties, costs, restitution pay-
19 ments and other forms of transfers of money or
20 property made pursuant to the sentence of the court
21 shall be made by the offender to an entity des-
22 ignated by the Director of the Administrative Office
23 of the United States Courts for accounting and pay-
24 ment by the entity in accordance with this sub-
25 section;

1 “(2) the entity designated by the Director of
2 the Administrative Office of the United States
3 Courts shall—

4 “(A) log all transfers in a manner that
5 tracks the offender’s obligations and the cur-
6 rent status in meeting those obligations, unless,
7 after efforts have been made to enforce the res-
8 titution order and it appears that compliance
9 cannot be obtained, the court determines that
10 continued recordkeeping under this subpara-
11 graph would not be useful; and

12 “(B) notify the court and the interested
13 parties when an offender is 30 days in arrears
14 in meeting those obligations; and

15 “(3) the offender shall advise the entity des-
16 igned by the Director of the Administrative Office
17 of the United States Courts of any change in the of-
18 fender’s address during the term of the restitution
19 order.

20 “(i) A restitution order shall constitute a lien against
21 all property of the offender and may be recorded in any
22 Federal or State office for the recording of liens against
23 real or personal property.

24 “(j) Compliance with the schedule of payment and
25 other terms of a restitution order shall be a condition of

1 any probation, parole, or other form of release of an of-
2 fender. If a defendant fails to comply with a restitution
3 order, the court may revoke probation or a term of super-
4 vised release, modify the term or conditions of probation
5 or a term of supervised release, hold the defendant in con-
6 tempt of court, enter a restraining order or injunction,
7 order the sale of property of the defendant, accept a per-
8 formance bond, or take any other action necessary to ob-
9 tain compliance with the restitution order. In determining
10 what action to take, the court shall consider the defend-
11 ant's employment status, earning ability, financial re-
12 sources, the willfulness in failing to comply with the res-
13 titution order, and any other circumstances that may have
14 a bearing on the defendant's ability to comply with the
15 restitution order.

16 “(k) An order of restitution may be enforced—

17 “(1) by the United States—

18 “(A) in the manner provided for the collec-
19 tion and payment of fines in subchapter B of
20 chapter 229 of this title; or

21 “(B) in the same manner as a judgment in
22 a civil action; and

23 “(2) by a victim named in the order to receive
24 the restitution, in the same manner as a judgment
25 in a civil action.

1 “(l) A victim or the offender may petition the court
2 at any time to modify a restitution order as appropriate
3 in view of a change in the economic circumstances of the
4 offender.”.

5 (b) PROCEDURE FOR ISSUING ORDER OF RESTITU-
6 TION.—Section 3664 of title 18, United States Code, is
7 amended—

8 (1) by striking subsection (a);

9 (2) by redesignating subsections (b), (c), (d),
10 and (e) as subsections (a), (b), (c), and (d);

11 (3) by amending subsection (a), as redesignated
12 by paragraph (2), to read as follows:

13 “(a) The court may order the probation service of the
14 court to obtain information pertaining to the amount of
15 loss sustained by any victim as a result of the offense,
16 the financial resources of the defendant, the financial
17 needs and earning ability of the defendant and the defend-
18 ant’s dependents, and such other factors as the court
19 deems appropriate. The probation service of the court
20 shall include the information collected in the report of
21 presentence investigation or in a separate report, as the
22 court directs.”; and

23 (4) by adding at the end thereof the following
24 new subsection:

1 “(e) The court may refer any issue arising in connec-
2 tion with a proposed order of restitution to a magistrate
3 or special master for proposed findings of fact and rec-
4 ommendations as to disposition, subject to a de novo de-
5 termination of the issue by the court.”.

6 **SEC. 807. AUTHORITY FOR OVERSEAS LAW ENFORCEMENT**
7 **TRAINING ACTIVITIES.**

8 The Director of the Federal Bureau of Investigation
9 is authorized to support law enforcement training activi-
10 ties in foreign countries for the purpose of improving the
11 effectiveness of the United States in investigating and
12 prosecuting transnational offenses.

