

103^D CONGRESS
1ST SESSION

H. R. 1238

To establish constitutional procedures for the imposition of the death penalty for terrorist murders and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1993

Mr. SHAW (for himself and Mr. GEKAS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish constitutional procedures for the imposition of the death penalty for terrorist murders and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Protection Against
4 Terrorism Act of 1993”.

5 **TITLE I—TERRORISM DEATH PENALTY**

6 **ACT OF 1993.**

7 **SEC. 101. DEATH PENALTY FOR TERRORIST ACTS.**

8 (a) OFFENSE.—Subsections 2331 (a) through (c) of
9 title 18 of the United States Code are amended to read
10 as follows:

1 “(a) HOMICIDE.—Whoever kills a person while such
2 person is inside the United States, or kills a national of
3 the United States, while such national is outside the Unit-
4 ed States, shall—

5 “(1)(A) if the killing is a first degree murder
6 as defined in section 1111(a) of this title, be pun-
7 ished by death or imprisonment for any term of
8 years or for life, or be fined under this title, or both;
9 and

10 “(B) if the killing is a murder other than a first
11 degree murder as defined in section 1111(a) of this
12 title, be fined under this title or imprisoned for any
13 term of years or for life, or both so fined and so im-
14 prisoned;

15 “(2) if the killing is a voluntary manslaughter
16 as defined in section 1112(a) of this title, be fined
17 under this title or imprisoned not more than thirty
18 years, or both; and

19 “(3) if the killing is an involuntary man-
20 slaughter as defined in section 1112(a) of this title,
21 be fined under this title or imprisoned not more
22 than ten years, or both.

23 “(b) ATTEMPT OR CONSPIRACY WITH RESPECT TO
24 HOMICIDE.—Whoever attempts to kill, or engages in a
25 conspiracy to kill, any human being inside the United

1 States or any national of the United States while such
2 national is outside the United States shall—

3 “(1) in the case of an attempt to commit a kill-
4 ing that is a murder as defined in this chapter, be
5 fined under this title or imprisoned not more than
6 thirty-five years, or both; and

7 “(2) in the case of a conspiracy by two or more
8 persons to commit a killing that is a murder as de-
9 fined in section 1111(a) of this title, if one or more
10 of such persons do any overt act to effect the object
11 of the conspiracy, be fined under this title or im-
12 prisoned for any term of years or for life, or both
13 so fined and so imprisoned.

14 “(c) OTHER CONDUCT.—Whoever engages in phys-
15 ical violence—

16 “(1) with intent to cause serious bodily injury
17 to a person inside the United States, or a national
18 of the United States while such national is outside
19 the United States; or

20 “(2) with the result that serious bodily injury is
21 caused to a person inside the United States, or to
22 a national of the United States while such national
23 is outside the United States;

24 shall be fined under this title or imprisoned not more than
25 ten years, or both”.

1 (b) DEATH PENALTY.—Section 2331 of title 18 of
2 the United States Code, is amended by adding at the end
3 thereof the following:

4 “(f) DEATH PENALTY PROCEDURES.—

5 “(1) SENTENCE OF DEATH.—A defendant who
6 has been found guilty of an offense described in sub-
7 section (a)(1)(A), if the defendant, as determined
8 beyond a reasonable doubt at a hearing under para-
9 graph 3—

10 “(A) intentionally killed the victim;

11 “(B) intentionally inflicted serious bodily
12 injury that resulted in the death of the victim;

13 “(C) intentionally participated in an act,
14 contemplating that the life of a person would be
15 taken or intending that lethal force would be
16 used in connection with a person, other than
17 one of the participants in the offense, and the
18 victim died as a direct result of the act; or

19 “(D) intentionally and specifically engaged
20 in an act, knowing that the act created a grave
21 risk of death to a person, other than one of the
22 participants in the offense, such that participa-
23 tion in the act constituted a reckless disregard
24 for human life and the victim died as a direct
25 result of the act.

1 shall be sentenced to death if, after consideration of the
2 factors set forth in paragraph (2) in the course of a hear-
3 ing held pursuant to paragraph (3) it is determined that
4 imposition of a sentence of death is justified; provided that
5 no person may be sentenced to death who was less than
6 sixteen years of age at the time of the offense.

7 “(2) FACTORS TO BE CONSIDERED IN DETER-
8 MINING WHETHER A SENTENCE OF DEATH IS JUSTI-
9 FIED—

10 “(A) MITIGATING FACTORS.—In determin-
11 ing whether a sentence of death is justified, the
12 jury, or if there is no jury, the court, shall con-
13 sider each of the following mitigating factors
14 and determine which, if any, exist:

15 “(i) the defendant’s mental capacity
16 was significantly impaired, although the
17 impairment was not such as to constitute
18 a defense to prosecution;

19 “(ii) the defendant was under unusual
20 and substantial duress, although not such
21 duress as would constitute a defense to
22 prosecution; and

23 “(iii) the defendant was an accomplice
24 and participation in the offense was rel-
25 atively minor.

1 The jury, or if there is no jury, the court, shall
2 consider whether any other mitigating factor
3 exists.

4 “(B) AGGRAVATING FACTORS.—In deter-
5 mining whether a sentence of death is justified,
6 the jury, or if there is no jury, the court, shall
7 consider each of the following aggravating fac-
8 tors and determine which, if any, exist:

9 “(i) the death, or injury resulting in
10 death, occurred during the commission or
11 attempted commission of, or during the
12 immediate flight from the commission of,
13 an offense under section 751 (prisoners in
14 custody of institution or officer), section
15 794 (gathering or delivering defense infor-
16 mation to aid foreign government), section
17 844(d) (transportation of explosives in
18 interstate commerce for certain purposes),
19 section 844(f) (destruction of Government
20 property in interstate commerce by explo-
21 sives), section 1118 (prisoners serving life
22 term), section 1201 (kidnaping), or section
23 2381 (treason) of this title, or section 902
24 (i) or (n) of the Federal Aviation Act of

1 1958, as amended (49 U.S.C. 1472 (i) or
2 (n)) (aircraft piracy);

3 “(ii) the defendant has previously
4 been convicted of another Federal or State
5 offense resulting in the death of a person,
6 for which a sentence of life imprisonment
7 or a sentence of death was authorized by
8 statute;

