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: **May 13, 2002**

I. Introduction

The Advisory Committee on the Rules of Criminal Procedure met on April 25-26, 2002 in Washington, D.C. and took action on a number of proposed amendments to the Rules of Criminal Procedure. The Minutes of those meetings are included at Appendix D.

This Report addresses two action items: approval of Rule 41 for publication and comment and approval of the restyled Rules Governing § 2254 and § 2255 Proceedings, for publication and comment, and several information items.

II. Action Items—Summary and Recommendations.

The Committee has been considering several key proposals involving Rule 41, Search Warrants, for some time. In addition, the Standing Committee approved the Committee's proposal to restyle the Rules Governing § 2254 and § 2255, often simply referred to collectively as the "habeas" rules. The Committee has completed its initial

work on these proposed amendments and recommends that they be approved for publication and comment.

III. Action Item—Proposed Amendments to Rule 41. Search Warrants.

A. In General.

Although Rule 41 was part of the restyling amendments, recently approved by the Supreme Court, the Committee determined that several substantive changes should be studied further. In the meantime the Committee recommended additional amendments to Rule 41 in response to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001; those amendments were later approved by the Judicial Conference and were blended into the style package recently approved by the Supreme Court.

In preparing the Style package of amendments last year, the Committee included for public comment a proposal to provide coverage in Rule 41 for what is sometimes referred to as the "sneak and peek" search (or "covert" search), where officers obtain a search warrant to enter a premises and look around, without taking anything and without notifying the owner of the entry until much later. The public comment revealed a number of unresolved issues, so the Committee withdrew that proposal from the package of proposed amendments and also determined that it would be beneficial to review the possibility of including some coverage of tracking-device warrants in Rule 41. Those matters were referred to the Rule 41 Subcommittee, chaired by Judge Tommy Miller. The subcommittee was also asked to review the USA PATRIOT Act and determine whether any other provision in that Act affected, or required an amendment to, the Rules of Criminal Procedure.

The Subcommittee ultimately recommended to the Committee that: (1) no further action should be taken, at this time, to address the issue of "sneak and peek" searches in Rule 41; (2) it would be beneficial for counsel and magistrates for the Committee to address the issue of tracking-device warrants; and (3) the Committee should include a provision in Rule 41 recognizing the authority of a magistrate to delay the notice required by Rule 41. At the April 2002 meeting, the Committee approved the Subcommittee's proposed amendments to Rule 41 and its recommendation that no action be taken on "sneak and peek" searches.

The proposed amendments to Rule 41 and the accompanying Committee Note are attached in Appendix A.

B. Summary of Proposed Changes to Rule 41.

1. Addition of Definitions.

The Committee has added two new definitional provisions in amended Rule 41(a)(2). Rule 41(a)(2)(D) addresses the definitions of "domestic terrorism" and "international terrorism," which are terms used in Rule 41(b)(2), and Rule 41(a)(2)(E) references the definition of "tracking device." Rather than define those terms in the rule itself, the rule cross-references the pertinent federal statute where the terms are defined.

2. Authority to Issue Tracking-Device Warrants.

In General

Amended Rule 41(b)(4) is a new provision, designed to address the use of tracking devices. The Committee was persuaded to expressly include such warrants in Rule 41. Although such searches are recognized both by statute, *see* 18 U.S.C. § 3117(b) and by caselaw, Rule 41 currently provides no procedural guidance for those judicial officers who are asked to issue tracking-device warrants. As with traditional search warrants for persons or property, tracking-device warrants may implicate law enforcement interests in multiple districts, and warrants may be required to monitor tracking devices when they are used to monitor persons or property in areas where there is a reasonable expectation of privacy.

Scope of Authority; Inside or Outside the District

The amendment provides that a magistrate judge may issue a warrant, if he or she has the authority to do so in the district, to install or use a tracking device. The magistrate judge's authority to allow installation of a tracking device includes the authority to permit maintenance and removal of the tracking device. The proposed amendment is grounded on the understanding that the device will assist officers only in tracking the movements of a person or property. It is important to note that under the proposed amendment, the warrant could authorize officers to track the person or property within the district of issuance, or outside the district.

Authority to Issue Tracking-Device Warrants Limited to Federal Judges

The Committee recognized that even in those cases where officers have no reason to believe initially that a person or property will move outside the district, issuing a warrant to authorize tracking both inside and outside the district avoids the need to obtain multiple warrants if the property or person later crosses district or state lines. Because the authorized tracking may involve more than one district or state, the Committee believed that only federal judicial officers should be authorized to issue this type of warrant.

3. Obtaining a Tracking-Device Warrant

Rule 41(d) includes new language on tracking devices. Although the tracking-device statute, 18 U.S.C. § 3117, does not set out a standard an applicant must meet to install a tracking device, the Supreme Court has reserved ruling on the issue until it is squarely presented by the facts of a case. *See United States v. Karo*, 468 U.S. 705, 718 n. 5 (1984). The Committee did not attempt to resolve that issue in Rule 41. Instead, the amendment simply provides that if probable cause is shown, the magistrate judge must issue the warrant.

4. Contents of Tracking-Device Warrants

Rule 41(e)(2)(B) is a new provision intended to address the contents of tracking-device warrants. In order to avoid open-ended monitoring of tracking devices, the Committee included a provision that requires the magistrate judge to specify in the warrant the length of time for using the device. Although the initial time stated in the warrant may not exceed 45 days, the rule permits officers to seek extensions of time for good cause. The rule also specifies that any installation of a tracking device authorized by the warrant must be made within 10 calendar days and, unless otherwise provided, that any installation occur during daylight hours. The Committee considered, but rejected, applying more stringent or detailed interim time requirements within the 45-day limit, such as those contained in Title III, Omnibus Crime Control and Safe Streets Act of 1968, *as amended* by Title I of the 1968 Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2520.

5. Execution and Return of Tracking-Device Warrants

The Committee completely revised Rule 41(f) to accommodate the new provisions for tracking-device warrants. Current Rule 41(f)(1) has been revised to address execution and delivery of warrants to search for and seize a person or property; no substantive change has been made to that provision. New Rule 41(f)(2) addresses execution and delivery of tracking-device warrants. That provision generally tracks the structure of revised Rule 41(f)(1), with appropriate adjustments for the particular requirements of tracking-device warrants.

Revised Rule 41(f)(2)(A) provides that the officer must note on the warrant the time the device was installed and the period during which the device was used. Under new Rule 41(f)(2)(B), the officer must return the tracking-device warrant to the magistrate judge designated in the warrant, within 10 calendar days after use of the device has ended.

Amended Rule 41(f)(2)(C) addresses the problems of serving a copy of a tracking-device warrant on the person who has been tracked, or whose property has been tracked. The amendment requires the officer to serve a copy of the tracking-device warrant on the person within 10 calendar days after the tracking has ended. That service

may be accomplished by either personally serving the person or by leaving a copy at the person's residence or usual abode and by sending a copy by mail. The Rule also provides, however, that the officer may (for good cause) obtain the court's permission to delay further the delivery of the warrant.

6. Delayed Notice for Any Type of Search.

As noted above, the Rule 41 Subcommittee reviewed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 to determine if any provision in that Act required an amendment to Rule 41. As a result of its study, the Subcommittee recommended, and the Committee accepted, a proposal to include a new provision, Rule 41(f)(3), to reflect 18 U.S.C. § 3103a(b). That new statutory provision authorizes a court to delay any notice required in conjunction with the issuance of any search warrants. The new provision in Rule 41 permits the government to request, and the magistrate judge to grant, a delay in giving any notice required in Rule 41.

Recommendation—The Committee recommends that Criminal Rule 41 be approved and published for public comment.

IV. Action Item—Proposed Substantive and Restyling Amendments to Rules Governing § 2254 Proceedings and Rules Governing § 2255 Proceedings and Accompanying Forms.

A. In General; Background.

For the last four years, the Committee has considered a number of proposed amendments to the Rules Governing § 2254 Proceedings and § 2255 Proceedings. Those proposed changes were driven in large part by passage of the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214. As a result of that study, the Committee in 2000 published several substantive amendments to those rules for public comment. Following the comment period, the Committee decided to withdraw the proposed amendments for two reasons. First, the comments on the amendments pointed out other substantive issues that might be addressed. And second, it was clear that the rules were ripe for restyling.

Following completion of its restyling efforts for the Criminal Rules in 2001, the Committee sought approval from the Standing Committee to restyle the Rules Governing § 2254 Proceedings and the Rules Governing § 2255 Proceedings. That approval was granted in June 2001. Mr. Joe Spaniol and Professor Joe Kimble prepared an initial draft of the rules, which in turn was referred to the "Habeas Rules Subcommittee," chaired by Judge David Trager. The Subcommittee reviewed the draft, met several times during the early months of 2002, and recommended that the Committee approve both style and substantive amendments to the rules and seek approval to publish the rules for public comment.

In restyling the rules, the Committee generally followed the pattern it had developed in restyling the Criminal Rules and focused on several key points. First, the Committee has attempted to standardize (where possible) key terms and phrases that appear throughout the rules.

Second, in several rules, the Committee has deleted provisions that it believed were no longer necessary or required. Whether those constitute substantive changes is not always clear. See current Rule 9(a), concerning delayed petitions or motions, which was rendered of questionable viability by 28 U.S.C. §§ 2244(d) and 2255, para. 6.

Third, the Committee has attempted to avoid any unforeseen substantive changes and has attempted in the Committee Notes to clearly state where the Committee is making what it considers to be a "substantive" change. Where a real question has arisen as to whether a particular change is substantive in nature, the Committee has identified it as such.

Fourth, several rules have been reorganized to make them easier to read and apply. In some, sections from one rule have been transferred to another rule.

Fifth, in some rules, major substantive changes have been made. *See, e.g.*, Rules 2 and 3 (requirement that clerk file deficient petition or motion). Some of those changes, (*see, e.g.*, Rule 9 dealing with successive petitions or motions) have been under discussion for some time but were deferred pending the restyling effort. Still others were identified and included during the project.

A copy of the proposed rules are at Attachment B along with proposed Committee Notes. The rules are presented in a side-by-side format with the current rule on the left column and the proposed restyled rules in the right column.

B. Substantive Amendments to Rules Governing §§ 2254 and 2255 Proceedings.

In restyling the rules, the Committee considered a number of substantive amendments to the rules, some of which were required to make the rules consistent with the Antiterrorism and Effective Death Penalty Act of 1996. Others were considered and adopted because of changes in practices. The more significant substantive amendments are noted in the following discussion.