13 **TITLE IX—HABEAS CORPUS**
14 **REFORM**

15 **SEC. 901. FILING DEADLINES.**

16 Section 2244 of title 28, United States Code, is
17 amended by adding at the end the following new sub-
18 section:

19 “(d)(1) A 1-year period of limitation shall apply to
20 an application for a writ of habeas corpus by a person
21 in custody pursuant to the judgment of a State court. The
22 limitation period shall run from the latest of—

23 “(A) the date on which the judgment became
24 final by the conclusion of direct review or the expira-
25 tion of the time for seeking such review;

1 “(B) the date on which the impediment to filing
2 an application created by State action in violation of
3 the Constitution or laws of the United States is re-
4 moved, if the applicant was prevented from filing by
5 such State action;

6 “(C) the date on which the constitutional right
7 asserted was initially recognized by the Supreme
8 Court, if the right has been newly recognized by the
9 Supreme Court and made retroactively applicable to
10 cases on collateral review; or

11 “(D) the date on which the factual predicate of
12 the claim or claims presented could have been dis-
13 covered through the exercise of due diligence.

14 “(2) The time during which a properly filed applica-
15 tion for State post-conviction or other collateral review
16 with respect to the pertinent judgment or claim shall not
17 be counted toward any period of limitation under this sub-
18 section.”.

19 **SEC. 902. APPEAL.**

20 Section 2253 of title 28, United States Code, is
21 amended to read as follows:

22 **“§ 2253. Appeal**

23 “(a) In a habeas corpus proceeding or a proceeding
24 under section 2255 before a district judge, the final order

1 shall be subject to review, on appeal, by the court of ap-
2 peals for the circuit in which the proceeding is held.

3 “(b) There shall be no right of appeal from a final
4 order in a proceeding to test the validity of a warrant to
5 remove to another district or place for commitment or trial
6 a person charged with a criminal offense against the
7 United States, or to test the validity of such person’s de-
8 tention pending removal proceedings.

9 “(c)(1) Unless a circuit justice or judge issues a cer-
10 tificate of appealability, an appeal may not be taken to
11 the court of appeals from—

12 “(A) the final order in a habeas corpus proceed-
13 ing in which the detention complained of arises out
14 of process issued by a State court; or

15 “(B) the final order in a proceeding under sec-
16 tion 2255.

17 “(2) A certificate of appealability may issue under
18 paragraph (1) only if the applicant has made a substantial
19 showing of the denial of a constitutional right.

20 “(3) The certificate of appealability under paragraph
21 (1) shall indicate which specific issue or issues satisfy the
22 showing required by paragraph (2).”.

1 **SEC. 903. AMENDMENT OF FEDERAL RULES OF APPELLATE**
2 **PROCEDURE.**

3 Rule 22 of the Federal Rules of Appellate Procedure
4 is amended to read as follows:

5 **“Rule 22. Habeas corpus and section 2255 proceed-**
6 **ings**

7 “(a) APPLICATION FOR THE ORIGINAL WRIT.—An
8 application for a writ of habeas corpus shall be made to
9 the appropriate district court. If application is made to
10 a circuit judge, the application shall be transferred to the
11 appropriate district court. If an application is made to or
12 transferred to the district court and denied, renewal of the
13 application before a circuit judge shall not be permitted.
14 The applicant may, pursuant to section 2253 of title 28,
15 United States Code, appeal to the appropriate court of ap-
16 peals from the order of the district court denying the writ.