9 “(iii) the defendant has previously
10 been convicted of two or more Federal or
11 State offenses, punishable by a term of im-
12 prisonment of more than one year, commit-
13 ted on different occasions, involving the in-
14 fliction of, or attempted infliction of, seri-
15 ous bodily injury or death upon another
16 person;

17 “(iv) the defendant, in the commission
18 of the offense, or in escaping apprehension
19 for the violation of the offense, knowingly
20 created a grave risk of death to one or
21 more persons in addition to the victim of
22 the offense;

23 “(v) the defendant committed the of-
24 fense in an especially heinous, cruel, or
25 depraved manner;

1 “(vi) the defendant procured the com-
2 mission of the offense by payment or
3 promise of payment of anything of pecu-
4 niary value;

5 “(vii) the defendant committed the of-
6 fense as consideration for the receipt, or in
7 the expectation of the receipt, of anything
8 of pecuniary value;

9 “(viii) the defendant committed the
10 offense after planning and premeditation
11 to cause the death of a person or commit
12 an act of terrorism;

13 “(ix) the defendant has previously
14 been convicted of two or more State or
15 Federal offenses punishable by a term of
16 imprisonment of more than one year, com-
17 mitted on different occasions, involving the
18 distribution of a controlled substance;

19 “(x) the victim was particularly vul-
20 nerable due to old age, youth or infirmity,
21 the defendant committed the offense
22 against—

23 “(I) the President of the United
24 States, the President-elect, the Vice
25 President, the Vice President-elect,

1 the Vice-President-designate, or, if
2 there is no Vice President, the officer
3 next in order of succession to the of-
4 fice of the President of the United
5 States, or any person who is acting as
6 President under the Constitution and
7 laws of the United States;

8 “(II) a chief of state, head of
9 government, or the political equiva-
10 lent, of a foreign nation;

11 “(III) a foreign official listed in
12 section 1116(b)(3)(A) of this title, if
13 he is in the United States on official
14 business; or

15 “(iv) a Federal public servant
16 who is a judge, a law enforcement of-
17 ficer, or an employee of a United
18 States penal or correctional institu-
19 tion—

20 “(aa) while he is engaged in
21 the performance of his official
22 duties;

23 “(bb) because of the per-
24 formance of his official duties; or

1 “(cc) because of his status
2 as a public servant.

3 For purposes of this subparagraph, a ‘law
4 enforcement officer’ is a public servant au-
5 thorized by law or by a Government agency
6 or Congress to conduct or engage in the
7 prevention, investigation, or prosecution of
8 an offense.

9 The jury, or if there is no jury, the court, may
10 consider whether any other aggravating factor
11 exists.

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

14 “(A) NOTICE BY THE GOVERNMENT.—If
15 the attorney for the Government believes that
16 the circumstances of the offense are such that
17 a sentence of death is justified under this chap-
18 ter, he shall, a reasonable time before the trial,
19 or before acceptance by the court of a plea of
20 guilty, or at such time thereafter as the court
21 may permit upon a showing of good cause, sign
22 and file with the court, and serve on the de-
23 fendant, a notice—

24 “(i) stating that the Government be-
25 lieves that the circumstances of the offense

1 are such that, if the defendant is convicted,
2 a sentence of death is justified under this
3 chapter and that the Government will seek
4 the sentence of death; and

5 “(ii) setting forth the aggravating fac-
6 tor or factors that the Government, if the
7 defendant is convicted, proposes to prove
8 as justifying a sentence of death.

9 The court may permit the attorney for the Gov-
10 ernment to amend the notice upon a showing of
11 good cause.

12 “(B) HEARING BEFORE A COURT OR
13 JURY.—If the attorney for the Government has
14 filed a notice as required under subsection (a)
15 and the defendant is found guilty of or pleads
16 guilty to an offense described in paragraph (1),
17 the judge who presided at the trial or before
18 whom the guilty plea was entered, or another
19 judge if that judge is unavailable, shall conduct
20 a separate sentencing hearing to determine the
21 punishment to be imposed. The hearing shall be
22 conducted—

23 “(i) before the jury that determined
24 the defendant’s guilt;

1 “(ii) before a jury impaneled for the
2 purpose of the hearing if—

3 “(I) the defendant was convicted
4 upon a plea of guilty;

5 “(II) the defendant was convicted
6 after a trial before the court sitting
7 without a jury;

8 “(III) the jury that determined
9 the defendant’s guilt was discharged
10 for good cause; or

11 “(IV) after initial imposition of a
12 sentence under this section, reconsid-
13 eration of the sentence under this sec-
14 tion is necessary; or

15 “(iii) before the court alone, upon the
16 motion of the defendant and with the ap-
17 proval of the attorney for the Government.

18 A jury impaneled pursuant to paragraph
19 (3)(b)(2) shall consist of twelve members, un-
20 less, at any time before the conclusion of the
21 hearing, the parties stipulate, with the approval
22 of the court, that it shall consist of a lesser
23 number.

24 “(C) PROOF OF MITIGATING AND AGGRA-
25 VATING FACTORS.—Notwithstanding rule 32(c)

1 of the Federal Rules of Criminal Procedure,
2 when a defendant is found guilty or pleads
3 guilty to an offense under paragraph (1), no
4 presentence report shall be prepared. At the
5 sentencing hearing, information may be pre-
6 sented as to any matter relevant to the sen-
7 tence, including any mitigating or aggravating
8 factor permitted or required to be considered
9 under paragraph (2). Information presented
10 may include the trial transcript and exhibits if
11 the hearing is held before a jury or judge not
12 present during the trial. Any other information
13 relevant to a mitigating or aggravating factor
14 may be presented by either the attorney for the
15 Government or the defendant, regardless of its
16 admissibility under the rules governing admis-
17 sion of evidence at criminal trials, except that
18 information may be excluded if its probative
19 value is substantially outweighed by the danger
20 of creating unfair prejudice, confusing the is-
21 sues, or misleading the jury. The Government
22 and the defendant shall be permitted to rebut
23 any information received at the hearing, and
24 shall be given fair opportunity to present argu-
25 ment as to the adequacy of the information to

1 establish the existence of any aggravating or
2 mitigating factor, and as to the appropriateness
3 in the case of imposing a sentence of death.
4 The Government shall open the argument. The
5 defendant shall be permitted to reply. The Gov-
6 ernment shall then be permitted to reply in re-
7 buttal. The burden of establishing the existence
8 of any aggravating factor is on the Government,
9 and is not satisfied unless the existence of such
10 a factor is established beyond a reasonable
11 doubt. The burden of establishing the existence
12 of any mitigating factor is on the defendant,
13 and is not satisfied unless the existence of such
14 a factor is established by a preponderance of
15 the information.