1. Filing Petitions and Motions that do Not Conform to the Rules.

Prior to the Antiterrorism and Effective Death Penalty Act of 1996, defective petitions and motions were usually rejected and returned to the petitioner or moving party. The Act, however, created a one-year statute of limitations and thus a court's rejection of a petition or motion, simply because it does not conform to the rules, may effectively bar the prisoner from ever having his or her claims considered. *See*

§ 2244(d)(1) and § 2255, para. 6 (1-year statute of limitations). To avoid that problem the Committee has proposed that Rule 2(e) of the § 2254 rules and Rule 2(d) of the § 2255 rules be eliminated and that a new provision be added in Rule 3(b) of each set of rules. The new provision parallels Rule 5 of the Federal Rules of Civil Procedure and requires the clerk to file petitions and motions, even if they are in some way defective. If they are defective, the Committee envisions that the court would direct the petitioner or moving party to correct them.

2. Delayed Petitions and Motions.

Current Rule 9 in both sets of rules covers delayed petitions and motions and successive petitions and motions. After considering the issue, the Committee decided by a vote of 10 to 1, with one abstention, to delete current Rule 9(a) from the rules. The Committee concluded that it was no longer necessary in light of the one-year statute of limitations. In addition, current Rule 9(b), which deals with successive petitions was revised to reflect the requirement in the AEDPA that a petitioner or moving party must first seek approval from the appropriate court of appeals to file a second or successive petition or motion.

3. Replies by Petitioners and Moving Parties to Government Response.

Rule 5 in both sets of rules addresses the government's response to a petition or motion. But the current rules make no mention of the possibility of a petitioner's or moving party's reply to that response. The Committee is aware that in some districts, the court permits the petitioner or moving party to file a reply, particularly in those cases where they may have a response to the government's claim that a statute of limitations or exhaustion of remedies claim bars the petition or motion. To address that issue the Committee, by a vote of 12-0, added new Rule 5(e).

C. Restyled Rules.

The following discussion notes the proposed style changes to the rules and other changes that are less significant substantive amendments to the rules. The titles of the rules in this discussion are as they appear in the current rules. Because the rules are very similar for Sections 2254 and 2255, they are presented here in tandem, unless otherwise noted. At one time the Committee considered whether to attempt to blend the two sets of rules into one combined set. It concluded, however, that doing so would not be feasible, given the differences in the underlying statutes and in key terminology in the rules themselves.

Rule 1. Scope of Rules. The Committee proposes only minor style changes to Rule 1. In restyling the rules the Committee considered, but rejected, a proposal to include a specific reference to § 2241 habeas petitions in Rule 1 of the § 2254 rules. The current rules doe not do so and it was the view of the

Committee that current Rule 1(b) provides adequate notice that the rules may be used for habeas petitions not otherwise covered under Rule 1(a).

Rule 2. Petition (Motion). In addition to style changes, as noted above, the Committee deleted Rule 2(e) in the § 2254 Rules and Rule 2(d) in the § 2255 Rules, dealing with the court's return of an insufficient petition or motion. The Committee also deleted the language in current Rule 2(c), which requires the petitioner or moving party to specify all grounds for possible relief, including those that were, or reasonably should have been, known by the petitioner or moving party; members of the Committee believed that this language was probably unnecessary in light of the AEDPA.

The Committee also modified the language in the rule that currently requires that the papers be signed personally by the petitioner or moving party under penalty of perjury; the Committee recognized that § 2242 permits someone representing the petitioner or moving party to sign the document.

The Committee also decided that Rule 2 should not list all of the information that might be required of the petitioner or moving party. Instead, the requested information will be noted on the forms themselves.

Rule 3. Filing Petition. As noted above, the Committee added new Rule 3(b) that would require the clerk to accept an otherwise insufficient petition or motion. Also, the Committee added a new Rule 3(c) that would call attention to the one-year statute of limitations. In the § 2254 Rules the cite is to § 2244(d) and in the § 2255 Rules the reference is to § 2255, para. 6. Finally, the Committee added a new provision, Rule 3(d) that spells out when a paper filed by an inmate, using an institution's internal mailing system, is considered to have been filed.

Rule 4. Preliminary Consideration by Judge. Current Rule 4 requires that certain documents be sent by "certified mail" to the parties. The Committee changed the wording to reflect that the documents must be served on the parties, which could certainly include but is not limited to, using the mails. Further, the Committee changed the provision in Rule 4 of the § 2254 rules concerning service of the petition on the State's Attorney General. The Committee is aware that in some states, service of the petition is more appropriately made on some other state officer. Thus, the proposed amendment to Rule 4 requires service of the petition on the Attorney General or another appropriate state officer.

Rule 5. Answer; Contents. In addition to minor style changes (including creation of new subdivision headings), the Committee has included a requirement in Rule 5(d) of the § 2254 rules that would require the respondent to supply the court with copies of any briefs it had submitted to an appellate court, and any opinions and dispositive orders from that appellate court.

Rule 6. Discovery. The Committee made minor style changes to Rule 6.

Rule 7. Expansion of Record. The Committee made minor style changes to Rule 7, which include moving the text of Rule 7(d) to revised Rule 7(a).

Rule 8. Evidentiary Hearing. In addition to style changes in Rule 8, the Committee amended the rule to provide that copies of proposed findings and recommendations will be served on the parties; the current rule provides that the copies are to be mailed.

Rule 9. Delayed or Successive Petitions (Motions). In addition to style changes to Rule 9, the Committee amended the rule to specifically reference the need to obtain approval from the appropriate court of appeals, a requirement imposed by the AEDPA.

Rule 10. Powers of Magistrate. Only minor style changes have been made to Rule 10.

Rule 11, § 2254 Proceedings. Applicability of Rules of Civil Procedure. Rule 11, Rules Governing § 2254 Proceedings, contains only minor style changes.

Rule 11, § 2255 Proceedings. Time for Appeal. Rule 11, Rules Governing § 2255 Proceedings, contains only minor style changes.

Rule 12, § 2255 Proceedings. Applicability of Rules of Civil Procedure and Rules of Criminal Procedure. The Committee made minor style changes to Rule 11 of the § 2255 Rules.

D. Revised Official Forms Accompanying the Rules Governing §§ 2254 and 2255 Proceedings.

The Committee has also modified and updated the official forms that accompany the Rules Governing §§ 2254 and 2255 Proceedings. The changes are stylistic in nature and reflect the proposed changes to the rules and changes required by the AEDPA, for example, information regarding successive petitions or motions. The Committee is particularly interested in receiving comment on the lists of possible grounds for relief in question #12. A copy of the proposed forms are at Appendix C.

Recommendation—The Committee recommends that the Rules Governing § 2254 Proceedings and Rules Governing § 2255 Proceedings be approved and published for public comment.

V. Information Items

A. Rule 35. Correcting or Reducing a Sentence.

Prior to the restyling efforts for the Rules of Criminal Procedure, Rule 35(c) permitted the court to correct an error in the sentence within 7 days of the "imposition of sentence." During the restying project, Rule 35(c) was moved to Rule 35(a) and the term "sentencing" was substituted for "imposition of sentence." While the rule was out for public comment, as part of the comprehensive style package, the Committee gave further consideration to that amendment, at the urging of the Appellate Rules Committee. The concern was that the more common triggering event for appeal purposes was the entry of the judgment.

In June 2001, the Standing Committee approved publication of a proposed amendment to Rule 35. In that amendment, proposed new Rule 35(a) includes a definition of "sentencing" — only for purposes of Rule 35 — and "sentencing" means "entry of the judgment." The Comment period for that proposed amendment ended on February 15, 2002.

The Committee received seven written comments. The Department of Justice, the Federal Bar Association, the Committee on the U.S. Courts of the State Bar of Michigan, and the NACDL opposed the amendment. On the other hand, the State Bar of California Committee on Federal Courts, the Federal Magistrate Judges Assn., and Judge David Lawson endorsed the amendment.

The public comments opposing the amendment cite, among other things, concerns about interjecting more uncertainty into the area, leaving open for too long the possibility of the court changing the sentence, and adopting the minority, rather than majority view of the circuit courts that have addressed the issue. At least one commentator noted that the rule as proposed creates a special definition for "sentencing" that normally does not apply to other rules, such as Rule 32. Those endorsing the amendment believed that it will clarify an ambiguity in the rule and make it more consistent with Appellate Rule 4.

Currently the Circuits are split on the question of what the term "sentencing" means in relation to the 7-day rule in Rule 35. The majority view (six circuits) is that the 7-day period is triggered by the oral pronouncement of the sentence. The minority view (one circuit), and the one adopted in the proposed amendment, is that the period commences with the entry of the judgment. *See United States v. Aguirre*, 214 F.3d 1122, 1125-26 (9th Cir. 2000) (citing cases). The Committee opted for the latter position in order to make the rule more consistent with Appellate Rule 4 and any other rules that might specify when the right to appeal is triggered.

At its April 2002 meeting the Committee considered the public comments and the caselaw on the topic, and it decided that for purposes of Rule 35 the term sentencing should mean "oral announcement of the sentence." Rather than including a special definition for sentencing in the Rule itself, the Committee decided to substitute the term

"oral announcement of the sentence" whenever the term "sentencing" was used. After the meeting, it became apparent that that approach presented drafting problems.

Thus, the Committee has decided to hold the proposed amendment to Rule 35 until it has had an opportunity to discuss the matter further at its Fall 2002 meeting.

B. Model Local Rule Regarding Electronic Filing in Criminal Cases

At its April 2002 meeting the Committee considered a proposed set of model local rules dealing with electronic filings in criminal cases and offered its views on possible changes to those rules. The model rules had been originally developed for civil cases by a subcommittee of the Committee on Court Administration and Management (CACM). The Judicial Conference ultimately approved that rule. In light of the fact that some courts will now be able to accept electronic filings in criminal cases, the subcommittee chair of CACM on electronic filing, Judge John Koeltl (S.D.N.Y), offered suggested changes to the existing model local rule to accommodate criminal cases. The revised rule was also forwarded to Judge Fitzwater, chair of the Technology Subcommittee of the Committee on Rules of Practice and Procedure, who in turn has asked the members of that subcommittee to review the attached draft and offer any comments or suggestions to the Committee.

The Committee was asked to review the draft and offer any suggested changes. The Committee held an extended discussion on what, if any, special problems might arise with electronic filings in criminal cases, including access by the parties and the public generally to any, or all, of the filed documents and whether any special rules should be applied for papers signed by the defendant.

The Committee, by a vote of 10-2, recommended that the rules be changed to reflect that all charging documents be filed in their original form or in scanned format, in the court's discretion, and that everything signed by the defendant could be filed in the original or in scanned format, at the discretion of the court.

The Committee understands that the proposed local rules are designed to provide only preliminary guidance to the courts that wish to experiment with electronic filings in criminal cases. After the courts have used the system, further changes may be in order.

