

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

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**TO: Hon. Anthony J. Scirica, Chair  
Standing Committee on Rules of Practice and Procedure**

**FROM: Ed Carnes, Chair  
Advisory Committee on Federal Rules of Criminal Procedure**

**SUBJECT: Report of the Advisory Committee on Criminal Rules**

**DATE: December 3, 2001**

**I. Introduction**

The Advisory Committee on the Rules of Criminal Procedure was originally scheduled to meet on October 29-30, 2001, in Santa Fe, New Mexico. Because of the events of September 11, 2001, the meeting was cancelled.

Nonetheless, the Committee has considered amendments to Rule 6, Grand Jury, and Rule 41, Search Warrants, as a result of Congressional amendments to those rules as a part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Pub. L. No. 107-56). As noted in the following discussion, the Committee recommends amendments to those two rules in order to avoid problems with the Supersession Clause of the Rules Enabling Act.

The proposed amendments closely conform to the statutory language and no substantive changes are intended. The Committee decided to retain the language of the statutory amendments throughout the draft, unless the format or definitional terms adopted in the comprehensively restyled rules dictated otherwise. The Committee concluded that a deviation from the statutory language, particularly without the benefit of public comment, would be unwise.

## II. Action Items.

### A. In General

On October 26, 2001, President Bush signed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. The Act amended two rules of Criminal Procedure:

- Section 203 of the Act amended Rule 6 to permit sharing grand-jury information associated with terrorism with specific law enforcement entities. The government must notify the court of any disclosures and the identity of the department or agency to which the disclosure was made.
- Section 219 amended Rule 41 to permit a magistrate judge to issue a search warrant for property outside the district in cases involving terrorism.

Those amendments took effect immediately and are not affected by the Sunset Provisions in Section 224 of the Act. The pertinent portions of the Act are attached to this report.

### B. The Need to “Restyle” the Congressional Amendments; Avoiding the Supersession Problem.

Under the Rules Enabling Act, 28 U.S.C. § 2072(b), the pending “style” changes to the Criminal Rules—which have been approved by the Judicial Conference and will presumably be approved by the Supreme Court next Spring—could create supersession problems when the restyled rules take effect on December 1, 2002, because they will have a later effective date than the Act. The Committee believes that it needs to incorporate the changes the recent legislation mandates for Rules 6 and 41, before the Supreme Court adopts the restylized rules, in order to avoid any confusion and possible supersession problems.

To implement these changes in a timely manner and avoid supersession problems, the Chair asked the Rule 6 Subcommittee and Rule 41 Subcommittee to consider style changes to the Congressional language that would conform that language to the global “style” changes to the Criminal Rules. Those subcommittees considered a draft prepared by the Reporter and the Chair. In addition, the Standing Committee’s Style Subcommittee provided suggested changes. A revised draft was then submitted to the full Committee for its consideration.

In accordance with established procedures, the Committee recommends that the Standing Committee not publish the proposed changes for publication and comment by the public, because the changes will simply conform the rules to recent legislation. Instead, the Committee recommends that the Standing Committee forward the proposed changes to Rules 6 and 41 to the Judicial Conference, which in turn can forward them to the Supreme Court with a recommendation that they be approved and included in the May 2002 package of the restyled rules. Hopefully, the revised Rules 6 and 41 and accompanying Committee Notes can be blended in with the existing "style" package.

The proposed drafts, *infra*, include some restructuring and renumbering of the legislative amendments to fit within the approved style package versions of Rules 6 and 41, already approved by the Judicial Conference.

### C. Amendments to Rule 6—Grand Jury.

The amendments to Rule 6 permit the government to share certain grand jury information involving intelligence information with other federal officials. See Section 203 of the Act.

Although the Act itself does not say so explicitly, the Committee has assumed that Congress meant that an attorney for the government would do the disclosing that Rule 6 authorizes to other officials. For that reason, the new provision adopted by Congress was inserted as a new paragraph (D) to follow the existing paragraph (C) that relates to attorneys for the government disclosing information to other grand juries.

It is not clear in the legislative amendment to Rule 6 whether the attorney for the government is to provide notice of such disclosures to the court that convened the grand jury or to some other court. In the end, the Committee believed that it is better to include language that explicitly indicates that the report is to be made to the court in the district where the grand jury was convened. That tracks language already approved in Rule 6.

