

107TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 107-236
Part 1

PROVIDE APPROPRIATE TOOLS REQUIRED TO
INTERCEPT AND OBSTRUCT TERRORISM
(PATRIOT) ACT OF 2001

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 2975

together with

ADDITIONAL VIEWS



OCTOBER 11, 2001.—Ordered to be printed

PROVIDE APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (PATRIOT) ACT OF
2001

PROVIDE APPROPRIATE TOOLS REQUIRED TO INTERCEPT
AND OBSTRUCT TERRORISM (PATRIOT) ACT OF 2001

OCTOBER 11, 2001.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2975]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2975) to combat terrorism, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendment	2
Purpose and Summary	41
Background and Need for the Legislation	41
Hearings	42
Committee Consideration	42
Votes of the Committee	42
Committee Oversight Findings	45
Performance Goals and Objectives	46
New Budget Authority and Tax Expenditures	46
Congressional Budget Office Cost Estimate	46
Constitutional Authority Statement	51
Section-by-Section Analysis and Discussion	52
Changes in Existing Law Made by the Bill, as Reported	79
Committee Jurisdiction Letters	156
Markup Transcript	164
Additional Views	431

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001".

SEC. 2. TABLE OF CONTENTS.

The following is the table of contents for this Act:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Construction; severability.

TITLE I—INTELLIGENCE GATHERING

Subtitle A—Electronic Surveillance

- Sec. 101. Modification of authorities relating to use of pen registers and trap and trace devices.
- Sec. 102. Seizure of voice-mail messages pursuant to warrants.
- Sec. 103. Authorized disclosure.
- Sec. 104. Savings provision.
- Sec. 105. Interception of computer trespasser communications.
- Sec. 106. Technical amendment.
- Sec. 107. Scope of subpoenas for records of electronic communications.
- Sec. 108. Nationwide service of search warrants for electronic evidence.
- Sec. 109. Clarification of scope.
- Sec. 110. Emergency disclosure of electronic communications to protect life and limb.
- Sec. 111. Use as evidence.
- Sec. 112. Reports concerning the disclosure of the contents of electronic communications.

Subtitle B—Foreign Intelligence Surveillance and Other Information

- Sec. 151. Period of orders of electronic surveillance of non-United States persons under foreign intelligence surveillance.
- Sec. 152. Multi-point authority.
- Sec. 153. Foreign intelligence information.
- Sec. 154. Foreign intelligence information sharing.
- Sec. 155. Pen register and trap and trace authority.
- Sec. 156. Business records.
- Sec. 157. Miscellaneous national-security authorities.
- Sec. 158. Proposed legislation.
- Sec. 159. Presidential authority.
- Sec. 160. Clarification of no technology mandates.
- Sec. 161. Civil liability for certain unauthorized disclosures.
- Sec. 162. Sunset.

TITLE II—ALIENS ENGAGING IN TERRORIST ACTIVITY

Subtitle A—Detention and Removal of Aliens Engaging in Terrorist Activity

- Sec. 201. Changes in classes of aliens who are ineligible for admission and deportable due to terrorist activity.
- Sec. 202. Changes in designation of foreign terrorist organizations.
- Sec. 203. Mandatory detention of suspected terrorists; habeas corpus; judicial review.
- Sec. 204. Changes in conditions for granting asylum.
- Sec. 205. Multilateral cooperation against terrorists.
- Sec. 206. Requiring sharing by the Federal bureau of investigation of certain criminal record extracts with other Federal agencies in order to enhance border security.
- Sec. 207. Inadmissibility of aliens engaged in money laundering.
- Sec. 208. Program to collect information relating to nonimmigrant foreign students and other exchange program participants.
- Sec. 209. Protection of northern border.

Subtitle B—Preservation of Immigration Benefits for Victims of Terrorism

- Sec. 211. Special immigrant status.
- Sec. 212. Extension of filing or reentry deadlines.
- Sec. 213. Humanitarian relief for certain surviving spouses and children.
- Sec. 214. "Age-out" protection for children.
- Sec. 215. Temporary administrative relief.
- Sec. 216. Evidence of death, disability, or loss of employment.
- Sec. 217. No benefits to terrorists or family members of terrorists.
- Sec. 218. Definitions.

TITLE III—CRIMINAL JUSTICE

Subtitle A—Substantive Criminal Law

- Sec. 301. Statute of limitation for prosecuting terrorism offenses.
- Sec. 302. Alternative maximum penalties for terrorism crimes.
- Sec. 303. Penalties for terrorist conspiracies.
- Sec. 304. Terrorism crimes as *respondeat superior* predicates.
- Sec. 305. Biological weapons.
- Sec. 306. Support of terrorism through expert advice or assistance.
- Sec. 307. Prohibition against harboring.
- Sec. 308. Post-release supervision of terrorists.
- Sec. 309. Definition.
- Sec. 310. Civil damages.

Subtitle B—Criminal Procedure

- Sec. 351. Single-jurisdiction search warrants for terrorism.

"(A) the date on which a denial of concurrence is received; or

"(B) the end of the 60-day period beginning on the date the concurrence was sought.