C. Other Proposed Amendments Under Consideration by the Committee

The Committee has under active consideration several amendments to the Criminal Rules and will continue its discussion of those proposed amendments at its Fall 2002 meeting:

- **Rule 12.2. Notice of Insanity Defense; Mental Examination**

The Committee will consider a possible amendment to Rule 12.2 concerning sanctions in those cases where the defense fails to disclose the results of a mental examination conducted by the defense expert.

- **Rules 29, 33, and 34; Proposed Amendments re Rulings by Court**

Rules 29, 33, and 34 require that motions under those rules be filed within 7-day of the times specified in those rules; in the alternative the moving party may obtain an extension of time if the court fixes a different time for filing the motions. However, the court must fix that time within the original 7-day period specified in each rule. The Committee has considered the case where the defendant files an extension of time within the 7 days but due to the judge's illness or absence, the judge does not, within the 7-day limit, extend the deadline. At least one Circuit had ruled that the 7-day limit is jurisdictional. The Committee has agreed to proceed with an amendment to address that concern and will consider possible language at its next meeting.

- **Rule 32.1. Revoking or Modifying Probation or Supervised Release**

As noted in *United States v. Frazier*, ____ F.3d _____ (11th Cir. 2002), there is no explicit provision in Rule 32.1 for the defendant's right to allocution. The Committee has decided to amend Rule 32.1 to address that point. That amendment will be on the agenda for the Committee's Fall 2002 meeting.

- **Proposed Rule Regarding Appeal of Rulings by Magistrate Judges**

Finally, at the suggestion of Judge Tashima, the Committee has decided to proceed with drafting an amendment, or possibly a new rule, that would parallel Rule of Civil Procedure 72(a), which addresses what counsel must do to preserve an issue for appeal from a magistrate judge's rulings on nondispositive, pretrial matters.

Attachments:

A. Proposed Amendments to Criminal Rules 41.
B. Proposed Amendments to Rules Governing §§ 2254 & 2255 Proceedings
C. Proposed Forms Accompanying Rules Governing §§ 2254 & 2255 Proceedings
D. Minutes of April 2002 Meeting

APPENDIX A

[Copy of Rule 41 and Note]

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE*

Rule 41. Search and Seizure

(a) Scope and Definitions.

* * * * *

(2) ***Definitions.*** The following definitions apply under this rule:

* * * * *

(D) "Domestic terrorism" and "international terrorism" have the meanings set out in 18 U.S.C. § 2331.

(E) "Tracking device" has the meaning set out in 18 U.S.C. § 3117(b).

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

(1) a magistrate judge with authority in the district —

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* New material is underlined; matter to be omitted is lined through.

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;

(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; ~~and~~

(3) a magistrate judge — in an investigation of domestic terrorism or international terrorism — ~~having~~ with authority in any district in which activities related to the terrorism may have occurred, may issue a warrant for a person or

property within or outside that district.; and

(4) a magistrate judge with authority in the district may issue a warrant to install within the district a tracking device, to use a tracking device, or both; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both.

* * * * *

(d) Obtaining a Warrant.

(1) ~~***Probable Cause***~~ ***In General.*** After receiving an affidavit or other information, a magistrate judge — or if authorized by Rule 41(b), ~~or~~ a judge of a state court of record — must issue the warrant if there is probable cause to search for and seize a person or property or to install or use a tracking device ~~under Rule 41(c)~~.

* * * * *

(e) Issuing the Warrant.

(1) ***In General.*** The magistrate judge or a judge of a state court of record must issue the warrant to an officer authorized to execute it.

(2) ***Contents of the Warrant.***

(A) Warrant to Search for and Seize a Person or Property. Except for a tracking-device warrant, ~~T~~the warrant must identify the person or property to be searched, identify any person or property to be seized, and designate the magistrate judge to whom it must be returned. The warrant must command the officer to:

~~(A)~~(i) execute the warrant within a specified time no longer than 10 days;

~~(B)~~(ii) execute the warrant during the

daytime, unless the judge for good cause expressly authorizes execution at another time; and

~~(C)~~(iii) return the warrant to the magistrate judge designated in the warrant.

(B) Warrant for a Tracking Device. A tracking-device warrant must identify the person or property to be tracked, designate the magistrate judge to whom it must be returned, and specify the length of time that the device may be used. The time must not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions of no more than 45 days each. The warrant must command the officer to:

(i) complete any installation authorized

by the warrant within a specified time no longer than 10 calendar days;

(ii) perform any installation authorized by the warrant during the daytime, unless the judge for good cause expressly authorizes installation at another time; and

(iii) return the warrant to the magistrate judge designated in the warrant.

(3) ***Warrant by Telephonic or Other Means.***

* * * * *

(f) Executing and Returning the Warrant.

(1) Warrant to Search for and Seize a Person or Property.

~~(1)~~(A) *Noting the Time.* The officer executing the warrant must enter on ~~its face~~ it the exact date and time it ~~is~~ was executed.

~~(2)~~(B) *Inventory*. An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken. If either one is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person.

~~(3)~~(C) *Receipt*. The officer executing the warrant must: ~~(A)~~ give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken; or ~~(B)~~ must leave a copy of the warrant and receipt at the place where the officer took

the property.

~~(4)~~(D) *Return.* The officer executing the warrant must promptly return it — together with the copy of the inventory — to the magistrate judge designated on the warrant. The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.

(2) ***Warrant for a Tracking Device.***

(A) *Noting the Time.* The officer executing a tracking-device warrant must enter on it the date and time the device was installed and the period during which it was used.

(B) *Return.* Within 10 calendar days after the use of the tracking device has ended, the

officer executing the warrant must return it to the magistrate judge designated in the warrant.

(C) *Service*. Within 10 calendar days after the use of the tracking device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with someone of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the

government, the magistrate judge may, on one or more occasions, for good cause extend the time to serve the warrant for a reasonable period.

(3) ***Delayed Notice.*** Upon request of the government, a magistrate judge — or if authorized by Rule 41(b), a judge of a state court of record — may delay any notice required by this rule if the delay is authorized by statute.

* * * * *

COMMITTEE NOTE

The amendments to Rule 41 address two issues: first, procedures for issuing tracking-device warrants and second, a provision for delaying any notice required by the rule.

Amended Rule 41(a)(2) includes two new definitional provisions. The first, in Rule 41(a)(2)(D), addresses the definitions of "domestic terrorism" and "international terrorism," terms used in Rule 41(b)(2). The second, in Rule 41(a)(2)(E), addresses the definition of "tracking device."

Amended Rule 41(b)(4) is a new provision, designed to address the use of tracking devices. Such searches are recognized both by statute, *see* 18 U.S.C. § 3117(b) and by caselaw, *see, e.g.*, *United States v. Karo*, 468 U.S. 705 (1984); *United States v. Knotts*, 460 U.S. 276 (1983). Nonetheless, there is no procedural guidance in current Rule 41 for those judicial officers who are asked to issue tracking-device warrants. As with traditional search warrants for persons or property, tracking-device warrants may implicate law enforcement interests in multiple districts. Further, warrants may be required to monitor tracking devices when they are used to monitor persons or property in areas where there is a reasonable expectation of privacy. *See, e.g., United States v. Karo, supra* (although no probable cause was required to install beeper, officers' monitoring of its location in defendant's home raised Fourth Amendment concerns).

The amendment provides that a magistrate judge may issue a warrant, if he or she has the authority to do so in the district, to install or use a tracking device, as that term is defined in 18 U.S.C. § 3117(b). The magistrate judge's authority to allow installation of a tracking device includes the authority to permit maintenance and removal of the tracking device. The Committee did not intend by this amendment to expand or contract the definition of what might constitute a tracking device. The amendment is based on the understanding that the device will assist officers only in tracking the movements of a person or property. The warrant may authorize officers to track the person or property within the district of issuance, or outside the district.

Because the authorized tracking may involve more than one district or state, the Committee believes that only federal judicial officers should be authorized to issue this type of warrant. Even where officers have no reason to believe initially that a person or property will move outside the district of issuance, issuing a warrant

to authorize tracking both inside and outside the district avoids the necessity of obtaining multiple warrants if the property or person later crosses district or state lines.

The amendment reflects the view that if the officers intend to install or use the device in a constitutionally protected area, they must obtain judicial approval to do so. If, on the other hand, the officers intend to install and use the device without implicating any Fourth Amendment rights, there is no need to obtain the warrant. *See, e.g., United States v. Knotts, supra*, where the officers' actions in installing and following tracking device did not amount to a search under the Fourth Amendment.

Amended Rule 41(d) includes new language on tracking devices. The tracking-device statute, 18 U.S.C. § 3117, does not specify the standard an applicant must meet to install a tracking device. The Supreme Court has acknowledged that the standard for installation of a tracking device is unresolved, but has reserved ruling on the issue until it is squarely presented by the facts of a case. *See United States v. Karo*, 468 U.S. 705, 718 n. 5 (1984). The amendment to Rule 41 does not resolve this issue or hold that such warrants may issue only on a showing of probable cause. Instead, it simply provides that if probable cause is shown, the magistrate judge must issue the warrant. And the warrant is only needed if the device is installed (for example, in the trunk of the defendant's car) or monitored (for example, while the car is in the defendant's garage) in an area in which the person being monitored has a reasonable expectation of privacy.

Amended Rule 41(e)(2)(B) is a new provision intended to address the contents of tracking-device warrants. To avoid open-ended monitoring of tracking devices, the revised rule requires the magistrate judge to specify in the warrant the length of time for using the device. Although the initial time stated in the warrant may not exceed 45 days, extensions of time may be granted for good cause.

The rule further specifies that any installation of a tracking device authorized by the warrant must be made within ten calendar days and, unless otherwise provided, that any installation occur during daylight hours.

Current Rule 41(f) has been completely revised to accommodate new provisions dealing with tracking-device warrants. First, current Rule 41(f)(1) has been revised to address execution and delivery of warrants to search for and seize a person or property; no substantive change has been made to that provision. New Rule 41(f)(2) addresses execution and delivery of tracking-device warrants. That provision generally tracks the structure of revised Rule 41(f)(1), with appropriate adjustments for the particular requirements of tracking-device warrants. Under Rule 41(f)(2)(A) the officer must note on the warrant the time the device was installed and the period during which the device was used. And under new Rule 41(f)(2)(B), the officer must return the tracking-device warrant to the magistrate judge designated in the warrant, within 10 calendar days after use of the device has ended.