16 “(D) RETURN OF SPECIAL FINDINGS.—
17 The jury, or if there is no jury, the court, shall
18 consider all the information received during the
19 hearing. It shall return a special finding as to
20 each mitigating and aggravating factor, con-
21 cerning which information is presented at the
22 hearing, required to be considered under para-
23 graph (2). The jury must find the existence of
24 an aggravating factor by a unanimous vote al-
25 though it is unnecessary that there be a unani-

1 mous vote on any specific aggravating factor if
2 a majority of the jury finds the existence of
3 such a specific factor. A finding with respect to
4 a mitigating factor may be made by one or
5 more members of the jury and any member of
6 the jury who finds the existence of a mitigating
7 factor may consider such a factor established
8 for purposes of this section, regardless of the
9 number of jurors who consider that the factor
10 has been established.

11 “(E) RETURN OF A FINDING CONCERNING
12 A SENTENCE OF DEATH.—If an aggravating
13 factor required to be considered under subpara-
14 graph (2)(c) is found to exist; the jury, or if
15 there is no jury, the court, shall then consider
16 whether all the aggravating factors found to
17 exist sufficiently outweigh all the mitigating
18 factors found to exist to justify a sentence of
19 death, or, in the absence of a mitigating factor,
20 whether the aggravating factors alone are suffi-
21 cient to justify a sentence of death. Based upon
22 this consideration, the jury by unanimous vote,
23 or if there is no jury, the court shall return a
24 finding as to whether a sentence of death is jus-
25 tified.

1 “(F) SPECIAL PRECAUTION TO ASSURE
2 AGAINST DISCRIMINATION.—In a hearing held
3 before a jury, the court, prior to the return of
4 a finding under subparagraph (E), shall in-
5 struct the jury that, in considering whether a
6 sentence of death is justified, it shall not con-
7 sider the race, color, national origin, creed, or
8 sex of the defendant. The jury, upon return of
9 a finding under subparagraph (E), shall also re-
10 turn to the court a certificate, signed by each
11 juror, that consideration of the race, color, na-
12 tional origin, creed, or sex of the defendant was
13 not involved in reaching the juror’s individual
14 decision.

15 “(4) IMPOSITION OF A SENTENCE OF DEATH.—
16 Upon a finding under subparagraph (3)(E) that a
17 sentence of death is justified, the court shall sen-
18 tence the defendant to death. Upon a finding under
19 subparagraph (3)(E) that a sentence of death is not
20 justified, or under subparagraph (3)(E) that no ag-
21 gravating factor required to be found exists, the
22 court shall impose any sentence other than death
23 that is authorized by law. Notwithstanding any other
24 provision of law, if the maximum term of imprison-
25 ment for the offense is life imprisonment the court

1 may impose a sentence of life imprisonment without
2 parole.

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

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

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

15 “(i) the evidence submitted during the
16 trial;

17 “(ii) the information submitted during
18 the sentencing hearing;

19 “(iii) the procedures employed in the
20 sentencing hearing; and

21 “(iv) the special findings returned
22 under subparagraph (3)(D).

23 “(C) DECISION AND DISPOSITION.—

24 “(i) If the court of appeals determines
25 that—

1 “(I) the sentence of death was
2 not imposed under the influence of
3 passion, prejudice, or any other arbi-
4 trary factor; and

5 “(II) the information supports
6 the special finding of the existence of
7 an aggravating factor required to be
8 considered under paragraph (2); it
9 shall affirm the sentence.

10 “(ii) In any other case, the court of
11 appeals shall remand the case for reconsid-
12 eration under paragraph (3).

13 “(iii) The court of appeals shall state
14 in writing the reasons for its disposition of
15 an appeal of a sentence of death under this
16 section.

17 “(6) IMPLEMENTATION OF A SENTENCE OF
18 DEATH.—A person who has been sentenced to death
19 pursuant to the provisions of this chapter shall be
20 committed to the custody of the Attorney General
21 until exhaustion of the procedures for appeal of the
22 judgment of conviction and for review of the sen-
23 tence. When the sentence is to be implemented, the
24 Attorney General shall release the person sentenced
25 to death to the custody of a United States marshal,

1 who shall supervise implementation of the sentence
2 in the manner prescribed by the law of the State in
3 which the sentence is imposed. If the law of such
4 State does not provide for implementation of a sen-
5 tence of death, the court shall designate another
6 State, the law of which does so provide, and the sen-
7 tence shall be implemented in the latter State in the
8 manner prescribed by such law. A sentence of death
9 shall not be carried out upon a woman while she is
10 pregnant.

11 “(7) USE OF STATE FACILITIES.—

12 “(A) IN GENERAL.—A United States mar-
13 shal charged with supervising the implementa-
14 tion of a sentence of death may use appropriate
15 State or local facilities for the purpose, may use
16 the services of an appropriate State or local of-
17 ficial or of a person such an official employs for
18 the purpose, and shall pay the costs thereof in
19 an amount approved by the Attorney General.

20 “(B) EXCUSE OF AN EMPLOYEE ON MORAL
21 OR RELIGIOUS GROUNDS.—No employee of any
22 State department of corrections or the Federal
23 Bureau of Prisons and no employee providing
24 services to that department or bureau under
25 contract shall be required as a condition of that

1 employment, or contractual obligation to be in
2 attendance at or to participate in any execution
3 carried out under this section if such participa-
4 tion is contrary to the moral or religious convic-
5 tions of the employee. For purposes of this sub-
6 section, the term ‘participation in execution’ in-
7 cludes personal preparation of the condemned
8 individual and the apparatus used for execution
9 and supervision of the activities of other person-
10 nel in carrying out such activities.’’.

11 **TITLE II—TERRORIST ALIEN REMOVAL**

12 SEC. 201. This Act may be cited as the “Terrorist
13 Alien Removal Act of 1991”.

14 SEC. 2. The Congress finds that (a) Terrorist groups
15 have been able to create significant infrastructures and
16 cells in the United States among persons who are in the
17 United States either temporarily, as students or in other
18 capacities, or as permanent resident aliens.