"(3) EXCEPTION.—It shall be the duty of the Secretary of State to carry out the procedural requirements of paragraphs (2)(A) and (6)(B) of subsection (a) in all cases, including cases in which a designation or revocation is initiated by the Attorney General."

SEC. 203. MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW.

(a) IN GENERAL.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after section 236 the following:

"MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW

"SEC. 236A. (a) DETENTION OF TERRORIST ALIENS.—

"(1) CUSTODY.—The Attorney General shall take into custody any alien who is certified under paragraph (3).

"(2) RELEASE.—Except as provided in paragraphs (5) and (6), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States or found not to be inadmissible or deportable, as the case may be. Except as provided in paragraph (6), such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3).

"(3) CERTIFICATION.—The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien—

"(A) is described in section 212(a)(3)(A)(i), 212(a)(3)(A)(iii), 212(a)(3)(B), 237(a)(4)(A)(i), 237(a)(4)(A)(iii), or 237(a)(4)(B); or

"(B) is engaged in any other activity that endangers the national security of the United States.

"(4) NONDELEGATION.—The Attorney General may delegate the authority provided under paragraph (3) only to the Deputy Attorney General. The Deputy Attorney General may not delegate such authority.

"(5) COMMENCEMENT OF PROCEEDINGS.—The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.

"(6) LIMITATION ON INDEFINITE DETENTION.—An alien detained under paragraph (1) who has been ordered removed based on one or more of the grounds of inadmissibility or deportability referred to in paragraph (3)(A), who has not been removed within the removal period specified under section 241(a)(1)(A), and whose removal is unlikely in the reasonably foreseeable future, may be detained for additional periods of up to six months if the Attorney General demonstrates that the release of the alien will not protect the national security of the United States or adequately ensure the safety of the community or any person.

"(b) HABEAS CORPUS AND JUDICIAL REVIEW.—Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3) or (a)(6)) is available exclusively in habeas corpus proceedings initiated in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision."

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236 the following:

"Sec. 236A. Mandatory detention of suspected terrorists; habeas corpus; judicial review."

(c) REPORTS.—Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, with respect to the reporting period, on—

- (1) the number of aliens certified under section 236A(a)(3) of the Immigration and Nationality Act, as added by subsection (a);
- (2) the grounds for such certifications;
- (3) the nationalities of the aliens so certified;

- (4) the length of the detention for each alien so certified; and
- (5) the number of aliens so certified who—
 - (A) were granted any form of relief from removal;
 - (B) were removed;
 - (C) the Attorney General has determined are no longer an alien who may be so certified; or
 - (D) were released from detention.

SEC. 204. CHANGES IN CONDITIONS FOR GRANTING ASYLUM.

(a) **IN GENERAL.**—Section 208(b)(2)(A)(v) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)(v)) is amended—

- (1) by striking “inadmissible under” each place such term appears and inserting “described in”; and
 - (2) by striking “removable under” and inserting “described in”.
- (b) **RETROACTIVE APPLICATION OF AMENDMENTS.**—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to—

- (1) actions taken by an alien before such date, as well as actions taken on or after such date; and
- (2) all aliens, without regard to the date of entry or attempted entry into the United States, whose application for asylum is pending on or after such date (except for applications with respect to which there has been a final administrative decision before such date).

SEC. 205. MULTILATERAL COOPERATION AGAINST TERRORISTS.

Section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)) is amended—

- (1) by striking “The records” and inserting “(1) Subject to paragraphs (2) and (3), the records”;
- (2) by striking “United States,” and all that follows through the period at the end and inserting “United States.”; and
- (3) by adding at the end the following:

“(2) In the discretion of the Secretary of State, certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

“(3)(A) Subject to the provisions of this paragraph, the Secretary of State may provide copies of records of the Department of State and of diplomatic and consular offices of the United States (including the Department of State’s automated visa lookout database) pertaining to the issuance or refusal of visas or permits to enter the United States, or information contained in such records, to foreign governments if the Secretary determines that it is necessary and appropriate.

“(B) Such records and information may be provided on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism. General access to records and information may be provided under an agreement to limit the use of such records and information to the purposes described in the preceding sentence.

“(C) The Secretary of State shall make any determination under this paragraph in consultation with any Federal agency that compiled or provided such records or information.

“(D) To the extent possible, such records and information shall be made available to foreign governments on a reciprocal basis.”.

SEC. 206. REQUIRING SHARING BY THE FEDERAL BUREAU OF INVESTIGATION OF CERTAIN CRIMINAL RECORD EXTRACTS WITH OTHER FEDERAL AGENCIES IN ORDER TO ENHANCE BORDER SECURITY.