Amended Rule 41(f)(2)(C) addresses the particular problems of serving a copy of a tracking-device warrant on the person who has been tracked, or whose property has been tracked. In the case of other warrants, current Rule 41 envisions that the subjects of the search typically know that they have been searched, usually within a short period of time after the search has taken place. Tracking-device warrants, on the other hand, are by their nature covert intrusions and can be successfully used only when the person being investigated is unaware that a tracking device is being used. The amendment requires that the officer must serve a copy of the tracking-device warrant on the person within 10 calendar days after the tracking has ended. That service may be accomplished by either personally serving the person or by leaving a copy at the person's residence or usual abode and by sending a copy by mail. The Rule also provides, however, that the officer may (for good cause) obtain the court's permission to delay further the delivery of the warrant. That might be appropriate, for example, where the owner of the tracked property

is undetermined, or where the officer establishes that the investigation is ongoing and that disclosure of the warrant will compromise that investigation.

Use of a tracking device is to be distinguished from other continuous monitoring or observations that are governed by statutory provisions or caselaw. *See* Title III, Omnibus Crime Control and Safe Streets Act of 1968, *as amended* by Title I of the 1968 Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2520; *United States v. Biasucci*, 786 F.2d 504 (2d Cir. 1986) (use of video camera); *United States v. Torres*, 751 F.2d 875 (7th Cir. 1984) (television surveillance).

Finally, amended Rule 41(f)(3) is a new provision that permits the government to request, and the magistrate judge to grant, a delay in any notice required in Rule 41. The amendment is co-extensive with 18 U.S.C. § 3103a(b). That new provision, added as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, authorizes a court to delay any notice required in conjunction with the issuance of any search warrants.

APPENDIX B

[Copies of Habeas Rules and Notes]

RULES FOR PROCEEDINGS UNDER 28 U.S.C. § 2254

Present Rules	Restyled Rules
Rule 1. Scope of Rules	**Rule 1. Scope**
(a) Applicable to cases involving custody pursuant to a judgment of a state court. These rules govern the procedure in the United States district courts on applications under 28 U.S.C. § 2254:	**(a) Cases Involving a Petition under 28 U.S.C. § 2254.** These rules govern a petition for a writ of habeas corpus filed in a United States district court under 28 U.S.C. § 2254 by:
(1) by a person in custody pursuant to a judgment of a state court, for a determination that such custody is in violation of the Constitution, laws, or treaties of the United States; and	(1) a person in custody under a state-court judgment who seeks a determination that the custody violates the Constitution, laws, or treaties of the United States; and
(2) by a person in custody pursuant to a judgment of either a state or a federal court, who makes application for a determination that custody to which he may be subject in the future under a judgment of a state court will be in violation of the Constitution, laws, or treaties of the United States.	(2) a person in custody under a state-court or federal-court judgment who seeks a determination that future custody under a state-court judgment would violate the Constitution, laws, or treaties of the United States.
(b) Other situations. In applications for habeas corpus in cases not covered by subdivision (a), these rules may be applied at the discretion of the United States district court.	**(b) Other Cases.** The district court may apply these rules to a habeas corpus petition not covered by Rule 1(a).

COMMITTEE NOTE

The language of Rule 1 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Rule 2. Petition	Rule 2. The Petition
(a) Applicants in present custody. If the applicant is presently in custody pursuant to the state judgment in question, the application shall be in the form of a petition for a writ of habeas corpus in which the state officer having custody of the applicant shall be named as respondent.	**(a) Current Custody; Naming the Respondent.** If the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state officer who has custody.
(b) Applicants subject to future custody. If the applicant is not presently in custody pursuant to the state judgment against which he seeks relief but may be subject to such custody in the future, the application shall be in the form of a petition for a writ of habeas corpus with an added prayer for appropriate relief against the judgment which he seeks to attack. In such a case the officer having present custody of the applicant and the attorney general of the state in which the judgment which he seeks to attack was entered shall each be named as respondents.	**(b) Future Custody; Naming the Respondents and Specifying the Judgment.** If the petitioner is not yet in custody — but may be subject to future custody — under the state-court judgment being contested, the petition must name as respondents both the officer who has current custody and the attorney general of the state where the judgment was entered. The petition must ask for relief against the state-court judgment being contested.
(c) Form of Petition. The petition shall be in substantially the form annexed to these rules, except that any district court may by local rule require that petitions filed with it shall be in a form prescribed by the local rule. Blank petitions in the prescribed form shall be made available without charge by the clerk of the district court to applicants upon their request. It shall specify all the grounds for relief which are available to the petitioner and of which he has or by the exercise of reasonable diligence should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified. It shall also state the relief requested. The petition shall be typewritten or legibly handwritten and shall be signed under penalty of perjury by the petitioner.	**(c) Form.** The petition must: (1) specify all the grounds for relief available to the petitioner; (2) briefly summarize the facts supporting each ground; (3) state the relief requested; (4) be typewritten or legibly handwritten; and (5) be signed under penalty of perjury.

(d) Petition to be directed to judgments of one court only. A petition shall be limited to the assertion of a claim for relief against the judgment or judgments of a single state court (sitting in a county or other appropriate political subdivision). If a petitioner desires to attack the validity of the judgments of two or more state courts under which he is in custody or may be subject to future custody, as the case may be, he shall do so by separate petitions.	**(d) Standard Form.** The petition must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule. The clerk must make blank forms available to petitioners without charge. **(e) Separate Petitions for Judgments of Separate Courts.** A petitioner who seeks relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court.
(e) Return of insufficient petition. If a petition received by the clerk of a district court does not substantially comply with the requirements of rule 2 or rule 3, it may be returned to the petitioner, if a judge of the court so directs, together with a statement of the reason for its return. The clerk shall retain a copy of the petition.	

COMMITTEE NOTE

The language of Rule 2 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as described below.

Revised Rule 2(c)(5) has been amended by removing the requirement that the petition be signed personally by the petitioner. As reflected in 28 U.S.C. § 2242, an application for habeas corpus relief may be filed by the person who is seeking relief, or by someone acting on behalf of that person.

The language in new Rule 2(d) has been changed to reflect that a petitioner must substantially follow the standard form, which is appended to the rules, or a form provided by the court. The current rule, Rule 2(c), seems to indicate a preference for the standard "national" form. Under the

amended rule, there is no stated preference. The Committee understood that current practice in some courts is that if the petitioner first files a petition using the national form, that courts may ask the petitioner to supplement it with the local form.

Current Rule 2(e), which provided for returning an insufficient petition, has been deleted. The Committee believed that the approach in Federal Rule of Civil Procedure 5(e) was more appropriate for dealing with petitions that do not conform to the form requirements of the rule. That Rule provides that the clerk may not refuse to accept a filing solely for the reason that it fails to comply with these rules or local rules. Prior to the adoption of a one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, the petitioner suffered no penalty, other than delay, if the petition was deemed insufficient. Now that a one-year statute of limitations applies to petitions filed under § 2254, *see* 28 U.S.C. § 2244(d)(1), the court's dismissal of a petition because it is not in proper form may pose a significant penalty for a petitioner, who may not be able to file another petition within the one-year limitation period. Now, under revised Rule 3(b), the clerk is required to file a petition, even though it may otherwise fail to comply with the provisions in revised Rule 2(c). The Committee believed that the better procedure was to accept the defective petition and require the petitioner to submit a corrected petition that conforms to Rule 2(c).

Rule 3. Filing Petition	Rule 3. Filing the Petition; Inmate Filing
(a) Place of filing; copies; filing fee. A petition shall be filed in the office of the clerk of the district court. It shall be accompanied by two conformed copies thereof. It shall also be accompanied by the filing fee prescribed by law unless the petitioner applies for and is given leave to prosecute the petition in forma pauperis. If the petitioner desires to prosecute the petition in forma pauperis, he shall file the affidavit required by 28 U.S.C. § 1915. In all such cases the petition shall also be accompanied by a certificate of the warden or other appropriate officer of the institution in which the petitioner is confined as to the amount of money or securities on deposit to the petitioner's credit in any account in the institution, which certificate may be considered by the court in acting upon his application for leave to proceed in forma pauperis.	**(a) Where to File; Copies; Filing Fee.** An original and two copies of the petition must be filed with the clerk and must be accompanied by: (1) the applicable filing fee, or (2) a motion for leave to proceed in forma pauperis, the affidavit required by 28 U.S.C. § 1915, and a certificate from the warden or other appropriate officer of the place of confinement showing the amount of money or securities that the petitioner has in any account in the institution.
(b) Filing and service. Upon receipt of the petition and the filing fee, or an order granting leave to the petitioner to proceed in forma pauperis, and having ascertained that the petition appears on its face to comply with rules 2 and 3, the clerk of the district court shall file the petition and enter it on the docket in his office. The filing of the petition shall not require the respondent to answer the petition or otherwise move with respect to it unless so ordered by the court.	**(b) Filing.** The clerk must file the petition and enter it on the docket. **(c) Time to File.** The time for filing a petition is governed by 28 U.S.C. § 2244(d). **(d) Inmate Filing.** A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

COMMITTEE NOTE

The language of Rule 3 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended except as described below.

The last sentence of current Rule 3(b), dealing with an answer being filed by the respondent, has been moved to revised Rule 5(a).

Revised Rule 3(b) is new and is intended to parallel Federal Rule of Civil Procedure 5(e), which provides that the clerk may not refuse to accept a filing solely for the reason that it fails to comply with these rules or local rules. Prior to the adoption of a one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, the petitioner suffered no penalty, other than delay, if the petition was deemed insufficient. That Act, however, added a one-year statute of limitations to petitions filed under § 2254, *see* 28 U.S.C. § 2244(d)(1). Thus, a court's dismissal of a defective petition may pose a significant penalty for a petitioner who may not be able to file a corrected petition within the one-year limitation period. The Committee believed that the better procedure was to accept the defective petition and require the petitioner to submit a corrected petition that conforms to Rule 2. Thus, revised 3(b) requires the clerk is required to file a petition, even though it may otherwise fail to comply with Rule 2.

Revised Rule 3(c), which sets out a specific reference to 28 U.S.C. § 2244(d), is new and has been added to put petitioners on notice that a one-year statute of limitations applies to petitions filed under these Rules.

Rule 3(d) is new and provides guidance on determining whether a petition from an inmate is considered to have been filed in a timely fashion. The new provision parallels Federal Rule of Appellate Procedure 25(a)(2)(C).

Rule 4. Preliminary Consideration by Judge	Rule 4. Preliminary Review; Serving the Petition and Order
The original petition shall be presented promptly to a judge of the district court in accordance with the procedure of the court for the assignment of its business. The petition shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified. Otherwise the judge shall order the respondent to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate. In every case a copy of the petition and any order shall be served by certified mail on the respondent and the attorney general of the state involved.	The clerk must promptly forward the petition to a judge under the court's assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an answer or other pleading within a fixed time, or to take other action the judge may order. In every case, the clerk must serve a copy of the petition and any order on the respondent and on the attorney general or other appropriate officer of the state involved.

