104th Congress, 1st Session – – – – – – – – – – – – – House Document 104–31

PROPOSED LEGISLATION: "THE OMNIBUS COUNTERTERRORISM ACT OF 1995"

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A DRAFT OF PROPOSED LEGISLATION TO IMPROVE THE ABILITY OF THE UNITED STATES TO RESPOND TO THE INTERNATIONAL TERRORIST THREAT

FEBRUARY 9, 1995.—Message and accompanying papers referred to the Committee on the Judiciary and ordered to be printed

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To the Congress of the United States:

I am pleased to transmit today for your immediate consideration and enactment the "Omnibus Counterterrorism Act of 1995." Also transmitted is a section-by-section analysis. This legislative proposal is part of my Administration's comprehensive effort to strengthen the ability of the United States to deter terrorist acts and punish those who aid or abet any international terrorist activity in the United States. It corrects deficiencies and gaps in current law.

Some of the most significant provisions of the bill will:

Provide clear Federal criminal jurisdiction for any international terrorist attack that might occur in the United States;

Provide Federal criminal jurisdiction over terrorists who use the United States as the place from which to plan terrorist attacks overseas;

Provide a workable mechanism, utilizing U.S. District Court Judges appointed by the Chief Justice, to deport expeditiously alien terrorists without risking the disclosure of national security information or techniques;

Provide a new mechanism for preventing fund-raising in the United States that supports international terrorist activities overseas; and

Implement an international treaty requiring the insertion of a chemical agent into plastic explosives when manufactured to make them detectable.

The fund-raising provision includes a licensing mechanism under which funds can only be transferred based on a strict showing that the money will be used exclusively for religious, charitable, literary, or educational purposes and will not be diverted for terrorist activity. The bill also includes numerous relatively technical, but highly important, provisions that will facilitate investigations and prosecutions of terrorist crimes.

It is the Administration's intent that section 101 of the bill confer Federal jurisdiction only over international terrorism offenses. The Administration will work with Members of Congress to ensure that the language in the bill is consistent with that intent.

I urge the prompt and favorable consideration of this legislative proposal by the Congress.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 9, 1995.*

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as "The Omnibus Counterterrorism Act of 1995."

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SEC. 3. FINDINGS AND PURPOSES.

(a) The Congress finds and declares -

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

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

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

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

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

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

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

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

(9) International terrorists, violating the sovereignty of foreign countries, attack dissidents and former colleagues living in foreign countries, including the United States;

(10) International terrorists, both inside and outside the United States, carefully plan attacks and carry them out in foreign countries against innocent victims;

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

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

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

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

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

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

(17) International terrorist organizations, acting through affiliated groups and/or individuals, have been raising significant funds within the United States, often through misrepresentation of their purposes or subtle forms of extortion, or using the United States as a conduit for transferring funds among countries;

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

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

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

(21) Law enforcement officials have been hindered in using current immigration law to deport alien terrorists because the law fails to provide procedures to protect classified intelligence sources and information. Moreover, a few high ranking members of terrorist organizations have been naturalized as United States citizens because denial of such naturalizations would have necessitated public disclosure of highly classified sources and methods. Furthermore, deportation hearings frequently extend over several years, thus hampering the expeditious removal of aliens engaging in terrorist activity;

(22) Present immigration law is inadequate to protect the United States from terrorist attacks by certain aliens. New procedures are needed to permit expeditious removal of alien terrorists from the United States, thereby reducing the threat that such aliens pose to the national security and other vital interests of the United States;

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

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

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

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

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

(E) hijacking in 1985 TWA Flight 847 during which a United States Navy diver was murdered;

(F) murdering in 1985 an American tourist aboard the Achille Lauro cruise liner;

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

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

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

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

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

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

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

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

(O) bombing in 1989 UTA Flight 772 resulting in 171 deaths, including seven Americans;

(P) murdering in 1989 a United States Marine Corps officer assigned to the United Nations Truce Supervisory Organization in Lebanon;

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

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

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

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

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

(V) wounding in October 1994 two United States citizens on a crowded street in Jerusalem, Israel;

(W) kidnapping and subsequently murdering in October 1994 a dual citizen of the United States and Israel; and

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

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

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

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

their offenses;

(27) The threat that nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially due to international developments in the years since the enactment in 1982 of the legislation which implemented the Convention on the Physical Protection of Nuclear Material, codified at 21 U.S.C. 831;

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

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

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

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

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

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

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

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

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

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

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

The Congress further finds:

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

(40) Such international terrorist offenses involve international associations, communication, and mobility which can often be addressed effectively only at the federal law enforcement level;

(41) There previously has been no federal criminal statute which provides a comprehensive basis for addressing acts of international terrorism carried out within the United States;

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

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

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

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

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

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

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

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

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

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

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

TITLE I - SUBSTANTIVE CRIMINAL LAW ENHANCEMENTS

SEC. 101. ACTS OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.

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

"2332b. Acts of terrorism transcending national boundaries

"(a) FINDINGS AND PURPOSE.

"(1) The Congress hereby finds that -

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

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

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

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

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

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

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

"(b) PROHIBITED ACTS. -

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

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

"(B) destroys or damages any structure, conveyance or other real or personal property within the United States

in violation of the laws of any State or the United States shall be punished as prescribed in subsection (d).

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

"(c) JURISDICTIONAL BASES. - The circumstances referred to in subsection (b) are:

"(1) any of the offenders travels in commerce with the intent to commit the offense or to escape apprehension after the commission of such offense;

"(2) the mail, or any facility utilized in any manner in commerce, is used in furtherance of the commission of the offense or to effect the escape of any offender after the commission of such offense;

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

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

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

"(6) any victim, or intended victim, of the offense is, at the time of the offense, traveling in commerce;

"(7) any victim, intended victim or offender is not a national of the United States;

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

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

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

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

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

"(2) for kidnapping, by imprisonment for any term of years or for life;

"(3) for maiming, by imprisonment for not more than thirty-five years;

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

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

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

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

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

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

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

"(g) EVIDENCE. -

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

"(2) In a prosecution under this section that is based upon the adoption of State law, only the elements of the offense under State law, and not any provisions pertaining to criminal procedure or evidence, are adopted.

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

"(i) DEFINITIONS. - As used in this section, the term -

"(1) 'commerce' has the meaning given such term in section 1951(b)(3) of this title;

"(2) 'facility utilized in any manner in commerce' includes means of transportation, communication, and transmission;

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

"(4) 'serious bodily injury' has the meaning prescribed in section 1365(g)(3) of this title;

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

"(6) 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.".

(b) TECHNICAL AMENDMENT. - The chapter analysis for Chapter 113B of title 18, United States Code, is amended by inserting after "2332a. Use of Weapons of Mass Destruction." the following:

"2332b. Acts of terrorism transcending national boundaries."

(c) STATUTE OF LIMITATIONS AMENDMENT. - Section 3286 of title 18, United States Code, is amended by -

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

(2) striking "36" and inserting "37";

(3) striking "2331" and inserting "2332";

(4) striking "2339"; and inserting "2332a"; and

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

(d) PRESUMPTIVE DETENTION -- Section 3142(e) of title 18, United States Code, is amended by inserting "or section 2332b" after "section 924(c)".

(e) WIRETAP AMENDMENT - Section 2518(11)(b)(ii) of title 18, United States Code, is amended by -

(1) inserting "(A)" before "thwart" and

(2) inserting "or (I) commit a violation of section 2332b of this title" after "facilities".

SEC. 102. CONSPIRACY TO HARM PEOPLE AND PROPERTY OVERSEAS.

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

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

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

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

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

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

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

(b) The chapter analysis for chapter 45 of title 18, United States Code, is amended by striking "956. Conspiracy to injure property of foreign government." and inserting in lieu thereof "956. Conspiracy to kill, kidrap, maim, or injure certain property in a foreign country.".

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

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

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

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

(4) striking "of an escape" and inserting in lieu thereof "or an escape"; and

(5) inserting "956," before "1114."

SEC. 103. CLARIFICATION AND EXTENSION OF CRIMINAL JURISDICTION OVER CERTAIN TERRORISM OFFENSES OVERSEAS.

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

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

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

"(2) There is jurisdiction over the offense in paragraph (1) if -

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

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

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

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

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

(b) Section 32(b) of title 18, United States Code, is amended by --

(1) striking ", if the offender is later found in the United States,"; and

(2) adding at the end the following two new paragraphs:

"(5) There is jurisdiction over an offense in this subsection if -

"(A) a national of the United States was on board, or would have been on board, the aircraft;

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

"(C) an offender is afterwards found in the United States.

"(6) For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))."

(c) Section 1116 of title 18, United States Code, is amended by --

(1) in subsection (b), adding at the end a new paragraph (7) as follows:

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

(2) in subsection (c), striking the first sentence and inserting the following:

"If the victim of an offense under subsection (a) is an internationally protected person outside the

United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

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

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

(2) in subsection (e), striking the first sentence and inserting the following:

"If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

(e) Section 878 of title 18, United States Code, is amended by --

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

(2) in subsection (d) striking the first sentence and inserting the following:

"If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United State, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

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

(1) striking the first sentence and inserting the following:

"If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise

jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States."; and

(2) adding at the end thereof the following:

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

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

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

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

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

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

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

(3) adding the following at the end thereof:

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

TITLE II - IMMIGRATION LAW IMPROVEMENTS

SEC. 201. ALIEN TERRORIST REMOVAL PROCEDURES.

(a) FINDINGS AND PURPOSE. -

(1) The Congress hereby finds that -

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

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

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

(D) the bombing of the World Trade Center exemplifies the danger posed to the United States and its citizens by alien terrorists;

(E) similarly, some foreign terrorist organizations utilize associated aliens within the United States to raise funds to facilitate their overseas terrorist acts against U.S. nationals as well as against foreign governments and their citizens; and

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

(2) The purpose of this section is to provide procedures which, consistent with principles of fundamental fairness, will allow the government to deport alien terrorists promptly without compromising intelligence sources and methods.

(b) ALIEN REMOVAL PROCEDURES. - The Immigration and Nationality Act is amended --

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

"TITLE V -- ALIEN TERRORIST REMOVAL PROCEDURES.

"Sec. 501. Applicability
"Sec. 502. Special removal hearing
"Sec. 503. Designation of judges

"Sec. 504. Miscellaneous provisions"; and

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

"TITLE V -- ALIEN TERRORIST REMOVAL PROCEDURES

"Applicability

"Sec. 501. (a) The provisions of this title may be followed in the discretion of the Department of Justice whenever the Department of Justice has classified information that an alien described in paragraph 4(B) of section 241(a), as amended, is subject to deportation because of such section. For purposes of this title, the terms 'classified information' and 'national security' shall have the meaning prescribed in section 1 of the Classified Information Procedures Act, 18 U.S.C. App. III 1.

"(b) Whenever an official of the Department of Justice files, under section 502, an application with the court established under section 503 for authorization to seek removal pursuant to the provisions of this title, the alien's rights regarding removal and expulsion shall be governed solely by the provisions of this title. Except as they are specifically referenced, no other provisions of the Immigration and Nationality Act shall be applicable. An alien subject to removal under these provisions shall have no right of discovery of information derived from electronic surveillance authorized under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et. seq.) or otherwise for national security purposes. Nor shall such alien have the right to seek suppression of evidence. Further, the government is authorized to use, in the removal proceedings, the fruits of electronic surveillance and/or unconsented physical searches authorized under the Foreign Intelligence Surveillance Act without regard to subsections 106(c), (e), (f), (g), and (h) of that Act. The provisions and requirements of section 3504 of title 18, United States Code, shall not apply to procedures under this title.

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

"(1) a judicial determination of probable cause to believe that such person is such an alien; and

"(2) a judicial determination pursuant to the provisions of this title that an alien is removable on the grounds that he or she is an alien described in paragraph 4(B) of section 241(a), as amended.

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

"Special Removal Hearing

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

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

"(2) the approval of the Attorney General or the Deputy Attorney General for the making of the application;

"(3) the identity of the alien for whom authorization for the special removal procedure is sought; and

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

"(A) the alien is an alien as described in paragraph 4(B) of section 241(a), as amended, and is physically present in the United States; and

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

"(b)(1) The application shall be filed under seal with the court established under section 503. The

Attorney General may take into custody any alien with respect to whom such an application has been filed and, notwithstanding any other provision of law, may retain such an alien in custody in accordance with the procedures authorized by this title.

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

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

> "(1) the alien who is the subject of the application has been correctly identified and is an alien as described in paragraph 4(B) of section 241(a), as amended; and
>
> "(2) adherence to the provisions of title II regarding the deportation of the identified alien would pose a risk to the national security of the United States.

"(d)(1) In any case in which the application for the order is denied, the judge shall prepare a written statement of his reasons for the denial and the Department of Justice may seek a review of the denial by the United States Court of Appeals for the District of Columbia Circuit by notice of appeal which must be filed within 20 days. In such a case the entire record of the proceeding shall be transmitted to the Court of Appeals

under seal and the Court of Appeals shall hear the matter ex parte.

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

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

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

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

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

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

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

"(A) the continued presence of the alien in the United States, or

"(B) the provision of the required summary

would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person. If such finding is issued, the special removal hearing shall continue, the Department of Justice shall cause to be delivered to the alien a statement that no summary is possible, and the classified information submitted in camera and ex parte may be used pursuant to subsection (j).

"(3) The Department of Justice may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of --

"(A) any determination by the judge pursuant to paragraph (1) --

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

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

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

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

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

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

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

"(i) At any time prior to the conclusion of the special removal hearing, either the alien or the Department of Justice may request the judge to issue a subpoena for the presence of a named witness (which subpoena may also command the person to whom it is directed to produce books, papers, documents, or other objects designated therein) upon a satisfactory showing that the presence of the witness is necessary for the determination of any material matter. Such a request may be made ex parte except that the judge shall inform the Department of Justice of any request for a subpoena by the alien for a witness or material if compliance with such a subpoena would reveal evidence or the source of evidence which has been introduced, or which the Department of Justice has received permission to introduce, in camera and ex parte pursuant to subsection (j), and the Department of Justice shall be given a reasonable opportunity to oppose the issuance of such a subpoena. If an application for a subpoena by the alien also makes a showing that the alien is financially unable to pay for the attendance of a witness so requested, the court may order the costs incurred by the process and the fees of the witness so subpoenaed to be paid for from funds appropriated for the enforcement of title II. A subpoena under this subsection may be served anywhere in the United States. A witness subpoenaed under this subsection shall receive the same fees and expenses as a

witness subpoenaed in connection with a civil proceeding in a court of the United States. Nothing in this subsection is intended to allow an alien to have access to classified information.

"(j) When classified information has been summarized pursuant to subsection (e)(1) or where a finding has been made under subsection (e)(2) that no summary is possible, classified information shall be introduced (either in writing or through testimony) in camera and ex parte and neither the alien nor the public shall be informed of such evidence or its sources other than through reference to the summary provided pursuant to subsection (e)(1). Notwithstanding the previous sentence, the Department of Justice may, in its discretion and, in the case of classified information, after coordination with the originating agency, elect to introduce such evidence in open session.

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

"(l) Following the receipt of evidence, the attorneys for the Department of Justice and for the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien. The attorney for the Department of Justice shall open the argument. The attorney for the alien shall be permitted to reply. The attorney for the Department of Justice shall then be permitted to reply in rebuttal. The judge may allow any part of the argument that refers to evidence received in camera and ex parte to be heard in camera and ex parte.