(a) **IN GENERAL.**—Section 105 of the Immigration and Nationality Act (8 U.S.C. 1105), is amended—

- (1) in the section heading, by adding “AND DATA EXCHANGE” at the end;
- (2) by inserting “(a) LIAISON WITH INTERNAL SECURITY OFFICERS.—” after “105.”;
- (3) by striking “the internal security of” and inserting “the internal and border security of”; and
- (4) by adding at the end the following:

“(b) **CRIMINAL HISTORY RECORD INFORMATION.**—The Attorney General and the Director of the Federal Bureau of Investigation shall provide the Secretary of State and the Commissioner access to the criminal history record information contained in the National Crime Information Center’s Interstate Identification Index, Wanted Persons File, and to any other files maintained by the National Crime Information Center that may be mutually agreed upon by the Attorney General and the official

- (i) an individual who performs security services, full or part time, for consideration as an independent contractor or an employee, whether armed or unarmed and in uniform or plain clothes whose primary duty is to perform security services, or
- (ii) an individual who is an employee of an electronic security system company who is engaged in one or more of the following activities in the State: burglar alarm technician, fire alarm technician, closed circuit television technician, access control technician, or security system monitor; but
- (B) does not include—
 - (i) sworn police officers who have law enforcement powers in the State;
 - (ii) attorneys, accountants, and other professionals who are otherwise licensed in the State;
 - (iii) employees whose duties are primarily internal audit or credit functions;
 - (iv) persons whose duties may incidentally include the reporting or apprehension of shoplifters or trespassers, or
 - (v) an individual on active duty in the military service;
- (4) the term "certificate of registration" means a license, permit, certificate, registration card, or other formal written permission from the State for the person to engage in providing security services;
- (5) the term "security services" means the performance of one or more of the following:
 - (A) the observation or reporting of intrusion, larceny, vandalism, fire or trespass;
 - (B) the deterrence of theft or misappropriation of any goods, money, or other item of value;
 - (C) the observation or reporting of any unlawful activity;
 - (D) the protection of individuals or property, including proprietary information, from harm or misappropriation;
 - (E) the control of access to premises being protected;
 - (F) the secure movement of prisoners;
 - (G) the maintenance of order and safety at athletic, entertainment, or other public activities;
 - (H) the provision of canine services for protecting premises or for the detection of any unlawful device or substance; and
 - (I) the transportation of money or other valuables by armored vehicle; and
- (6) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

PURPOSE AND SUMMARY

H.R. 2975, the "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001," provides enhanced investigative tools and improves information sharing for the law enforcement and intelligence communities to combat terrorism and terrorist-related crimes. The enhanced law enforcement tools and information sharing-provisions will assist in the prevention of future terrorist activities and the preliminary acts and crimes which further such activities. To protect the delicate balance between law enforcement and civil liberties, the bill provides additional government reporting requirements, disciplinary actions for abuse, and civil penalties.

BACKGROUND AND NEED FOR THE LEGISLATION

On September 11, 2001, the United States was attacked by terrorist. After the attacks the country became aware of the need to better defend and protect the nation, liberty and citizens within our own borders. There are several key legislative changes needed to mobilize the nation against terrorism and to assist law enforcement and the intelligence community to determine who carried out the

horrific acts of Tuesday, September 11, 2001, and to bring our criminal investigative capabilities to prevent future attacks.

HEARINGS

On September 24, 2001, the Committee on the Judiciary held one hearing on the Administration's proposed legislation the "Mobilization Against Terrorism Act of 2001," which formed the basis of H.R. 2975, the "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001." Testimony was received from four witnesses, representing the Department of Justice. The witnesses were: The Honorable John Aschroft, Attorney General; Honorable Michael Chertoff, Assistant Attorney General for the Criminal Division; Honorable Larry Thompson, Deputy Attorney General; and Honorable Viet Dinh, Assistant Attorney General for Legal Policy.

COMMITTEE CONSIDERATION

On October 3, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 2975, as amended, by a 36-0 vote, a quorum being present.

VOTES OF THE COMMITTEE

(1) An amendment was offered by Mr. Boucher (for himself, Mr. Goodlatte, and Mr. Cannon) to insert language at the end of title I that states "Nothing in this Act shall impose any additional technical obligation or requirement on a provider of wire or electronic communication service or other person to furnish facilities, services or technical assistance." The amendment passed by voice vote.

(2) An amendment was offered by Mr. Frank to provide increased civil liability for unlawful disclosures of information obtained by wire or electronic interception, access to electronically-stored communications, pen register and trap trace, or the Foreign Intelligence Surveillance Act of 1978 (FISA) intelligence gathering and to provide administrative discipline for intentional violations and to provide procedures for actions against the United States. The amendment passed by voice vote.

(3) An amendment was offered by Mr. Berman to sections 103 and 154, clarifying that the term "foreign intelligence information" is the same term that is defined under section 1801(e) of title 50, the Foreign Intelligence Surveillance Act. The amendment passed by voice vote.

(4) Amendments were offered en bloc by Mr. Sensenbrenner (for himself, Mr. Conyers, Mr. Hyde, and Mr. Berman) to, among other things, clarify that upon request, those being served with the generic pen/trap order created under this section shall receive written or electronic certification that the assistance provided related to the order; to authorize five million dollars to be appropriated for antidrug training for South and Central Asia police; to establish a feasibility study on the use of a biometric identifier scanning system with access to the FBI Integrated Automated Fingerprint Identification system at overseas consular posts and points of entry to the United States; to clarify that a court of competent jurisdiction for nationwide search warrants must have jurisdiction over the offense being investigated; and to modify the current designation

process by allowing either the Secretary of State or the Attorney General to determine designation of a foreign terrorist organization and if they fail to agree, the President shall make such determination. The amendment passed by voice vote.