COMMITTEE NOTE

The language of Rule 4 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as described below.

The requirement that in every case the clerk of the court must serve a copy of the petition on the respondent by certified mail has been deleted. In addition, the current requirement that the petition be sent to the Attorney General of the state has been modified to reflect practice in some jurisdictions that the appropriate state official may be someone other than the Attorney General, for example, the officer in charge of a local confinement facility. This comports with a similar provision in 28 U.S.C. § 2252, which addresses notice of habeas corpus proceedings to the state's attorney general or other appropriate officer of the state.

Rule 5. Answer; Contents	Rule 5. The Answer and the Reply
The answer shall respond to the allegations of the petition. In addition it shall state whether the petitioner has exhausted his state remedies including any post-conviction remedies available to him under the statutes or procedural rules of the state and including also his right of appeal both from the judgment of conviction and from any adverse judgment or order in the post- conviction proceeding.	**(a) When Required.** The respondent is not required to answer the petition unless a judge so orders. **(b) Addressing the Allegations; State Remedies.** The answer must address the allegations in the petition. In addition, it must state whether any claim in the petition is barred by any affirmative defense, including a failure to exhaust state remedies, a procedural bar, or a statute of limitations.
The answer shall indicate what transcripts (of pretrial, trial, sentencing, and post-conviction proceedings) are available, when they can be furnished, and also what proceedings have been recorded and not transcribed. There shall be attached to the answer such portions of the transcripts as the answering party deems relevant. The court on its own motion or upon request of the petitioner may order that further portions of the existing transcripts be furnished or that certain portions of the non-transcribed proceedings be transcribed and furnished. If a transcript is neither available nor procurable, a narrative summary of the evidence may be submitted.	**(c) Transcripts.** The answer must also indicate what transcripts (of pretrial, trial, sentencing, or post-conviction proceedings) are available, when they can be furnished, and what proceedings have been recorded but not transcribed. The respondent must attach to the answer parts of the transcript that the respondent considers relevant. The judge may order that the respondent furnish other parts of existing transcripts or that parts of untranscribed recordings be transcribed and furnished. If a transcript cannot be obtained, the respondent may submit a narrative summary of the evidence.
If the petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, a copy of the petitioner's brief on appeal and of the opinion of the appellate court, if any, shall also be filed by the respondent with the answer.	**(d) Briefs on Appeal and Opinions.** The respondent must also file with the answer a copy of: (1) any brief that the petitioner submitted in an appellate court contesting the conviction or sentence, or contesting an adverse judgment or order in a post-conviction proceeding;

	(2) any brief that the prosecution submitted in an appellate court relating to the conviction or sentence; and (3) the opinions and dispositive orders of the appellate court relating to the conviction or the sentence. **(e) Reply.** The petitioner may submit a reply to the respondent's answer or other pleading within a time fixed by the judge.

COMMITTEE NOTE

The language of Rule 5 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as described below.

Revised Rule 5(a), which provides that the respondent is not required to file an answer to the petition, unless a judge so orders, is taken from current Rule 3(b). Revised Rule 5(d) includes new material. First, Rule 5(d)(2), requires a respondent – assuming an answer is filed – to provide the court with a copy of any brief submitted by the prosecution to the appellate court. And Rule 5(d)(3) now provides that the respondent also filed copies of any opinions and dispositive orders of the appellate court concerning the conviction or sentence. These provisions are intended to insure that the court is provided with additional information that may assist it in resolving the issues raised, or not raised, in the petition.

Finally, revised Rule 5(e) reflects the practice in some jurisdictions that a petitioner has an opportunity to file a response, or other pleading, to the respondent's answer. In that case, the Rule prescribes that the court set the time for such responses. In lieu of setting specific time limits in each case, the court may decide to include such time limits in its local rules.

Rule 6. Discovery	Rule 6. Discovery
(a) Leave of court required. A party shall be entitled to invoke the processes of discovery available under the Federal Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for effective utilization of discovery procedures, counsel shall be appointed by the judge for a petitioner who qualifies for the appointment of counsel under 18 U.S.C. § 3006A(g).	**(a) Leave of Court Required.** A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure but may limit the extent of discovery. If necessary for effective discovery, the judge must appoint an attorney for a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A.
(b) Requests for discovery. Requests for discovery shall be accompanied by a statement of the interrogatories or requests for admission and a list of the documents, if any, sought to be produced.	**(b) Requesting Discovery.** When requesting discovery, a party must include a statement of any interrogatories or requests for admission, and a list of any requested documents.
(c) Expenses. If the respondent is granted leave to take the deposition of the petitioner or any other person the judge may as a condition of taking it direct that the respondent pay the expenses of travel and subsistence and fees of counsel for the petitioner to attend the taking of the deposition.	**(c) Deposition Expenses.** If the respondent is granted leave to take a deposition, the judge may require the respondent to pay the travel expenses, subsistence expenses, and fees of the petitioner's attorney to attend the deposition.

COMMITTEE NOTE

The language of Rule 6 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Rule 7. Expansion of Record	Rule 7. Expanding the Record
(a) Direction for expansion. If the petition is not dismissed summarily the judge may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the petition.	**(a) In General.** If the petition is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the merits of the petition. The judge may require the parties to authenticate these materials.
(b) Materials to be added. The expanded record may include, without limitation, letters predating the filing of the petition in the district court, documents, exhibits, and answers under oath, if so directed, to written interrogatories propounded by the judge. Affidavits may be submitted and considered as a part of the record.	**(b) Types of Materials.** The materials that may be required include letters predating the filing of the petition, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. Affidavits may also be submitted and considered as part of the record.
(c) Submission to opposing party. In any case in which an expanded record is directed, copies of the letters, documents, exhibits, and affidavits proposed to be included shall be submitted to the party against whom they are to be offered, and he shall be afforded an opportunity to admit or deny their correctness. **(d) Authentication.** The court may require the authentication of any material under subdivision (b) or (c).	**(c) Review by the Opposing Party**. The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.

COMMITTEE NOTE

The language of Rule 7 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

The language in current Rule 7(d), which deals with authentication of materials in the expanded record, has been moved to revised Rule 7(a).

Rule 8. Evidentiary Hearing	Rule 8. Evidentiary Hearing
(a) Determination by court. If the petition is not dismissed at a previous stage in the proceeding, the judge, after the answer and the transcript and record of state court proceedings are filed, shall, upon a review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the petition as justice shall require.	**(a) Determining Whether to Hold a Hearing.** If the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.
(b) Function of the magistrate. (1) When designated to do so in accordance with 28 U.S.C. § 636(b), a magistrate may conduct hearings, including evidentiary hearings, on the petition, and submit to a judge of the court proposed findings of fact and recommendations for disposition. (2) The magistrate shall file proposed findings and recommendations with the court and a copy shall forthwith be mailed to all parties. (3) Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. (4) A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify in whole or in part any findings or recommendations made by the magistrate.	**(b) Reference to a Magistrate Judge.** A judge may, under 28 U.S.C. § 636(b), refer the petition to a magistrate judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within 10 days after being served, a party may file objections as provided by local court rule. The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.

(c) Appointment of counsel; time for hearing. If an evidentiary hearing is required the judge shall appoint counsel for a petitioner who qualifies for the appointment of counsel under 18 U.S.C. § 3006A(g) and the hearing shall be conducted as promptly as practicable, having regard for the need of counsel for both parties for adequate time for investigation and preparation. These rules do not limit the appointment of counsel under 18 U.S.C. § 3006A at any stage of the case if the interest of justice so requires.	(c) **Appointing Counsel; Time of Hearing.** If an evidentiary hearing is warranted, the judge must appoint an attorney to represent a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A. The judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare. These rules do not limit the appointment of counsel under § 3006A at any stage of the proceeding.

COMMITTEE NOTE

The language of Rule 8 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

The requirement in current Rule 8(b)(2) that a copy magistrate judge's findings must be promptly mailed to all parties, has been changed in revised Rule 8(b) to require that copies of those findings be served on all parties. As used in this rule, requiring that the parties be "served" is consistent with Federal Rule of Civil Procedure 5(b), which may include mailing the copies.

Rule 9. Delayed or Successive Petitions	Rule 9. Successive Petitions
(a) Delayed petitions. A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.	
(b) Successive petitions. A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.	Before presenting a second or successive petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition.

COMMITTEE NOTE

The language of Rule 9 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as noted below.

First, current Rule 9(a) has been deleted as being unnecessary, in light of the applicable one-year statute of limitations for § 2255 motions, added as part of the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214.

Second, current Rule 9(b), now Rule 9, has been changed to also reflect provisions in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, which now require a petitioner to obtain approval from the appropriate court of appeals before filing a second or successive petition. *See* 28 U.S.C. § 2244(b)(3).

Finally, the title of Rule 9 has been changed to reflect the fact that the only topic now addressed in the rule is that of successive petitions.

Rule 10. Powers of Magistrates	Rule 10. Powers of a Magistrate Judge
The duties imposed upon the judge of the district court by these rules may be performed by a United States magistrate pursuant to 28 U.S.C. § 636.	If authorized to do so under 28 U.S.C. § 636, a magistrate judge may perform the duties of a district judge under these rules.

COMMITTEE NOTE

The language of Rule 10 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Rule 11. Federal Rules of Civil Procedure; Extent of Applicability	Rule 11. Applicability of the Federal Rules of Civil Procedure
The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with these rules, may be applied, when appropriate, to petitions filed under these rules.	The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with these rules, may be applied to a proceeding under these rules.

COMMITTEE NOTE

The language of Rule 11 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

RULES FOR PROCEEDINGS UNDER 28 U.S.C. § 2255

Present Rules	Restyled Rules
Rule 1. Scope of Rules	**Rule 1. Scope**
These rules govern the procedure in the district court on a motion under 28 U.S.C. § 2255: (1) by a person in custody pursuant to a judgment of that court for a determination that the judgment was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such judgment, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack; and	These rules govern a motion filed in a United States district court under 28 U.S.C. § 2255 by: **(a)** a person in custody under a judgment of that court who seeks a determination that: (1) the judgment violates the Constitution or laws of the United States; (2) the court lacked jurisdiction to enter the judgment; (3) the sentence exceeded the maximum allowed by law; or (4) the judgment or sentence is otherwise subject to collateral review; and

(2) by a person in custody pursuant to a judgment of a state or other federal court and subject to future custody under a judgment of the district court for a determination that such future custody will be in violation of the Constitution or laws of the United States, or that the district court was without jurisdiction to impose such judgment, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.	**(b)** a person in custody under a judgment of a state court or another federal court, and subject to future custody under a judgment of the district court, who seeks a determination that: (1) future custody under a judgment of the district court would violate the Constitution or laws of the United States; (2) the district court lacked jurisdiction to enter the judgment; (3) the district court's sentence exceeded the maximum allowed by law; or (4) the district court's judgment or sentence is otherwise subject to collateral review.