"(m) The Department of Justice has the burden of showing by clear and convincing evidence that the alien is subject to removal because he is an alien as described in paragraph 4(B) of subsection 241(a) of this Act (8 U.S.C. 1251(a)(4)(B)), as amended. If the judge finds that the Department of Justice has met this burden, the judge shall order the alien removed and, if the alien is a resident alien who was released pending the special removal hearing, order the Attorney General to take the alien into custody.

"(n)(1) At the time of rendering a decision as to whether the alien shall be removed, the judge shall prepare a written order containing a statement of facts

found and conclusions of law. Any portion of the order that would reveal the substance or source of information received in camera and ex parte pursuant to subsection (j) shall not be made available to the alien or the public.

"(2) The decision of the judge may be appealed by either the alien or the Department of Justice to the United States Court of Appeals for the District of Columbia Circuit by notice of appeal which must be filed within 20 days, during which time such order shall not be executed. In any case appealed pursuant to this subsection, the entire record shall be transmitted to the Court of Appeals and information received pursuant to subsection (j), and any portion of the judge's order that would reveal the substance or source of such information shall be transmitted under seal. The Court of Appeals shall consider the case as expeditiously as possible.

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

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

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

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

"(r) Nothing in this section shall prevent the United States from seeking protective orders and/or asserting privileges ordinarily available to the United States to protect against the disclosure of classified

information, including the invocation of the military and state secrets privileges.

"Designation of Judges

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

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

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

"Miscellaneous Provisions

"Sec. 504. (a)(1) Following a determination pursuant to this title that an alien shall be removed, and after the conclusion of any judicial review thereof, the Attorney General may retain the alien in custody or, if the alien was released pursuant to subsection 502(o), may return the alien to custody, and shall cause the alien to be transported to any country which the alien shall designate provided such designation does not, in the judgement of the Attorney General, in consultation with the Secretary of State, impair the obligation of the

United States under any treaty (including a treaty pertaining to extradition) or otherwise adversely affect the foreign policy of the United States.

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

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

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

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

"(2) Pending the commencement of any service of a sentence of confinement by an alien described in

paragraph (1), such an alien shall remain in the custody of the Attorney General, unless the Attorney General determines that temporary release of the alien to the custody of State authorities for confinement in a State facility is appropriate and would not endanger national security or public safety.

"(3) Following the completion of a sentence of confinement by an alien described in paragraph (1) or following the completion of State criminal proceedings which do not result in a sentence of confinement of an alien released to the custody of State authorities pursuant to paragraph (2), such an alien shall be returned to the custody of the Attorney General who shall proceed to carry out the provisions of subsection (a) concerning removal of the alien.

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

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

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

(c) ADDITIONAL AMENDMENTS TO INA. - (1) Subsection 106(b) of the Immigration and Nationality Act (8 U.S.C. 1105a(b)) is amended by adding at the end thereof the following sentence: "Jurisdiction to review an order entered pursuant to the provisions of section 235(c) of this Act concerning an alien excludable under paragraph 3(B) of subsection 212(a) (8 U.S.C. 1182(a)), as amended, shall rest exclusively in the United States Court of Appeals for the District of Columbia Circuit.".

(2) Section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) is amended by deleting the word "or" at the end of subparagraph (b)(1), by replacing the period at the end of subparagraph (b)(2) with a semicolon followed by the word "or", and

by adding at the end of paragraph (b) the following subparagraph: "(3) who has been excluded from the United States pursuant to subsection 235(c) of this Act (8 U.S.C. 1225(c)) because such alien was excludable under paragraph 3(B) of subsection 212(a) thereof (8 U.S.C. 1182(a)(3)(B)), as amended, or who has been removed from the United States pursuant to the provisions of title V of the Immigration and Nationality Act, and who thereafter, without the permission of the Attorney General, enters the United States or attempts to do so shall be fined under title 18, United States Code, and imprisoned for a period of ten years which sentence shall not run concurrently with any other sentence."

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

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

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

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

"(B) TERRORISM ACTIVITIES

"(i) IN GENERAL

Any alien who

"(I) has engaged in a terrorism activity, or

"(II) a consular officer or the Attorney General knows, or has reason to believe, is likely to engage after entry in any terrorism activity (as defined in clause (iii)),

is excludable. An alien who is a representative of the Palestine Liberation Organization, or any terrorist organization designated by proclamation by the President after he has found such organization to be detrimental to the interests of the United States, is considered, for purposes of this Act, to be engaged in a terrorism activity. As used in clause (B)(i), the term "representative" includes an officer, official or spokesman of the organization and any person who directs, counsels, commands or induces such organization or its

members to engage in terrorism activity. For purposes of subparagraph (3)(B)(i), the determination by the Secretary of State or the Attorney General that an alien is a representative of the organization shall be controlling and shall not be subject to review by any court.

"(ii) TERRORISM ACTIVITY DEFINED.--As used in this Act, the term 'terrorism activity' means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State), and which involves any of the following:

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

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

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

"(IV) An assassination.

"(V) The use of any--

"(a) biological agent, chemical agent, or nuclear weapon or device, or

"(b) explosive, firearm, or other weapon (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

"(VI) A threat, attempt, or conspiracy to do any of the foregoing.

"(iii) ENGAGE IN TERRORISM ACTIVITY DEFINED.--As used in this Act, the term 'engage in terrorism activity' means to commit, in an individual capacity or as a member of an organization, an act of terrorism activity or an act

which the actor knows, or reasonably should know, affords material support to any individual, organization, or government which the actor knows or reasonably should know has committed or plans to commit terrorism activity, including any of the following acts:

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

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

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

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

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

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

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

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

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

(c) Section 291 of the Immigration and Nationality Act (8 U.S.C. 1361) is amended by adding after "custody of the Service." this new sentence:

"The limited production authorized by this provision shall not extend to the records of any other agency or department of the Government or to any documents that do not pertain to the respondent's entry.".

(d) Section 242(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)) is amended by inserting after "Government" the following:

> ". In the case of an alien who is not lawfully admitted for permanent residence and notwithstanding the provisions of any other law, reasonable opportunity shall not comprehend access to classified information, whether or not introduced in evidence against him. The provisions and requirements of 18 U.S.C. § 3504 and 50 U.S.C § 1801 et seq. shall not apply in such cases"."

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

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

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

(2) inserting after "Title 13" the following:

> "and (ii) may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used:
>
> > "(I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or
> >
> > "(II) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the legalization application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant".

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

(2) Section 210(b)(6) of the Immigration and Nationality Act (8 U.S.C. 1160(b)(6)) is amended by inserting the following sentence before "Anyone who uses":

> "Except the Attorney General may authorize an application to a Federal Court of competent jurisdiction for, and a

judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used:

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

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

TITLE III - CONTROLS OVER TERRORIST FUND-RAISING

SEC. 301. TERRORIST FUND-RAISING PROHIBITED.

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

"2339B. Fund-raising for terrorist organizations

"(a) FINDINGS AND PURPOSE. -

"(1) The Congress hereby finds that -

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

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

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

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

"(E) international cooperation is required for an effective response to terrorism, as demonstrated by the numerous multilateral conventions in force providing universal

prosecutive jurisdiction over persons involved in a variety of terrorist acts, e.g., hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage;

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

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

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

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

"(1) fund-raising or the provision of funds for use by or for the benefit of any foreign organization, including persons assisting such organization in fund-raising, that the President has designated pursuant to subsection (c) as being engaged in terrorism activities, or

"(2) financial transactions with any such foreign organization,

within the United States or by any person subject to the jurisdiction of the United States anywhere.

"(c) DESIGNATION. -

"(1) Pursuant to the authority granted in subsection (b), the President is authorized to designate any foreign organization based on finding that -

"(A) the organization engages in terrorism activity as defined in section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. § 1182(a)(3)(B)); and

"(B) the organization's terrorism activities threaten the national security, foreign policy, or economy of the United States.

"(2) Pursuant to the authority granted in subsection (b), the President is also authorized to designate persons which are raising funds for, or acting for or on behalf of, any organization designated pursuant to subsection (c)(1) above.

"(3) If the President finds that the conditions which were the basis for any designation issued under this subsection have changed in such a manner as to warrant revocation of such designation, or that the national security, foreign relations, or economic interests of the United States so warrant, he may revoke such designation in whole or in part.

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

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

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

"(d) PROHIBITED ACTIVITIES. -

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

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

"(e) AUTHORIZED TRANSACTIONS. -

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

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

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

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

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

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

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

"(f) SPECIAL REQUIREMENTS FOR FINANCIAL INSTITUTIONS. -

"(1) Except as authorized by the Secretary by means of directives, regulations, or licenses, any financial institution which becomes aware that it has possession of or control over any funds

in which an organization or person designated under subsection (c) has an interest, shall -

"(A) retain possession of or maintain control over such funds; and

"(B) report to the Secretary the existence of such funds in accordance with the regulations prescribed by the Secretary.

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

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

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

"(g) INVESTIGATIONS. -

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

"(h) RECORDKEEPING AND REPORTING; CIVIL PROCEDURES. -

"(1) Notwithstanding any other provision of law, in exercising the authorities granted by this section, the Secretary and the Attorney General may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to

in this section either before, during, or after the completion thereof, or relative to any funds referred to in this section, or as may be necessary to enforce the terms of this section. In any case in which a report by a person could be required under this subsection, the Secretary or the Attorney General may require the production of any books of account, records, contracts, letters, memoranda, or other papers or documents, whether maintained in hard copy or electronically, in the control or custody of such person.

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

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

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

"(i) PENALTIES. -

"(1) Any person who knowingly violates subsection (d) shall be fined under this title, or imprisoned for up to 10 years, or both.

"(2)(A) Any person who fails to maintain or to make available to the Secretary upon his request or demand the books or records required by subsection (e), or by regulations promulgated thereunder, shall be subject to a civil penalty of $50,000 or twice the amount of money which would have been documented had the books and records been properly maintained, whichever is greater.

"(B) Any person who fails to take the actions required of financial institutions pursuant to subsection (f)(1), or by regulations promulgated thereunder, shall be subject to a civil

penalty of $50,000 per violation, or twice the amount of money of which the financial institution was required to retain possession or control, whichever is greater.

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

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

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

"(j) INJUNCTION. -

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

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

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

"(l) CLASSIFIED INFORMATION IN CIVIL PROCEEDINGS BROUGHT BY THE UNITED STATES. -

"(1) Discovery of classified information by defendants

A court, upon a sufficient showing, may authorize the United States to delete specified items of classified information from documents to be introduced into evidence and/or made available to the defendant through discovery under the Federal Rules of Civil Procedure, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The court shall permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief

following such an ex parte showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal. If the court enters an order denying relief to the United States under this provision, the United States may take an immediate, interlocutory appeal in accordance with the provisions of paragraph (3) of this subsection. In the event of such an appeal, the entire text of the underlying written statement of the United States, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

"(2) Introduction of classified information; precautions by court

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

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

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

"(3) Interlocutory appeal

"(A) An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of a district court

authorizing the disclosure of classified information, imposing sanctions for nondisclosure of classified information, or refusing a protective order sought by the United States to prevent the disclosure of classified information.

"(B) An appeal taken pursuant to this section either before or during trial shall be expedited by the court of appeals. Prior to trial, an appeal shall be taken within ten days after the decision or order appealed from and the trial shall not commence until the appeal is resolved. If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved and the court of appeals (1) shall hear argument on such appeal within four days of the adjournment of the trial, (2) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (3) shall render its decision within four days of argument on appeal, and (4) may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

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

"(m) DEFINITIONS. - As used in this section, the term -

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

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

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

"(4) 'national security' means the national defense and foreign relations of the United States;

"(5) 'person' includes an individual, partnership, association, group, corporation or other organization;

"(6) 'Secretary' means the Secretary of the Treasury; and

"(7) 'United States', when used in a geographical sense, includes all commonwealths, territories and possessions of the United States.".

(b) TECHNICAL AMENDMENT. - The analysis for chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following:

"2339B. Fund-raising for terrorist organizations".

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

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

TITLE IV - CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

SEC. 401. SHORT TITLE.

This title may be cited as the "Marking of Plastic Explosives for Detection Act.".

SEC. 402. FINDINGS AND PURPOSES.

(a) Findings.--The Congress finds that--

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

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

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

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

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

(b) Purpose.--The purpose of this Act is to fully implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

SEC. 403. DEFINITIONS.

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

"(o) 'Convention on the Marking of Plastic Explosives' means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

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

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

"(2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

"(3) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

"(4) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

"(5) any other substance in the concentration specified by the Secretary, after consultation with the Secretary of State and the Secretary of Defense, which

has been added to the table in Part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

"(q) 'Plastic explosive' means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form have a vapor pressure less than 10^{-4} Pa at a temperature of 25° C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.".

SEC. 404. REQUIREMENT OF DETECTION AGENTS FOR PLASTIC EXPLOSIVES.

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

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

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

"(2) This subsection does not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive which was imported, brought into, or manufactured in the United States prior to the effective date of the Marking of Plastic Explosives for Detection Act by or on behalf of any agency of the United States performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

"(n)(1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive which does not contain a detection agent.

"(2) This subsection does not apply to--

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

"(B) the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States prior to the effective date of this Act by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

"(o) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the effective date of this Act, to fail to report to the Secretary within 120 days from the effective date of this Act the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may by regulations prescribe.".

SEC. 405. CRIMINAL SANCTIONS.

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

"(a) Any person who violates subsections (a) through (i) or (l) through (o) of section 842 of this chapter shall be fined under this title or imprisoned not more than 10 years, or both.".

SEC. 406. EXCEPTIONS.

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

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

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

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

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

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

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

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

"(C) forensic science purposes; or

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

SEC. 407. INVESTIGATIVE AUTHORITY.

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

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

(2) by adding at the end the following:

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

SEC. 408. EFFECTIVE DATE.

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

TITLE V - NUCLEAR MATERIALS

SEC. 501. EXPANSION OF NUCLEAR MATERIALS PROHIBITIONS.

(a)(1) FINDINGS. - The Congress finds and declares -

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

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

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

(D) The threat that nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially since the enactment in 1982 of the legislation which implemented the Convention on the Physical Protection of Nuclear Material, codified at 18 U.S.C. 831;

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

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

(G) Reported trafficking incidents in the early 1990's suggest that the individuals involved in trafficking these materials from Eurasia and Eastern Europe frequently conducted their black market sales of

these materials within the Federal Republic of Germany, the Baltic States, and to a lesser extent in the Middle European countries;

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

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

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

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

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

(2) PURPOSE. - The purpose of the Act is to provide federal law enforcement the necessary tools and fullest possible basis allowed under the Constitution of the United States to combat the threat of nuclear contamination and proliferation which may result from illegal possession and use of radioactive materials.

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

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

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

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

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

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

(5) amending subsection (c)(2) to read as follows:

"(2) an offender or a victim is a national of the United States or a United States corporation or other legal entity;";

(6) in subsection (c)(3), striking "at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and";

(7) striking "or" at the end of subsection (c)(3);

(8) in subsection (c)(4), striking "nuclear material for peaceful purposes" and inserting "nuclear material or nuclear byproduct material";

(9) striking the period at the end of subsection (c)(4) and inserting "; or";

(10) adding at the end of subsection (c) a new paragraph as follows:

"(5) the governmental entity under subsection (a)(5) is the United States or the threat under subsection (a)(6) is directed at the United States.";

(11) in subsection (f)(1)(A), striking "with an isotopic concentration not in excess of 80 percent plutonium 238";

(12) inserting at the beginning of subsection (f)(1)(C) "enriched uranium, defined as";

(13) redesignating subsections (f)(2) - (4) as (f)(3) -

(14) inserting after subsection (f)(1) the following new paragraph:

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

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

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

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

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

"(7) the term 'United States corporation or other legal entity' means any corporation or other entity organized under the laws of the United States or any State, district, commonwealth, territory or possession of the United States.".