The Rule 6 Subcommittee generally proposed that the Committee follow the legislative language as closely as possible, even if it was not entirely clear what Congress meant by a particular term or phrase. Thus, the Committee did not adopt all of the style changes recommended by the Style Subcommittee.

The proposed amendments are at Appendix A to this memo.

*Recommendation: The Advisory Committee recommends that the Standing Committee approve the proposed amendments to Rule 6 and forward them, without public comment, to the Judicial Conference for approval.*

**D. Rule 41—Search Warrant.**

The amendment to Rule 41 permits magistrate judges to issue search warrants for property or persons outside their districts if the investigation involves terrorist activities within that district. *See* Section 219 of the Act, attached.

Although it is not explicitly stated in the legislative amendment, the Committee has assumed that the amendment to Rule 41 does not permit magistrate judges to issue warrants to be executed outside the United States. It simply extends the magistrate's authority to other districts.

To be consistent with other provisions in Rule 41, the Committee has recommended that the amendment include reference to the fact that magistrate judges must otherwise have the authority to issue search warrants in their district, and thus be consistent with the restyled version of Rule 41.

Finally, to be consistent with the recently restyled version of Rule 41, the Committee dropped the word "search" from the amendment because the only type of warrant covered in that rule is a search warrant.

*Recommendation: The Advisory Committee recommends that the Standing Committee approve the proposed amendments to Rule 41 and forward them, without public comment, to the Judicial Conference for approval.*

The proposed amendments to Rule 41 are at Appendix A of this memo.

**III. Information Items**

**A. Other Criminal Rules That May be Affected by the USA PATRIOT ACT.**

Other rules-related sections in the Act also need to be studied and may require conforming amendments. But these provisions do not raise supersession problems and will be considered by the Committee in the regular course of the rulemaking process.

- Section 213 of the Act amends 18 U.S.C. § 3103a authorizing the delay of giving notice of an executed search in all criminal cases ("sneak and peek").
- Section 216 amends chapter 206 of title 18, Pen Registers and Trap and Trace Devices, and expands the use of these devices in all criminal cases. (Section

214 amends title 50 involving the use of these devices in foreign intelligence surveillance.)

- Section 412 amends title 8 dealing with the Immigration and Nationality Act and sets out special provisions governing habeas corpus petitions of aliens suspected of terrorism.

These sections make extensive changes to substantive law, which will require careful study by the Committee.

**B. Restyling of "Habeas Corpus" Rules.**

In the process of proposing global amendments to the Criminal Rules, the Committee for the last couple of years has also considered amendments to selected rules in the Rules Governing §§ 2254 and 2255 Proceedings (the habeas corpus rules). As noted in previous reports to the Standing Committee, those proposed changes resulted from a review to determine if changes were required as a result of the passage of the Antiterrorism and Effective Death Penalty Act, which amended a number of applicable federal statutes.

In the process of reviewing those rules, the Committee concluded that it would be beneficial to consider global style changes to the habeas rules. For example, as observed at the June Standing Committee meeting, the current habeas rules are not gender neutral. At its October 2000 meeting the Committee discussed the possibility of planning and implementing a restyling of the habeas rules. At its January 2001 meeting, the Standing Committee approved the restyling project for those rules. A subcommittee is currently considering proposed drafts from the Style Subcommittee. Any restyled rules would not be presented to the Standing Committee until at least June 2002.

**Attachments**

- Appendix A: Proposed Amendments to Rules 6 and 41, and Committee Notes
- Appendix B: Pertinent Sections of Restyled Rules 6 and 41, forwarded to Supreme Court
- Appendix C: Pertinent Sections of USA PATRIOT ACT

APPENDIX A

1 **Rule 6. The Grand Jury<sup>1</sup>**

2 \* \* \* \* \*

3 **(e) Recording and Disclosing the Proceedings.**

4 \* \* \* \* \*

5 **(3) Exceptions.**

6 \* \* \* \* \*

7 (D) An attorney for the government may disclose any grand  
8 jury matter involving foreign intelligence,  
9 counterintelligence (as defined in 50 U.S.C. § 401a), or  
10 foreign intelligence information (as defined in  
11 6(e)(3)(D)(iii)) to any federal law enforcement,  
12 intelligence, protective, immigration, national defense, or  
13 national security official to assist the official receiving the  
14 information in the performance of that official's duties.

15 (i) Any federal official who receives information under  
16 Rule 6(e)(3)(D) may use the information only as  
17 necessary in the conduct of that person's official  
18 duties subject to any limitations on the unauthorized  
19 disclosure of such information.