17 “(b) CERTIFICATE OF APPEALABILITY.—In a habeas
18 corpus proceeding in which the detention complained of
19 arises out of process issued by a State court, an appeal
20 by the applicant for the writ may not proceed unless a
21 district or a circuit judge issues a certificate of
22 appealability pursuant to section 2253(c) of title 28,
23 United States Code. If an appeal is taken by the applicant,
24 the district judge who rendered the judgment shall either
25 issue a certificate of appealability or state the reasons why
26 such a certificate should not issue. The certificate or the

1 statement shall be forwarded to the court of appeals with
2 the notice of appeal and the file of the proceedings in the
3 district court. If the district judge has denied the certifi-
4 cate, the applicant for the writ may then request issuance
5 of the certificate by a circuit judge. If such a request is
6 addressed to the court of appeals, it shall be deemed ad-
7 dressed to the judges thereof and shall be considered by
8 a circuit judge or judges as the court deems appropriate.
9 If no express request for a certificate is filed, the notice
10 of appeal shall be deemed to constitute a request ad-
11 dressed to the judges of the court of appeals. If an appeal
12 is taken by a State or its representative, a certificate of
13 appealability is not required.”.

14 **SEC. 904. SECTION 2254 AMENDMENTS.**

15 Section 2254 of title 28, United States Code, is
16 amended—

17 (1) by amending subsection (b) to read as fol-
18 lows:

19 “(b)(1) An application for a writ of habeas corpus
20 on behalf of a person in custody pursuant to the judgment
21 of a State court shall not be granted unless it appears
22 that—

23 “(A) the applicant has exhausted the remedies
24 available in the courts of the State; or

1 “(B)(i) there is an absence of available State
2 corrective process; or

3 “(ii) circumstances exist that render such proc-
4 ess ineffective to protect the rights of the applicant.

5 “(2) An application for a writ of habeas corpus may
6 be denied on the merits, notwithstanding the failure of the
7 applicant to exhaust the remedies available in the courts
8 of the State.

9 “(3) A State shall not be deemed to have waived the
10 exhaustion requirement or be estopped from reliance upon
11 the requirement unless the State, through counsel, ex-
12 pressly waives the requirement.”;

13 (2) by redesignating subsections (d), (e), and
14 (f) as subsections (e), (f), and (g), respectively;

15 (3) by inserting after subsection (c) the follow-
16 ing new subsection:

17 “(d) An application for a writ of habeas corpus on
18 behalf of a person in custody pursuant to the judgment
19 of a State court shall not be granted with respect to any
20 claim that was adjudicated on the merits in State court
21 proceedings unless the adjudication of the claim—

22 “(1) resulted in a decision that was contrary to,
23 or involved an unreasonable application of, clearly
24 established Federal law, as determined by the Su-
25 preme Court of the United States; or

1 “(2) resulted in a decision that was based on an
2 unreasonable determination of the facts in light of
3 the evidence presented in the State court proceed-
4 ing.”;

5 (4) by amending subsection (e), as redesignated
6 by paragraph (2), to read as follows:

7 “(e)(1) In a proceeding instituted by an application
8 for a writ of habeas corpus by a person in custody pursu-
9 ant to the judgment of a State court, a determination of
10 a factual issue made by a State court shall be presumed
11 to be correct. The applicant shall have the burden of re-
12 butting the presumption of correctness by clear and con-
13 vincing evidence.

14 “(2) If the applicant has failed to develop the factual
15 basis of a claim in State court proceedings, the court shall
16 not hold an evidentiary hearing on the claim unless the
17 applicant shows that—

18 “(A) the claim relies on—

19 “(i) a new rule of constitutional law, made
20 retroactive to cases on collateral review by the
21 Supreme Court, that was previously unavail-
22 able; or

23 “(ii) a factual predicate that could not
24 have been previously discovered through the ex-
25 ercise of due diligence; and

1 “(B) the facts underlying the claim would be
2 sufficient to establish by clear and convincing evi-
3 dence that but for constitutional error, no reasonable
4 factfinder would have found the applicant guilty of
5 the underlying offense.”; and

6 (5) by adding at the end the following new sub-
7 sections:

8 “(h) Except as provided in section 408 of the Con-
9 trolled Substances Act, in all proceedings brought under
10 this section, and any subsequent proceedings on review,
11 the court may appoint counsel for an applicant who is or
12 becomes financially unable to afford counsel, except as
13 provided by a rule promulgated by the Supreme Court
14 pursuant to statutory authority. Appointment of counsel
15 under this section shall be governed by section 3006A of
16 title 18.