TITLE VI - PROCEDURAL AND TECHNICAL CORRECTIONS AND IMPROVEMENTS

SEC. 601. CORRECTION TO MATERIAL SUPPORT PROVISION

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

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

"§ 2339A. Providing material support to terrorists

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

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

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

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

(1) in subsection(a), inserting "threatens," before "attempts or conspires to use, a weapon of mass destruction";

(2) by redesignating subsection (b) as subsection (c); and

(3) by adding the following new subsection:

"(b) Any national of the United States who outside of the United States uses, or threatens, attempts or conspires to use, a weapon of mass destruction shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisonment for any term of years or for life.".

SEC. 603. ADDITION OF TERRORIST OFFENSES TO THE RICO STATUTE.

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

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

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

(3) inserting after "section 664 (relating to embezzlement from pension and welfare funds)," the following: "section 831 (relating to prohibited transactions involving

nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce),";

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

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

(6) inserting after "section 1344 (relating to financial institution fraud)," the following: "section 1361 (relating to willful injury of government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),";

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

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

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

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

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

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

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

(1) inserting after "an offense under" the following: "section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding or retaliating against a federal official by threatening or injuring a family member), ";

(2) inserting after "section 215 (relating to commissions or gifts for procuring loans)," the following: "section 351 (relating to Congressional or Cabinet officer assassination),";

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

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

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

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

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

(8) inserting after "2114 (relating to bank and postal robbery and theft)," the following: "section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),"; and

(9) striking "of this title" and inserting the following: "section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code, ".

SEC. 605. AUTHORIZATION FOR INTERCEPTIONS OF COMMUNICATIONS IN CERTAIN TERRORISM RELATED OFFENSES.

(a) Section 2516(1) of title 18, United States Code, is amended by -

(1) striking "and" at the end of subparagraph (n);

(2) redesignating subparagraph (o) as subparagraph (q); and

(3) inserting these two new paragraphs after paragraph (n):

"(o) any violation of section 956 or section 960 of title 18, United States Code (relating to certain actions against foreign nations);

"(p) any violation of section 46502 of title 49, United States Code; and".

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

SEC. 606. CLARIFICATION OF MARITIME VIOLENCE JURISDICTION.

Section 2280(B)(1)(A) of title 18, United States Code, is amended by -

(1) in clause (ii), striking "and the activity is not prohibited as a crime by the State in which the activity takes place"; and

(2) in clause (iii), striking "the activity takes place on a ship flying the flag of a foreign country or outside of the United States,".

SEC. 607. EXPANSION OF FEDERAL JURISDICTION OVER BOMB THREATS.

Section 844(e) of title 18, United States Code, is amended by -

(1) inserting "(1)" before "Whoever"; and

(2) adding at the end thereof this new paragraph:

"(2) Whoever willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made to violate subsections (f) or (i) of this section or section 81 of this title shall be fined under this title or imprisoned for not more than five years, or both.

SEC. 608. INCREASED PENALTY FOR EXPLOSIVE CONSPIRACIES.

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

"(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as those prescribed for the offense the commission of which was the object of the conspiracy.".

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

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

SEC. 610. ADDITION OF CONSPIRACY TO TERRORISM OFFENSES

(a)(1) Section 32(a)(7) of title 18, United States Code, is amended by inserting "or conspires" after "attempts".

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

(b) Section 37(a) title 18, United States Code, is amended by inserting "or conspires" after "attempts".

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

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

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

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

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

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

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

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

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

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

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

TITLE VII - ANTITERRORISM ASSISTANCE

SEC. 701. FINDINGS.

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

SEC. 702. ANTITERRORISM ASSISTANCE AMENDMENTS.

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

(1) striking "30 days" in subsection (d)(1)(A) and inserting in lieu thereof "180 days";

(2) striking the "add" after subsection (d)(1)(B);

(3) striking subsection (d)(1)(B);

(4) inserting "and" after subsection (d)(1)(A);

(5) redesignating subsection (d)(1)(C) as subsection (d)(1)(B);

(6) amending subsection (d) (2) to read as follows:

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

(7) striking subsection (f).

SECTION-BY-SECTION ANALYSIS

Section 1.

Section 1 states that the short title for the Act is "The Omnibus Counterterrorism Act of 1995."

Section 2.

Section 2 provides a Table of Contents for the Act.

Section 3.

Section 3 sets forth the congressional findings and purposes for the Act.

Section 101.

The purpose of section 101 is to provide a more certain and comprehensive basis for the Federal Government to respond to future acts of international terrorism carried out within the United States. The section creates an overarching statute (proposed 18 U.S.C. 2332b) which would allow the government to incorporate for purposes of a federal prosecution any applicable federal or state criminal statute violated by the terrorist act, so long as the government can establish any one of a variety of jurisdictional bases delineated in proposed subsection 2332b(c).

Subsection 101(a) creates a new offense, 18 U.S.C. 2332b, entitled "Acts of Terrorism Transcending National Boundaries." This statute is aimed at those terrorist acts that take place within the United States but which are in some fashion or degree instigated, commanded, or facilitated from outside the United States. It does not encompass acts of street crime or domestic terrorism which are in no way connected to overseas sources.

Subsection 2332b(a) sets forth the particular findings and purposes for the provision.

Subsection 2332b(b) sets forth the prohibited acts which relate to the killing, kidnapping, maiming, assault causing serious bodily injury, or assault with a dangerous weapon of any individual (U.S. national or alien) within the United States. It also covers destruction or damage to any structure, conveyance or other real or personal property within the United States. These are the types of violent actions that terrorists most often undertake. The provision encompasses any such activity which is in violation of the laws of the United States or any State, provided a federal jurisdictional nexus is present.

Subsection 2332b(c) sets forth the jurisdictional bases. Except for subsections (c)(6) and (7), these bases are a compilation of jurisdictional elements which are presently utilized in federal statutes and which have been approved by the courts.

Paragraph (1) covers the situation where the offender travels in commerce. Cf. 18 U.S.C. 1952.

Paragraph (2) covers the situation where the mails or a facility utilized in any manner in commerce is used to further the commission of the offense or to effectuate an escape therefrom. Cf. 18 U.S.C. 1951

Paragraph (3) covers the situation where the results of illegal conduct affect commerce. Cf. 18 U.S.C. 1365(c).

Paragraph (4) covers the situation where the victim is a federal official. Cf. 18 U.S.C. 115, 1114, 351, 1751. The language includes both civilians and military personnel. Moreover, it also covers any "agent" of a federal agency. Cf. 18 U.S.C. 1114 (i.e., assisting agent of customs or internal revenue) and 1121. It covers all branches of government, including members of the military services, as well as all independent agencies of the United States.

Paragraph (5) covers property used in commerce (cf. 18 U.S.C. 844(i)), owned by the United States (cf. 18 U.S.C. 1361), owned by an institution receiving federal financial assistance (cf. 18 U.S.C. 844(f)) or insured by the federal government (cf. 18 U.S.C. 2113).

Paragraph (6) provides a jurisdictional base which has not been tested. It should, however, fall with the federal government's commerce power. It is included to avoid the construction, given to many federal interstate commerce statutes, that a "commercial" aspect is required. Paragraph (6) would cover both business and personal travel.

Paragraph (7) covers situations where the victim or perpetrator is not a national of the United States. The victimization of an alien in a terrorist attack has the potential of affecting the relations of the United States with the country of which the alien is a citizen. Moreover, some other statutes base criminal jurisdiction on the involvement of an alien as the perpetrator or victim. E.g., see 18 U.S.C. 1203 and 1116. In addition, aliens are a special responsibility of the federal government, as it is involved in admitting aliens, establishing the conditions for their presence, adjusting them to resident alien status, deporting aliens for violating the immigration laws, and eventually naturalizing aliens as citizens.

Paragraphs (8) and (9) cover the territorial seas of the United States and other places within the special maritime and territorial jurisdiction of the United States that are located within the United States (cf. 18 U.S.C. 7).

Jurisdiction exists over the prohibited activity if at least one of the jurisdictional elements is applicable to one perpetrator. When jurisdiction exists for one perpetrator, it exists over all perpetrators even those who were never within the United States.

Subsection (d) sets forth stringent penalties. These penalties are mandatorily consecutive to any other term of imprisonment which the defendant might receive. Consecutive sentences for "identical" offenses brought in the same prosecution are constitutionally permissible. See Missouri v. Hunter, 459 U.S. 359, 367 (1983). However, there is no statutory mandatory minimum. The court is given the discretion to decide the penalty for this offense under the sentencing guidelines.

Subsection (e) limits the prosecutorial discretion of the Attorney General. Before an indictment is sought under section 2332b, the Attorney General, or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions, must certify that in his or her judgment the violation of section 2332b, or the activity preparatory to its commission, transcended national boundaries. This means that the Attorney General must conclude that some connection exists between the activities and some person or entity outside the United States.

Moreover, the certification must find that the offense appears to have been intended to coerce, intimidate, or retaliate against a government or civilian population. This is similar to the certification requirement for "terrorism" found in 18 U.S.C. 2332(d). The term "civilian population" includes any segment thereof and, accordingly, is consistent with the Congressionally intended scope of section 2332(d). The certification requirement ensures that the statute will only be used against terrorists with overseas connections. Section 2332b is not aimed at purely domestic terrorism or against normal street crime as current law, both federal and state, appears to adequately address these areas. The certification of the Attorney General is not an element of the offense and, except for verification that the determination was made by an authorized official, is not subject to judicial review.

Subsection (f) states that the Attorney General shall investigate this offense and may request assistance from any other federal, state, or local agency including the military services. This latter provision, also found in several other statutes, see e.g., 18 U.S.C. 351(g) and 1751(i), is intended to overcome the restrictions of the posse comitatus statute, 18 U.S.C. 1385. It is not intended to give intelligence agencies, such as the Central

Intelligence Agency, any mission that is prohibited by their charters.

Pursuant to 28 C.F.R. 0.85(a), the Attorney General automatically delegates investigative responsibility over this offense to the Director of the Federal Bureau of Investigation (FBI). Moreover, under 28 C.F.R. 0.85(l) the FBI has been designated as the lead federal law enforcement agency responsible for criminal investigation of terrorism within the United States. While local and state authorities retain their investigative authority under their respective laws, it is expected that in the event of major terrorist crimes such agencies will cooperate, consult, coordinate and work closely with the FBI, as occurred in the investigation of the World Trade Center bombing in New York City.

Subsection (g) makes express two points which are normally inferred by courts under similar statutes, namely, that no defendant has to have knowledge of any jurisdictional base and that only the elements of the state offense and not any of its provisions pertaining to procedures or evidence are adopted. Federal rules of evidence and procedure control any case brought under section 2332b.

Subsection (h) makes it clear that there is extraterritorial jurisdiction to reach defendants who were involved in crimes but who never entered the United States.

Subsection (i) sets forth definitions, many of which specifically incorporate definitions from elsewhere in the federal code, e.g., the definition of "territorial sea" in 18 U.S.C. 2280(e).

Subsection 101(b) makes a technical amendment to the chapter analysis for Chapter 113B of title 18, United States Code.

Subsection 101(c) amends 18 U.S.C. 3286, which was created by section 120001 of Pub. Law 103-322. Section 3286 is designed to extend the period of limitation for a series of enumerated terrorism offenses from five to eight years. The wording of the section, however, gives rise to a potential interpretation that, with respect to violations of the enumerated offenses that are capital crimes, the same eight-year period applies rather than the unlimited period that previously applied and continues to apply to capital offenses under 18 U.S.C. 3281. Section 3286's introductory language is as follows:

> "Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any offense involving a violation of" the enumerated provisions of law (emphasis supplied).

It seems clear that Congress did not intend to reduce the limitations period for offenses under the enumerated statutes that are capital due to the killing of one or more victims. Rather, the intent was (as the title of the section 120001 provision indicates) to enlarge the applicable limitation period for non-capital violations of the listed offenses. Accordingly, the proposed amendment would insert "non-capital" after "any" in the above-quoted phrase. Notably, the drafters were careful to include the word "non-capital" when effecting a similar period of limitations extension applicable to arson offenses under 18 U.S.C. 844(i) in section 320917 of the Pub. L. 103-322.

Subsection 101(c) also corrects certain erroneous statutory references in section 3286 (i.e., changes "36" to "37", "2331" to 2332" and "2339" to "2332a"). Finally, the subsection adds to section 3286 the new 18 U.S.C. 2332b.

Subsection 101(d) amends section 3142(e) of title 18, United States Code, to insure that a defendant arrested for a violation of the new 18 U.S.C. 2332b is presumed to be unreleasable pending trial. The factors, most likely to be present, i.e., an alien perpetrator who is likely to flee and who is working on behalf of or in concert with a foreign organization, makes such an individual unsuitable for release pending trial. This presumption, which is subject to rebuttal, will limit the degree of sensitive evidence that the Government must disclose to sustain its burden to deny release.

Subsection 101(e) amends the "roving" provision in the wiretap statute (18 U.S.C. 2518(11)(b)(ii)) so that it can be applied to violations of new 18 U.S.C. 2332b even in the absence of a showing of intent to thwart detection. The development of evidence of such intent could cause a delay which, in the content of a section 2332b violation, could have catastrophic consequences. Further, the secrecy and clandestine movement of terrorists make it extremely difficult to develop advance knowledge of which precise telephones they will use.

Section 102.

Section 102 is designed to complement section 101 of this bill concerning terrorist acts within the United States transcending national boundaries. Just as a better basis for addressing crimes carried out within the United States by international terrorists is needed, it also is appropriate that there should be an effective federal basis to reach conspiracies undertaken in part within the United States for the purpose of carrying out terrorist acts in foreign countries.

Section 102 covers two areas of activity involving international terrorists. The first is conspiracy in the United

States to murder, kidnap, or maim a person outside of the United States. The second is conspiracy in the United States to destroy certain critical types of property, such as public buildings and conveyances, in foreign countries. The term conveyance would include cars, buses, trucks, airplanes, trains, and vessels.

Subsection 102(a) amends current 18 U.S.C. 956 in several ways. It creates a new subsection 956(a) which proscribes a conspiracy in the United States to murder, maim, or kidnap a person outside of the United States. The new section fills a void in the law that exists. Currently, subsection 956(a) only prohibits a conspiracy in the United States to commit certain types of property crimes in a foreign country with which the United States is at peace. It does not cover conspiracy to commit crimes against the person.

Subsection 102(a) thus expands on the current section 956 so that new subsection 956(a) covers conspiracy to commit one of the three listed serious crimes against any person in a foreign country or in any place outside of the jurisdiction of the United States, such as on the high seas. This type of offense is committed by terrorists and the new subsection 956(a) is intended to ensure that the government is able to punish those persons who use the United States as a base in which to plot such a crime to be carried out outside the jurisdiction of the United States.

New subsection 956(a) would apply to conspiracies to commit one of the enumerated offenses where at least one of the conspirators is inside the United States. The other member or members of the conspiracy would not have to be in the United States but at least one overt act in furtherance of the conspiracy would have to be committed in the United States. The subsection would apply, for example, to two individuals who consummated an agreement to kill a person in a foreign country where only one of the conspirators was in the United States and the agreement was reached by telephone conversations or letters, provided at least one of the overt acts were undertaken by one co-conspirator while in the United States. In such a case, the agreement would be reached at least in part in the United States. The overt act may be that of only one of the conspirators and need not itself be a crime.