20 (ii) Within a reasonable time after disclosure is made  
21 under Rule 6(e)(3)(D), an attorney for the  
22 government must file, under seal, a notice with the  
23 court in the district where the grand jury convened

24 stating that such information was disclosed and the  
25 departments, agencies, or entities to which the  
26 disclosure was made.

27 (iii) As used in Rule 6(e)(3)(D), the term “foreign  
28 intelligence information” means:

29 (a) information, whether or not it concerns a  
30 United States person, that relates to the  
31 ability of the United States to protect  
32 against—

- 33 • actual or potential attack or other grave  
34 hostile acts of a foreign power or its  
35 agent;
- 36 • sabotage or international terrorism by a  
37 foreign power or its agent;
- 38 • clandestine intelligence activities by an  
39 intelligence service or network of a  
40 foreign power or by its agent; or

41 (b) information, whether or not it concerns a  
42 United States person, with respect to a  
43 foreign power or foreign territory that relates  
44 to —

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<sup>1</sup> New material is underlined. Material to be deleted is lined through.



67 persons identified in Rule ~~6(e)(3)(E)~~ 6(e)(3)(F) a  
68 reasonable opportunity to appear and be heard.

69 \* \* \* \* \*

**COMMITTEE NOTE**

**To be inserted in the existing Note for Rule 6:**

Rule 6(e)(3)(D) is new and reflects changes made to Rule 6 in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. The new provision permits an attorney for the government to disclose grand jury matters involving foreign intelligence or counterintelligence to other Federal officials, in order to assist those officials in performing their duties. Under Rule 6(e)(3)(D)(i), the federal official receiving the information may only use the information as necessary and may be otherwise limited in making further disclosures. Any disclosures made under this provision must be reported under seal, within a reasonable time, to the court. The term "foreign intelligence information" is defined in Rule 6(e)(3)(D)(iii).

**[The Committee Notes for all subsequent sections in Rule 6 will have to be redesignated]**

1 **Rule 41. Search and Seizure**

2 \* \* \* \* \*

3 **(b) Authority to Issue a Warrant.** At the request of a federal law enforcement  
4 officer or an attorney for the government:

5 \* \* \* \* \*

6 (3) a magistrate judge—in an investigation of domestic terrorism or  
7 international terrorism (as defined in 18 U.S.C. § 2331)—having  
8 authority in any district in which activities related to the terrorism  
9 may have occurred, may issue a warrant for a person or property  
10 within or outside that district.

11 \* \* \* \* \*

**COMMITTEE NOTE**

**To be inserted in the existing Note to Rule 41:**

Rule 41(b)(3) is a new provision that incorporates a congressional amendment to Rule 41 as a part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. The provision explicitly addresses the authority of a magistrate judge to issue a search warrant in an investigation of domestic or international terrorism. As long as the magistrate judge has authority in a district where activities related to terrorism may have occurred, the magistrate judge may issue a warrant for persons or property not only within the district, but outside the district as well.

APPENDIX B

<p style="text-align: center;"><b>III. INDICTMENT AND INFORMATION</b></p>	<p style="text-align: center;"><b>TITLE III. THE GRAND JURY, THE INDICTMENT, AND THE INFORMATION</b></p>
<p><b>Rule 6. The Grand Jury</b></p>	<p><b>Rule 6. The Grand Jury</b></p>
<p><b>(a) Summoning Grand Juries.</b></p> <p><b>(1) Generally.</b> The court shall order one or more grand juries to be summoned at such time as the public interest requires. The grand jury shall consist of not less than 16 nor more than 23 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement.</p> <p><b>(2) Alternate Jurors.</b> The court may direct that alternate jurors may be designated at the time a grand jury is selected. Alternate jurors in the order in which they were designated may thereafter be impanelled as provided in subdivision (g) of this rule. Alternate jurors shall be drawn in the same manner and shall have the same qualifications as the regular jurors, and if impanelled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors.</p>	<p><b>(a) Summoning a Grand Jury.</b></p> <p><b>(1) In General.</b> When the public interest so requires, the court must order that one or more grand juries be summoned. A grand jury must have 16 to 23 members, and the court must order that enough legally qualified persons be summoned to meet this requirement.</p> <p><b>(2) Alternate Jurors.</b> When a grand jury is selected, the court may also select alternate jurors. Alternate jurors must have the same qualifications and be selected in the same manner as any other juror. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror is subject to the same challenges, takes the same oath, and has the same authority as the other jurors.</p>
<p><b>(b) Objections to Grand Jury and to Grand Jurors.</b></p> <p><b>(1) Challenges.</b> The attorney for the government or a defendant who has been held to answer in the district court may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.</p> <p><b>(2) Motion to Dismiss.</b> A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. It shall be made in the manner prescribed in 28 U.S.C. § 1867(e) and shall be granted under the conditions prescribed in that statute. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.</p>	<p><b>(b) Objection to the Grand Jury or to a Grand Juror.</b></p> <p><b>(1) Challenges.</b> Either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.</p> <p><b>(2) Motion to Dismiss an Indictment.</b> A party may move to dismiss the indictment based on an objection to the grand jury or on an individual juror's lack of legal qualification, unless the court has previously ruled on the same objection under Rule 6(b)(1). The motion to dismiss is governed by 28 U.S.C. § 1867(e). The court must not dismiss the indictment on the ground that a grand juror was not legally qualified if the record shows that at least 12 qualified jurors concurred in the indictment.</p>