(5) An amendment was offered by Mr. Hyde to make inadmissible any alien who the government knows or has reason to believe is a money launderer. The Secretary of State shall create a watchlist, to be checked before the issuance of a visa or admission of an alien into the U.S., which identifies persons who are known or suspected of money laundering. The amendment passed by voice vote.

(6) An amendment was offered by Mr. Nadler (for himself and Ms. Jackson Lee) to provide that the U.S. government can only seek information from the home government about an asylum applicant who is a suspected terrorist if the U.S. government does not disclose the fact that the alien has applied for asylum nor any information sufficient to give rise to an inference that the applicant has applied for asylum. Mr. Bachus offered an amendment to the amendment to strike the base provision—section 205(b)—from the bill. Both amendments passed by voice vote.

(7) Amendments were offered en bloc by Mr. Sensenbrenner (for himself, Mr. Conyers, Mr. Scott, Mr. Weiner, Mr. Issa, Mr. Keller, Mr. Barr, Mr. Cannon, Mr. Nadler and Ms. Jackson Lee). Mr. Scott offered an amendment to exclude military and military personnel from the provisions regarding extraterritorial jurisdiction in the bill who are already covered under the Military Extraterritorial Jurisdiction Act of 2000. Mr. Weiner and Mr. Issa offered amendments to increase the amount paid to public safety officers disabled or killed in the line of duty from \$100,000 to \$250,000. An amendment offered by Mr. Keller would authorize \$250,000 to require the FBI to study the feasibility of providing the airlines access to information regarding suspected terrorists. One of the amendments, offered by Mr. Barr, provided that the Attorney General and the Deputy Attorney General may, with no further delegation, certify an alien as a terrorist for purposes of mandatory detention. The bill had provided this authority to the Attorney General and the INS Commissioner. An amendment offered by Mr. Barr would allow an association of employers of private security officers to submit fingerprints or other methods of identification to the Attorney General for purposes of State licensing or certification. Another of the amendments, offered by Mr. Cannon (for himself and Mr. Issa), amends current law to revise the definition of "agency or instrumentality of a foreign state" for purposes of provisions regarding exceptions to: 1) the jurisdictional immunity of a foreign state where money damages are sought against the state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act; and 2) the immunity from attachment or execution where the judgment relates to a claim for which the foreign state is not immune. Another of the amendments, to be offered by Mr. Nadler (for himself and Ms. Jackson Lee), amends the section of the bill providing for mandatory detention of alien terrorists by providing that if an alien detained pursuant to the section was ordered removed as a terrorist (or on the other grounds allowing certification) and had not been removed

within 90 days and was unlikely to be removed in the reasonably foreseeable future, the alien could be detained for additional periods of up to 6 months if the Attorney General demonstrated that release would not protect the national security of the United States or ensure the public's safety. The en bloc amendment passed by voice vote.

(8) An amendment was offered by Ms. Lofgren to sunset most of the changes made to current immigration law by title II(a) of the bill. The amendment failed by voice vote.

(9) An amendment was offered by Mr. Weiner to amend the foreign student tracking system created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by advancing the date by which the system must be fully operational, providing that students who are nationals of countries that have repeatedly provided support for acts of international terrorism may be assessed a higher fee than other foreign students, and providing that the Attorney General shall provide to the Secretary of State and the Director of the FBI the information collected by the system. The amendment passed by a rollcall vote of 25-8.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Gekas			
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Bryant	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Graham			
Mr. Bachus	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Ms. Hart	X		
Mr. Flake	X		
Mr. Pence	X		
Mr. Conyers		X	
Mr. Frank		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt			
Mr. Wexler	X		
Ms. Baldwin		X	
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman	X		
Total	25	8	

(10) An amendment was offered by Ms. Jackson Lee to provide funds for enhanced technology for security and enforcement at the northern border. The amendment passed by voice vote.

(11) An amendment was offered by Mr. Scott to narrow the list of persons restricted from possessing biological agents. Mr. Scott's amendment changed definition of persons restricted due to the indictment for a crime, to those persons indicted for a Federal terrorism offense. The amendment failed by voice vote.

(12) An amendment was offered by Mr. Scott to tighten the intent requirement to require actual intent instead of apparent intent for the definition of "domestic terrorism." The amendment failed by voice vote.

(13) Vote on final passage was adopted by a rollcall vote of 36-0.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Bryant	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Graham	X		
Mr. Bachus	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Ms. Hart	X		
Mr. Flake	X		
Mr. Pence	X		
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman	X		
Total	36	0	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activi-

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title

This Act may be cited as the "Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001."

*Section 2. Table of Contents**Section 3. Construction; Severability*

TITLE I—INTELLIGENCE GATHERING
SUBTITLE A—ELECTRONIC SURVEILLANCE

Section 101. Modification of Authorities Relating to Use of Pen Registers and Trap and Trace Devices

Under 18 U.S.C. § 3121(b), law enforcement may obtain authorization from a court, upon certification that the information to be obtained is relevant to a pending criminal investigation, to install and use a "pen register" device that identifies the telephone numbers dialed or pulsed from (outgoing calls) or a "trap and trace" device that identifies the telephone numbers to a particular telephone (incoming calls). These court authorizations do not permit capturing or recording of the content of any such communication under the terms of the court order.