19 (b) International terrorist groups that sponsor these
20 infrastructures were responsible for—

21 (1) conspiring to bomb the Turkish Honorary
22 Consulate in Philadelphia, Pennsylvania in 1982;

23 (2) hijacking Trans World Airlines Flight 847
24 during which a United States Navy diver was mur-
25 dered in 1985;

1 (3) hijacking Egypt Air Flight 648 during
2 which three Americans were killed in 1985;

3 (4) murdering an American citizen aboard the
4 Achille Lauro cruise liner in 1985;

5 (5) hijacking Pan Am Flight 73 in Karachi,
6 Pakistan, in which forty-four Americans were held
7 hostage and two were killed in 1986;

8 (6) conspiring to bomb an Air India aircraft in
9 New York City in 1986;

10 (7) attempting to bomb the Air Canada cargo
11 facility at the Los Angeles International airport in
12 1986; and

13 (8) numerous bombings and murders in North-
14 ern Ireland over the past decade.

15 (c) Certain governments and organizations have di-
16 rected their assets in the United States to take measures
17 in preparation for the commission of terrorist acts in this
18 country.

19 (d) Present immigration laws have not been used to
20 any significant degree by law enforcement officials to de-
21 port alien terrorists because compliance with these laws
22 with respect to such aliens would compromise classified
23 intelligence sources and information. Moreover, appellate
24 procedures routinely afforded aliens following a deporta-
25 tion hearing frequently extend over several years resulting

1 in an inability to remove expeditiously aliens engaging in
2 terrorist activity.

3 (e) Present immigration laws are inadequate to pro-
4 tect the national security of the United States from terror-
5 ist attacks by certain aliens. Therefore, new procedures
6 are needed to remove alien terrorists from the United
7 States and thus reduce the threat that such aliens pose
8 to the national security and other vital interests of the
9 United States.

10 SEC. 203. (a) Subsection 241(a) of the Immigration
11 and Nationality Act (8 U.S.C. 1251(a)) is amended by
12 adding at the end thereof a new paragraph 21 as follows:

13 “(21) either prior or subsequent to entry is en-
14 gaging in or has engaged in terrorist activity.”.

15 (b) Subsection 101(a) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1101(a)) is amended by adding at
17 the end thereof the following new paragraphs:

18 “(43) The term ‘terrorist activity’ means any activity
19 which is unlawful under the laws of the place where it
20 is committed, or which, if committed in the United States
21 would have been unlawful under the laws of the United
22 States or of any State and which involves—

23 “(A) the hijacking of an aircraft, vessel, or
24 vehicle;

1 “(B) the sabotage of an aircraft, vessel, or
2 vehicle;

3 “(C) the seizing or detaining and threatening to
4 kill, injure, or continue to detain another person in
5 order to compel a third person or governmental or-
6 ganization to do or abstain from doing any act as
7 an explicit or implicit condition for the release of the
8 person detained or seized;

9 “(D) a violent attack upon the person or liberty
10 of an ‘internationally protected person’ as defined in
11 18 U.S.C. 1116(b)(4);

12 “(E) the use of any explosive, biological agent,
13 chemical agent, nuclear weapon or device, or fire-
14 arm with intent to endanger, directly or indirectly,
15 the safety of people or cause substantial damage to
16 property;

17 “(F) an assassination; or

18 “(G) any threat, attempt, or conspiracy to do
19 any of the foregoing.

20 “(44) The term ‘engage in a terrorist activity’ means
21 to commit an act of terrorist activity or to do an act which
22 the actor knows, or reasonably should know, affords mate-
23 rial support to any individual or enterprise in conducting
24 terrorist activity at any time including, but not limited
25 to—

1 “(A) the preparation and planning of terrorist
2 activity;

3 “(B) the gathering of intelligence on potential
4 targets for terrorist activity;

5 “(C) the providing of any type of material sup-
6 port including but not limited to a safe house, trans-
7 portation, funds, false identification, weapon, or ex-
8 plosive to any individual who the actor knows or has
9 reason to believe has committed or plans to commit
10 an act of terrorist activity;

11 “(D) the soliciting of funds or other things of
12 value for terrorist activity or for any organization
13 which engages in or which has engaged in terrorist
14 activity; or

15 “(E) the solicitation of any individual for mem-
16 bership in a terrorist enterprise;

17 The term does not include lawful speeches, writings, or
18 attendance and participation in peaceful public assemblies;

19 *Provided, however,* That evidence of any speech, writing,
20 or participation in any public assembly may be used to
21 show the actor’s awareness of the unlawful methods of an
22 individual or enterprise conducting terrorist activity.

23 “(45) The term ‘individual’ means a human being.

24 “(46) The term ‘enterprise’ means an organization
25 or government.”.

1 SEC. 204. The Immigration and Nationality Act is
2 amended by adding at the end thereof a new title V as
3 follows:

4 **“TITLE V—REMOVAL OF ALIEN**
5 **TERRORISTS**

“Sec.

“501 (adds 8 U.S.C. 1601). Applicability.

“502 (adds 8 U.S.C. 1602). Special Removal Hearing.

“503 (adds 8 U.S.C. 1603). Designation of Judges.

“504 (adds 8 U.S.C. 1604). Miscellaneous Provisions.

6 **“§ 501. Applicability**

7 “(a) The provisions of this title may be followed in
8 the discretion of the Department of Justice whenever the
9 Department of Justice has information that an alien de-
10 scribed in paragraph 21 of subsection 241(a) of this Act
11 (8 U.S.C. 1251(a)(21)) is subject to deportation because
12 of that paragraph.

13 “(b) Whenever an official of the Department of Jus-
14 tice files, under section 502, an application with the court
15 established under section 503 for authorization to seek re-
16 moval pursuant to the provisions of this title, the alien’s
17 rights regarding removal and expulsion shall be governed
18 solely by the provisions of this title. Except as they are
19 specifically referenced, no other provisions of the Immigra-
20 tion and Nationality Act shall be applicable. An alien sub-
21 ject to removal under these provisions shall have no right
22 of discovery of information derived from electronic surveil-
23 lance authorized under the Foreign Intelligence Surveil-

1 lance Act or otherwise for national security purposes, nor
2 shall such alien have the right to seek suppression of evi-
3 dence derived in such manner. Further, the Government
4 is authorized to use, in the removal proceeding, the fruits
5 of electronic surveillance authorized under the Foreign In-
6 telligence Surveillance Act without regard to subsections
7 106 (c), (e), (f), (g), and (h) of that Act.