Subsection 102(a) also re-enacts current section 956(a) of title 18 (dealing with a conspiracy in the United States to destroy property in a foreign country) as subsection 956(b), and expands its coverage to other forms of property. The revision adds the terms "airport" and "airfield" to the list of "public utilities" presently set out in section 956(a), since they are particularly attractive targets for terrorists. New subsection 956(b) also adds public conveyances (e.g., buses), public structures, and any religious, educational or cultural property to the list of targets. This makes it clear that the statute covers a conspiracy to destroy any conveyance on which people travel and any structure where

people assemble, such as a store, factory or office building. It also covers property used for purposes of tourism, education, religion or entertainment. Accordingly, the words "public utility" do not limit the statute's application to a conspiracy to destroy only such public utility property as transportation lines or power generating facilities.

Consequently, as amended, 18 U.S.C. 956 reaches those individuals who have conspired within the United States to commit the violent offenses overseas and who solicit money in the United States to facilitate their commission. Moreover, monetary contributors who have knowledge of the conspiracy's purpose are coconspirators subject to prosecution.

Subsection 102(a) also increases the penalties in current 18 U.S.C. 956(a). The new penalties are comparable to those proposed in section 101 of the bill for the new 18 U.S.C. 2332b. Finally, subsection 102(a) eliminates the requirement that is currently found in 18 U.S.C. 956(b) of naming in the indictment the "specific property" which is being targeted, as this requirement may be difficult to establish in the context of a terrorism conspiracy which does not result in a completed offense. Additionally, even in a completed conspiracy, the parties may, after agreeing that a category of property or person will be targeted, leave the actual selection of the particular target to their conspirators on the ground overseas. Hence, while an indictment must always describe its purposes with specificity, it need not allege all specific facts, especially those that were formulated at a subsequent time or which may not be completely known to some of the participants.

Section 956 is contained in chapter 45 of title 18, United States Code, relating to interference with the foreign relations of the United States. It is not intended to apply to duly authorized actions undertaken on behalf of the United States Government. Chapter 45 covers those individuals who, without appropriate governmental authorization, engage in prohibited conduct that is harmful to the foreign relations of the United States.

Section 103.

This section would correct a failure to execute fully our treaty obligations and would, in addition, clarify and expand federal jurisdiction over certain overseas acts of terrorism affecting United States interests.

Subsection 103(a) would amend 49 U.S.C. 46502(b) (former section 902(n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472(n)). Section 46502(b) currently covers those aircraft piracies that occur outside the "special aircraft jurisdiction of the United States," as defined in 49 U.S.C.

46501(2). It, therefore, applies to hijackings of foreign civil aircraft which never enter United States airspace. As a State Party to the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the United States has a treaty obligation to prosecute or extradite such offenders when they are found in the United States. This measure is based on the universal jurisdiction theory. See United States v. Yunis, 924 F.2d 1086 (D.C. Cir. 1991). However, the present statute fails to make clear when federal criminal jurisdiction commences with respect to such air piracies, absent the actual presence within the United States of one of the perpetrators.

Paragraph (a)(1) would establish clear federal criminal jurisdiction over those foreign aircraft hijackings where United States nationals are victims or perpetrators. While the Hague Convention does not mandate that State Parties criminalize those situations involving their nationals as victims or perpetrators, it does allow State Parties to assert extraterritorial jurisdiction on the basis of the passive personality principle. See Paragraph 3 of Article 4. In addition, other recent international conventions dealing with terrorism, such as the United Nations Convention Against the Taking of Hostages and the International Maritime Organization Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, mandate criminal jurisdiction by a State Party when its national is a perpetrator and permit the assertion of jurisdiction when its national is a victim of an offense prohibited by those conventions. Further, experience has shown that it is often the country whose nationals were victims of the hijacking which is willing to commit the necessary resources to locate, prosecute, and incarcerate the perpetrators for a period of time commensurate with their criminal acts. For those foreign civil aircraft hijackings involving no United States nationals as victims or perpetrators, section 46502 would continue to carry out the U.S. obligation under the Convention to prosecute or extradite an alien perpetrator who was subsequently found in the United States.

Under the clarified statute, subject matter jurisdiction over the offense would vest whenever a United States national was on a hijacked flight or was the perpetrator of the hijacking. Where a United States national is the perpetrator, all perpetrators, including non-U.S. nationals, would be subject to indictment for the offense, since these non-national defendants would be either principals or aiders and abettors within the meaning of 18 U.S.C. 2.

Paragraph (a)(2) amends 49 U.S.C. 46502(b)(2) to set forth the three different subject matter jurisdictional bases. It has the effect of repealing the current provision which failed to fully execute our treaty obligation. Presently, paragraph 46502(b)(2) reads: "This subsection applies only if the place of takeoff or landing of the aircraft on which the individual commits the

offense is located outside the territory of the country of registration of the aircraft." Paragraph (b)(2) was intended to reflect paragraph 3 of Article 3 of the Hague Convention, which states that the convention normally applies "only if the place of take-off or the place of actual landing of the aircraft on which the offense is committed is situated outside the territory of the State or registration of that aircraft." However, the authors of the original legislation apparently overlooked the obligation imposed by paragraph 5 of Article 3 of the Convention which applies when the alleged aircraft hijacker is found in the territory of a State Party other than the State of registration of the hijacked aircraft. Paragraph 5 states: "Notwithstanding paragraphs 3 and 4 of this Article, Article 6, 7, 8 and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft."

For example, under the Hague Convention, the hijacking of an Air India flight that never left India is not initially covered by the Convention. (Article 3, paragraph 3.) However, the subsequent travel of the offender from India to the jurisdiction of another State Party triggers treaty obligations. Paragraph 5 makes the obligation of Article 7, to either prosecute or extradite an alleged offender found in a party's territory, applicable to a hijacker of a purely domestic air flight who flees to another State.

Paragraph (a)(3) creates a new section 46502(b)(3) which provides a definition of "national of the United States" that has been used in other terrorism provisions, see, e.g., 18 U.S.C. 2331(2) and 3077(2)(A).

Subsection 103(b) amends section 32(b) of title 18, United States Code. Presently, section 32(b) carries out the treaty obligation of the United States, as a State Party to the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, to prosecute or extradite offenders found in the United States who have engaged in certain acts of violence directed against foreign civil aircraft located outside the United States. The proposed amendment would fully retain current jurisdiction and would establish additional jurisdiction where a United States national was the perpetrator or a United States national was on board such aircraft when the offense was committed. Because subsection 32(b)(3) of title 18, United States Code, covers the placement of destructive devices upon such aircraft and a "victim" does not necessarily have to be on board the aircraft at the time of such placement, the phrase "or would have been on board" has been used. In such instances, the prosecution would have to establish that a United States national would have been on board a flight that such aircraft would have undertaken if the destructive device had not been placed thereon.

Subsection 103(b) is drafted in the same manner as paragraph (a)(2), above, so that once subject matter jurisdiction over the offense vests, all the perpetrators of the offense are subject to indictment for the offense.

Subsections 103(c), (d), (e) and (f) would amend 18 U.S.C. 1116 (murder), 112 (assault), 878 (threats), and 1201 (kidnapping), respectively. The primary purpose of these proposed amendments is to extend federal jurisdiction to reach United States nationals, or those acting in concert with such a national, who commit one of the specified offenses against an internationally protected person located outside of the United States. The invocation of such jurisdiction under U.S. law is required by the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including diplomatic agents. It was apparently omitted as an oversight when the implementing federal legislation was enacted in 1976 (P.L. 94-467).

Additionally, the provisions would also clarify existing jurisdiction. The language used in the first sentence of sections 1116(e), 112(e), 878(d), and 1201(e) is ambiguous as pertains to instances in which the victim is a United States diplomat. The first sentence in each of these provisions now reads: "If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender."

This sentence could be read to require the presence of the offender in the United States even when the internationally protected person injured overseas was a United States diplomat. This would be anomalous and was likely not intended. Accordingly, subsections (c)-(f) rewrite the first sentence to read as follows:

> If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.

The provision is drafted, in the same manner as the aircraft piracy and aircraft destruction measures, so that once subject matter jurisdiction over the offense is vested, all the perpetrators of the offense would be subject to indictment for the offense.

Subsections 103(c)-(f) also would incorporate in an appropriate manner the definition of "national of the United States" in sections 1116, 112, 878, and 1201 of title 18.

Subsection 103(g) contains an amendment similar in nature to those in the preceding subsections. It expands federal jurisdiction over extraterritorial offenses involving violence at international airports under 18 U.S.C. 37. That provision, enacted as section 60021 of Public Law 103-322, presently reaches such crimes committed outside the United States only when the offender is later found in the United States. There is, however, good reason to provide for federal jurisdiction over such terrorist crimes when an offender or a victim is a United States national. In such circumstances the interests of the United States are equal to, if not greater than, the circumstance where neither the victim nor the offender is necessarily a United States national but the offender is subsequently found in this country.

Subsection 103(h) adds the standard definition of the term "national of the United States" to 18 U.S.C. 178. This term is used earlier in the chapter (in 18 U.S.C. 175(a), which provides for extraterritorial jurisdiction over crimes involving biological weapons "committed by or against a national of the United States") but no definition is provided.

Section 201.

In recent years, the Department of Justice has obtained considerable evidence of involvement in terrorism by aliens in the United States. Both legal aliens, such as lawful permanent residents and aliens here on student visas, and illegal aliens are known to have aided and to have received instructions regarding terrorist acts from various international terrorist groups. While many of these aliens would be subject to deportation proceedings under the Immigration and Nationality Act (INA), these proceedings present serious difficulties in cases involving classified information. Specifically, these procedures do not prevent disclosure of classified information where such disclosure would pose a risk to national security. Consequently, section 201 sets out a new title in the INA devoted exclusively to the removal of aliens involved in terrorist activity where classified information is used to sustain the grounds for deportation.

The new title would create a special court, patterned after the special court created under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.*). When the Department of Justice believes that it has identified an alien in the United States who has engaged in terrorist activity, and that to afford such an alien a deportation hearing would reveal classified national security information, it could seek an *ex parte* order from the court. The order would authorize a formal hearing, called a special removal hearing, before the same court, at which the Department of Justice would seek to prove by clear and convincing evidence that the alien had in fact engaged in terrorist activity. At the hearing, classified evidence could be presented *in camera*

and not revealed to the alien or the public, although its general nature would normally be summarized.

Enactment of section 201 would provide a valuable new tool with which to combat aliens who use the United States as a base from which to launch or fund terrorist attacks either on U.S. citizens or on persons in other countries. It is a carefully measured response to the menace posed by alien terrorists and fully comports with and exceeds all constitutional requirements applicable to aliens.

Subsection 201(a) sets out findings that aliens are committing terrorist acts in the United States and against United States citizens and interests and that the existing provisions of the INA providing for the deportation of criminal aliens are inadequate to deal with this threat. These findings are in addition to the general findings contained in section 3 of the bill. The findings explain that these inadequacies arise primarily because the INA, particularly in its requirements pertaining to deportation hearings, may require disclosure of classified information.

The findings are important in explaining Congressional intent and purpose. As noted above, section 201 creates an entirely new type of hearing to determine whether aliens believed to be terrorists should be removed from the United States. At such a "special removal hearing," the government would be permitted to introduce *in camera* and *ex parte* classified evidence that the alien has engaged in terrorist activity. Such hearings would be held before Article III judges. The *in camera* and *ex parte* portion of the hearing would relate to classified information which, if provided to the alien or otherwise made public, would pose a risk to national security. Such an extraordinary type of hearing would be invoked only in a very small percentage of deportation cases, and would be applicable only in those cases in which an Article III judge has found probable cause to believe that the aliens in question are involved in terrorist activity. Although the bill provides the alien many rights equal to -- and in some respects greater than -- those enjoyed by aliens in ordinary deportation proceedings, the rights specified for aliens subject to a special removal hearing are deemed exclusive of any rights otherwise afforded under the INA.

It is within the power of Congress to provide for a special adjudicatory proceeding and to specify the procedural rights of aliens involved in terrorist acts. The Supreme Court has noted that "control over matters of immigration is a sovereign prerogative, largely within the control of the Executive and the Legislature . . . . The role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy." Landon v. Plasencia, 459 U.S. 21, 34-35 (1982).

Moreover, Congress can specify what type of process is due different classes of aliens. "[A] host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other; and the class of aliens itself is a heterogeneous multitude of persons with a wide-ranging variety of ties to this country." Mathews v. Diaz, 426 U.S. 67, 78-79 (1976). Because the Due Process Clause does not require "that all aliens must be placed in a single homogeneous legal classification," id., Congress can provide separate processes and procedures for determining whether to remove resident and non-resident alien terrorists.

Subsection 201(b) adds a new title V to the INA to provide a special process for removing alien terrorists when compliance with normal deportation procedures might adversely affect national security interests of the United States. However, the new title V is not the only way of expelling alien terrorists from the United States. In addition to proceedings under the new special removal provisions, aliens falling within 8 U.S.C. 1251(a)(4) (B) alternatively could be deported following a regular deportation hearing. Moreover, like all other aliens, alien terrorists remain subject to possible expulsion for any of the remaining deportation grounds specified in section 241 of the Act (8 U.S.C. 1251). For example, alien terrorists who violate the criminal laws of the United States remain subject to "ordinary" deportation proceedings on charges under INA section 241(a)(2). The special removal provisions augment, without in any way narrowing, the prosecutorial options in cases of alien terrorists.

The new title V consists of four new sections of the INA, sections 501-504 (8 U.S.C. 1601-1604). Briefly, the title provides for creation of a special court comprised of Article III judges, patterned after the special court created under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.*). When the Department of Justice believes it has identified an alien terrorist, that is, an alien who falls within 8 U.S.C. 1251(a)(4)(B), and determines that to disclose the evidence of that fact to the alien or the public would compromise national security, the Department may seek an order from the special court. The order would authorize the Department to present the classified portion of its evidence that the alien is a terrorist *in camera* and *ex parte* at a special removal hearing. The classified portion of the evidence would be received in chambers with only the court reporter, the counsel for the government, and the witness or document present. The general nature of such evidence, without identifying classified or sensitive particulars, would than normally be revealed to the alien, his counsel, and the public in summarized form. The summary would have to be found by the court to be sufficient to permit the alien to prepare a defense.

Where an adequate summary, as determined by the court, would pose a risk to national security, and, hence, unavailable to the alien, the special hearing would be terminated unless the court found that (1) the continued presence of the alien in the United States or (2) the preparation of the adequate summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person. If such a situation exits, the special removal hearing would continue, the alien would not receive a summary, and the relevant classified information could be introduced against the alien pursuant to subsection (j).

If, at the conclusion of the hearing, the judge finds that the government has established by clear and convincing evidence that the alien has engaged in terrorist activity, the judge would order the alien removed from the United States. The alien could appeal the decision to the United States Court of Appeals for the District of Columbia Circuit, and ultimately could petition for a writ of certiorari to the Supreme Court.

Use of information that is not made available to the alien for reasons of national security is a well-established concept in the existing provisions of the INA and immigration regulations. For example, section 235(c) provides for an expedited exclusion process for aliens excludable under 8 U.S.C. 1182(a)(3) (providing for the exclusion, *inter alia*, of alien spies, saboteurs, and terrorists), and states in relevant part:

> If the Attorney General is satisfied that the alien is excludable under [paragraph 212(a)(3)] on the basis of information of a confidential nature, the disclosure of which the Attorney General, in his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security, he may in his discretion order such alien to be excluded and deported without any inquiry or further inquiry by [an immigration judge].

Thus, where it is necessary to protect sensitive information, existing law authorizes the Attorney General to conduct exclusion proceedings outside the ordinary immigration court procedures and to rely on classified information in ordering the exclusion of alien terrorists.