**(3) Exceptions.**

(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to—

- (i) an attorney for the government for use in the performance of such attorney's duty; and
- (ii) such government personnel (including personnel of a state or subdivision of a state) as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce federal criminal law.

(B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney for the government in the performance of such attorney's duty to enforce federal criminal law. An attorney for the government shall promptly provide the district court, before which was impaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made, and shall certify that the attorney has advised such persons of their obligation of secrecy under this rule.

**(3) Exceptions.**

(A) Disclosure of a grand-jury matter — other than the grand jury's deliberations or any grand juror's vote — may be made to:

- (i) an attorney for the government for use in performing that attorney's duty;
- (ii) any government personnel — including those of a state or state subdivision or of an Indian tribe — that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal criminal law; or
- (iii) a person authorized by 18 U.S.C. § 3322.

(B) A person to whom information is disclosed under Rule 6(e)(3)(A)(ii) may use that information only to assist an attorney for the government in performing that attorney's duty to enforce federal criminal law. An attorney for the government must promptly provide the court that impaneled the grand jury with the names of all persons to whom a disclosure has been made, and must certify that the attorney has advised those persons of their obligation of secrecy under this rule.

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

- (i) when so directed by a court preliminarily to or in connection with a judicial proceeding;
- (ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;
- (iii) when the disclosure is made by an attorney for the government to another federal grand jury; or
- (iv) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of state criminal law, to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

(C) An attorney for the government may disclose any grand-jury matter to another federal grand jury.

(D) The court may authorize disclosure — at a time, in a manner, and subject to any other conditions that it directs — of a grand-jury matter:

- (i) preliminarily to or in connection with a judicial proceeding;
- (ii) at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury;
- (iii) at the request of the government if it shows that the matter may disclose a violation of state or Indian tribal criminal law, as long as the disclosure is to an appropriate state, state-subdivision, or Indian tribal official for the purpose of enforcing that law; or
- (iv) at the request of the government if it shows that the matter may disclose a violation of military criminal law under the Uniform Code of Military Justice, as long as the disclosure is to an appropriate military official for the purpose of enforcing that law.

(D) A petition for disclosure pursuant to subdivision (e)(3)(C)(i) shall be filed in the district where the grand jury convened. Unless the hearing is ex parte, which it may be when the petitioner is the government, the petitioner shall serve written notice of the petition upon (i) the attorney for the government, (ii) the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and (iii) such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and be heard.

(E) A petition to disclose a grand-jury matter under Rule 6(e)(3)(D)(i) must be filed in the district where the grand jury convened. Unless the hearing is ex parte — as it may be when the government is the petitioner — the petitioner must serve the petition on, and the court must afford a reasonable opportunity to appear and be heard to:

(i) an attorney for the government;

(ii) the parties to the judicial proceeding; and

(iii) any other person whom the court may designate.

(E) If the judicial proceeding giving rise to the petition is in a federal district court in another district, the court shall transfer the matter to that court unless it can reasonably obtain sufficient knowledge of the proceeding to determine whether disclosure is proper. The court shall order transmitted to the court to which the matter is transferred the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand jury secrecy. The court to which the matter is transferred shall afford the aforementioned persons a reasonable opportunity to appear and be heard.