COMMITTEE NOTE

The language of Rule 1 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Rule 2. Motion	Rule 2. The Motion
(a) Nature of application for relief. If the person is presently in custody pursuant to the federal judgment in question, or if not presently in custody may be subject to such custody in the future pursuant to such judgment, the application for relief shall be in the form of a motion to vacate, set aside, or correct the sentence.	**(a) Applying for Relief.** The application must be in the form of a motion to vacate, set aside, or correct the sentence.
(b) Form of Motion. The motion shall be in substantially the form annexed to these rules, except that any district court may by local rule require that motions filed with it shall be in a form prescribed by the local rule. Blank motions in the prescribed form shall be made available without charge by the clerk of the district court to applicants upon their request. It shall specify all the grounds for relief which are available to the movant and of which he has or, by the exercise of reasonable diligence, should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified. It shall also state the relief requested. The motion shall be typewritten or legibly handwritten and shall be signed under penalty of perjury by the petitioner.	**(b) Form.** The motion must: (1) specify all the grounds for relief available to the moving party; (2) briefly summarize the facts supporting each ground; (3) state the relief requested; (4) be typewritten or legibly handwritten; and (5) be signed under penalty of perjury. **(c) Standard Form.** The motion must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule. The clerk must make blank forms available to moving parties without charge.
(c) Motion to be directed to one judgment only. A motion shall be limited to the assertion of a claim for relief against one judgment only of the district court. If a movant desires to attack the validity of other judgments of that or any other district court under which he is in custody or may be subject to future custody, as the case may be, he shall do so by separate motions.	**(d) Separate Motions for Separate Judgments.** A moving party who seeks relief from more than one judgment must file a separate motion covering each judgment.

(d) Return of insufficient motion. If a motion received by the clerk of a district court does not substantially comply with the requirements of rule 2 or rule 3, it may be returned to the movant, if a judge of the court so directs, together with a statement of the reason for its return. The clerk shall retain a copy of the motion.	

COMMITTEE NOTE

The language of Rule 2 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as described below.

Revised Rule 2(b)(5) has been amended by removing the requirement that the motion be signed personally by the moving party. As reflected in 28 U.S.C. § 2242, an application for habeas corpus relief may be filed by the person who is seeking relief, or by someone acting on behalf of that person.

The language in new Rule 2(c) has been changed to reflect that a moving party must substantially follow the standard form, which is appended to the rules, or a form provided by the court. The current rule, Rule 2(c), seems to indicate a preference for the standard "national" form. Under the amended rule, there is no stated preference. The Committee understood that current practice in some courts is that if the moving party first files a motion using the national form, that courts may ask the moving party to supplement it with the local form.

Current Rule 2(d), which provided for returning an insufficient motion has been deleted. The Committee believed that the approach in Rule of Civil Procedure 5(e) was more appropriate for dealing with motions that do not conform to the form requirements of the rule. That Rule provides that the clerk may not refuse to accept a filing solely for the reason that it fails to comply with these rules or local rules. Prior to the adoption of a one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, the moving party suffered no penalty, other than delay, if the motion was deemed insufficient. Now that a one-year statute of limitations applies to motions filed under § 2255, *see* 28 U.S.C. § 2244(d)(1), the court's dismissal of a motion because it is not in proper form may pose a significant penalty for a moving party, who may not be able to file another motion within the one-year limitation period. Now, under revised Rule 3(b), the clerk is required to file a motion, even though it may otherwise fail to comply with the provisions in revised Rule 2(b). The Committee believed that the better procedure was to accept the defective motion and require the moving party to submit a corrected motion that conforms to Rule 2(b).

Rule 3. Filing Motion	Rule 3. Filing the Motion; Inmate Filing
(a) Place of filing; copies. A motion under these rules shall be filed in the office of the clerk of the district court. It shall be accompanied by two conformed copies thereof.	**(a) Where to File; Copies.** An original and two copies of the motion must be filed with the clerk.
(b) Filing and service. Upon receipt of the motion and having ascertained that it appears on its face to comply with rules 2 and 3, the clerk of the district court shall file the motion and enter it on the docket in his office in the criminal action in which was entered the judgment to which it is directed. He shall thereupon deliver or serve a copy of the motion together with a notice of its filing on the United States Attorney of the district in which the judgment under attack was entered. The filing of the motion shall not require said United States Attorney to answer the motion or otherwise move with respect to it unless so ordered by the court.	**(b) Filing and Service.** The clerk must file the motion and enter it on the criminal docket of the case in which the challenged judgment was entered. The clerk must then deliver or serve a copy of the motion on the United States attorney in that district, together with a notice of its filing. **(c) Time to File.** The time for filing a motion is governed by 28 U.S.C. § 2255 ¶ 6. **(d) Inmate Filing.** A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

COMMITTEE NOTE

The language of Rule 3 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Revised Rule 3(b) is new and is intended to parallel Federal Rule of Civil Procedure 5(e), which provides that the clerk may not refuse to accept a filing solely for the reason that it fails to

comply with these rules or local rules. Prior to the adoption of a one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, the moving party suffered no penalty, other than delay, if the petition was deemed insufficient. That Act, however, added a one-year statute of limitations to motions filed under § 2255, *see* 28 U.S.C. § 2244(d)(1). Thus, a court's dismissal of a defective motion may pose a significant penalty for a moving party who may not be able to file a corrected motion within the one-year limitation period. The Committee believed that the better procedure was to accept the defective motion and require the moving party to submit a corrected motion that conforms to Rule 2. Thus, revised 3(b) requires the clerk is required to file a motion, even though it may otherwise fail to comply with Rule 2.

Revised Rule 3(c), which sets out a specific reference to 28 U.S.C. § 2255, paragraph 6, is new and has been added to put moving parties on notice that a one-year statute of limitations applies to motions filed under these Rules.

Rule 3(d) is new and provides guidance on determining whether a motion from an inmate is considered to have been filed in a timely fashion. The new provision parallels Federal Rule of Appellate Procedure 25(a)(2)(C).

Rule 4. Preliminary Consideration by Judge	Rule 4. Preliminary Review
(a) Reference to judge; dismissal or order to answer. The original motion shall be presented promptly to the judge of the district court who presided at the movant's trial and sentenced him, or, if the judge who imposed sentence was not the trial judge, then it shall go to the judge who was in charge of that part of the proceedings being attacked by the movant. If the appropriate judge is unavailable to consider the motion, it shall be presented to another judge of the district in accordance with the procedure of the court for the assignment of its business.	**(a) Referral to Judge.** The clerk must promptly forward the motion to the judge who conducted the trial and imposed sentence or, if the judge who imposed sentence was not the trial judge, to the judge who conducted the proceedings being challenged. If the appropriate judge is not available, the clerk must forward the motion to a judge under the court's assignment procedure.
(b) Initial consideration by judge. The motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the United States Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.	**(b) Initial Consideration by Judge.** The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the government to file an answer or other pleading within a fixed time, or to take other action the judge may order.

COMMITTEE NOTE

The language of Rule 4 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Rule 5. Answer; Contents	Rule 5. The Answer and the Reply
(a) Contents of answer. The answer shall respond to the allegations of the motion. In addition it shall state whether the movant has used any other available federal remedies including any prior post-conviction motions under these rules or those existing previous to the adoption of the present rules. The answer shall also state whether an evidentiary hearing was accorded the movant in a federal court.	**(a) When Required.** The respondent is not required to answer the motion — or move with respect to it — unless a judge so orders. **(b) Addressing the Allegations; Other Remedies.** The answer must address the allegations in the motion. In addition, it must state whether the moving party has used any other federal remedies, including any prior post-conviction motions under these rules or any previous rules, and whether the moving party received an evidentiary hearing.
(b) Supplementing the answer. The court shall examine its files and records to determine whether it has available copies of transcripts and briefs whose existence the answer has indicated. If any of these items should be absent, the government shall be ordered to supplement its answer by filing the needed records. The court shall allow the government an appropriate period of time in which to do so, without unduly delaying the consideration of the motion.	**(c) Records of Prior Proceedings.** If the answer refers to briefs or transcripts of the prior proceedings that are not available in the court's records, the judge must order the government to furnish them within a reasonable time that will not unduly delay the proceedings. **(d) Reply.** The moving party may submit a reply to the respondent's answer or other pleading within a time fixed by the judge.

COMMITTEE NOTE

The language of Rule 5 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Revised Rule 5(a), which provides that the respondent is not required to file an answer to the motion, unless a judge so orders, is taken from current Rule 3(b).

Finally, revised Rule 5(d) reflects the practice in some jurisdictions that the moving party has an opportunity to file a response, or other pleading, to the respondent's answer. In that case, the Rule prescribes that the court set the time for such responses. In lieu of setting specific time limits in each case, the court may decide to include such time limits in its local rules.

Rule 6. Discovery	Rule 6. Discovery
(a) Leave of court required. A party may invoke the processes of discovery available under the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure or elsewhere in the usages and principles of law if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for effective utilization of discovery procedures, counsel shall be appointed by the judge for a movant who qualifies for appointment of counsel under 18 U.S.C. § 3006A(g).	**(a) Leave of Court Required.** A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure, or in accordance with the practices and principles of law. If necessary for effective discovery, the judge must appoint an attorney for a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A.
(b) Requests for discovery. Requests for discovery shall be accompanied by a statement of the interrogatories or requests for admission and a list of the documents, if any, sought to be produced.	**(b) Requesting Discovery.** When requesting discovery, a party must include a statement of any interrogatories or requests for admission, and a list of any requested documents.
(c) Expenses. If the government is granted leave to take the deposition of the movant or any other person, the judge may as a condition of taking it direct that the government pay the expenses of travel and subsistence and fees of counsel for the movant to attend the taking of the deposition.	**(c) Deposition Expenses.** If the government is granted leave to take a deposition, the judge may require the government to pay the travel expenses, subsistence expenses, and fees of the moving party's attorney to attend the deposition.

COMMITTEE NOTE

The language of Rule 6 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Rule 7. Expansion of Record	Rule 7. Expanding the Record
(a) Direction for expansion. If the motion is not dismissed summarily, the judge may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the motion.	**(a) In General.** If the motion is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the merits of the motion. The judge may require the parties to authenticate these materials.
(b) Materials to be added. The expanded record may include, without limitation, letters predating the filing of the motion in the district court, documents, exhibits, and answers under oath, if so directed, to written interrogatories propounded by the judge. Affidavits may be submitted and considered as a part of the record.	**(b) Types of Materials.** The materials that may be required include letters predating the filing of the motion, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. Affidavits also may be submitted and considered as part of the record.
(c) Submission to opposing party. In any case in which an expanded record is directed, copies of the letters, documents, exhibits, and affidavits proposed to be included shall be submitted to the party against whom they are to be offered, and he shall be afforded an opportunity to admit or deny their correctness. **(d) Authentication.** The court may require the authentication of any material under subdivision (b) or (c).	**(c) Review by the Opposing Party.** The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.