In the deportation context, 8 C.F.R. 242.17 (1990) provides that in determining whether to grant discretionary relief to an otherwise deportable alien, the immigration judge

> may consider and base his decision on information not contained in the record and not made available for inspection by the [alien], provided the Commissioner has determined that such information is relevant and

is classified under Executive Order No. 12356 (47 FR 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security.

The constitutionality of this provision has been upheld. Suciu v. INS, 755 F.2d 127 (8th Cir. 1985). The alien in that case had been in the United States for 16 years and had become deportable for overstaying his student visa, a deportation ground ordinarily susceptible to discretionary relief. Nevertheless, the court held that it was proper to deny the alien discretionary relief without disclosing to him the reasons for the denial. Suciu followed the Supreme Court's holding sustaining the constitutionality of a similar predecessor regulation in Jay v. Boyd, 351 U.S. 345 (1956).

Section 501 (Applicability)

Section 501 sets forth the applicability of the new title. Section 501(a) states that the title may, but need not, be employed by the Department of Justice whenever it has information that an alien is subject to deportation because he is an alien described in 8 U.S.C. 1251(a)(4)(B), that is, because he has engaged in terrorist activity.

Section 501(b) provides that whenever an official of the Department of Justice determines to seek the expulsion of an alien terrorist under the special removal provisions, only the provisions of the new title need be followed. This ensures that such an alien will not be deemed to have any additional rights under the other provisions of the INA. Except when specifically referenced in the special removal provisions, the remainder of the INA would be inapplicable. For example, under the special removal provisions an alien who has entered the United States (and thus is not susceptible to exclusion proceedings) need not be given a deportation hearing under section 242 of the Act, 8 U.S.C. 1252, and will not have available the rights generally afforded aliens in deportation proceedings (e.g., the opportunity for an alien out of status to correct his status).

Section 501(c) states that Congress has enacted the title upon finding that alien terrorists represent a unique threat to the security interests of the United States. Consequently, the subsection states Congress' specific intent that the Attorney General be authorized to remove such aliens without resort to a traditional deportation hearing, following an *ex parte* judicial determination of probable cause to believe they have engaged in terrorist activity and a further judicial determination, following a modified adversarial hearing, that the Department of Justice has established by clear and convincing evidence that the aliens in fact have engaged in terrorist activity.

Section 501(c) is designed to make clear that singling out alien terrorists for a special type of hearing rather than according them ordinary deportation hearings is a careful and deliberate policy choice by a political branch of government. This policy choice is grounded upon the legislative determination that alien terrorists seriously threaten the security interests of the United States and that the existing process for adjudicating and effecting alien removal is inadequate to meet this threat. In accordance with settled Supreme Court precedent, such a choice is well within the authority of the political branches of government to control our relationship with and response to aliens.

For example, in Mathews v. Diaz, supra, the Court held that Congress could constitutionally provide that only some aliens were entitled to Medicare benefits. The Court held that it was "unquestionably reasonable for Congress to make an alien's eligibility depend on both the character and duration of his residence," and noted that the Court was "especially reluctant to question the exercise of congressional judgment" in matters of alien regulation. 426 U.S. at 83, 84; see Fiallo v. Bell, 430 U.S. 787, 792 (1977) (describing the regulation of aliens as a political matter "largely immune from judicial control"). The specific findings and reference to the intent in adopting the new provisions of title V make clear the policy judgment that alien terrorists should be treated as a separate class of aliens and that this choice should not be disturbed by the courts.

Section 502 (Special Removal Hearing)

Section 502 sets out the procedure for the special removal hearing. Section 502(a) provides that whenever the Department of Justice determines to use the special removal process it must submit a written application to the special court (established pursuant to section 503) for an order authorizing such procedure. Each application must indicate that the Attorney General or Deputy Attorney General has approved its submission and must include the identity of the Department attorney making the application, the identity of the alien against whom removal proceedings are sought, and a statement of the facts and circumstances relied upon by the Department of Justice as justifying the belief that the subject is an alien terrorist and that following normal deportation procedures would pose a risk to the national security of the United States.

Section 502(b) provides that applications for special removal proceedings shall be filed under seal with the special court established pursuant to section 503. At or after the time the application is filed, the Attorney General may take the subject alien into custody. The Attorney General's authority to retain the alien in custody is governed by the provisions of new title V which, as explained below, provide in certain circumstances for the release of the alien.

Although title V does not require the Attorney General to take the alien subject to a special removal applications into custody, it is expected that most such aliens will be apprehended and confined. The Attorney General's decision whether to take a non-resident alien into custody will not be subject to judicial review. However, a resident alien is entitled to a release hearing before the judge assigned by the special court. The resident alien may be released upon such terms and conditions prescribed by the court (including the posting of any monetary amount), if the alien demonstrates to the court that the alien, if released, is not likely to flee and that the alien's release will not endanger national security or the safety of any person or the community. Subsequent provisions (section 504(a)) authorize the Attorney General to retain custody of alien terrorists who have been ordered removed until such aliens can be physically delivered outside our borders.

Section 502(c) provides that special removal applications shall be considered by a single Article III judge in accordance with section 503. In each case, the judge shall hold an *ex parte* hearing to receive and consider the written information provided with the application and such other evidence, whether documentary or testimonial in form, as the Department of Justice may proffer. The judge shall grant an *ex parte* order authorizing the special removal hearing as provided under title V if the judge finds that, on the basis of the information and evidence presented, there is probable cause to believe that the subject of the application is an alien who falls within the definition of alien terrorist and that adherence to the ordinary deportation procedures would pose a risk to national security.

Section 502(d)(1) provides that in any case in which a special removal application is denied, the Department of Justice within 20 days may appeal the denial to the United States Court of Appeals for the District of Columbia Circuit. In the event of a timely appeal, a confined alien may be retained in custody. When the Department of Justice appeals from the denial of a special removal application, the record of proceedings will be transmitted to the Court of Appeals under seal and the court will hear the appeal *ex parte*. Subsequent provisions (section 502(p)) authorize the Department of Justice to petition the Supreme Court for a writ of certiorari from an adverse appellate judgment.

Section 502(d)(2) provides that if the Department of Justice does not seek appellate review of the denial of a special removal application, the subject alien must be released from custody unless, as a deportable alien, the alien may be arrested and taken into custody pursuant to title II of the INA. Thus, for example, when the judge finds that the special procedures of title V are unwarranted but the alien is subject to deportation as an overstay or for violation of status, the alien might be retained in custody

but such detention would be pursuant to and governed by the provisions of title II.

Subsection 502(d)(3) provides that if a special removal application is denied because the judge finds no probable cause that the alien has engaged in terrorist activities, the alien must be released from custody during the pendency of an appeal by the government. However, section 502(d)(3) is similar to section 502(d)(2) in that it provides for the possibility of continued detention in the case of aliens who otherwise are subject to deportation under title II of the Act.

Section 502(d)(4) applies to cases in which the judge finds probable cause that the subject of a special removal application has been correctly identified as an alien terrorist, but fails to find probable cause that use of the special procedures are necessary for reasons of national security, and the Department of Justice determines to appeal. A finding that the alien has engaged in terrorist activity -- a ground for deportation that would support confinement under title II of the Act -- justifies retaining the alien in custody. Nevertheless, section 502(d)(4) provides that the judge must determine the question of custody based upon an assessment of the risk of flight and the danger to the community or individuals should the alien be released. The judge shall release the alien subject to the least restrictive condition(s) that will reasonably assure the alien's appearance at future proceedings, should the government prevail on its appeal, and will not endanger the community or individual members thereof. The possible release conditions are those authorized under the Bail Reform Act of 1984, 18 U.S.C. 3142(b) and (c), and range from release on personal recognizance to release on execution of a bail bond or release limited to certain places or periods of time. As with the referenced provisions of the Bail Reform Act, the judge may deny release altogether upon determining that no condition(s) of release would assure the alien's future appearance and community safety.

Section 502(e)(1) provides that in cases in which the special removal application is approved, the judge must then consider each piece of classified evidence that the Department of Justice proposes to introduce *in camera* and *ex parte* at the special removal hearing. The judge shall authorize the *in camera* and *ex parte* introduction of any item of classified evidence if such evidence is relevant to the deportation charge.

Section 502(e)(1) also provides that with respect to any evidence authorized to be introduced *in camera* and *ex parte*, the judge must consider how the alien subject to the proceedings is to be advised regarding such evidence. The Department of Justice must prepare a summary of the classified information. The court must find the summary to be sufficient to inform the alien of the general nature of the evidence that he has engaged in terrorist

activity, and to permit the alien to prepare a defense. A summary, however, "shall not pose a risk to the national security." In considering the summary to be provided to the alien of the government's proffered evidence, it is intended that the judge balance the alien's interest in having an opportunity to hear and respond to the case against him against the government's extraordinarily strong interest in protecting the national security. The Department of Justice shall provide the alien a copy of the court approved summary.

In situations where the court does not approve the proposed summary, the Department of Justice can amend the summary to meet specific concerns raised by the court. Subsection (e)(2) provides that if such submission is still found unacceptable, the special removal proceeding is to be terminated unless the court finds that the continued presence of the alien in the United States or the preparation of an adequate summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person. If such a situation exists, the special removal hearing would continue, the alien would be notified that no summary is possible, and relevant classified information could be introduced against the alien pursuant to subsection (j).

Section 502(e)(3) provides that, in certain situations, the Department of Justice may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit from the judge's rulings regarding the *in camera* and *ex parte* admission and summarization of particular items of evidence. Interlocutory appeal is authorized if the judge rules that a piece of classified information may not be introduced *in camera* and *ex parte* because it is not relevant; or if the Department disagrees with the judge regarding the wording of a summary (that is, if the Department believes that the scope of summary required by the court will compromise national security). Interlocutory appeal is also authorized when the court refuses to make the finding permitted by subsection (e)(2). Because the alien is to remain in custody during such an appeal, the Court of Appeals must hear the matter as expeditiously as possible. When the Department appeals, the entire record must be transmitted to the Court of Appeals under seal and the court shall hear the matter *ex parte*.

Section 502(f) provides that in any case in which the Department's application is approved, the court shall order a special removal hearing for the purpose of determining whether the alien in question has engaged in terrorist activity. Subsection (f) provides that "[i]n accordance with subsection (e), the alien shall be given reasonable notice of the nature of the charges against him and a general account of the basis for the charges." This cross-reference is intended to make clear that subsection (f) is not to be construed as requiring that information be given to the alien about the nature of the charges if such information would

reveal the matters that are to be introduced *in camera*. The special removal hearing must be held as expeditiously as possible.

Section 502(g) provides that the special removal hearing shall be held before the same judge who approved the Department of Justice's application unless the judge becomes unavailable due to illness or disability.

Section 502(h) sets out the rights to be afforded to the alien at the special removal hearing. The hearing shall be open to the public, the alien shall have the right to be represented by counsel (at government expense if he cannot afford representation), and to introduce evidence in his own behalf. Except as provided in section 502(j) regarding presentation of evidence *in camera* and *ex parte*, the alien also shall have a reasonable opportunity to examine the evidence against him and to cross-examine adverse witnesses. As in the case of administrative proceedings under the INA and civil proceedings generally, the alien may be called as a witness by the Department of Justice. A verbatim record of the proceedings and of all evidence and testimony shall be kept.

Section 502(i) provides that either the alien or the government may request the issuance of a subpoena for witnesses and documents. A subpoena request may be made *ex parte*, except that the judge must inform the Department of Justice where the subpoena sought by the alien threatens disclosure of evidence or the source of evidence which the Department of Justice has introduced or proffered for introduction *in camera* and *ex parte*. In such cases, the Department of Justice shall be given a reasonable opportunity to oppose the issuance of a subpoena and, if necessary to protect the confidentiality of the evidence or its source, the judge may, in his discretion, hear such opposition *in camera*. A subpoena under section 502(i) may be served anywhere in the United States. Where the alien shows an inability to pay for the appearance of a necessary witness, the court may order the costs of the subpoena and witness fee to be paid by the government from funds appropriated for the enforcement of title II of the INA. Section 502(i) states that it is not intended to allow the alien access to classified information.

Section 502(j) provides that any evidence which has been summarized pursuant to section 502(e)(1) may be introduced into the record, in documentary or testimonial form, *in camera* and *ex parte*. The section also permits the introduction of relevant classified information if the court has made the finding permitted by subsection (e)(2). While the alien and members of the public would be aware that evidence was being submitted *in camera* and *ex parte*, neither the alien nor the public would be informed of the nature of the evidence except as set out in section 502(e)(1). For example, if the Department of Justice sought to present *in camera* and *ex parte* evidence through live testimony, the courtroom could be cleared of the alien, his counsel, and the public while the

testimony is presented. Alternatively, the court might hear the testimony in chambers attended by only the reporter, the government's counsel, and the witness. In the case of documentary evidence, sealed documents could be presented to the court without examination by the alien or his counsel (or access by the public).

While the Department of Justice does not have to present evidence *in camera* and *ex parte*, even if it previously has received authorization to do so, it is contemplated that ordinarily much of the government's evidence (or at least the crucial portions thereof) will be presented in this fashion rather than in open court. The right to present evidence *in camera* and *ex parte* will have been determined in the *ex parte* proceedings before the court pursuant to subsections (a) through (c) of section 502.

Section 502(k) provides that evidence introduced in open session or *in camera* and *ex parte* may include all or part of the information that was presented at the earlier *ex parte* proceedings. If the evidence is to be introduced *in camera* and *ex parte*, the attorney for the Department of Justice could refer the judge to such evidence in the transcript of the *ex parte* hearing and ask that it be considered as evidence at the removal hearing itself. The Department might present evidence in open court rather than *in camera* and *ex parte* as a result of changed circumstances, for example, where the source whose life was at risk had died before the hearing or if the Department believes that a public presentation of the evidence might have a deterrent effect on other terrorists. In any event, once the Department of Justice has received authorization to present evidence *in camera* and *ex parte*, its decision whether to do so is purely discretionary and is not subject to review at the time of the special removal hearing. Of course, the disclosure of any classified information requires appropriate consultation with the originating agency.

Section 502(l) provides that following the introduction of evidence, the attorney for the Department of Justice and the attorney for the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the alien's removal. At the judge's discretion, *in camera* and *ex parte* argument by the Department of Justice attorney may be heard regarding evidence received *in camera* and *ex parte*.

Section 502(m) provides that the Department of Justice has the burden of showing that the evidence is sufficient. This burden is not satisfied unless the Department establishes by clear and convincing evidence -- the standard of proof applicable in a deportation hearing -- that the alien has engaged in terrorist activity. If the judge finds that the Department has met that burden, the judge must order the alien removed. In cases in which the alien has been shown to have engaged in terrorist activity, the judge has no authority to decide that removal would be unwarranted.

If the alien was a resident alien granted release, the court is to order the Attorney General to take the alien into custody.

Section 502(n)(1) provides that the judge must render his decision as to the alien's removal in the form of a written order. The order must state the facts found and the conclusions of law reached, but shall not reveal the substance of any evidence received *in camera* or *ex parte*.

Section 502(n)(2) provides that either the alien or the Department of Justice may appeal the judge's decision to the United States Court of Appeals for the District of Columbia Circuit. Any such appeal must be filed within 20 days, and during this period the order shall not be executed. Information received *in camera* and *ex parte* at the special removal hearing shall be transmitted to the Court of Appeals under seal. The Court of Appeals must hear the appeal as expeditiously as possible.

Section 502(n)(3) sets out the standard of review for proceedings in the Court of Appeals. Questions of law are to be reviewed *de novo*, but findings of fact may not be overturned unless clearly erroneous. This is the usual standard in civil cases.