(F) If the petition to disclose arises out of a judicial proceeding in another district, the petitioned court must transfer the petition to the other court unless the petitioned court can reasonably determine whether disclosure is proper. If the petitioned court decides to transfer, it must send to the transferee court the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand-jury secrecy. The transferee court must afford those persons identified in Rule 6(e)(3)(E) a reasonable opportunity to appear and be heard.

<p><b>Rule 41. Search and Seizure</b></p>	<p><b>Rule 41. Search and Seizure</b></p>
<p><b>(a) Authority to Issue Warrant.</b> Upon the request of a federal law enforcement officer or an attorney for the government, a search warrant authorized by this rule may be issued (1) by a federal magistrate judge, or a state court of record within the federal district, for a search of property or for a person within the district and (2) by a federal magistrate judge for a search of property or for a person either within or outside the district if the property or person is within the district when the warrant is sought but might move outside the district before the warrant is executed.</p>	<p><b>(a) Scope and Definitions.</b></p> <p>(1) <i>Scope.</i> This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances.</p>
	<p>(2) <i>Definitions.</i> The following definitions apply under this rule:</p> <p>(A) "Property" includes documents, books, papers, any other tangible objects, and information.</p> <p>(B) "Daytime" means the hours between 6:00 a.m. and 10:00 p.m. according to local time.</p> <p>(C) "Federal law enforcement officer" means a government agent (other than an attorney for the government) who is engaged in enforcing the criminal laws and is within any category of officers authorized by the Attorney General to request a search warrant.</p>

	<p>(b) <b>Authority to Issue a Warrant.</b> At the request of a federal law enforcement officer or an attorney for the government:</p> <ol style="list-style-type: none"> <li>(1) a magistrate judge with authority in the district — or if none is reasonably available, a judge of a state court of record in the district — has authority to issue a warrant to search for and seize a person or property located within the district; and</li> <li>(2) a magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed.</li> </ol>
<p>(b) <b>Property or Persons Which May be Seized With a Warrant.</b> A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of the crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which has been used as the means of committing a criminal offense; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.</p>	<p>(c) <b>Persons or Property Subject to Search or Seizure.</b> A warrant may be issued for any of the following:</p> <ol style="list-style-type: none"> <li>(1) evidence of a crime;</li> <li>(2) contraband, fruits of crime, or other items illegally possessed;</li> <li>(3) property designed for use, intended for use, or used in committing a crime; or</li> <li>(4) a person to be arrested or a person who is unlawfully restrained.</li> </ol>

One Hundred Seventh Congress  
of the  
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Wednesday,  
the third day of January, two thousand and one*

An Act

To deter and punish terrorist acts in the United States and around the world,  
to enhance law enforcement investigatory tools, and for other purposes.

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Construction; severability.

TITLE I—ENHANCING DOMESTIC SECURITY AGAINST TERRORISM

- Sec. 101. Counterterrorism fund.
- Sec. 102. Sense of Congress condemning discrimination against Arab and Muslim Americans.
- Sec. 103. Increased funding for the technical support center at the Federal Bureau of Investigation.
- Sec. 104. Requests for military assistance to enforce prohibition in certain emergencies.
- Sec. 105. Expansion of National Electronic Crime Task Force Initiative.
- Sec. 106. Presidential authority.

TITLE II—ENHANCED SURVEILLANCE PROCEDURES

- Sec. 201. Authority to intercept wire, oral, and electronic communications relating to terrorism.
- Sec. 202. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses.
- Sec. 203. Authority to share criminal investigative information.
- Sec. 204. Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications.
- Sec. 205. Employment of translators by the Federal Bureau of Investigation.
- Sec. 206. Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 207. Duration of FISA surveillance of non-United States persons who are agents of a foreign power.
- Sec. 208. Designation of judges.
- Sec. 209. Seizure of voice-mail messages pursuant to warrants.
- Sec. 210. Scope of subpoenas for records of electronic communications.
- Sec. 211. Clarification of scope.
- Sec. 212. Emergency disclosure of electronic communications to protect life and limb.
- Sec. 213. Authority for delaying notice of the execution of a warrant.
- Sec. 214. Pen register and trap and trace authority under FISA.
- Sec. 215. Access to records and other items under the Foreign Intelligence Surveillance Act.
- Sec. 216. Modification of authorities relating to use of pen registers and trap and trace devices.

“(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.”; and

(2) by inserting at the end the following:

“(c) CLASSIFIED INFORMATION.—In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court *ex parte* and *in camera*. This subsection does not confer or imply any right to judicial review.”.