17 “(i) The ineffectiveness or incompetence of counsel
18 during Federal or State collateral post-conviction proceed-
19 ings shall not be a ground for relief in a proceeding arising
20 under section 2254.”.

21 **SEC. 905. SECTION 2255 AMENDMENTS.**

22 Section 2255 of title 28, United States Code, is
23 amended—

24 (1) by striking the second and fifth undesig-
25 nated paragraphs; and

1 (2) by adding at the end the following new un-
2 designated paragraphs:

3 “A 1-year period of limitation shall apply to a motion
4 under this section. The limitation period shall run from
5 the latest of—

6 “(1) the date on which the judgment of convic-
7 tion becomes final;

8 “(2) the date on which the impediment to mak-
9 ing a motion created by governmental action in vio-
10 lation of the Constitution or laws of the United
11 States is removed, if the movant was prevented from
12 making a motion by such governmental action;

13 “(3) the date on which the right asserted was
14 initially recognized by the Supreme Court, if that
15 right has been newly recognized by the Supreme
16 Court and made retroactively applicable to cases on
17 collateral review; or

18 “(4) the date on which the facts supporting the
19 claim or claims presented could have been discovered
20 through the exercise of due diligence.

21 “Except as provided in section 408 of the Controlled
22 Substances Act, in all proceedings brought under this sec-
23 tion, and any subsequent proceedings on review, the court
24 may appoint counsel for a movant who is or becomes fi-
25 nancially unable to afford counsel shall be in the discretion

1 of the court, except as provided by a rule promulgated by
2 the Supreme Court pursuant to statutory authority. Ap-
3 pointment of counsel under this section shall be governed
4 by section 3006A of title 18.

5 “A second or successive motion must be certified as
6 provided in section 2244 by a panel of the appropriate
7 court of appeals to contain—

8 “(1) newly discovered evidence that, if proven
9 and viewed in light of the evidence as a whole, would
10 be sufficient to establish by clear and convincing evi-
11 dence that no reasonable factfinder would have
12 found the movant guilty of the offense; or

13 “(2) a new rule of constitutional law, made ret-
14 roactive to cases on collateral review by the Supreme
15 Court, that was previously unavailable.”.

16 **SEC. 906. LIMITS ON SECOND OR SUCCESSIVE APPLICA-**
17 **TIONS.**

18 (a) CONFORMING AMENDMENT TO SECTION
19 2244(a).—Section 2244(a) of title 28, United States
20 Code, is amended by striking “and the petition” and all
21 that follows through “by such inquiry.” and inserting “,
22 except as provided in section 2255.”.

23 (b) LIMITS ON SECOND OR SUCCESSIVE APPLICA-
24 TIONS.—Section 2244(b) of title 28, United States Code,
25 is amended to read as follows:

1 “(b)(1) A claim presented in a second or successive
2 habeas corpus application under section 2254 that was
3 presented in a prior application shall be dismissed.

4 “(2) A claim presented in a second or successive ha-
5 beas corpus application under section 2254 that was not
6 presented in a prior application shall be dismissed un-
7 less—

8 “(A) the applicant shows that the claim relies
9 on a new rule of constitutional law, made retroactive
10 to cases on collateral review by the Supreme Court,
11 that was previously unavailable; or

12 “(B)(i) the factual predicate for the claim could
13 not have been discovered previously through the ex-
14 ercise of due diligence; and

15 “(ii) the facts underlying the claim, if proven
16 and viewed in light of the evidence as a whole, would
17 be sufficient to establish by clear and convincing evi-
18 dence that, but for constitutional error, no reason-
19 able factfinder would have found the applicant guilty
20 of the underlying offense.