8 “(c) This title is enacted in response to findings of
9 Congress that aliens described in paragraph 21 of sub-
10 section 241(a) of this Act (8 U.S.C. 1251(a)(21)) rep-
11 resent a unique threat to the security of the United States.
12 It is the intention of Congress that such aliens be prompt-
13 ly removed from the United States following—

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

16 “(2) a judicial determination pursuant to the
17 provisions of this title that an alien is removable on
18 the grounds that he is an alien described in para-
19 graph 21 of subsection 241(a) (8 U.S.C.
20 1251(a)(21));

21 and that such aliens not be given a deportation hearing
22 and are ineligible for any discretionary relief from deporta-
23 tion and for relief under subsection 243(h) of the Immi-
24 gration and Nationality Act.

1 **“§ 502. Special Removal Hearing**

2 “(a) Whenever removal of an alien is sought pursuant
3 to the provisions of this title, a written application upon
4 oath or affirmation shall be submitted in camera and ex
5 parte to the court established under section 503 for an
6 order authorizing such a procedure. Each application shall
7 require the approval of the Attorney General, the Deputy
8 Attorney General, or the Associate Attorney General based
9 upon his finding that it satisfies the criteria and require-
10 ments for such application as set forth in this title. Each
11 application shall include—

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

14 “(2) the approval of the Attorney General, the
15 Deputy Attorney General, or the Associate Attorney
16 General for the making of the application;

17 “(3) the identity of the alien for whom author-
18 ization for the special removal procedure is sought;
19 and

20 “(4) a statement of facts and circumstances re-
21 lied on by the Department of Justice to establish
22 that—

23 “(A) an alien as described in paragraph 21
24 of subsection 241(a) of this Act (8 U.S.C.
25 1251(a)(21)) is physically present in the United
26 States, and

1 “(B) with respect to such alien, adherence
2 to the provisions of title II of this Act regarding
3 the deportation of aliens would tend to harm
4 the national security of the United States, ad-
5 versely affect foreign relations, reveal an inves-
6 tigative technique important to efficient law en-
7 forcement, or disclose a confidential source of
8 information.

9 “(b) The application shall be filed under seal with
10 the court established under section 503. The Attorney
11 General may take into custody any alien with respect to
12 whom such an application has been filed and, notwith-
13 standing any other provision of law, may retain such an
14 alien in custody in accordance with the procedures author-
15 ized by this title.

16 “(c) In accordance with the rules of the court estab-
17 lished under section 503, the judge shall consider the ap-
18 plication and may consider other information presented
19 under oath or affirmation at an in camera and ex parte
20 hearing on the application. A verbatim record shall be
21 maintained of such a hearing. The application and any
22 other evidence shall be considered by a single judge of that
23 court who shall enter an ex parte order as requested if
24 he finds, on the basis of the facts submitted in the applica-
25 tion and any other information provided by the Depart-

1 ment of Justice at the in camera and ex parte hearing,
2 there is probable cause to believe that—

3 “(1) the alien who is the subject of the applica-
4 tion has been correctly identified and is an alien as
5 described in paragraph 21 of subsection 241(a) of
6 this Act (8 U.S.C. 1251(a)); and

7 “(2) adherence to the provisions of title II of
8 this Act regarding the deportation of the identified
9 alien would tend to harm the national security of the
10 United States, adversely affect foreign relations, re-
11 veal an investigative technique important to efficient
12 law enforcement or disclose a confidential source of
13 information.

14 “(d)(1) In any case in which the application for the
15 order is denied, the judge shall prepare a written state-
16 ment of his reasons for the denial and the Department
17 of Justice may seek a review of the denial by the Court
18 of Appeals for the Federal Circuit by notice of appeal
19 which must be filed within twenty days. In such a case
20 the entire record of the proceeding shall be transmitted
21 to the Court of Appeals under seal and the Court of Ap-
22 peals shall hear the matter ex parte.

23 “(2) If the Department of Justice does not seek re-
24 view, the alien shall be released from custody unless such
25 alien may be arrested and taken into custody pursuant

1 to title II of this Act as an alien subject to deportation,
2 in which case such alien shall be treated in accordance
3 with the provisions of this Act concerning the deportation
4 of aliens.

5 “(3) If the application for the order is denied because
6 the judge has not found probable cause to believe that the
7 alien who is the subject of the application has been cor-
8 rectly identified or is an alien as described in paragraph
9 21 of subsection 241(a) of this Act (8 U.S.C. 1251(a))
10 and the Department of Justice seeks review, the alien shall
11 be released from custody unless such alien may be arrested
12 and taken into custody pursuant to title II of this Act
13 as an alien subject to deportation, in which case such alien
14 shall be treated in accordance with the provisions of this
15 Act concerning the deportation of aliens simultaneously
16 with the application of this title.

17 “(4) If the application for the order is denied be-
18 cause, although the judge found probable cause to believe
19 that the alien who is the subject of the application has
20 been correctly identified and is an alien as described in
21 paragraph 21 of subsection 241(a) of this Act (8 U.S.C.
22 1251(a)), the judge has found that there is not probable
23 cause to believe that adherence to the provisions of title
24 II of this Act regarding the deportation of the identified
25 alien would tend to harm the national security of the Unit-

1 ed States, adversely affect foreign relations, reveal an in-
2 vestigative technique important to efficient law enforce-
3 ment, or disclose a confidential source of information, the
4 judge shall release the alien from custody subject to the
5 least restrictive condition or combination of conditions of
6 release described in subsection 3142 (b) and (c)(1)(B)(i)-
7 (xiv) of title 18 that will reasonably assure the appearance
8 of the alien at any future proceeding pursuant to this title
9 and will not endanger the safety of any other person or
10 the community, but if the judge finds no such condition
11 or combination of conditions the alien shall remain in cus-
12 tody until the completion of any appeal authorized by this
13 title. The provisions of sections 3145–3148 of title 18 per-
14 taining to review and appeal of a release or detention
15 order, penalties for failure to appear, penalties for an of-
16 fense committed while on release, and sanctions for viola-
17 tions of a release condition shall apply to an alien to whom
18 the previous sentence applies and—

19 “(A) for purposes of section 3145 an appeal
20 shall be taken to the Court of Appeals for the Fed-
21 eral Circuit; and

22 “(B) for purposes of section 3146 the alien
23 shall be considered released in connection with a
24 charge of an offense punishable by life imprison-
25 ment.