Currently, the government must apply for a new pen/trap order in every jurisdiction where the target telephone is located. This can cause serious delays that could be devastating to an investigation, particularly where additional criminal or terrorist acts are planned.

Section 101 *does not* change the requirement under 18 U.S.C. § 3121 that law enforcement seek a *court order* to install and use pen registers/trap and trace devices. It does not change the law requiring that the attorney for the government certify to the court that the information sought is relevant to an ongoing criminal investigation.

This section does change the current law requiring the government to obtain the order in the jurisdiction where the telephone (or its equivalent) is located. This section authorizes the court with jurisdiction over the offense of the investigation to issue the order, thus streamlining an investigation and eliminating the need to intrude upon the resources of courts and prosecutors with no connection to the investigation.

Under the bill, 18 U.S.C. § 3123(a) would authorize courts to issue a single pen register/trap and trace order that could be executed in multiple jurisdictions anywhere in the United States. The bill divides the existing 18 U.S.C. § 3123(a) into two paragraphs. The new subsection (a)(1) applies to Federal investigations and provides that the order may be *issued to any provider of communication services within the United States* whose assistance is appropriate to the effectuation of the order. Subsection (a)(2) applies to State law enforcement and does not change the current authority granted to State officials.

This section updates the language of the statute to clarify that the pen/register authority applies to modern communication technologies. Current statutory references to the target "line," for example, are revised to encompass a "line or other facility." Such a

nence to endorse or espouse terrorism or to persuade others to support terrorism if this would undermine the efforts of the U.S. to reduce or eliminate terrorism, and an alien who is associated with a terrorist organization and intends while in the U.S. to engage in activities that could endanger the welfare, safety, or security of the U.S. These provisions are similar to current law's "foreign policy" ground of inadmissibility, barring entry to an alien whose entry or proposed activities in the U.S. would have potentially serious adverse foreign policy consequences for the U.S.

The Act makes deportable an alien who is a representative of a terrorist organization so designated by the Secretary of State. It also makes deportable a representative of a political, social or other similar group who publicly endorses terrorism only if the endorsement undermines the effort of the U.S. to eliminate or reduce terrorism and is intended and likely to incite or produce imminent lawless action. Also deportable is an alien who has used his or her prominence to endorse terrorism or to persuade others to support terrorism only if this will undermine the efforts of the U.S. to reduce or eliminate terrorism and is intended and likely to incite or produce imminent lawless action.

The intent of the bill is to make an alien inadmissible and deportable who has provided any material support to an organization designated as a "foreign terrorist organizations" by the Secretary of State pursuant to 8 U.S.C. sec. 1189. However, with respect to terrorist organizations which have not been so designated, and to organizations prior to their designation, the provision of material support, the soliciting of funds, and the soliciting for members is not a deportable or inadmissible offense unless the alien knew or reasonably should have known that the act would further terrorist activity. Thus, in such cases, support given to non-designated organizations for purposes of humanitarian aid is permitted. This presumes that the alien does not provide material support for a so-called humanitarian "front" group of a terrorist organization when the alien knows or reasonably should know that the material support is in reality in furtherance of terrorist activity.

Section 202. Changes in Designation of Foreign Terrorist Organizations

Current law provides a process whereby the Secretary of State can designate an organization as a foreign terrorist organization. The Act provides that either the Secretary or the Attorney General may recommend an organization for designation, and the organization will be so designated if the other concurs. In instances where either official cannot gain the other's concurrence, the President shall decide on the requested designation. The Act also clarifies that organizations can be redesignated as terrorist organizations and that designations and redesignations can be revoked.

Section 203. Mandatory Detention of Suspected Terrorists; Habeas Corpus; Judicial Review

Under the current regulatory regime, the INS can detain an alien for 48 hours before making a decision as to charging the alien with a crime or removable offense (except that in the event of emergency or other extraordinary circumstance, an additional reasonable time is allowed). The INS uses this time to establish an

alien's true identity, to check domestic and foreign databases for information about the alien, and to liaise with law enforcement agencies.

The Act provides a mechanism whereby the Attorney General can certify an alien as a suspected terrorist (or for espionage or certain other offenses) and detain him for 7 days before charging. If no charges are filed by the end of this period, the alien must be released. Otherwise, the Attorney General shall maintain custody of the alien until the alien is removed from the U.S. or found not to be inadmissible or deportable.

The Attorney General or Deputy Attorney General (with no power of delegation) may certify an alien as a terrorist if they have reasonable grounds to believe that the alien is a terrorist. Judicial review as to certification or detention is limited to habeas corpus review in the U.S. District Court for the District of Columbia. Such judicial review shall include review of the merits of the decision to certify an alien as a terrorist.