21 “(3)(A) Before a second or successive application per-
22 mitted by this section is filed in the district court, the ap-
23 plicant shall move in the appropriate court of appeals for
24 an order authorizing the district court to consider the ap-
25 plication.

1 “(B) A motion in the court of appeals for an order
2 authorizing the district court to consider a second or suc-
3 cessive application shall be determined by a three-judge
4 panel of the court of appeals.

5 “(C) The court of appeals may authorize the filing
6 of a second or successive application only if it determines
7 that the application makes a prima facie showing that the
8 application satisfies the requirements of this subsection.

9 “(D) The court of appeals shall grant or deny the
10 authorization to file a second or successive application not
11 later than 30 days after the filing of the motion.

12 “(E) The grant or denial of an authorization by a
13 court of appeals to file a second or successive application
14 shall not be appealable and shall not be the subject of a
15 petition for rehearing or for a writ of certiorari.

16 “(4) A district court shall dismiss any claim pre-
17 sented in a second or successive application that the court
18 of appeals has authorized to be filed unless the applicant
19 shows that the claim satisfies the requirements of this sec-
20 tion.”.

21 **SEC. 907. DEATH PENALTY LITIGATION PROCEDURES.**

22 (a) ADDITION OF CHAPTER TO TITLE 28, UNITED
23 STATES CODE.—Title 28, United States Code, is amended
24 by inserting after chapter 153 the following new chapter:

1 **“CHAPTER 154—SPECIAL HABEAS CORPUS**
 2 **PROCEDURES IN CAPITAL CASES**

“Sec.

“2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

“2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

“2263. Filing of habeas corpus application; time requirements; tolling rules.

“2264. Scope of Federal review; district court adjudications.

“2265. Application to State unitary review procedure.

“2266. Limitation periods for determining applications and motions.

3 **“§ 2261. Prisoners in State custody subject to capital**
 4 **sentence; appointment of counsel; re-**
 5 **quirement of rule of court or statute; pro-**
 6 **cedures for appointment**

7 “(a) This chapter shall apply to cases arising under
 8 section 2254 brought by prisoners in State custody who
 9 are subject to a capital sentence. It shall apply only if the
 10 provisions of subsections (b) and (c) are satisfied.

11 “(b) This chapter is applicable if a State establishes
 12 by statute, rule of its court of last resort, or by another
 13 agency authorized by State law, a mechanism for the ap-
 14 pointment, compensation, and payment of reasonable liti-
 15 gation expenses of competent counsel in State post-convic-
 16 tion proceedings brought by indigent prisoners whose cap-
 17 ital convictions and sentences have been upheld on direct
 18 appeal to the court of last resort in the State or have oth-
 19 erwise become final for State law purposes. The rule of

1 court or statute must provide standards of competency for
2 the appointment of such counsel.

3 “(c) Any mechanism for the appointment, compensa-
4 tion, and reimbursement of counsel as provided in sub-
5 section (b) must offer counsel to all State prisoners under
6 capital sentence and must provide for the entry of an
7 order by a court of record—

8 “(1) appointing one or more counsels to rep-
9 resent the prisoner upon a finding that the prisoner
10 is indigent and accepted the offer or is unable com-
11 petently to decide whether to accept or reject the
12 offer;

13 “(2) finding, after a hearing if necessary, that
14 the prisoner rejected the offer of counsel and made
15 the decision with an understanding of its legal con-
16 sequences; or

17 “(3) denying the appointment of counsel upon
18 a finding that the prisoner is not indigent.

19 “(d) No counsel appointed pursuant to subsections
20 (b) and (c) to represent a State prisoner under capital
21 sentence shall have previously represented the prisoner at
22 trial or on direct appeal in the case for which the appoint-
23 ment is made unless the prisoner and counsel expressly
24 request continued representation.