COMMITTEE NOTE

The language of Rule 7 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

The language in current Rule 7(d), which deals with authentication of materials in the expanded record, has been moved to revised Rule 7(a).

Rule 8. Evidentiary Hearing	Rule 8. Evidentiary Hearing
(a) Determination by court. If the motion has not been dismissed at a previous stage in the proceeding, the judge, after the answer is filed and any transcripts or records of prior court actions in the matter are in his possession, shall, upon a review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the motion as justice dictates.	**(a) Determining Whether to Hold a Hearing.** If the motion is not dismissed, the judge must review the answer, any transcripts and records of prior proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.
(b) Function of the magistrate. (1) When designated to do so in accordance with 28 U.S.C. § 636(b), a magistrate may conduct hearings, including evidentiary hearings, on the motion, and submit to a judge of the court proposed findings and recommendations for disposition. (2) The magistrate shall file proposed findings and recommendations with the court and a copy shall forthwith be mailed to all parties. (3) Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. (4) A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify in whole or in part any findings or recommendations made by the magistrate.	**(b) Reference to a Magistrate Judge.** A judge may, under 28 U.S.C. § 636(b), refer the motion to a magistrate judge to conduct hearings and to file proposed finding of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within 10 days after being served, a party may file objections as provided by local court rule. The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.

(c) Appointment of counsel; time for hearing. If an evidentiary hearing is required, the judge shall appoint counsel for a movant who qualifies for the appointment of counsel under 18 U.S.C. § 3006A(g) and the hearing shall be conducted as promptly as practicable, having regard for the need of counsel for both parties for adequate time for investigation and preparation. These rules do not limit the appointment of counsel under 18 U.S.C. § 3006A at any stage of the proceeding if the interest of justice so requires.	**(c) Appointing Counsel; Time of Hearing.** If an evidentiary hearing is warranted, the judge must appoint an attorney to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A. The judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare. These rules do not limit the appointment of counsel under § 3006A at any stage of the proceeding.
(d) Production of statements at evidentiary hearing. (1) In General. Federal Rule of Criminal Procedure 26.2(a)-(d), and (f) applies at an evidentiary hearing under these rules. (2) Sanctions for Failure to Produce Statement. If a party elects not to comply with an order under Federal Rule of Criminal Procedure 26.2(a) to deliver a statement to the moving party, at the evidentiary hearing the court may not consider the testimony of the witness whose statement is withheld.	**(d) Producing a Statement**. Federal Rule of Criminal Procedure 26.2(a)-(d) and (f) applies at a hearing under this rule. If a party does not comply with a Rule 26.2(a) order to produce a witness's statement, the court must not consider that witness's testimony.

COMMITTEE NOTE

The language of Rule 8 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as described below.

The requirement in current Rule 8(b)(2) that a copy magistrate judge's findings must be promptly mailed to all parties, has been changed in revised Rule 8(b) to require that copies of those findings be served on all parties. As used in this rule, requiring that the parties be "served" is consistent with Federal Rule of Civil Procedure 5(b), which may include mailing the copies.

Rule 9. Delayed or Successive Motions	Rule 9. Successive Motions
(a) Delayed motions. A motion for relief made pursuant to these rules may be dismissed if it appears that the government has been prejudiced in its ability to respond to the motion by delay in its filing unless the movant shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.	
(b) Successive motions. A second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.	Before presenting a second or successive motion, the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion.

COMMITTEE NOTE

The language of Rule 9 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Current Rule 9(a) has been deleted as being unnecessary, in light of the applicable one-year statute of limitations for § 2255 motions, added as part of the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214.

The remainder of revised Rule 9 reflects provisions in the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, which now require a moving party to obtain approval from the appropriate court of appeals before filing a second or successive motion. *See* 28 U.S.C. § 2255, paragraph 8.

Finally, the title of the rule has been changed to reflect the fact that the revised version addresses only the topic of successive motions.

Rule 10. Powers of Magistrates	Rule 10. Powers of a Magistrate Judge
The duties imposed upon the judge of the district court by these rules may be performed by a United States magistrate pursuant to 28 U.S.C. § 636.	If authorized to do so under 28 U.S.C. § 636, a magistrate judge may perform the duties of a district judge under these rules.

COMMITTEE NOTE

The language of Rule 10 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Rule 11. Time for Appeal	Rule 11. Time to Appeal
The time for appeal from an order entered on a motion for relief made pursuant to these rules is as provided in Rule 4(a) of the Federal Rules of Appellate Procedure. Nothing in these rules shall be construed as extending the time to appeal from the original judgment of conviction in the district court.	Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. These rules do not extend the time to appeal the original judgment of conviction.

COMMITTEE NOTE

The language of Rule 11 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

Rule 12. Federal Rules of Criminal and Civil Procedure; Extent of Applicability	Rule 12. Applicability of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure
If no procedure is specifically prescribed by these rules, the district court may proceed in any lawful manner not inconsistent with these rules, or any applicable statute, and may apply the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure, whichever it deems most appropriate, to motions filed under these rules.	The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with these rules, may be applied to motions filed under these rules.

COMMITTEE NOTE

The language of Rule 12 has been amended as part of general restyling of the rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended.

APPENDIX C

[Copies of Habeas Forms]

Petition for Relief From a Conviction or Sentence By a Person in State Custody

(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

Instructions

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.

2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.

3. Make sure the form is typed or neatly written.

4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

5. Answer all the questions briefly. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.

6. You must pay a fee of $5. If the fee is paid, your petition will be filed. If you cannot pay the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you. If your account exceeds $ _____, you must pay the filing fee.

7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.

8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

   Clerk, United States District Court for _____
   Address
   City, State Zip Code

9. **CAUTION: You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District
Name (under which you were convicted):	Case No.:
Place of Confinement:	Prisoner No.:
Petitioner (include the name under which you were convicted)	Respondent (authorized person having custody of petitioner)
	V.
The Attorney General of the State of	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____

   _____

   _____

   (b) Criminal docket number (if you know): _____
2. Date of the judgment of conviction: _____
3. Length of sentence: _____
4. Nature of crime (all counts): _____

   _____

   _____

   _____

   _____

   _____
5. (a) What was your plea? (Check one)

   (1) Not guilty ❑ (3) Nolo contendere (no contest) ❑

   (2) Guilty ❑ (4) Insanity plea ❑

   (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____

   _____

6. Kind of trial: (Check one)

   Jury ❑ Judge only ❑

7. Did you testify at the trial?

   Yes ❑ No ❑

8. Did you appeal from the judgment of conviction?

   Yes ❑ No ❑

9. If you did appeal, answer the following:

   (a) Name of court: _____

   (b) Docket number (if you know): _____

   (c) Result: _____

   (d) Date of result (if you know): _____

   (e) Citation to the case (if you know): _____

   (f) Grounds raised: _____

   (g) Did you seek further review by a higher state court? Yes ❑ No ❑

   If yes, answer the following:

   (1) Name of court: _____

   (2) Docket number (if you know): _____

   (3) Result: _____

   (4) Date of result (if you know): _____

   (5) Citation to the case (if you know): _____

   (6) Grounds raised: _____

   (h) Did you file a petition for certiorari in the United States Supreme Court? Yes ❑ No ❑

If yes, answer the following:

(1) Docket number (if you know): _____

(2) Result: _____

_____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

_____

_____

_____

_____

_____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ❑ No ❑

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket number (if you know): _____

(3) Nature of the proceeding: _____

(4) Grounds raised: _____

_____

_____

_____

_____

_____

_____

_____

_____

(5) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ❑ No ❑

(6) Result: _____

(7) Date of result (if you know): _____

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket number (if you know): _____

(3) Nature of the proceeding: _____

(4) Grounds raised: _____

(5) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ❑ No ❑

(6) Result: _____

(7) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket number (if you know): _____

(3) Nature of the proceeding: _____

(4) Grounds raised: _____

(5) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ❑ No ❑

(6) Result: _____

(7) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction the action taken on your petition, application, or motion?

(1) First petition: Yes ❑ No ❑

(2) Second petition: Yes ❑ No ❑

(3) Third petition: Yes ❑ No ❑

(e) If you did not appeal to the highest state court having jurisdiction, explain briefly why you did not: _____

12. For this petition, state briefly every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. Summarize briefly the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief. Each one is a separate ground for possible relief. You may raise other grounds besides those listed. However, you should raise in this petition all available grounds (relating to this conviction or sentence) on which you base your claim that you are being held in custody unlawfully.

- Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- Conviction obtained by use of coerced confession.
- Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- Conviction obtained by a violation of the privilege against self-incrimination.
- Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- Conviction obtained by a violation of the protection against double jeopardy.
- Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- Denial of effective assistance of counsel.
- Denial of right of appeal.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must set out in the space provided below the facts that support your claims.

GROUND ONE: _____

_____

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.): _____

_____

_____

(b) If you did not exhaust your state remedies on Ground One, briefly explain why: _____

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, briefly explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ❑ No ❑

(2) If your answer to Question (d)(1) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(3) Did you receive a hearing on your motion or petition?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion or petition?

Yes ❑ No ❑

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (d)(4) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," briefly explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, briefly explain why:

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, briefly explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial

court?

Yes ❑ No ❑

(2) If your answer to Question (d)(1) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(3) Did you receive a hearing on your motion or petition?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion or petition?

Yes ❑ No ❑

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (d)(5) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," briefly explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Three, briefly explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, briefly explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ❑ No ❑

(2) If your answer to Question (d)(1) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(3) Did you receive a hearing on your motion or petition?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion or petition?

Yes ❑ No ❑

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (d)(5) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," briefly explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Four, briefly explain why: _____

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, briefly explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ❑ No ❑

(2) If your answer to Question (d)(1) is "Yes," state the type of motion or petition, the name and location of the

court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(3) Did you receive a hearing on your motion or petition?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion or petition?

Yes ❑ No ❑

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (d)(5) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," briefly explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ❑ No ❑

If your answer is "No," state which grounds have not been so presented and briefly give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which

ground or grounds have not been presented, and briefly state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ❑ No ❑

If "Yes," state the name and location of the court, the case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinions or orders, if available. _____

15. Do you have any petition or appeal <u>now pending</u> (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ❑ No ❑

If "Yes," state the name and location of the court, the case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ❑ No ❑

18. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ❑ No ❑

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

_____

_____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ❑ No ❑

19. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as codified in 28 U.S.C. § 2244(d) does not bar your petition.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as codified in 28 U.S.C. § 2244(d) provides in part that:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the relief to which he or she may be entitled.