The alien shall be maintained in custody irrespective of any relief from removal granted the alien, until the Attorney General determines that the alien no longer warrants certification. However, if an alien detained pursuant to this section was ordered removed as a terrorist (or on the other grounds allowing certification) and has not been removed within 90 days and is unlikely to be removed in the reasonably foreseeable future, the alien may be detained for additional periods of up to 6 months if the Attorney General demonstrates that release will not protect the national security of the United States or ensure the public's safety.

The Attorney General must submit a report to Congress on the use of this section every 6 months.

Section 204. Changes in Conditions for Granting Asylum

The Act clarifies that even if the INS charges an alien for purposes of removal or deportation with a non terrorist-based offense, if the alien seeks asylum, the INS can seek to oppose its grant by providing evidence that the alien is a terrorist.

Section 205. Multilateral Cooperation Against Terrorists

The Records of the State Department pertaining to the issuance of or refusal to issue visas to enter the U.S. are confidential and can be used only in the formulation and enforcement of U.S. law. The Act provides that the government can provide such records to a foreign government on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism.

Section 206. Requiring Sharing by the Federal Bureau of Investigation of Certain Criminal Record Extracts with other Federal Agencies in Order to Enhance Border Security

The Act provides that the Justice Department shall provide to the State Department and the INS access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, Wanted Persons File, and to any other files maintained by the NCIC that may be mutually agreed upon by the Justice Department and the official to be provided access, for purposes of determining whether a visa applicant or an applicant for admission has a criminal history record. Such

AMENDMENT TO H.R. 2975
OFFERED BY MR. BARR OF GEORGIA

In section 236A(a)(4) of the Immigration and Nationality Act, as proposed to be inserted by section 203 of the bill, strike "Commissioner" each place such term appears and insert "Deputy Attorney General".

AMENDMENT TO H.R. _____**OFFERED BY MS. JACKSON-LEE OF TEXAS**

In section 236A(b) of the Immigration and Nationality Act, as proposed to be inserted by section 203 of the bill, strike "in the United States District Court for the District of Columbia." and insert "initiated in any district court of the United States.".

Chairman SENSENBRENNER. The Clerk will report the long-lost 003.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

The CLERK. "amendment to H.R. 2975, offered by Ms. Jackson Lee of Texas. In section 236A(b) of the Immigration and Nationality Act, as proposed to be inserted by section 203 of the bill, strike 'in the United States District Court for the District of Columbia' and insert 'initiated in any district court of the United States.'"

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. I do recognize, Mr. Chairman, that the rights of legal aliens and, of course, undocumented individuals are different from those of American citizens, but I would offer to say that this is a simplistic and not detrimental amendment, and that is to allow the appeal of a person's detention in any district court in the United States.

I make note that restricting this review to the District Court of the District of Columbia would be rendering the review almost meaningless to those who may need it and who are in different parts of the country. If a detainee is a resident of my home State of Texas, for instance, we would be in fact ensuring that previously retained counsel, witnesses in that person's defense, their family, other resources which might be available to the person close to home would have no possibility of participating in the proceedings.

We do realize that this legislation will capture or incorporate the guilty, and it will also help the innocent, meaning those who are innocent of terroristic activities. They may have other violations, but they certainly would not be defined as terrorists. To take them away from their jurisdictions in their particular State diminishes their ability to present a defense; and do we actually believe that it is possible to respect the concerns of due process for this person if we have allowed for a review, no matter how great the scope, limited to a particular court, thereby limiting the resources that they have to present their case?

I would ask my colleagues to view this as a technical change allowing the courts of other areas to review these cases. It is atypical to find much diversion in immigration case law, and if there is a question that the Ninth Circuit would be different from the D.C. Circuit and the Fifth Circuit, I think that there is a consistency under the laws; and I would ask that the amendment be accepted.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, my amendment would strike the portion of section 203 that limits judicial review of detention decisions to the U.S. District Court in the District of Columbia. Instead, my amendment would permit review in any district court.

It is my concern, Mr. Chairman, that by restricting this review to the District Court in the District of Columbia we would be rendering the review almost meaningless to those who need it most. If a detainee is a resident of my home state of Texas, for instance, we would in fact be ensuring that previously retained counsel, witnesses in his defense, family, and other resources which might be made available to him closer to home, would have no possibility of participating in the proceedings.

Do we actually believe that it is possible to respect the concerns for due process for this person if we have allowed for a review, no matter how great the scope, which by its technical structure does not allow for appropriate access to every avail-

able resource? This endangers our most cherished constitutional protections for judicial review in an entirely unreasonable way.

The provision of section 203 that limits review to the District Court of the District of Columbia so minimizes the potential to affect change on the alien's behalf that it virtually eliminates the protections afforded by review, and should therefore be amended as I have proposed.

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Mr. SMITH. I am trying to find out where you are amending the bill.

Ms. JACKSON LEE. It is 48, line 15 in the bill.

Thank you.

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Ms. JACKSON LEE. I assume that I have to yield back. I can't reserve my time.

Chairman SENSENBRENNER. No, you can't.

Ms. JACKSON LEE. Thank you.

Chairman SENSENBRENNER. For what purpose does the gentleman from Texas, Mr. Smith, seek recognition?