## TITLE II—ENHANCED SURVEILLANCE PROCEDURES

### SEC. 201. AUTHORITY TO INTERCEPT WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS RELATING TO TERRORISM.

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

(1) by redesignating paragraph (p), as so redesignated by section 434(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132; 110 Stat. 1274), as paragraph (r); and

(2) by inserting after paragraph (p), as so redesignated by section 201(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 110 Stat. 3009-565), the following new paragraph:

“(q) any criminal violation of section 229 (relating to chemical weapons); or sections 2332, 2332a, 2332b, 2332d, 2339A, or 2339B of this title (relating to terrorism); or”.

### SEC. 202. AUTHORITY TO INTERCEPT WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS RELATING TO COMPUTER FRAUD AND ABUSE OFFENSES.

Section 2516(1)(c) of title 18, United States Code, is amended by striking “and section 1341 (relating to mail fraud),” and inserting “section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse),”.

### SEC. 203. AUTHORITY TO SHARE CRIMINAL INVESTIGATIVE INFORMATION.

(a) AUTHORITY TO SHARE GRAND JURY INFORMATION.—

(1) IN GENERAL.—Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure is amended to read as follows:

“(C)(i) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

“(I) when so directed by a court preliminarily to or in connection with a judicial proceeding;

“(II) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

“(III) when the disclosure is made by an attorney for the government to another Federal grand jury;

“(IV) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such law; or

“(V) when the matters involve foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in clause (iv) of this subparagraph), to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties.

“(ii) If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

“(iii) Any Federal official to whom information is disclosed pursuant to clause (i)(V) of this subparagraph may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. Within a reasonable time after such disclosure, an attorney for the government shall file under seal a notice with the court stating the fact that such information was disclosed and the departments, agencies, or entities to which the disclosure was made.

“(iv) In clause (i)(V) of this subparagraph, the term ‘foreign intelligence information’ means—

“(I) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

“(aa) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

“(bb) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

“(cc) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of foreign power; or

“(II) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

“(aa) the national defense or the security of the United States; or

“(bb) the conduct of the foreign affairs of the United States.”

(2) CONFORMING AMENDMENT.—Rule 6(e)(3)(D) of the Federal Rules of Criminal Procedure is amended by striking “(e)(3)(C)(i)” and inserting “(e)(3)(C)(i)(I)”

(b) AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.—

(1) LAW ENFORCEMENT.—Section 2517 of title 18, United States Code, is amended by inserting at the end the following:  
“(6) Any investigative or law enforcement officer, or attorney for the Government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security official to the extent that such contents include foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in subsection (19) of section 2510 of this title), to assist the official who is to receive that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information.”

(2) DEFINITION.—Section 2510 of title 18, United States Code, is amended by—

(A) in paragraph (17), by striking “and” after the semicolon;

(B) in paragraph (18), by striking the period and inserting “; and”; and

(C) by inserting at the end the following:

“(19) ‘foreign intelligence information’ means—

“(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

“(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

“(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

“(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

“(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

“(i) the national defense or the security of the United States; or

“(ii) the conduct of the foreign affairs of the United States.”

(c) PROCEDURES.—The Attorney General shall establish procedures for the disclosure of information pursuant to section 2517(6)

and Rule 6(e)(3)(C)(i)(V) of the Federal Rules of Criminal Procedure that identifies a United States person, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)).

(d) FOREIGN INTELLIGENCE INFORMATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, it shall be lawful for foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)) or foreign intelligence information obtained as part of a criminal investigation to be disclosed to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information.

(2) DEFINITION.—In this subsection, the term "foreign intelligence information" means—

(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

(i) the national defense or the security of the United States; or

(ii) the conduct of the foreign affairs of the United States.

**SEC. 204. CLARIFICATION OF INTELLIGENCE EXCEPTIONS FROM LIMITATIONS ON INTERCEPTION AND DISCLOSURE OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS.**

Section 2511(2)(f) of title 18, United States Code, is amended—

(1) by striking "this chapter or chapter 121" and inserting "this chapter or chapter 121 or 206 of this title"; and

(2) by striking "wire and oral" and inserting "wire, oral, and electronic".

**SEC. 205. EMPLOYMENT OF TRANSLATORS BY THE FEDERAL BUREAU OF INVESTIGATION.**

(a) AUTHORITY.—The Director of the Federal Bureau of Investigation is authorized to expedite the employment of personnel as translators to support counterterrorism investigations and operations without regard to applicable Federal personnel requirements and limitations.