1 “(e)(1) In any case in which the application for the
2 order authorizing the special procedures of this title is ap-
3 proved, the judge who granted the order shall consider
4 separately each item of evidence the Department of Jus-
5 tice proposes to introduce in camera and ex parte at the
6 special removal hearing. The judge shall authorize the in-
7 troduction in camera and ex parte of any item of evidence
8 for which the judge determines that the introduction other
9 than in camera and ex parte would tend to harm the na-
10 tional security of the United States, adversely affect for-
11 eign relations, reveal an investigative technique important
12 to efficient law enforcement, or disclose a confidential
13 source of information. With respect to any evidence which
14 the judge authorizes to be introduced in camera and ex
15 parte, the judge shall cause to be prepared and shall sign,
16 and the Department of Justice shall cause to be delivered
17 to the alien, either—

18 “(A) a written summary which shall be suffi-
19 cient to inform the alien of the general nature of the
20 evidence that he is an alien as described in para-
21 graph 21 of subsection 241(a) of this Act (8 U.S.C.
22 1251(a)(21)) and to permit the alien to marshal the
23 facts and prepare a defense, but which shall not
24 tend to harm the national security, adversely affect
25 foreign relations, reveal an investigative technique

1 important to efficient law enforcement, or disclose a
2 confidential source; or

3 “(B) if necessary to prevent serious harm to the
4 national security or death or serious bodily injury to
5 any person, a statement informing the alien that no
6 such summary is possible.

7 “(2) The Department of Justice may take an
8 interlocutory appeal to the United States Court of
9 Appeals for the Federal Circuit of any determination
10 by the judge pursuant to paragraph (1)—

11 “(A) concerning whether an item of evidence
12 may be introduced in camera and ex parte;

13 “(B) concerning the contents of any summary
14 of evidence to be introduced in camera and ex parte
15 prepared pursuant to subparagraph (e)(1)(A); or

16 “(C) ruling that no summary of evidence to be
17 introduced in camera and ex parte is possible pursu-
18 ant to subparagraph (e)(1)(B).

19 In any interlocutory appeal taken pursuant to this para-
20 graph, the entire record, including any proposed order of
21 the judge or summary of evidence, shall be transmitted
22 to the Court of Appeals under seal which shall hear the
23 matter ex parte. The Court of Appeals shall consider the
24 appeal as expeditiously as possible.

1 “(f) In any case in which the application for the order
2 is approved the special removal hearing authorized by this
3 section shall be conducted for the purpose of determining
4 if the alien to whom the order pertains should be removed
5 from the United States on the grounds that he is an alien
6 as described in paragraph 21 of subsection 241(a) of this
7 Act (8 U.S.C. 1251(a)(21)). In accordance with subsection
8 (e), the alien shall be given reasonable notice of the nature
9 of the charges against him. The alien shall be given notice,
10 reasonable under all the circumstances, of the time and
11 place at which the hearing will be held. The hearing shall
12 be held as expeditiously as possible.

13 “(g) The special removal hearing shall be held before
14 the same judge who granted the order pursuant to sub-
15 section (e) unless that judge is deemed unavailable due
16 to illness or disability by the chief judge of the court estab-
17 lished pursuant to section 503, or has died. A decision
18 by the chief judge pursuant to the preceding sentence shall
19 not be subject to review by either the alien or the Depart-
20 ment of Justice.

21 “(h) The hearing shall be open to the public. The
22 alien shall have a right to be present as such hearing and
23 to be represented by counsel. Any alien financially unable
24 to obtain counsel shall be entitled to have counsel assigned
25 to represent him. Such counsel shall be appointed by the

1 judge pursuant to the plan for furnishing representation
2 for any person financially unable to obtain adequate rep-
3 resentation for the district in which the hearing is con-
4 ducted as provided for in section 3006A of title 18, all
5 provisions of that section shall apply, and for purposes of
6 determining the maximum amount of compensation, the
7 matter shall be treated as if a felony was charged. The
8 alien may be called as a witness by the Department of
9 Justice. The alien shall have a right to introduce evidence
10 on his own behalf. Except as provided in subsection (j),
11 the alien shall have a reasonable opportunity to examine
12 the evidence against him and to cross-examine any wit-
13 nesses. A verbatim record of the proceedings and of all
14 testimony and evidence offered or produced at such a
15 hearing shall be kept. The decision of the judge shall be
16 based only on the evidence introduced at the hearing, in-
17 cluding evidence introduced under subsection (j).

18 “(i) At any time prior to the conclusion of the hear-
19 ing, either the alien or the Department of Justice may
20 request the judge to issue a subpoena for the presence of
21 a named witness (which subpoena may also command the
22 person to whom it is directed to produce books, papers,
23 documents, or other objects designated therein) upon a
24 satisfactory showing that the presence of the witness is
25 necessary for the determination of any material matter.

1 Such a request may be made ex parte except that the
2 judge shall inform the Department of Justice of any re-
3 quest for a subpoena by the alien for a witness or material
4 if compliance with such a subpoena would reveal evidence
5 or the source of evidence which has been introduced, or
6 which the Department of Justice has received permission
7 to introduce, in camera and ex parte pursuant to sub-
8 section (j), and the Department of Justice shall be given
9 a reasonable opportunity to oppose the issuance of such
10 a subpoena. If an application for a subpoena by the alien
11 also makes a showing that the alien is financially unable
12 to pay for the attendance of a witness so requested, the
13 court may order the costs incurred by the process and the
14 fees of the witness so subpoenaed to be paid for from
15 funds appropriated for the enforcement of title II of this
16 Act. A subpoena under this subsection may be served any-
17 where in the United States. A witness subpoenaed under
18 this subsection shall receive the same fees and expenses
19 as a witness subpoenaed in connection with a civil proceed-
20 ing in a court of the United States. Nothing in this sub-
21 section is intended to allow an alien to have access to clas-
22 sified information.