Mr. SMITH. Mr. Chairman, I oppose the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, first of all, let me say that the Chairman of the Immigration Subcommittee, Mr. Gekas, has left for a long-standing commitment and will be gone for another 15 minutes or so; and in his absence, he has asked me to fill in for him, which I am happy to do.

Mr. Chairman, actually the reason to oppose this amendment is provided by the author of the amendment in one of the last statements that she just made, where she expressed concern about, quote, "much diversity in immigration case law."

Under the base bill, mandating exclusive jurisdiction for judicial review of any action or decision to detain a suspected terrorist under proposed section 236A of the INA will lead to consistent application of the law. That is why we need to oppose this amendment. We don't want to make it inconsistent, as the gentlewoman mentioned a while ago.

There is no procedural value to a district court decision, and therefore no district court judge is required to follow the decision of any other district court judge. While there is no Presidential value to a decision of a judge of the D.C. District Court, decisions of the D.C. District Court are binding on all D.C. District Court judges. The circuit court decision, unless reviewed by the Supreme Court, is the law with respect to this provision.

While other circuit court decisions are binding on the district courts within their jurisdiction, allowing venue in any district court, as this amendment would do, could result in 11 different rules for application review of section 236A from the 11 different circuit courts.

Venue in the District Court for the District of Columbia is consistent with other mandatory venue provisions in the act. The act provides that judicial review of determinations under the expedited removal provisions and implementation of the expedited removal provision is available only in the D.C. District Court. Most importantly, the decision of the judge after a hearing before the alien terrorist removal court may only be appealed to the D.C. District Court.

So, Mr. Chairman, again the reason to oppose the amendment is because it would allow for so many inconsistent rulings and determinations of immigration law; and I, like the gentleman from Texas, would like to avoid that diversity in immigration case law.

So I urge my colleagues to oppose the amendment and vote for the consistent application of the law as is found in the underlying bill.

Mr. HYDE. Would the gentleman yield?

Mr. SMITH. I will be more than happy to yield to the gentleman from Illinois.

Mr. HYDE. I just would like to remind the Committee that in the 1964 Voting Rights Act we had quite a battle over the requirement by the drafters and the perpetrators of the bill requiring that any litigation be brought in the Circuit Court of the District of Columbia.

I felt that was an imposition. If you had a litigation to correct circumstances having to do with the voting rights act in Greenville, South Carolina, or Memphis, Tennessee, there was a U.S. District Court nearby perfectly qualified to hear that case, but no you had to get on the Greyhound bus and come to Washington and file it in the district court here.

So the notion that you have one court to file these types of litigation in is not new. It has been around at least—

Mr. FRANK. Would the gentleman yield?

Mr. HYDE.—in the Voting Rights Act.

Mr. SMITH. I thank the gentleman from Illinois for his comments, and now I will be happy to yield to the gentleman from Massachusetts.

Mr. FRANK. The gentleman from Illinois didn't finish his sentence. Has he changed his mind on that position that he wants opposed? Is that the punch line?

Mr. HYDE. I am not comfortable with forcing people into a particular court.

Mr. FRANK. So the gentleman will vote for the amendment?

Mr. HYDE. I think we have a court system that is spread out over the country to accommodate the people.

On the other hand, there is something to be said for consistency in a particularly technical area of the law, and they are talking about immigration; but I frankly come down on the side of supporting the amendment and deploring the rigidity of the Voting Rights Act requiring you to go to that court.

Mr. BARR. Would the gentleman yield?

Chairman SENSENBRENNER. The time belongs to the gentleman from Texas.

Mr. BARR. Would the gentleman yield?

Mr. SMITH. I will be happy to yield to the gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you. I just wanted to associate myself with the remarks of the distinguished former Chairman and current Chairman of the International Relations Committee in support of this amendment.

Mr. SMITH. Mr. Chairman, I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on—

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan Mr. Conyers.

Mr. CONYERS. Mr. Chairman, as one of the people that was around when the original Voter Rights Act was enacted, maybe not the only person but one of the people, I think our former Chairman, his memory has—he was getting ready to come on board, but at any rate, I want to express the concerns articulated by the gentlemen from Illinois and Georgia that there is merit in reconsidering this proposal. I would not like at this hour for anything untoward to happen to this idea, and I would implore the gentlelady from Texas to withdraw this so that we can all examine this without it having met some untimely demise at this hour at night, and I assure you we will give it our considered and concerned examination, because it may not have gotten this in the consideration of 57 other amendments to this bill and I would yield to her now if it is her inclination.

Ms. JACKSON LEE. First of all, let me thank the Ranking Member, because he above all has a great history, and let me thank both Mr. Barr and Mr. Hyde. I would imagine there may be others that appreciate the position that the particular individual is put in, but if I might qualify the distinction on the Voter Rights Act, though, I don't want to discourage my supporters. This probably has even more weight because these individuals are detained, and so they are not even able to get on the Greyhound bus and get to the D.C. Courts.

This is troubling for me, Mr. Conyers. This is I think an important change in this legislation, and I would be interested as to whether there is a procedure or a new way to determine what our support is on this legislation, on this particular amendment, because I don't want to lose the opportunity to have it in, and I don't want to jeopardize it, as you have mentioned, and the Chairman is being very kind in his indulging us on this.