1 “(e) The ineffectiveness or incompetence of counsel
2 during State or Federal post-conviction proceedings in a
3 capital case shall not be a ground for relief in a proceeding
4 arising under section 2254. This limitation shall not pre-
5 clude the appointment of different counsel, on the court’s
6 own motion or at the request of the prisoner, at any phase
7 of State or Federal post-conviction proceedings on the
8 basis of the ineffectiveness or incompetence of counsel in
9 such proceedings.

10 **“§ 2262. Mandatory stay of execution; duration; limits**
11 **on stays of execution; successive peti-**
12 **tions**

13 “(a) Upon the entry in the appropriate State court
14 of record of an order under section 2261(c), a warrant
15 or order setting an execution date for a State prisoner
16 shall be stayed upon application to any court that would
17 have jurisdiction over any proceedings filed under section
18 2254. The application shall recite that the State has in-
19 voked the post-conviction review procedures of this chapter
20 and that the scheduled execution is subject to stay.

21 “(b) A stay of execution granted pursuant to sub-
22 section (a) shall expire if—

23 “(1) a State prisoner fails to file a habeas cor-
24 pus application under section 2254 within the time
25 required in section 2263;

1 direct review or the expiration of the time for seeking such
2 review.

3 “(b) The time requirements established by subsection
4 (a) shall be tolled—

5 “(1) from the date that a petition for certiorari
6 is filed in the Supreme Court until the date of final
7 disposition of the petition if a State prisoner files
8 the petition to secure review by the Supreme Court
9 of the affirmance of a capital sentence on direct re-
10 view by the court of last resort of the State or other
11 final State court decision on direct review;

12 “(2) from the date on which the first petition
13 for post-conviction review or other collateral relief is
14 filed until the final State court disposition of such
15 petition; and

16 “(3) during an additional period not to exceed
17 30 days, if—

18 “(A) a motion for an extension of time is
19 filed in the Federal district court that would
20 have jurisdiction over the case upon the filing
21 of a habeas corpus application under section
22 2254; and

23 “(B) a showing of good cause is made for
24 the failure to file the habeas corpus application

1 within the time period established by this sec-
2 tion.

3 **“§ 2264. Scope of Federal review; district court adju-
4 dications**

5 “(a) Whenever a State prisoner under capital sen-
6 tence files a petition for habeas corpus relief to which this
7 chapter applies, the district court shall only consider a
8 claim or claims that have been raised and decided on the
9 merits in the State courts, unless the failure to raise the
10 claim properly is—

11 “(1) the result of State action in violation of
12 the Constitution or laws of the United States;

13 “(2) the result of the Supreme Court recogni-
14 tion of a new Federal right that is made retro-
15 actively applicable; or

16 “(3) based on a factual predicate that could not
17 have been discovered through the exercise of due
18 diligence in time to present the claim for State or
19 Federal post-conviction review.

20 “(b) Following review subject to subsections (a), (d),
21 and (e) of section 2254, the court shall rule on the claims
22 properly before it.

1 prisoner and counsel expressly request continued represen-
2 tation.

3 “(c) Sections 2262, 2263, 2264, and 2266 shall apply
4 in relation to cases involving a sentence of death from any
5 State having a unitary review procedure that qualifies
6 under this section. References to State ‘post-conviction re-
7 view’ and ‘direct review’ in such sections shall be under-
8 stood as referring to unitary review under the State proce-
9 dure. The reference in section 2262(a) to ‘an order under
10 section 2261(e)’ shall be understood as referring to the
11 post-trial order under subsection (b) concerning represen-
12 tation in the unitary review proceedings, but if a tran-
13 script of the trial proceedings is unavailable at the time
14 of the filing of such an order in the appropriate State
15 court, then the start of the 180-day limitation period
16 under section 2263 shall be deferred until a transcript is
17 made available to the prisoner or counsel of the prisoner.