_____

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ _____ (month, date, year).

Executed (signed) on _____ (date).

_____

Signature of Petitioner (required)

IN FORMA PAUPERIS DECLARATION

28 U.S.C. § 2254

IN FORMA PAUPERIS DECLARATION

_____

[Insert appropriate court]

DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

_____
(Petitioner)

v.

_____
(Respondent(s))

I, _____, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes ☐ No ☐

   a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.

   _____

   _____

   b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

   _____

   _____

2. Have you received within the past twelve months any money from any of the following sources?

   a. Business, profession or form of self-employment? Yes ☐ No ☐

   b. Rent payments, interest or dividends? Yes ☐ No ☐

   c. Pensions, annuities or life insurance payments? Yes ☐ No ☐

   d. Gifts or inheritances? Yes ☐ No ☐

   e. Any other sources? Yes ☐ No ☐

   If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. _____

   _____

   _____

   _____

   _____

3. Do you own cash, or do you have money in a checking or savings account?

Yes ☐ No ☐ (include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned. _____

_____

_____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ☐ No ☐

If the answer is "yes," describe the property and state its approximate value. _____

_____

_____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

_____

_____

_____

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.

(date)

_____

Signature of Petitioner

Certificate

I hereby certify that the petitioner herein has the sum of $_____ on account to his credit at the _____ institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said _____ institution: _____

_____

_____

_____

_____

Authorized Officer of Institution

(As amended Apr. 28, 1982, eff. Aug. 1, 1982.)

Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.

2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.

3. Make sure the form is typed or neatly written.

4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

5. Answer all the questions briefly. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.

6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.

7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.

8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

   Clerk, United States District Court for _____
   Address
   City, State Zip Code

9. **CAUTION: You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.**

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District
Name:	Case No.:
Place of Confinement:	Prisoner No.:
UNITED STATES OF AMERICA v.	Movant (include name under which convicted)

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____

   _____

   _____

   (b) Criminal docket number (if you know): _____
2. Date of the judgment of conviction: _____
3. Length of sentence: _____
4. Nature of crime (all counts): _____

   _____

   _____

   _____

   _____

   _____
5. (a) What was your plea? (Check one)

   (1) Not guilty ❑ (3) Nolo contendere (no contest) ❑

   (2) Guilty ❑

   (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____

   _____

   _____

   _____

   _____

   _____

6. Kind of trial: (Check one)

   Jury ❑ Judge only ❑

7. Did you testify at the trial?

   Yes ❑ No ❑

8. Did you appeal from the judgment of conviction?

   Yes ❑ No ❑

9. If you did appeal, answer the following:

   (a) Name of court: _____

   (b) Docket number (if you know): _____

   (c) Result: _____

   (d) Date of result (if you know): _____

   (e) Citation to the case (if you know): _____

   (f) Grounds raised: _____

   _____

   _____

   _____

   _____

   _____

   _____

   (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ❑ No ❑

   If "Yes," answer the following:

   (1) Docket number (if you know): _____

   (2) Result: _____

   _____

   (3) Date of result (if you know): _____

   (4) Citation to the case (if you know): _____

   (5) Grounds raised: _____

   _____

   _____

   _____

   _____

   _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

    Yes ❑ No ❑

11. If your answer to Question 10 was "Yes," give the following information:

    (a) (1) Name of court: _____

(2) Docket number (if you know): _____

(3) Nature of the proceeding: _____

(4) Grounds raised: _____

_____

_____

_____

_____

_____

_____

_____

_____

(5) Did you receive a hearing where evidence was given on your motion, petition, application?

Yes ❑ No ❑

(6) Result: _____

(7) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket number (if you know): _____

(3) Nature of the proceeding: _____

(4) Grounds raised: _____

_____

_____

_____

_____

_____

(5) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ❑ No ❑

(6) Result: _____

(7) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ❑ No ❑

(2) Second petition: Yes ❑ No ❑

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

_____

_____

12. For this motion, state briefly every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. Summarize briefly the facts supporting each ground.

CAUTION: If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief. Each one is a separate ground for possible relief. You may raise other grounds besides those listed. However, you should raise in this motion all available grounds (relating to this conviction or sentence) on which you base your claim that you are being held in custody unlawfully.

- Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- Conviction obtained by use of coerced confession.
- Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- Conviction obtained by a violation of the privilege against self-incrimination.
- Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- Conviction obtained by a violation of the protection against double jeopardy.
- Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- Denial of effective assistance of counsel.
- Denial of right of appeal.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must set out in the space provided below the facts that support your claims.

GROUND ONE: _____

_____

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.): _____

_____

_____

_____

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, briefly explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ❑ No ❑

(2) If your answer to Question (c)(1) is "Yes," state the type of motion, petition, or application, the name and location of the court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available.

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available.

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," briefly explain:

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.): _____

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, briefly explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ❑ No ❑

(2) If your answer to Question (c)(1) is "Yes," state the type of motion, petition, or application, the name and location of the court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

_____

_____

_____

_____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," briefly explain: _____

_____

_____

_____

_____

GROUND THREE: _____

_____

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.): _____

_____

_____

_____

_____

_____

_____

_____

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did <u>not</u> raise this issue in your direct appeal, briefly explain why: _____

_____

_____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ❑ No ❑

(2) If your answer to Question (c)(1) is "Yes," state the type of motion, petition, or application, the name and location of the court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," briefly explain: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.): _____

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, briefly explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ❑ No ❑

(2) If your answer to Question (c)(1) is "Yes," state the type of motion, petition, or application, the name and location of the court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No ❑

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (c)(4) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," briefly explain: _____

13. Is there any ground in this motion that has not been presented in some federal court? If so, which ground or grounds have not been presented, and briefly state your reasons for not presenting them: _____

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ❑ No ❑

If "Yes," state the name and location of the court, the case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ❑ No ❑

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ❑ No ❑

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

_____

_____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ❑ No ❑

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as codified in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as codified in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the relief to which he or she may be entitled.

_____

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on _____ _____ (month, date, year).

Executed (signed) on _____ (date).

_____

Signature of Movant (required)

IN FORMA PAUPERIS DECLARATION

28 U.S.C. § 2255

IN FORMA PAUPERIS DECLARATION

_____

[Insert appropriate court]

United States
v.
_____
(Movant)

DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

I, _____, declare that I am the movant in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes ☐ No ☐
   a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.
   _____
   _____
   b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.
   _____
   _____
2. Have you received within the past twelve months any money from any of the following sources?
   a. Business, profession or form of self-employment? Yes ☐ No ☐
   b. Rent payments, interest or dividends? Yes ☐ No ☐
   c. Pensions, annuities or life insurance payments? Yes ☐ No ☐
   d. Gifts or inheritances? Yes ☐ No ☐
   e. Any other sources? Yes ☐ No ☐

   If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. _____
   _____
   _____
   _____
   _____
3. Do you own any cash, or do you have money in a checking or savings account?

   Yes ☐ No ☐ (Include any funds in prison accounts)

   If the answer is "yes," state the total value of the items owned. _____
   _____
   _____

4. Do you own real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ☐ No ☐

If the answer is "yes," describe the property and state its approximate value. _____

_____

_____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

_____

_____

_____

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.

(date)

_____

Signature of Movant

CERTIFICATE

I hereby certify that the movant herein has the sum of $_____ on account to his credit at the _____ institution where he is confined.

I further certify that movant likewise has the following securities to his credit according to the records of said _____ institution: ____

_____

_____

_____

_____

_____

Authorized Officer of Institution

(As amended Apr. 28, 1982, eff. Aug. 1, 1982.)

APPENDIX A

Rule 6. The Grand Jury[1]

* * * * *

(e) Recording and Disclosing the Proceedings.

* * * * *

(3) Exceptions.

* * * * *

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

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

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

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

(iii) As used in Rule 6(e)(3)(D), the term "foreign intelligence information" means:

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

- actual or potential attack or other grave hostile acts of a foreign power or its agent;
- sabotage or international terrorism by a foreign power or its agent;
- clandestine intelligence activities by an intelligence service or network of a foreign power or by its agent; or

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

[1] New material is underlined. Material to be deleted is lined through.

- the national defense or the security of the United States; or
- the conduct of the foreign affairs of the United States.

~~(D)~~(E) 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) preliminary to or in connection with a judicial proceeding;

* * * * *

~~(E)~~(F) A petition to disclose a grand jury-matter under Rule ~~6(e)(3)(D)(i)~~ 6(e)(3)(E)(i) must be filed in the district where the grand jury convened....

* * * * *

~~(F)~~(G) 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)~~ 6(e)(3)(F) a reasonable opportunity to appear and be heard.

* * * * *

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]

Rule 41. Search and Seizure

* * * * *

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

* * * * *

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

* * * * *

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

III. INDICTMENT AND INFORMATION	TITLE III. THE GRAND JURY, THE INDICTMENT, AND THE INFORMATION
Rule 6. The Grand Jury	**Rule 6. The Grand Jury**
(a) Summoning Grand Juries. **(1) Generally.** 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. **(2) Alternate Jurors.** 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.	**(a) Summoning a Grand Jury.** (1) ***In General.*** 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. (2) ***Alternate Jurors.*** 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.
(b) Objections to Grand Jury and to Grand Jurors. **(1) Challenges.** 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. **(2) Motion to Dismiss.** 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.	**(b) Objection to the Grand Jury or to a Grand Juror.** (1) ***Challenges.*** 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. (2) ***Motion to Dismiss an Indictment.*** 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.

(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.

Rule 41. Search and Seizure	Rule 41. Search and Seizure
(a) Authority to Issue Warrant. 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.	**(a) Scope and Definitions.** **(1)** ***Scope.*** This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances.
	(2) ***Definitions.*** The following definitions apply under this rule: (A) "Property" includes documents, books, papers, any other tangible objects, and information. (B) "Daytime" means the hours between 6:00 a.m. and 10:00 p.m. according to local time. (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.

	(b) **Authority to Issue a Warrant.** At the request of a federal law enforcement officer or an attorney for the government: (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 (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.
(b) Property or Persons Which May be Seized With a Warrant. 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.	(c) **Persons or Property Subject to Search or Seizure.** A warrant may be issued for any of the following: (1) evidence of a crime; (2) contraband, fruits of crime, or other items illegally possessed; (3) property designed for use, intended for use, or used in committing a crime; or (4) a person to be arrested or a person who is unlawfully restrained.

APPENDIX C

H.R. 3162

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:

"(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

"(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

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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".

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(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

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"(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;

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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