Mr. CONYERS. It is a legitimate concern on your part. So I will assure you that I will vote for it and we will dispose of this amendment tonight.

Mr. DELAHUNT. Would the gentleman from Michigan yield?

Mr. CONYERS. With pleasure.

Mr. DELAHUNT. I think probably we should just go and have a vote on it at this point in time, but I can't just let the remarks of the gentleman from Texas go without a response in terms of consistency. Well, presumably the substantive law is not be inconsistent throughout the entire United States. The standards hopefully are the same. I mean, when you talk about inconsistency, if I could ask my friend from Texas what he means specifically, I would be interested in an answer.

Chairman SENSENBRENNER. The time belongs to the gentleman from Michigan.

Mr. CONYERS. Well, I have no further comments. I will yield to the gentleman.

Mr. BERMAN. I just hope that if we are going to have a rollcall vote, we know it is going to be a rollcall vote that prevails in favor of the amendment, because otherwise I would take the gentleman from Michigan's suggestion that in the spirit of the way a number of things have been worked out up to tonight and which I anticipate can be worked out between now and the time this bill comes

to the floor, we—a record vote losing an important issue like this could be more damaging than the gentleman from Michigan suggested.

Ms. JACKSON LEE. Would the gentleman yield? I don't know whose time it is.

Mr. CONYERS. Of course.

Ms. JACKSON LEE. This is a very important issue, as several are to me. And obviously I do not—I do hear from Mr. Hyde and Mr. Barr, and I thank them. I am not hearing from a number of other Members. But I would say this to my colleagues on the other side of the aisle. This is an issue that would warrant bipartisanship. This is an issue simply that gives access to courts who have done it before.

If there are no further Members on the other side willing to indicate by their public acknowledgment that they would vote for this, it is of such value and importance to me that I will at this time withdraw it so that we can be sure that it is in the language of the bill. That is more important to me than to—

Chairman SENSENBRENNER. The amendment is withdrawn.

Ms. JACKSON LEE.—jeopardize this not passing.

Chairman SENSENBRENNER. The amendment is withdrawn. You don't need unanimous consent for the author to withdraw an amendment.

For what purpose does the gentleman from Massachusetts—

Mr. FRANK. To strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. I want to express my appreciation to the gentleman from Texas. It is clear this is an issue about which there is legitimate division, and I just wanted to urge the gentleman from Texas—I know we want to do this—to work with the Chairman and the Ranking Member. There are potential compromises. Forcing people to come to Washington imposes some hardships on them. There could be some alleviation. There are questions of counsel. There are questions of compensation. I think this is something that could be worked out and perhaps even wind up with some beneficial approach that would compensate people for this, because I just want to say I appreciate what the gentleman did, and many of us who intend ultimately to support the bill at this stage want to express this is not the last we hear of this and think there is room for some kinds of compromise that will preserve the legal requirements that we are trying to get at but alleviate the hardships that would be caused.

Mr. WATT. Would the gentleman yield just briefly?

Mr. FRANK. Yes, I will yield to my friend from North Carolina.

Mr. WATT. In the process of doing that, I would like to point out that there was a very strong basis for doing what was done under the Voting Rights Act at the time it was done, because to have judges deciding voting rights issues sitting on district courts in the South at that time was just not a practical thing to do.

Mr. FRANK. As I said, I think we will take note that this is a very important issue and it is one of the ones that I hope we will be able to work out before we come to the floor next week.

Chairman SENSENBRENNER. Further amendments to title II?

Ms. JACKSON LEE. Yes, Mr. Chairman. I have an amendment at the desk, Line 961.

Chairman SENSENBRENNER. The Clerk will report Jackson Lee 961.

The CLERK. Mr. Chairman, I don't have 961.

Chairman SENSENBRENNER. The Clerk does not have 961. Are there further amendments—

Ms. JACKSON LEE. Mr. Chairman, I would be happy to have it Xeroxed. I am not sure—all of our amendments were in. They were in. We would like to have the opportunity to have—

Chairman SENSENBRENNER. The Clerk will look again to see if Jackson Lee 961 is in the pile of any of the three of you up there.

The CLERK. Mr. Chairman, there is an amendment here 961, with no name.

Chairman SENSENBRENNER. Does the gentlewoman from Texas wish to claim maternity to no-name 961?

Ms. JACKSON LEE. It is the Jackson Lee amendment, thank you. Yes, thank you, Mr. Chairman.

Chairman SENSENBRENNER. The Clerk will report the newly found amendment.

The CLERK. Amendment to H.R. 2975 offered by Ms. Jackson Lee. Add at the end the following: Title, blank, hate crimes section, prohibition of certain acts of violence. Section 245 of title 18, United States Code, as amended.

Mr. SMITH. Mr. Chairman, I reserve a point of order.

Chairman SENSENBRENNER. Point of order is reserved. Without objection, the amendment will be considered as read, and the gentlewoman from Texas, Ms. Jackson Lee, will be recognized for 5 minutes, subject to the reservation of the point of order.

[The amendment follows:]