18 **“§ 2266. Limitation periods for determining applica-**
19 **tions and motions**

20 “(a) The adjudication of any application under sec-
21 tion 2254 that is subject to this chapter, and the adjudica-
22 tion of any motion under section 2255 by a person under
23 sentence of death, shall be given priority by the district
24 court and by the court of appeals over all noncapital mat-
25 ters.

1 “(b)(1)(A) A district court shall render a final deter-
2 mination and enter a final judgment on any application
3 for a writ of habeas corpus brought under this chapter
4 in a capital case not later than 180 days after the date
5 on which the application is filed.

6 “(B) A district court shall afford the parties at least
7 120 days in which to complete all actions, including the
8 preparation of all pleadings and briefs, and if necessary,
9 a hearing, prior to the submission of the case for decision.

10 “(C)(i) A district court may delay for not more than
11 one additional 30-day period beyond the period specified
12 in subparagraph (A), the rendering of a determination of
13 an application for a writ of habeas corpus if the court is-
14 sues a written order making a finding, and stating the
15 reasons for the finding, that the ends of justice that would
16 be served by allowing the delay outweigh the best interests
17 of the public and the applicant in a speedy disposition of
18 the application.

19 “(ii) The factors, among others, that a court shall
20 consider in determining whether a delay in the disposition
21 of an application is warranted are as follows:

22 “(I) Whether the failure to allow the delay
23 would be likely to result in a miscarriage of justice.

24 “(II) Whether the case is so unusual or so com-
25 plex, due to the number of defendants, the nature of

1 the prosecution, or the existence of novel questions
2 of fact or law, that it is unreasonable to expect ade-
3 quate briefing within the time limitations established
4 by subparagraph (A).

5 “(III) Whether the failure to allow a delay in
6 a case, that, taken as a whole, is not so unusual or
7 so complex as described in subclause (II), but would
8 otherwise deny the applicant reasonable time to ob-
9 tain counsel, would unreasonably deny the applicant
10 or the government continuity of counsel, or would
11 deny counsel for the applicant or the government the
12 reasonable time necessary for effective preparation,
13 taking into account the exercise of due diligence.

14 “(iii) No delay in disposition shall be permissible be-
15 cause of general congestion of the court’s calendar.

16 “(iv) The court shall transmit a copy of any order
17 issued under clause (i) to the Director of the Administra-
18 tive Office of the United States Courts for inclusion in
19 the report under paragraph (5).

20 “(2) The time limitations under paragraph (1) shall
21 apply to—

22 “(A) an initial application for a writ of habeas
23 corpus;

24 “(B) any second or successive application for a
25 writ of habeas corpus; and

1 “(C) any redetermination of an application for
2 a writ of habeas corpus following a remand by the
3 court of appeals or the Supreme Court for further
4 proceedings, in which case the limitation period shall
5 run from the date the remand is ordered.

6 “(3)(A) The time limitations under this section shall
7 not be construed to entitle an applicant to a stay of execu-
8 tion, to which the applicant would otherwise not be enti-
9 tled, for the purpose of litigating any application or
10 appeal.

11 “(B) No amendment to an application for a writ of
12 habeas corpus under this chapter shall be permitted after
13 the filing of the answer to the application, except on the
14 grounds specified in section 2244(b).

15 “(4)(A) The failure of a court to meet or comply with
16 a time limitation under this section shall not be a ground
17 for granting relief from a judgment of conviction or sen-
18 tence.

19 “(B) The State may enforce a time limitation under
20 this section by petitioning for a writ of mandamus to the
21 court of appeals. The court of appeals shall act on the
22 petition for a writ or mandamus not later than 30 days
23 after the filing of the petition.

24 “(5)(A) The Administrative Office of United States
25 Courts shall submit to Congress an annual report on the

1 compliance by the district courts with the time limitations
2 under this section.

3 “(B) The report described in subparagraph (A) shall
4 include copies of the orders submitted by the district
5 courts under paragraph (1)(B)(iv).