Section 502(o) provides that in cases in which the judge decides that the alien should not be removed, the alien must be released from custody. There is an exception for aliens who may be arrested and taken into custody pursuant to title II of the INA as aliens subject to deportation. For such aliens, the issues of release and/or circumstances of continued detention would be governed by the pertinent provisions of the INA.

Section 502(p) provides that following a decision by the Court of Appeals, either the alien or the government may seek a writ of certiorari in the Supreme Court. In such cases, information submitted to the Court of Appeals under seal shall, if transmitted to the Supreme Court, remain under seal.

Section 502(q) sets forth the normal right the Government has to dismiss a removal action at any stage of the proceeding.

Section 502(r) acknowledges that the United States retains its common law privileges.

Section 503 (Designation of Judges)

Section 503 establishes the special court to consider terrorist removal cases under section 502, patterned on the special court created under the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801 *et seq*. Section 503(a) provides that the court will consist of five federal district court judges chosen by the Chief Justice of the United States from five different judicial circuits.

One of these judges shall be designated as the chief or presiding judge. Should the Chief Justice determine it appropriate, he could designate as judges under this section some of those that he has designated pursuant to section 1803(a) of title 50, United States Code for the Foreign Intelligence Surveillance Court. The presiding judge shall promulgate rules for the functioning of the special court. The presiding judge also shall be responsible for assigning cases to the various judges. Section 503(c) provides that judges shall be appointed to the special court for terms of five years, except for the initial appointments the terms of which shall vary from one to five years so that one new judge will be appointed each year. Judges may be reappointed to the special court.

Section 503(b) provides that all proceedings under section 502 are to be held as expeditiously as possible. Section 503(b) also provides that the Chief Justice, in consultation with the Attorney General, the Director of Central Intelligence and other appropriate officials, shall provide for the maintenance of appropriate security measures to protect the *ex parte* special removal applications, the orders entered in response to such applications, and the evidence received *in camera* and *ex parte* sufficient to prevent disclosures which could compromise national security.

Section 504 (Miscellaneous Provisions)

Section 504 contains the title's miscellaneous provisions. Section 504(a) provides that following a final determination that the alien terrorist should be removed (that is, after the special removal hearing and completion of any appellate review), the Attorney General may retain the alien in custody (or if the alien was released, apprehend and place the alien in custody) until he can be removed from the United States. The alien is provided the right to choose the country to which he will be removed, subject to the Attorney General's authority, in consultation with the Secretary of State, to designate another country if the alien's choice would impair a United States treaty obligation (such as an obligation under an extradition treaty) or would adversely affect the foreign policy of the United States. If the alien does not choose a country or if he chooses a country deemed unacceptable, the Attorney General, in coordination with the Secretary of State, must make efforts to find a country that will take the alien. The alien may, at the Attorney General's discretion, be kept in custody until an appropriate country can be found, and the Attorney General shall provide the alien with a written report regarding such efforts at least once every six months. The Attorney General's determinations and actions regarding execution of the removal order are not subject to direct or collateral judicial review, except for a claim that continued detention violates the alien's constitutional rights. The alien terrorist shall be photographed

and fingerprinted and advised of the special penalty provisions for unlawful return before he is removed from the United States.

Section 504(b) provides that, notwithstanding section 504(a), the Attorney General may defer the actual removal of the alien terrorist to allow the alien to face trial on any State or federal criminal charge (whether or not related to his terrorist activity) and, if convicted, to serve a sentence of confinement. Section 504(b)(2) provides that pending the service of a State or federal sentence of confinement, the alien terrorist is to remain in the Attorney General's custody unless the Attorney General determines that the alien can be released to the custody of State authorities for pretrial confinement in a State facility without endangering national security or public safety. It is intended that where the alien terrorist could possibly secure pretrial release, the Attorney General shall not release the alien to a State for pretrial confinement. Section 503(b)(3) provides that if an alien terrorist released to State authorities is subsequently to be released from state custody because of an acquittal in the collateral trial, completion of the alien's sentence of confinement, or otherwise, the alien shall immediately be returned to the custody of the Attorney General who shall then proceed to effect the alien's removal from the United States.

Section 504(c) provides that for purposes of sections 751 and 752 of title 18 (punishing escape from confinement and aiding such an escape), an alien in the Attorney General's custody pursuant to this new title -- whether awaiting or after completion of a special removal hearing -- shall be treated as if in custody by virtue of a felony arrest. Accordingly, escape by or aiding the escape of an alien terrorist will be punishable by imprisonment for up to five years.

Section 504(d) provides that an alien in the Attorney General's custody pursuant to this new title -- whether awaiting or after completion of a special removal hearing -- shall be given reasonable opportunity to receive visits from relatives and friends and to consult with his attorney. Determination of what is "reasonable" usually will follow the ordinary rules of the facility in which the alien is confined.

Section 504(d) also provides that when an alien is confined pursuant to this new title, he shall have the right to contact appropriate diplomatic or consular officers of his country of citizenship or nationality. Moreover, even if the alien makes no such request, subsection (d) directs the Attorney General to notify the appropriate embassy of the alien's detention.

Subsection 201(c) sets out three conforming amendments to the INA. First, section 106 of the INA, 8 U.S.C. § 1105a, is amended to provide that appeals from orders entered pursuant to section 235(c) of the Act (pertaining to summary exclusion proceedings for

alien spies, saboteurs, and terrorists) shall be to the United States Court of Appeals for the District of Columbia Circuit. Thus, in cases involving alien terrorists, the same court of appeals shall hear both exclusion and deportation appeals and will develop unique expertise concerning such cases.

Second, section 276 of the INA, 8 U.S.C. § 1326, is amended to add increased penalties for an alien entering or attempting to enter the United States without permission after removal under the new title or exclusion under section 235(c) for terrorist activity. For aliens unlawfully re-entering or attempting to reenter the United States, the section presently provides for a fine pursuant to title 18 and/or imprisonment for up to two years (five years when the alien has been convicted of a felony in the United States, or 15 years when convicted of an "aggravated felony"); the bill increases to a mandatory ten years the term of imprisonment for re-entering alien terrorists.

Finally, section 106 of the INA, 8 U.S.C. § 1105a, is amended to strike subsection (a)(10) regarding habeas corpus review of deportation orders. Originally enacted in 1961 to make clear that the exclusive provision for review of final deportation orders through petition to the courts of appeals was not intended to extinguish traditional writs of habeas corpus in cases of wrongful detention, the subsection has been the source of confusion and duplicative litigation in the courts. Congress never intended that habeas corpus proceedings be an alternative to the process of petitioning the courts of appeals for review of deportation orders. Elimination of subsection (a)(10) will make clear that any review of the merits of a deportation order or the denial of relief from deportation is available only through petition for review in the courts of appeals, while leaving unchanged the traditional writ of habeas corpus to examine challenges to detention arising from asserted errors of constitutional proportions.

Subsection 201(d) provides that the new provisions are effective upon enactment and "apply to all aliens without regard to the date of entry or attempted entry into the United States." Aliens may not avoid the special removal process on the grounds that either their involvement in terrorist activity or their entry into the United States occurred before enactment of the new title. Upon enactment, the new title will be available to the Attorney General for removal of any and all alien terrorists when classified information is involved.

Section 202.

This section makes additional changes to the Immigration and Naturalization Act (INA) besides those contained in section 201. It improves the government's ability to deny visas to alien

terrorist leaders and to deport non-resident alien terrorists under the INA.

Subsection 202(a) amends the excludability provisions of the INA relating to terrorism activities (section 212(a)(3)(B) of the INA (8 U.S.C. 1182(a)(3)(B)). Most of the changes are clarifying in nature, but a few are substantive. The changes are:

(1) "Terrorist" is changed to "terrorism" in most instances in order to direct focus on the nature of the activity itself and not the character of the particular individual perpetrator.

(2) Definitions of "terrorist organization" and "terrorism" are added. The definition of "terrorist organization" includes subgroups. Although a terrorist organization may perform certain charitable activities, e.g., run a hospital, this does not remove its characterization of being a terrorist organization if it, or any of its subgroups, engages in terrorism activity. The definition of "terrorism" describes terrorism as the "premeditated politically motivated violence perpetrated against noncombat targets." This is consistent with existing law found elsewhere in the federal code. See, e.g., 22 U.S.C. 2656f(d).

(3) In order to make "representatives" of certain specified terrorist organizations excludable, the term has been expanded to cover any person who directs, counsels, commands or induces the organization or its members to engage in terrorism activity. The terms "counsels, commands, or induces" are used in 18 U.S.C. 2. Presently, only the officers, officials, representatives and spokesman are deemed to be excludable. This change expands coverage to encompass those leaders of the group who may not hold formal titles and those who are closely associated with the group and exert leadership over the group but may not technically be a member. This is not a mere membership provision.

(4) In order to make the "leaders" of more terrorist organizations excludable without having to establish that they personally have engaged in terrorist activity, the revision gives the President authority to designate terrorist organizations based on a finding that they are detrimental to the interests of the United States. (Presently, only the PLO is expressly cited in the existing statute.) Implicit with the right to designate is the authority to remove an organization that the President has previously designated. By giving the President this authority, which is similar to subsection (f) of section 212 (8 U.S.C. 212(f)), the President can impose stricter travel limitations on the leaders of terrorist organizations who desire to visit the United States. For a leader of a

designated terrorist organization to obtain a visa, he would have to solicit a waiver from the Attorney General under subsection 212(d)(3) (8 U.S.C. 1182(d)(3)) to obtain temporary admission. In deciding whether or not to grant the waiver, the Attorney General could, should he/she decide to grant a waiver, impose whatever restrictions are warranted on the alien's presence in the United States.

(5) The words "it had been" are inserted in the first sentence of the definition of "terrorism activity" in order to make clear that it is United States law (federal or state) which is used to determine whether overseas violent activity is considered criminal.

(6) The term "weapon" is added to clause (V)(b) in the definition of "terrorist activity" in order to cover those murders carried out by deadly and dangerous devices other than firearms or explosives (e.g., a knife).

(7) The knowledge requirement in clause (III) of the definition of "engage in terrorism activity" was deleted as unnecessary, as similar language has been added in the beginning of the definition.

(8) The term "documentation or" has been add to "false identification" in clause (III) of the definition of "engage in terrorism activity" to encompass other forms of false documentation that might be provided to facilitate terrorism activity. The term "false identification" would include stolen, counterfeit, forged and falsely made identification documents.

Subsection 202(b) amends section 241(a)(4)(B) of the INA (8 U.S.C. 1251(a)(4)(B)) to reflect the change in section 212(a)(3)(B) (8 U.S.C. 1182(a)(3)(B)) from "terrorist" to "terrorism."

Subsection 202(c) adds a sentence to section 291 of the INA (8 U.S.C. 1361) to clarify that discovery by the alien in a deportation proceeding is limited only to those documents in the INS file relating to the alien's entry. Section 291 was never intended to authorized discovery beyond this limited category of documents.

Subsection 202(d) makes an important change to section 242(b)(3) of the INA (8 U.S.C. 1252(b)(3)). First, in the case of non-resident aliens it precludes the alien's access to any classified information that is being used to deport them. Secondly, it denies non-resident aliens any rights under 18 U.S.C 3504 (relating to access concerning sources of evidence) and 50 U.S.C. 1801 et seq. (relating to the Foreign Intelligence Surveillance Act) during their deportation.

Section 203.

Section 203 amends the confidentiality provisions contained in the Immigration and Nationality Act (INA) for an alien's application relating to legalization (section 245 A(c)(5) of the INA (8 U.S.C. 1255(a)(c)(5)) or special agricultural worker status (section 210(b)(5) and (6) of the INA (8 U.S.C. 1160(b)(5) and (6)). At present, it is very difficult to obtain crucial information contained in these files, such as fingerprints, photographs, addresses, etc., when the alien becomes a subject of a criminal investigation. In both the World Trade Center bombing and the killing of CIA personnel on their way to work at CIA Headquarters, the existing confidentiality provisions hindered law enforcement efforts.

Subsection 203(a) amends the confidential provisions for legalization files. It permits access to the file if a federal court finds that the file relates to an alien who has been killed or severely incapacitated or is the suspect of an aggravated felony. Subsection 203(b) makes comparable amendments to the confidentiality requirements relating to special agricultural worker status.

Section 301.

Section 301 authorizes the government to regulate or prohibit any person or organization within the United States and any person subject to the jurisdiction of the United States anywhere from raising or providing funds for use by any foreign organization which the President has designated to be engaged in terrorism activities. Such designation would be based on a Presidential finding that the organization (1) engages in terrorism activity as defined in the Immigration and Nationality Act and (2) its terrorism activities threaten the national security, foreign policy, or economy of the United States.

The fund-raising provision provides a licensing mechanism under which funds may be provided to a designated organization based on a showing that the money will be used exclusively for religious, charitable, literary, or educational purposes. It includes both administrative and judicial enforcement procedures, as well as a special classified information procedures applicable to certain types of civil litigation. The term "person" is defined to include individuals, partnerships, associations, groups, corporations or other organizations.

Subsection 301(a) creates a new section 2339B in title 18, United States Code, entitled "Fund-raising for terrorist organizations."

Subsection 2339B(a) sets forth the congressional findings and purposes for the fund-raising statute.

Subsection 2339B(b) gives the President the authority to issue regulations to regulate or prohibit any person within the United States or any person subject to the jurisdiction of the United States anywhere from raising or providing funds for use by, or from engaging in financial transactions with, any foreign organization which the President, pursuant to subsection 2339B(c), has designated to be engaged in terrorism activities.

Subsection 2339B(c)(1) grants the President the authority to designate any foreign organization, if he finds that (1) the organization engages in terrorism activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) and (2) the organization's terrorism activities threaten the national security, foreign policy or economy of the United States. Subsection 2339B(c)(2) grants the President the authority to designate persons who are raising funds for or are acting for or on behalf of a foreign organization designated pursuant to subsection (c)(1).

Such designations must be published in the *Federal Register*. The President is authorized to revoke any designation. A designation under subsection (c)(1) is conclusive and is not reviewable by a court in a criminal prosecution.

Subsection 2339B(d) sets forth the prohibited activities. Paragraph (1) makes it unlawful for any person within the United States, or any person subject to the jurisdiction of the United States anywhere in the world, to raise, receive, or collect funds on behalf of or to furnish, give, transmit, transfer, or provide funds to or for a organization designated by the President unless such activity is done in accordance with a license granted under subsection 2339B(e). Paragraph (2) makes it unlawful for any person within the United States or any person subject to the jurisdiction of the United States anywhere in the world, acting for or on behalf of a designated organization, (1) to transmit, transfer, or receive any funds raised in violation of subsection 2339B(d)(1); (2) to transmit, transfer or dispose of any funds in which any designated organization has an interest; or (3) to attempt to do any of the foregoing. The latter provision serves to make it a crime for any person within the United States, or any person subject to the jurisdiction of the United States anywhere, to transmit, transfer or dispose of on behalf of a designated organization any funds in which such organization has an interest until after a license has been issued.

Subsection 2339B(e) requires that any person who desires to solicit funds or transfer funds to any designated organization must obtain a license from the Secretary of the Treasury. Any license issued by the Secretary shall be granted only when the Secretary is

satisfied that the funds are intended exclusively for religious, charitable, literacy, or educational purposes and that any recipient in any fund-raising chain has effective procedures in place to insure that the funds will be used exclusively for religious, charitable, literary, or educational purposes and will not be used to affect a transfer of funds to be used in terrorism activity. The burden is on the license applicant to convince the Secretary that such procedures do in fact exist. A licensee is required to keep books and records and make such books available for inspection upon the Secretary's request. A licensee is also required to have an agreement with any recipient which permits the Secretary to inspect the recipient's records.