(b) SECURITY REQUIREMENTS.—The Director of the Federal Bureau of Investigation shall establish such security requirements as are necessary for the personnel employed as translators under subsection (a).

(1) in section 2510—

(A) in paragraph (18), by striking “and” at the end;  
(B) in paragraph (19), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (19) the following:

“(20) ‘protected computer’ has the meaning set forth in section 1030; and

“(21) ‘computer trespasser’—

“(A) means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer; and

“(B) does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer.”; and

(2) in section 2511(2), by inserting at the end the following:

“(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser transmitted to, through, or from the protected computer, if—

“(I) the owner or operator of the protected computer authorizes the interception of the computer trespasser’s communications on the protected computer;

“(II) the person acting under color of law is lawfully engaged in an investigation;

“(III) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser’s communications will be relevant to the investigation; and

“(IV) such interception does not acquire communications other than those transmitted to or from the computer trespasser.”.

**SEC. 218. FOREIGN INTELLIGENCE INFORMATION.**

Sections 104(a)(7)(B) and section 303(a)(7)(B) (50 U.S.C. 1804(a)(7)(B) and 1823(a)(7)(B)) of the Foreign Intelligence Surveillance Act of 1978 are each amended by striking “the purpose” and inserting “a significant purpose”.

**SEC. 219. SINGLE-JURISDICTION SEARCH WARRANTS FOR TERRORISM.**

Rule 41(a) of the Federal Rules of Criminal Procedure is amended by inserting after “executed” the following: “and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of title 18, United States Code), by a Federal magistrate judge in any district in which activities related to the terrorism may have occurred, for a search of property or for a person within or outside the district”.

**SEC. 220. NATIONWIDE SERVICE OF SEARCH WARRANTS FOR ELECTRONIC EVIDENCE.**

(a) IN GENERAL.—Chapter 121 of title 18, United States Code, is amended—

(1) in section 2703, by striking “under the Federal Rules of Criminal Procedure” every place it appears and inserting “using the procedures described in the Federal Rules of

“(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.”; and

(2) by inserting at the end the following:

“(c) CLASSIFIED INFORMATION.—In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.”.

## TITLE II—ENHANCED SURVEILLANCE PROCEDURES

### SEC. 201. AUTHORITY TO INTERCEPT WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS RELATING TO TERRORISM.

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

(1) by redesignating paragraph (p), as so redesignated by section 434(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132; 110 Stat. 1274), as paragraph (r); and

(2) by inserting after paragraph (p), as so redesignated by section 201(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–565), the following new paragraph:

“(q) any criminal violation of section 229 (relating to chemical weapons); or sections 2332, 2332a, 2332b, 2332d, 2339A, or 2339B of this title (relating to terrorism); or”.

### SEC. 202. AUTHORITY TO INTERCEPT WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS RELATING TO COMPUTER FRAUD AND ABUSE OFFENSES.

Section 2516(1)(c) of title 18, United States Code, is amended by striking “and section 1341 (relating to mail fraud),” and inserting “section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse).”.

### SEC. 203. AUTHORITY TO SHARE CRIMINAL INVESTIGATIVE INFORMATION.

(a) AUTHORITY TO SHARE GRAND JURY INFORMATION.—

(1) IN GENERAL.—Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure is amended to read as follows:

“(C)(i) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

“(I) when so directed by a court preliminarily to or in connection with a judicial proceeding;

“(II) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

“(III) when the disclosure is made by an attorney for the government to another Federal grand jury;

“(IV) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such law; or

“(V) when the matters involve foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in clause (iv) of this subparagraph), to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties.

“(ii) If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

“(iii) Any Federal official to whom information is disclosed pursuant to clause (i)(V) of this subparagraph may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. Within a reasonable time after such disclosure, an attorney for the government shall file under seal a notice with the court stating the fact that such information was disclosed and the departments, agencies, or entities to which the disclosure was made.

“(iv) In clause (i)(V) of this subparagraph, the term ‘foreign intelligence information’ means—

“(I) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

“(aa) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

“(bb) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

“(cc) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of foreign power; or

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“(II) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

“(aa) the national defense or the security of the United States; or

“(bb) the conduct of the foreign affairs of the United States.”.

(2) CONFORMING AMENDMENT.—Rule 6(e)(3)(D) of the Federal Rules of Criminal Procedure is amended by striking “(e)(3)(C)(i)” and inserting “(e)(3)(C)(i)(I)”.