6 “(c)(1)(A) A court of appeals shall hear and render
7 a final determination of any appeal of an order granting
8 or denying, in whole or in part, an application brought
9 under this chapter in a capital case not later than 120
10 days after the date on which the reply brief is filed, or
11 if no reply brief is filed, not later than 120 days after
12 the date on which the answering brief is filed.

13 “(B)(i) A court of appeals shall decide whether to
14 grant a petition for rehearing or other request for rehear-
15 ing en banc not later than 30 days after the date on which
16 the petition for rehearing is filed unless a responsive
17 pleading is required, in which case the court shall decide
18 whether to grant the petition not later than 30 days after
19 the date on which the responsive pleading is filed.

20 “(ii) If a petition for rehearing or rehearing en banc
21 is granted, the court of appeals shall hear and render a
22 final determination of the appeal not later than 120 days
23 after the date on which the order granting rehearing or
24 rehearing en banc is entered.

1 “(2) The time limitations under paragraph (1) shall
2 apply to—

3 “(A) an initial application for a writ of habeas
4 corpus;

5 “(B) any second or successive application for a
6 writ of habeas corpus; and

7 “(C) any redetermination of an application for
8 a writ of habeas corpus or related appeal following
9 a remand by the court of appeals en banc or the Su-
10 preme Court for further proceedings, in which case
11 the limitation period shall run from the date the re-
12 mand is ordered.

13 “(3) The time limitations under this section shall not
14 be construed to entitle an applicant to a stay of execution,
15 to which the applicant would otherwise not be entitled, for
16 the purpose of litigating any application or appeal.

17 “(4)(A) The failure of a court to meet or comply with
18 a time limitation under this section shall not be a ground
19 for granting relief from a judgment of conviction or sen-
20 tence.

21 “(B) The State may enforce a time limitation under
22 this section by applying for a writ of mandamus to the
23 Supreme Court.

24 “(5) The Administrative Office of United States
25 Courts shall submit to Congress an annual report on the

1 compliance by the courts of appeals with the time limita-
2 tions under this section.”.

3 (b) TECHNICAL AMENDMENT.—The table of chapters
4 at the beginning of part VI of title 28, United States Code,
5 is amended by adding after the item relating to chapter
6 153 the following new item:

**“154. Special habeas corpus procedures in capital
cases 2261”.**

7 (c) EFFECTIVE DATE.—Chapter 154 of title 28,
8 United States Code (as added by subsection (a)) shall
9 apply to cases pending on or after the date of enactment
10 of this Act.

11 **SEC. 908. TECHNICAL AMENDMENT.**

12 Section 408(q) of the Controlled Substances Act (21
13 U.S.C. 848(q)) is amended by amending paragraph (9)
14 to read as follows:

15 “(9) Upon a finding that investigative, expert, or
16 other services are reasonably necessary for the representa-
17 tion of the defendant, whether in connection with issues
18 relating to guilt or the sentence, the court may authorize
19 the defendant’s attorneys to obtain such services on behalf
20 of the defendant and, if so authorized, shall order the pay-
21 ment of fees and expenses therefor under paragraph (10).
22 No ex parte proceeding, communication, or request may
23 be considered pursuant to this section unless a proper
24 showing is made concerning the need for confidentiality.

1 Any such proceeding, communication, or request shall be
 2 transcribed and made a part of the record available for
 3 appellate review.”.

4 **SEC. 909. SEVERABILITY.**

5 If any provision of this title, an amendment made by
 6 this title, or the application of such provision or amend-
 7 ment to any person or circumstance is held to be unconsti-
 8 tutional, the remainder of this title, the amendments made
 9 by this title, and the application of the provisions of such
 10 to any person or circumstances shall not be affected there-
 11 by.



HR 2768 IH—2

HR 2768 IH—3

HR 2768 IH—4

HR 2768 IH—5

HR 2768 IH—6

HR 2768 IH—7

HR 2768 IH—8

HR 2768 IH—9

HR 2768 IH—10

HR 2768 IH—11

HR 2768 IH—12

HR 2768 IH—13