Subsection 2339B(f) requires that a financial institution which becomes aware that it is in possession of or that it has control over funds in which a designated organization has an interest must "freeze" such funds and notify the Secretary of the Treasury. A civil penalty is provided for failure to freeze such funds or report the required information to the Secretary. The term "financial institution" has the meaning prescribed in 31 U.S.C. 5312(a)(2) and regulations promulgated thereunder. It is the same definition as utilized in the money laundering statute, see 18 U.S.C. 1956(c)(6).

Subsection 2339B(g) divides investigative responsibility for the section between the Secretary of the Treasury and the Attorney General. This provision thus permits the combination of the administrative and financial expertise of Treasury's Office of Foreign Assets Control (OFAC) and the intelligence capabilities and criminal investigative techniques of the Federal Bureau of Investigation (FBI) to be combined together in a highly coordinated manner in order to effectively enforce the requirements of this section while protecting the equities of the nation's national security intelligence gathering community. The provision reflects, as does section 407 of the bill, the FBI's role as the lead federal agency for the investigation and prosecution of terrorist activity as well as the prime federal intelligence agency for gathering national security information within the United States.

Section 2339B(h) gives authority to the Secretary of the Treasury and the Attorney General to require recordkeeping, hold hearings, issue subpoenas, administer oaths and receive evidence.

Subsection 2339B(i) sets forth the penalties for section 2339B. Any person who knowingly violates subsection 2339B(d) can be fined under title 18, United States Code, or imprisoned for up to ten years, or both. A person who fails to keep records or make records available to the Secretary of the Treasury upon his/her request is subject to a civil penalty of the greater of $50,000 or twice the amount of money which would have been documented had the books and records been properly maintained. A financial institution which fails to take the actions required pursuant to

subsection (f)(1) is subject to civil penalty of the greater of $50,000 or twice the amount of money of which the financial institution was required to retain possession or control. Any person who violates any license, order, direction, or regulation issued pursuant to the section is subject to a civil penalty of the greater of $50,000 per violation or twice the value of the violation. A person who intentionally fails to maintain or make available the required books or records also commits a crime subject to a fine under title 18, United States Code, or imprisonment for up to five years, or both. Any organization convicted of an offense under subsections 2339B(i)(1) or (3) shall forfeit any charitable designation it might have received under the Internal Revenue Code.

Subsection 2339B(j)(1) gives the Attorney General the right to seek an injunction to block any violation of section 2339B. An injunctive proceeding is normally governed by the Federal Rules of Civil Procedure, but if the respondent is under indictment, discovery is to be governed by the Federal Rules of Criminal Procedure.

Subsection 2339B(k) states that there is extraterritorial jurisdiction over activity prohibited by section 2339B which is conducted outside the United States. This insures that foreign persons outside the United States are covered by this statute if they aid, assist, counsel, command, induce or procure, or conspire with, persons within the United States or persons subject to the jurisdiction of the United States anywhere in the world to violate the fund-raising prohibition (18 U.S.C. 2339B, 2, and 371).

Subsection 2339B(l) sets forth a special process to protect classified information when the government is the plaintiff in civil proceedings to enforce section 2339B.

Subsection 2339B(m) sets forth the definitions of "classified information," "financial institution," "funds," "national security," "person," and "United States." Funds are defined to include all currency, coin, and any negotiable or registered security that can be used as a method of transferring money.

Subsection 301(c) further amends section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)) to include leaders of any terrorist organization designated under the fund-raising statute (18 U.S,C. 2339B) as an aliens deemed to be excludable under the immigration laws.

Subsection 301(d) makes the special classified information provisions of 18 U.S.C. 2339B(k) applicable to similar civil proceedings under the International Emergency Economic Powers Act (50 U.S.C. 1701 et. seq.).

Section 401.

This section states that title IV may be cited as the "Marking of Plastic Explosives for Detection Act."

Section 402.

This section sets forth the congressional findings concerning the criminal use of plastic explosives and the prevention of such use through the marking of plastic explosives for the purpose of detection. This section also states that the purpose of the legislation is to implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991 (the Convention).

Section 403.

This section sets forth three new definitions for 18 U.S.C. 841. It amends 18 U.S.C. 841 by adding a new subsection (o) which defines the term "Convention on the Marking of Plastic Explosives." The definition provides the full title of the Convention, "Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991." The definition eliminates the need to repeat the full title of the Convention each time it is used in the bill.

Section 403 also amends section 841 by adding a new subsection (p) which defines the term "detection agent." The term has been defined to include four specified chemical substances and any other substance specified by the Secretary of the Treasury by regulation. The four specified chemical substances, ethylene glycol dinitrate (EGDN), 2,3-dimethyl-2-3-dinitrobutane (DMNB), paramononitrotoluene (p-MNT), and ortho-mononitrotoluene (o-MNT), are in Part 2 of the Technical Annex to the Convention. The required minimum concentration of the four substances in the finished plastic explosives was also taken from the Technical Annex. The definition of "detection agent" has been drafted to require that the particular substance be introduced into a plastic explosive in such a manner as to achieve homogeneous distribution in the finished explosive. The purpose of homogeneous distribution is to assure that the detection agent can be detected by vapor detection equipment.

New section 841(p)(5) would permit the Secretary of the Treasury to add other substances to the list of approved detection agents by regulation, in consultation with the Secretaries of State and Defense. Permitting the Secretary to designate detection agents other than the four listed in the statute would facilitate the use of other substances without the need for legislation. Only those substances which have been added to the table in Part 2 of

the Technical Annex, pursuant to Articles VI and VII of the Convention, may be designated as approved detection agents under section 841(p)(5). Since the Department of Defense (DOD) is the largest domestic consumer of plastic explosives (over 95 percent of domestic production), it is appropriate that DOD provide guidance to the Treasury Department in approving additional substances as detection agents.

Finally, section 403 adds a new subsection (q) to section 841 which defines the term "plastic explosive." The definition is based on the definition of "explosives" in Article I of the Convention and Part I of the Technical Annex.

Section 404.

This section adds subsections (l)-(o) to 18 U.S.C. § 842 proscribing certain conduct relating to unmarked plastic explosives.

Section 842(l) would make it unlawful for any person to manufacture within the United States any plastic explosive which does not contain a detection agent.

Section 842(m) would make it unlawful for any person to import into the United States or export from the United States any plastic explosive which does not contain a detection agent. However, importations and exportations of plastic explosives imported into or manufactured in the United States prior to the effective date of the Act by Federal law enforcement agencies or the National Guard of any State, or by any person acting on behalf of such entities, would be exempted from this prohibition for a period of 15 years after the Convention is entered into force with respect to the United States. This provision implements Article IV, paragraph 3, of the Convention. Section 842(m) is drafted to specifically include the National Guard of any State and military reserve units within the 15-year exemption.

The purpose of the 15-year exemption is to give the military and Federal law enforcement agencies a period of 15 years to use up the considerable stock of unmarked plastic explosives they now have on hand. This exception would also permit DOD to export its unmarked plastic explosives to United States forces in other countries during the 15-year period.

Section 842(n)(1) would make it unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive which does not contain a detection agent. Section 842(n)(2)(A) would provide an exception to the prohibition of section 842(n)(1) for any plastic explosive which was imported, brought into, or manufactured in the United States prior to the effective date of the Act by any person during a period not

exceeding three years after the effective date of the Act. This provision implements Article IV, paragraph 2, of the Convention, and provides an exemption from the prohibitions of section 842(n)(1) for any person, including State and local governmental entities and other Federal agencies, for a period of three years after the effective date of the Act.

Section 842(n)(2)(B) would provide an exception to the prohibition of section 842(n)(1) for any plastic explosive which was imported, brought into, or manufactured in the United States prior to the effective date of the Act by any Federal law enforcement agency or the United States military or by any person acting on behalf of such entities for a period of 15 years after the date of entry into force of the Convention with respect to the United States. This provision implements Article IV, paragraph 3, of the Convention. The provision was drafted to specifically include the National Guard of any State and military reserve units within the 15-year exemption.

Section 842(o) would make it unlawful for any person, other than a Federal agency possessing any plastic explosive on the effective date of the Act, to fail to report to the Secretary of the Treasury within 120 days from the effective date of the Act the quantity of plastic explosive possessed, the manufacturer or importer of the explosive, any identifying markings on the explosive, and any other information as required by regulation. This provision implements Article IV, paragraph 1, of the Convention, which requires each State Party to take all necessary measures to exercise control over the possession and transfer of possession of unmarked explosives which have been manufactured in or imported into its territory prior to the entry into force of the Convention with respect to that State. This provision was drafted to specifically include the National Guard of any State and military reserve units as agencies which are exempt from the reporting requirement.

Section 405.

This section amends 18 U.S.C. 844(a), which provides penalties for violating certain provisions of 18 U.S.C. 842. The amended section would add sections 842(l)-(o) to the list of offenses punishable by a fine under 18 U.S.C. 3571 of not more than $250,000 in the case of an individual, and $500,000 in the case of an organization, or by imprisonment for not more than 10 years, or both.

Section 406.

This section amends 18 U.S.C. 845(a)(1), which excepts from the provisions of 18 U.S.C. Chapter 40 any aspect of the

transportation of explosive materials regulated by the United States Department of Transportation. The purpose of the amendment is to make it clear that the exception in section 845(a)(1) applies only to those aspects of such transportation relating to safety. This amendment would overcome the effect of the adverse decisions in United States v. Petrykievicz, 809 F. Supp. 794 (W.D. Wash. 1992), and United States v. Illingworth, 489 F.2d 264 (10th Cir.) 1973). In those cases, the court held that the language of section 845(a)(1) resulted in the defendant's exemption from all the provisions of the chapter, including the requirement of a license or permit to ship, transport, or receive explosives in interstate or foreign commerce.

The list of offenses which are not subject to the exceptions of section 845(a) has also been amended to include the new plastic explosives offenses in sections 842(l)-(m).

Section 406 also adds a new subsection (c) to 18 U.S.C. 845 to provide certain affirmative defenses to the new plastic explosives offenses in sections 842(l)-(o). This provision implements Part 1, paragraph II, of the Technical Annex to the Convention, which relates to exceptions for limited quantities of explosives. The affirmative defenses of 18 US.C. 845(c) could be asserted by defendants in criminal prosecutions, persons having an interest in explosive materials seized and forfeited pursuant to 18 U.S.C. 844(c), and persons challenging the revocation or denial of their explosives licenses or permits pursuant to 18 U.S.C. 845(c).

The three affirmative defenses specified in section 845(c)(1) all relate to research, training, and testing, and require that the proponent provide evidence that there was a "small amount" of plastic explosive intended for and utilized solely in the specified activities. The representatives to the Conference which resulted in the Convention agreed that the amount of unmarked explosive permitted to be used for these purposes should be "limited," but were unable to agree on a specific quantity. The Secretary of the Treasury may issue regulations defining what quantity of plastic explosives is a "small amount" or may leave it up to the proponent of the affirmative defense to prove that a "small amount" of explosives was imported, manufactured, possessed, etc. The statute is drafted to require that the proponent establish the affirmative defense by a preponderance of the evidence.

Section 845(c)(2) would create another affirmative defense to the plastic explosives offenses, which implements Article IV of the Convention, and Part I, Paragraph II(d), of the Technical Annex. This provision would require that proponent to prove, by a preponderance of the evidence, that the plastic explosive was, within three years after the date of entry into force of the Convention with respect to the United States, incorporated in a military device that is intended to become or has become the

property of any Federal military or law enforcement agency. Furthermore, the proponent must prove that the plastic explosive has remained an integral part of the military device for the exemption to apply. This requirement would discourage the removal of unmarked plastic explosives from bombs, mines, and other military devices manufactured for the United States military during the three year period. The provision was drafted to specifically include the National Guard of any State and military reserve units within the exemption. The term "military device" has been defined in accordance with the definition of that term in Article I of the Convention.

Requiring that the exceptions of section 845(c) be established as an affirmative defense would facilitate the prosecution of violations of the new plastic explosive provisions by terrorists and other dangerous criminals in that the Government would not have to bear the difficult, if not impossible, burden of proving that the explosives were not used in one of the research, training, testing, or military device exceptions specified in the statute. The proponent of the affirmative defense would be in the best position to establish the existence of one of the exceptions.

The approach taken in section 845(c) is patterned after the affirmative defense provision in 18 U.S.C. 176 and 177, relating to the use of biological weapons.

Section 407.

This section provides the Attorney General investigative authority over new subsections (m) and (n) of section 842, relating to the importation, exportation, shipping, transferring, receipt or possession of unmarked plastic explosives, when such provisions are violated by terrorist/revolutionary groups or individuals. This authority is consistent with the existing March 1, 1973, memorandum of understanding on the investigation of explosives violations between the Departments of Justice and the Treasury and the United States Postal Service. The section also makes it clear that, consistent with current national policy, the Federal Bureau of Investigation (FBI) is the lead Federal agency for investigating all violations of Federal law involving terrorism when the FBI has been given by statute or regulation investigative authority over the relevant offense. See 28 U.S.C. 523 and 28 C.F.R. 0.85(1).

Section 408.

This section provides that the amendments made by title IV shall take effect one year after the date of enactment. The one year delay should be adequate for manufacturers to obtain sources of one of the specified detection agents and to reformulate the plastic explosives they manufacture to include a detection agent.

Section 501.

Section 501 expands the scope and jurisdictional bases under 18 U.S.C. 831 (prohibited transactions involving nuclear materials). It is an effort to modify current law to deal with the increased risk stemming from the destruction of certain nuclear weapons that were once in the arsenal of the former Soviet Union and the lessening of security controls over peaceful nuclear materials in the former Soviet Union. Among other things, the bill expands the definition of nuclear materials to include those materials which are less than weapons grade but are dangerous to human life and/or the environment. It also expands the jurisdictional bases to reach all situations where a U.S. national or corporation is the victim or perpetrator of an offense. The bill expressly covers those situations where a threat to do some form of prohibited activity is directed at the United States Government.

Subsection 501(a)(1) sets forth a series of findings. Subsection 501(a)(2) sets forth the purpose.

Subsection 501(b) makes many technical changes to section 831 of title 18, United States Code. The ones of substance are:

(1) Paragraph (1) adds "nuclear byproduct material" to the scope of subsection 831(a).

(2) Paragraph (2) ensures coverage of situations under subsection 831(a)(1)(A) where there is substantial damage to the environment.

(3) Paragraph (3) rewrites subsection 831(a)(1)(B) in the following ways:

(A) drops the requirement that the defendant "know" that circumstances exist which are dangerous to life or property. If such circumstances are created through the intentional actions of the defendant, criminal sanctions are appropriate due to the inherently dangerous nature of nuclear material and the extraordinary risk of harm created.

(B) adds substantial damage to the environment; and

(C) adds language (i.e., "such circumstances are represented to the defendant to exist") to cover the situation of sales by undercover law enforcement to prospective buyers of materials purported to be nuclear materials. This is comparable to the new 18 U.S.C. 21 created by section 320910 of Pub. L. 103-322 for undercover operations.

(4) Paragraph (4) expands the threat provision of subsection 831(a)(6) to cover threats to do substantial damage to the environment.

(5) Paragraph (5) expands the jurisdiction in subsection 831(c)(2) beyond those situations where the offender is a United States national. As revised, it includes all situations, anywhere in the world where a United States national is the victim of an offense or where the perpetrator or victim of the offense is a "United States corporation or other legal entity."