(b) AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.—

(1) LAW ENFORCEMENT.—Section 2517 of title 18, United States Code, is amended by inserting at the end the following:

“(6) Any investigative or law enforcement officer, or attorney for the Government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security official to the extent that such contents include foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in subsection (19) of section 2510 of this title), to assist the official who is to receive that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person’s official duties subject to any limitations on the unauthorized disclosure of such information.”.

(2) DEFINITION.—Section 2510 of title 18, United States Code, is amended by—

(A) in paragraph (17), by striking “and” after the semicolon;

(B) in paragraph (18), by striking the period and inserting “; and”; and

(C) by inserting at the end the following:

“(19) ‘foreign intelligence information’ means—

“(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

“(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

“(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

“(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

“(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

“(i) the national defense or the security of the United States; or

“(ii) the conduct of the foreign affairs of the United States.”.

(c) PROCEDURES.—The Attorney General shall establish procedures for the disclosure of information pursuant to section 2517(6)

and Rule 6(e)(3)(C)(i)(V) of the Federal Rules of Criminal Procedure that identifies a United States person, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)).

(d) FOREIGN INTELLIGENCE INFORMATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, it shall be lawful for foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)) or foreign intelligence information obtained as part of a criminal investigation to be disclosed to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information.

(2) DEFINITION.—In this subsection, the term “foreign intelligence information” means—

(A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

(i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

(i) the national defense or the security of the United States; or

(ii) the conduct of the foreign affairs of the United States.

**SEC. 204. CLARIFICATION OF INTELLIGENCE EXCEPTIONS FROM LIMITATIONS ON INTERCEPTION AND DISCLOSURE OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS.**

Section 2511(2)(f) of title 18, United States Code, is amended—

(1) by striking “this chapter or chapter 121” and inserting “this chapter or chapter 121 or 206 of this title”; and

(2) by striking “wire and oral” and inserting “wire, oral, and electronic”.

**SEC. 205. EMPLOYMENT OF TRANSLATORS BY THE FEDERAL BUREAU OF INVESTIGATION.**

(a) AUTHORITY.—The Director of the Federal Bureau of Investigation is authorized to expedite the employment of personnel as translators to support counterterrorism investigations and operations without regard to applicable Federal personnel requirements and limitations.

(b) SECURITY REQUIREMENTS.—The Director of the Federal Bureau of Investigation shall establish such security requirements as are necessary for the personnel employed as translators under subsection (a).

(1) in section 2510—

(A) in paragraph (18), by striking “and” at the end;

(B) in paragraph (19), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (19) the following:

“(20) ‘protected computer’ has the meaning set forth in section 1030; and

“(21) ‘computer trespasser’—

“(A) means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer; and

“(B) does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer.”; and

(2) in section 2511(2), by inserting at the end the following:

“(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser transmitted to, through, or from the protected computer, if—

“(I) the owner or operator of the protected computer authorizes the interception of the computer trespasser’s communications on the protected computer;

“(II) the person acting under color of law is lawfully engaged in an investigation;

“(III) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser’s communications will be relevant to the investigation; and

“(IV) such interception does not acquire communications other than those transmitted to or from the computer trespasser.”.

**SEC. 218. FOREIGN INTELLIGENCE INFORMATION.**

Sections 104(a)(7)(B) and section 303(a)(7)(B) (50 U.S.C. 1804(a)(7)(B) and 1823(a)(7)(B)) of the Foreign Intelligence Surveillance Act of 1978 are each amended by striking “the purpose” and inserting “a significant purpose”.

**SEC. 219. SINGLE-JURISDICTION SEARCH WARRANTS FOR TERRORISM.**

Rule 41(a) of the Federal Rules of Criminal Procedure is amended by inserting after “executed” the following: “and (3) in an investigation of domestic terrorism or international terrorism (as defined in section 2331 of title 18, United States Code), by a Federal magistrate judge in any district in which activities related to the terrorism may have occurred, for a search of property or for a person within or outside the district”.

**SEC. 220. NATIONWIDE SERVICE OF SEARCH WARRANTS FOR ELECTRONIC EVIDENCE.**

(a) IN GENERAL.—Chapter 121 of title 18, United States Code, is amended—

(1) in section 2703, by striking “under the Federal Rules of Criminal Procedure” every place it appears and inserting “using the procedures described in the Federal Rules of