23 “(j) Evidence which has either been summarized pur-
24 suant to subsection (e)(1)(A) or for which no summary
25 has been deemed possible pursuant to subsection (e)(1)(B)

1 shall be introduced (either in writing or through testi-
2 mony) in camera and ex parte and neither the alien, nor
3 the public shall be informed of such evidence or its source
4 other than through reference to the summary provided
5 pursuant to subsection (e)(1)(A) or to the explanation that
6 no summary could be provided pursuant to subsection
7 (e)(1)(B). Notwithstanding the previous sentence, the De-
8 partment of Justice may, in its discretion, elect to intro-
9 duce such evidence in open session.

10 “(k) Evidence introduced at the hearing, either in
11 open session or in camera and ex parte may, in the discre-
12 tion of the Department of Justice, include all or part of
13 the information presented under subsections (a) through
14 (c) used to obtain the order for the hearing under this
15 section.

16 “(l) Following the receipt of evidence, the attorney
17 for the Department of Justice and for the alien shall be
18 given fair opportunity to present argument as to whether
19 the evidence is sufficient to justify the removal of the
20 alien. The attorney for the Department of Justice shall
21 open the argument. The attorney for the alien shall be
22 permitted to reply. The attorney for the Department of
23 Justice shall then be permitted to reply in rebuttal. The
24 judge may allow any part of the argument that refers to

1 evidence received in camera and ex parte to be heard in
2 camera and ex parte.

3 “(m) The Department of Justice has the burden of
4 showing by clear and convincing evidence that the alien
5 is subject to removal because he is an alien as described
6 in paragraph 21 of subsection 241(a) of this Act (8 U.S.C.
7 1251(a)(21)). If the judge finds that the Department of
8 Justice has met this burden, the judge shall order the
9 alien removed.

10 “(n)(1) At the time of rendering a decision as to
11 whether the alien shall be removed, the judge shall prepare
12 a written order containing a statement of facts found and
13 conclusions of law. Any portion of the order that would
14 reveal the substance or source of evidence received in cam-
15 era and ex parte pursuant to subsection (j) shall not be
16 made available to the alien or the public.

17 “(2) The decision of the judge may be appealed by
18 either the alien or the Department of Justice to the Court
19 of Appeals for the Federal Circuit by notice of appeal
20 which must be filed within twenty days, during which time
21 such order shall not be executed. In any case appealed
22 pursuant to this subsection, the entire record shall be
23 transmitted to the Court of Appeals and information re-
24 ceived pursuant to subsection (j), and any portion of the
25 judge’s order that would reveal such information or its

1 source, shall be transmitted under seal. The Court of Ap-
2 peals shall consider the case as expeditiously as possible.

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

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

16 “(p) Following a decision by the Court of Appeals
17 pursuant to either subsection (d) or subsection (n), either
18 the alien or the Department of Justice may petition the
19 Supreme Court for a writ of certiorari. In any such case,
20 any information transmitted to the Court of Appeals
21 under seal shall, if such information is also submitted to
22 the Supreme Court, be transmitted under seal.

23 **“§ 503. Designation of Judges**

24 “(a) The Chief Justice of the United States shall
25 publicly designate five district court judges from five of

1 the United States judicial circuits who shall constitute a
2 court which shall have jurisdiction to conduct all matters
3 and proceedings authorized by section 502. One of the
4 judges so appointed shall be publicly designated as the
5 presiding judge by the Chief Justice. The presiding judge
6 shall promulgate rules to facilitate the functioning of the
7 court and shall be responsible for assigning the consider-
8 ation of cases to the various judges.

9 “(b) Proceedings under section 502 shall be con-
10 ducted as expeditiously as possible. The Chief Justice, in
11 consultation with the Attorney General and other appro-
12 priate Federal officials, shall, consistent with the objec-
13 tives of this title, provide for the maintenance of appro-
14 priate security measures for applications for ex parte or-
15 ders to conduct the special removal hearing authorized by
16 section 502, the orders themselves, evidence received in
17 camera and ex parte, and other matters as necessary to
18 protect information concerning matters before the court
19 from harming the national security of the United States,
20 adversely affecting foreign relations, revealing investiga-
21 tive techniques, or disclosing confidential sources of infor-
22 mation.

23 “(c) Each judge designated under this section shall
24 serve for a term of five years and shall be eligible for re-
25 designation except that the four associate judges first des-

1 ignated under subsection (a) shall be designated for terms
2 of from one to four years so that one term expires each
3 year.

4 **“§ 504. Miscellaneous Provisions**

5 “(a)(1) Following a determination pursuant to this
6 title that an alien shall be removed, and after the conclu-
7 sion of any judicial review thereof, the Attorney General
8 may retain the alien in custody, or if the alien was released
9 pursuant to subsection 502(o) may return the alien to cus-
10 tody, and shall cause the alien to be transported to any
11 country which the alien shall designate provided such des-
12 ignment does not, in the Attorney General’s judgment, im-
13 pair any treaty (including a treaty pertaining to extra-
14 dition) obligation of the United States or otherwise ad-
15 versely affect the foreign policy of the United States.

16 “(2) If the alien refuses to chose a country to which
17 he wishes to be transported, or if the Attorney General
18 determines that removal of the alien to a selected country
19 would impair a treaty obligation or adversely affect foreign
20 policy, the Attorney General shall cause the alien to be
21 transported to any country willing to receive such alien.

22 “(3) Before an alien is transported out of the United
23 States pursuant to paragraph (1) or (2) or pursuant to
24 an order of exclusion because such alien is excludable
25 under paragraph 34 of subsection 212(a) of this Act (8

1 U.S.C. 1182(a)(34)), he or she shall be photographed and
2 fingerprinted, and shall be advised of the provisions of
3 subsection 276(b) of this Act (8 U.S.C. 1326(b)).

4 “(4) If no country is willing to receive such an alien,
5 the Attorney General may, notwithstanding any other pro-
6 vision of law, retain the alien in custody. The Attorney
7 General shall make periodic efforts to reach agreement
8 with other countries to accept such an alien and shall sub-
9 mit a written report on his efforts to obtain such an agree-
10 ment to the alien at least every six months. Any alien in
11 custody pursuant to this subsection shall be released from
12 custody solely at the discretion of the Attorney General
13 and subject to such conditions as the Attorney General
14 shall deem appropriate. The actions of the Attorney Gen-
15 eral pursuant to this subsection shall not be subject to
16 judicial review, including application for a writ of habeas
17 corpus except for a claim that his rights under the Con-
18 stitution are being violated by continued detention. Juris-
19 diction over any such challenge shall lie exclusively in the
20 Court of Appeals for the Federal Circuit.