(6) Paragraph (6) drops the requirement in subsection 831(c)(3) that the nuclear material be for "peaceful purposes", i.e., non-military, and that it be in use, storage, or transport. Hence, the provision now reaches any alien who commits an offense under subsection 831(a) overseas and is subsequently found in the United States. Of course, if the target of the offense was a U.S. national or corporation or the U.S. Government there would be jurisdiction of the offense under another provision of subsection 831(c), even when the perpetrator is still overseas. The activities prohibited by subsection 831(a) are so serious that all civilized nations have recognized their obligations to confront this growing problem because of its inherent dangerousness.

(7) Paragraph (8) deletes the requirement for subsection 831(c)(4) that the nuclear materials being shipped to or from the United States be for peaceful purposes. Hence, military nuclear materials are now encompassed under subsection 831(c)(4). It also adds nuclear byproduct material to the provision.

(8) Paragraph (10) adds a new paragraph (5) to subsection 831(c) to ensure that there is federal jurisdiction when the governmental entity being threatened under subsection 831(a)(5) is the United States and when the threat under subsection 831(a)(6) is directed at the United States.

(9) Paragraph (11) deletes an outmoded requirement, so that all plutonium is now covered.

(10) Paragraph (14) adds "nuclear byproduct material" to the definitions as a new subsection 831(f)(2). Nuclear byproduct material means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator. This will extend the prohibitions of this statute to materials that are not capable of creating a nuclear explosion, but which, nevertheless, could be used to create a radioactive dispersal device capable of spreading highly dangerous radioactive material throughout an area.

Section 102(c) of this Act also proposes to broaden the scope of the material support statute by incorporating, as one of the predicate offenses, the proposed statute relating to conspiracies within the United States to commit terrorist acts abroad.

Section 602.

This section would add coverage for threats to the weapons of mass destruction statute (18 U.S.C. 2332a). The offense of using a weapon of mass destruction (or attempting or conspiring to use such a weapon) was created by section 60023 of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322). However, no threat offense was included. A threat to use such a weapon is a foreseeable tactic to be employed by a terrorist group. Further, it could necessitate a serious and costly government response, e.g. efforts to eliminate the threat, evacuation of a city or facility, etc. Accordingly, it seems clearly appropriate to make threatening to use a weapon of mass destruction a federal offense.

This section amends subsection (a) to include threats among the proscribed offenders. Further, it redesignates subsection (b) of section 2332a as subsection (c) and provides a new subsection (b). The new subsection (b) ensures jurisdiction when a national of the United States outside the United States is the perpetrator of the threat offense.

Section 603.

Section 603 adds to the Racketeer Influenced and Corrupt Organizations (RICO) statute certain federal violent crimes relating to murder and destruction of property. These are the offenses most often committed by terrorists. Many violent crimes committed within the United States are encompassed as predicate acts for the RICO statute. However, RICO does not presently reach most terrorist acts directed against United States interests overseas. Hence, this section adds to RICO extraterritorial terrorism violations. When an organization commits a series of terrorist acts, a RICO theory of prosecution may be the optimal means of proceeding.

The offenses being added to as predicate acts to RICO are: 18 U.S.C. 32 (relating to the destruction of aircraft), 37 (relating to violence at international airports), 115 (relating to influencing, impeding or retaliating against a federal official by threatening or injuring a family member) 351 (relating to Congressional or Cabinet officer assassination), 831 (relating to prohibited transactions involving nuclear materials as amended by section 501 of this bill), 844 (f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce), 956 (relating to conspiracy to

(11) Paragraph (17) adds to subsection 831(f) the definitions for the terms "national of the United States" and "United States corporation or other legal entity."

Section 601.

This section deletes subsection (c) of the material support statute (18 U.S.C. 2339A(c)) enacted as part of the 1994 crime bill (Pub. L. 103-322). It would also correct erroneous statutory references and typographical errors (i.e., changes "36" to "37," "2331" to "2332," "2339" to "2332a," and "of an escape" to "or an escape").

Subsection 2339A(c) of title 18, United States Code, imposes an unprecedented and impractical burden on law enforcement concerning the initiation and continuation of criminal investigations under 18 U.S.C. 2339A. Specifically, subsection (c) provides that the government may not initiate or continue an investigation under this statute unless the existing facts reasonably indicate that the target knowingly and intentionally has engaged, is engaged, or will engage in a violation of federal criminal law. In other words, the government must have facts that reasonably indicate each element of the offense before it even initiates (or continues) an investigation. The normal investigative practice is that the government obtains evidence which indicates that a violation may exist if certain other elements of the offense, particularly the knowledge or intent elements, are also present. The government then seeks to obtain evidence which establishes or negates the existence of the other elements. If such evidence is found to exist, the investigation continues to obtain the necessary evidence to prove its case beyond a reasonable doubt on every element.

As drafted, however, subsection (c) reverses the natural flow of a criminal investigation. It is an impediment to the effective use of section 2339A. Moreover, the provision would generate unproductive litigation which would only serve to delay the prosecution of any offender, drain limited investigative and prosecutive resources, and hinder efforts to thwart terrorism. It is the position of the Department of Justice that the investigative guidelines issued by the Attorney General adequately protect individual rights while providing for effective law enforcement.

Section 601 deletes subsection (c) retroactive to September 13, 1994, the date that the 1994 crime bill was signed into law. Since subsection (c) is procedural in nature, the retroactive nature of the proposed deletion does not pose a constitutional problem. It should suffice, however, to preclude a defendant from availing himself of subsection (c) in the event that the conduct charged in a subsequent indictment arose between September 13, 1994, and the enactment of section 601.

kill, kidnap, maim or injure property certain property in a foreign country as amended by section 102 of this bill), 1111 (relating to murder), 1114 (relating to murder of United States law enforcement officials), 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to wilful injury of government property), 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), 1751 (relating to Presidential assassination), 2280 (relating to violence against maritime navigation as amended by section 606 of this bill), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to terrorist acts abroad against United States nationals), 2332a (relating to use of weapons of mass destruction as amended by section 602 of this bill), 2332b (relating to acts of terrorism transcending national boundaries created by section 101 of this bill), and 2339A (relating to providing material support to terrorists as amended by sections 102(c) and 601 of this bill), and 49 U.S.C. 46502 (relating to aircraft piracy).

Section 604.

18 U.S.C. 1956(a)(2)(A) makes it a felony to transfer funds from the United States to a place outside the United States if the transfer is done with the intent to promote the carrying on of "specified unlawful activity." The term "specified unlawful activity" is defined in section 1956(c)(7)(B) to include an offense against a foreign nation involving kidnapping, robbery, or extortion as well as certain offenses involving controlled substances and fraud by or against a foreign bank. It does not, however, include murder or the destruction of property by means of explosive or fire.

In recent investigations of international terrorist organizations, it has been discovered that certain of these organizations collect money in the United States and then transfer the money outside the United States for use in connection with acts of terrorism which may involve murder or destruction of property in foreign nations.

In order to prevent terrorist organizations from collecting money inside the United States which is used to finance murders and destruction of property, subsection (a) would add "murder and destruction of property by explosive or fire" to the list of specified unlawful activity in section 1956(c)(7)(B)(ii). This amendment would also apply to cases where the proceeds of any such murder or property destruction would be laundered in the United States.

Subsection (b) would add to the definitions of "specified unlawful activity" in section 1956(c)(7)(D) of title 18, United States Code, those violent federal offenses most likely to be

violated by terrorists overseas. Hence, if during the course of perpetrating these violent offenses the terrorists transferred funds in interstate or foreign commerce to promote the carrying on of any of these offenses, they would also violate the money laundering statute. The offenses added are the same as those added to the RICO statute by section 603 of this bill, except for 18 U.S.C. 1203 (relating to hostage taking) which is already contained as a money laundering predicate. It should be noted that if section 603 of this bill is enacted, subsection 604(b) need not be enacted because any offense which is included as a RICO predicate is automatically a predicate also under the money laundering statute.

Section 605.

This section would add a number of terrorism-related offenses to 18 U.S.C. 2516, thereby permitting court-authorized interception of wire, oral, and electronic communications when the rigorous requirements of chapter 119 (including section 2516) are met. Presently, section 2516 contains a long list of felony offenses for which electronic surveillance is authorized. The list has grown periodically since the initial enactment of the section in 1968. As a result, coverage of terrorism-related offenses is not comprehensive. Section 2516 already includes such offenses as hostage taking under 18 U.S.C. 1203, train wrecking under 18 U.S.C. 1992, and sabotage of nuclear facilities or fuel under 42 U.S.C. 2284.

The instant proposal would add 18 U.S.C. 956, as amended by section 103 of this bill, and 960 (proscribing conspiracies to harm people or damage certain property of a foreign nation with which the United States is not at war and organizing or participating in from within the United States an expedition against a friendly nation), 49 U.S.C. 46502 (relating to aircraft piracy), and 18 U.S.C. 2332 (relating to killing United States nationals abroad with intent to coerce the government or a civilian population). It would also add 18 U.S.C. 2332a (relating to offenses involving weapons of mass destruction), 18 U.S.C. 2332b (relating to acts of terrorism transcending national boundaries, which offense is created by section 101 of this bill), 18 U.S.C. 2339A (relating to providing material support to terrorists), and 18 U.S.C. 37 (relating to violence at airports).

Terrorism offenses frequently require the use of court-authorized electronic surveillance techniques because of the clandestine and violent nature of the groups that commit such crimes. Adding the proposed predicate offenses to 18 U.S.C. 2516 would therefore facilitate the ability of law enforcement successfully to investigate, and sometimes prevent, such offenses in the future.

Section 606.

In considering legislative proposals which were incorporated into the 1994 crime bill (Pub. L. 103-322), Congress altered the Department's proposed formulation of the jurisdictional provisions of the Maritime Violence legislation, the Violence Against Maritime Fixed Platforms legislation, and Violence at International Airports legislation, because of a concern over possible federal coverage of violence stemming from labor disputes. The altered language created uncertainties which were brought to the attention of Congress. Subsequently, the labor violence concern was addressed by adoption of the bar to prosecution contained in 18 U.S.C. 37(c), 2280(c) and 2281(c). With the adoption of this bar, the sections were to revert to their original wording, as submitted by the Department of Justice. While sections 37 and 2281 were properly corrected, the disturbing altered language was inadvertently left in section 2280.

Consequently, as clauses (ii) and (iii) of subsection 2280(b)(1)(A) of title 18, United States Code, are presently written, there would be no federal jurisdiction over a prohibited act within the United States by anyone (alien or citizen) if there was a state crime, regardless of whether the state crime is a felony. Moreover, the Maritime Convention mandated that the United States assert jurisdiction when a United States national does a prohibited act anywhere against any covered ship. Limiting jurisdiction over prohibited acts committed by United States nationals to those directed against only foreign ships and ships outside the United States does not fulfill our treaty responsibilities to guard against all wrongful conduct by our own nationals.

Moreover, as presently drafted, there is no federal jurisdiction over alien attacks against foreign vessels within the United States, except in the unlikely situation that no state crime is involved. This is a potentially serious gap. Finally, until the federal criminal jurisdiction over the expanded portion of the territorial sea of the United States is clarified, there remains some doubt about federal criminal jurisdiction over aliens committing prohibited acts against foreign vessels in the expanded portion of the territorial sea of the United States (i.e., from 3 to 12 nautical miles out). Consequently, striking the limiting phrases in clauses (ii) and (iii) ensures federal jurisdiction, unless the bar to prosecution under subsection 2280(c) relating to labor disputes is applicable, in all situations that are required by the Maritime Convention.

Section 607.

This section expands federal jurisdiction over certain bomb threats or hoaxes. Presently, 18 U.S.C. 844(e), covers threats to

damage by fire or explosive property protected by 18 U.S.C. 844(f) or (i), if the United States mails, the telephone or some other instrument of commerce is used to convey the threat or the false information. Section 607 removes any jurisdictional nexus for the means used to convey the threat or false information. A sufficient jurisdictional nexus is contained in the targeted property itself, i.e., the property (1) belongs to the United States Government, (2) is owned by an organization receiving federal funds, or (3) is used in or affects interstate or foreign commerce. The threat provision has also been drafted to cover a threat to commit an arson in violation of 18 U.S.C. 81 against property located in the special maritime and territorial jurisdiction of the United States.

Section 608.

This section would amend the explosives chapter of title 18 to provide generally that a conspiracy to commit an offense under that chapter is punishable by the same maximum term as that applicable to the substantive offense that was the object of the conspiracy. In contrast, the general conspiracy statute, 18 U.S.C. 371, provides for a maximum of five years' imprisonment. This provision accords with several recent Congressional enactments, including 21 U.S.C. 846 (applicable to drug conspiracies) and 18 U.S.C. 1956(h) (applicable to money laundering conspiracies). See also section 320105 of Pub. Law 103-322, which raised the penalty for the offense of conspiracy to travel interstate with intent to commit murder for hire (18 U.S.C. 1958). This trend in federal law, which is emulated in the penal codes of many States, recognizes that, as the Supreme Court has observed, "collective criminal agreement -- partnership in crime -- presents a greater potential threat to the public than individual delicts." Callanan v. United States, 364 U.S. 587, 593 (1961); accord United States v. Feola, 420 U.S. 671, 693-4 (1975).

Section 608 includes the introductory phrase "[e]xcept as provided in this section" in order to take account of one area where a different maximum penalty will apply. Section 110518(b) of Pub. Law 103-322 enacted a special twenty-year maximum prison penalty (18 U.S.C. 844(m)) for conspiracies to violate 18 U.S.C. 844(h), which prohibits using an explosive to commit certain crimes and which carries a mandatory five-year prison term for the completed crime. Like section 844(m), the proposed amendment exempts the penalty of death for a conspiracy offense.

Section 609.

Section 609 would cure an anomaly in 18 U.S.C. 115. The statute presently punishes violent crimes against the immediate families of certain former federal officials and law enforcement officers (including prosecutors) in retaliation for acts undertaken

while the former official was in office. However, the former official is not protected against such crimes. Federal investigators, prosecutors, and judges who are involved in terrorism cases are often the subject of death threats. The danger posed to the safety of such officers does not necessarily abate when they leave government service. Former United States officials should be protected by federal law against retaliation directed at the past performance of their official duties. Section 609 would provide such protection.

Section 610.

The changes made by this section are similar to that made by section 608 for explosives conspiracies.

This section adds "conspiracy" to several offenses likely to be committed by terrorists. Conspiracy is added to the offense itself to ensure that coconspirators are subject to the same penalty applicable to those perpetrators who attempt or complete the offense. Presently, the maximum possible imprisonment provided under the general conspiracy statute, 18 U.S.C. 371, is only five years. The offenses for which conspiracy is being added are: 18 U.S.C. 32 (destruction of aircraft), 37(violence at airports serving international civil aviation), 115(certain violent crimes against former federal officials, added by section 609, and family members of current or former federal officials), 175 (prohibitions with respect to biological weapons), 1203 (hostage taking), 2280 (violence against maritime navigation), and 2281 (violence against maritime fixed platforms), and 49 U.S.C. 46502 (relating to aircraft piracy).

Section 701.

This section sets forth the congressional findings for title VII.

Section 702.

Amending subsection 573(d) of chapter 8 of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa2) would allow more flexibility and efficiency in the Department of State's Antiterrorism Training Assistance (ATA) program by permitting more courses to be taught overseas and allowing for instructors to teach overseas for up to 180 days. Current law allows training overseas for only certain specified types of courses and only for up to 30 days. Deleting subsection (f) of section 573 would allow for some personnel expenses for administering the ATA program to be met through the foreign aid appropriation. Currently, all such costs are paid from the Department of State's Salaries and Expenses account.