21 “(b)(1) Notwithstanding the provisions of subsection
22 (a), the Attorney General may hold in abeyance the re-
23 moval of an alien who has been ordered removed pursuant
24 to this title to allow the trial of such alien on any federal

1 or State criminal charge and the service of any sentence
2 of confinement resulting from such a trial.

3 “(2) Pending the commencement of any service of a
4 sentence of confinement, by an alien described in para-
5 graph (1), such an alien shall remain in the custody of
6 the Attorney General, unless the Attorney General deter-
7 mines that temporary release of the alien to the custody
8 of State authorities for confinement in a State facility is
9 appropriate and would not endanger national security or
10 public safety.

11 “(3) Following the completion of a sentence of con-
12 finement by an alien described in paragraph (1) or follow-
13 ing the completion of State criminal proceedings which do
14 not result in a sentence of confinement of an alien released
15 to the custody of State authorities pursuant to paragraph
16 (2), such an alien shall be returned to the custody of the
17 Attorney General who shall proceed to carry out the provi-
18 sions of subsection (a) concerning removal of the alien.

19 “(c) For the purposes of sections 751 and 752 of title
20 18, an alien in the custody of the Attorney General pursu-
21 ant to this title shall be considered as being committed
22 to the custody of the Attorney General by virtue of an
23 arrest on a charge of felony.

24 “(d)(1) An alien in the custody of the Attorney Gen-
25 eral pursuant to this title shall be given reasonable oppor-

1 tunities to communicate with and receive visits from mem-
2 bers of his or her family, and to contact, retain, and com-
3 municate with an attorney.

4 “(2) An alien in the custody of the Attorney General
5 pursuant to this title shall have the right to contact an
6 appropriate diplomatic or consular official of the alien’s
7 country, or an official of any country providing representa-
8 tion services for that country. The Attorney General shall
9 notify the appropriate embassy of the alien’s detention.”.

10 SEC. 205. Subsection 212(a) of the Immigration and
11 Nationality Act (8 U.S.C. 1182(a)) is amended by adding
12 at the end thereof a new paragraph 34 as follows:

13 “(34) Aliens with respect to whom the consular offi-
14 cer or the Attorney General knows or has reasonable
15 ground to believe are engaging in, have engaged in, or
16 probably would, after entry, engage in terrorist activity.”.

17 SEC. 206. (a) Subsection 235(c) of the Immigration
18 and Nationality Act (8 U.S.C. 1225(c)) is amended by
19 striking out “or (29)” and inserting in lieu thereof “(29),
20 or (34)”.

21 (b) Section 106(b) (8 U.S.C. 1105a(b)) of the Immi-
22 gration and Nationality Act is amended by adding at the
23 end thereof the following sentence: “Jurisdiction to review
24 an order entered pursuant to the provisions of section
25 235(c) of this Act concerning an alien excludable under

1 paragraph 34 of subsection 212(a) (8 U.S.C. 1182(a))
2 shall rest exclusively in the United States Court of Appeals
3 for the Federal Circuit.”.

4 SEC. 207. Section 276 of the Immigration and Na-
5 tionality Act (8 U.S.C. 1326) is amended by inserting
6 “(a)” before the phrase “Any alien who” at the beginning
7 thereof and by adding a new subsection (b) as follows:

8 “(b) Any alien who has been excluded from the Unit-
9 ed States pursuant to subsection 235(c) of the Immigra-
10 tion and Nationality Act (8 U.S.C. 1225(c)) because such
11 alien was excludable under paragraph 34 of subsection
12 212(a) of said Act (8 U.S.C. 1182(a)(34)) or has been
13 removed from the United States pursuant to the provi-
14 sions of title V of the Immigration and Nationality Act
15 and who thereafter, without the permission of the Attor-
16 ney General, enters the United States or attempts to do
17 so shall be imprisoned for a period of ten years which sen-
18 tence shall not run concurrently with any other sentence
19 and fined in accordance with the provisions of title 18,
20 United States Code.”.

21 SEC. 208. Subsection 106(a) (8 U.S.C. 1105a(a)) of
22 the Immigration and Nationality Act is amended by—

23 (1) striking from the end of paragraph 8 “;
24 and” and inserting a period; and

25 (2) striking paragraph (9).

1 **TITLE III—COUNTERINTELLIGENCE AC-**
2 **CESS TO TELEPHONE TOLL AND**
3 **TRANSACTIONAL RECORDS**

4 SEC. 301. Section 2709 of title 18 of the United
5 States Code is amended by—

- 6 (1) striking out subsections (b) and (c); and
7 (2) inserting the following new subsections (b)
8 and (c).

9 “(b) **REQUIRED CERTIFICATION.**—The Director of
10 the Federal Bureau of Investigation (or an individual
11 within the Federal Bureau of Investigation designated for
12 this purpose by the Director) may:

13 “(1) request any such information and records
14 if the Director (or the Director’s designee) certifies
15 in writing to the wire or electronic communication
16 service provider to which the request is made that—

17 “(A) the information sought is relevant to
18 an authorized foreign counterintelligence inves-
19 tigation; and

20 “(B) there are specific and articulable
21 facts giving reason to believe that the person or
22 entity about whom information is sought or per-
23 tains is a foreign power or an agent of a foreign
24 power as defined in section 101 of the Foreign

1 Intelligence Surveillance Act of 1978 (50
2 U.S.C. 1801); and

3 “(2) request subscriber information regarding a
4 person or entity if the Director certifies in writing
5 to the wire or electronic communications service pro-
6 vider to which the request is made that—

7 “(A) the information sought is relevant to
8 an authorized foreign counterintelligence inves-
9 tigation; and

10 “(B) that information available to the Fed-
11 eral Bureau of Investigation indicates there is
12 reason to believe that communication facilities
13 registered in the name of the person or entity
14 have been used; through the services of such
15 provider, in communication with a foreign
16 power or an agent of a foreign power as defined
17 in section 101 of the Foreign Intelligence Sur-
18 veillance Act of 1978 (50 U.S.C. 1801).”.

19 “(c) PENALTY FOR DISCLOSURE.—No wire or elec-
20 tronic communication service provider, or officer, em-
21 ployee, or agent thereof, shall disclose to any person that
22 the Federal Bureau of Investigation has sought or ob-
23 tained access to information under this section. Violators
24 of this section shall be subject to penalty under section
25 3571 of this title.”.



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