

sections shall first be issued, on an interim or other basis, not later than the effective date.”

ABOLITION OF IMMIGRATION AND NATURALIZATION  
SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

SENSE OF CONGRESS RESPECTING CONSULTATION WITH  
MEXICO

Section 301(f) of Pub. L. 99-603, as amended by Pub. L. 100-525, §2(l)(4), Oct. 24, 1988, 102 Stat. 2612, provided that: “It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under section 218 of the Immigration and Nationality Act [8 U.S.C. 1188].”

REPORTS ON H-2A PROGRAM

Section 403 of Pub. L. 99-603 provided that:

“(a) PRESIDENTIAL REPORTS.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of the temporary agricultural worker (H-2A) program, which shall include—

“(1) the number of foreign workers permitted to be employed under the program in each year;

“(2) the compliance of employers and foreign workers with the terms and conditions of the program;

“(3) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

“(4) recommendations for modifications of the program, including—

“(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

“(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested,

“(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers, and

“(D) the relative benefits to domestic workers and burdens upon employers of a policy which requires employers, as a condition for certification under the program, to continue to accept qualified United States workers for employment after the date the H-2A workers depart for work with the employer.

The recommendations under subparagraph (D) shall be made in furtherance of the Congressional policy that aliens not be admitted under the H-2A program unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or services needed and that the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

“(b) DEADLINES.—A report on the H-2A temporary worker program under subsection (a) shall be submitted not later than two years after the date of the enactment of this Act [Nov. 6, 1986], and every two years thereafter.”

[Functions of President under section 403 of Pub. L. 99-603 delegated to Secretary of Labor by section 2(b) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, set out as a note under section 1364 of this title.]

§ 1189. Designation of foreign terrorist organizations

(a) Designation

(1) In general

The Secretary is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that—

(A) the organization is a foreign organization;

(B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism)<sup>1</sup>; and

(C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.

(2) Procedure

(A) Notice

(i) To congressional leaders

Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate an organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor.

(ii) Publication in Federal Register

The Secretary shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

(B) Effect of designation

(i) For purposes of section 2339B of title 18, a designation under this subsection shall take effect upon publication under subparagraph (A)(ii).

(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

(C) Freezing of assets

Upon notification under paragraph (2)(A)(i), the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.

(3) Record

(A) In general

In making a designation under this subsection, the Secretary shall create an administrative record.

<sup>1</sup> So in original. The closing parenthesis probably should follow “section 1182(a)(3)(B) of this title”.

**(B) Classified information**

The Secretary may consider classified information in making a designation under this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court *ex parte* and *in camera* for purposes of judicial review under subsection (c) of this section.

**(4) Period of designation****(A) In general**

A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c) of this section.

**(B) Review of designation upon petition****(i) In general**

The Secretary shall review the designation of a foreign terrorist organization under the procedures set forth in clauses (iii) and (iv) if the designated organization files a petition for revocation within the petition period described in clause (ii).

**(ii) Petition period**

For purposes of clause (i)—

(I) if the designated organization has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

(II) if the designated organization has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

**(iii) Procedures**

Any foreign terrorist organization that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the organization is warranted.

**(iv) Determination****(I) In general**

Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Secretary shall make a determination as to such revocation.

**(II) Classified information**

The Secretary may consider classified information in making a determination in response to a petition for revocation. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court *ex parte* and *in camera* for purposes of judicial review under subsection (c) of this section.

**(III) Publication of determination**

A determination made by the Secretary under this clause shall be published in the Federal Register.

**(IV) Procedures**

Any revocation by the Secretary shall be made in accordance with paragraph (6).

**(C) Other review of designation****(i) In general**

If in a 5-year period no review has taken place under subparagraph (B), the Secretary shall review the designation of the foreign terrorist organization in order to determine whether such designation should be revoked pursuant to paragraph (6).

**(ii) Procedures**

If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Secretary. The results of such review and the applicable procedures shall not be reviewable in any court.

**(iii) Publication of results of review**

The Secretary shall publish any determination made pursuant to this subparagraph in the Federal Register.

**(5) Revocation by Act of Congress**

The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

**(6) Revocation based on change in circumstances****(A) In general**

The Secretary may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Secretary finds that—

(i) the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation; or

(ii) the national security of the United States warrants a revocation.

**(B) Procedure**

The procedural requirements of paragraphs (2) and (3) shall apply to a revocation under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

**(7) Effect of revocation**

The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

**(8) Use of designation in trial or hearing**

If a designation under this subsection has become effective under paragraph (2)(B) a de-

pendant in a criminal action or an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any trial or hearing.

**(b) Amendments to a designation**

**(1) In general**

The Secretary may amend a designation under this subsection if the Secretary finds that the organization has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another organization.

**(2) Procedure**

Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register. Subparagraphs (B) and (C) of subsection (a)(2) of this section shall apply to an amended designation upon such publication. Paragraphs (2)(A)(i), (4), (5), (6), (7), and (8) of subsection (a) of this section shall also apply to an amended designation.

**(3) Administrative record**

The administrative record shall be corrected to include the amendments as well as any additional relevant information that supports those amendments.

**(4) Classified information**

The Secretary may consider classified information in amending a designation in accordance with this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c) of this section.

**(c) Judicial review of designation**

**(1) In general**

Not later than 30 days after publication in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review in the United States Court of Appeals for the District of Columbia Circuit.

**(2) Basis of review**

Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation, amended designation, or determination in response to a petition for revocation.

**(3) Scope of review**

The Court shall hold unlawful and set aside a designation, amended designation, or determination in response to a petition for revocation the court finds to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under paragraph (2),<sup>2</sup> or

(E) not in accord with the procedures required by law.

**(4) Judicial review invoked**

The pendency of an action for judicial review of a designation, amended designation, or determination in response to a petition for revocation shall not affect the application of this section, unless the court issues a final order setting aside the designation, amended designation, or determination in response to a petition for revocation.

**(d) Definitions**

As used in this section—

(1) the term “classified information” has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

(2) the term “national security” means the national defense, foreign relations, or economic interests of the United States;

(3) the term “relevant committees” means the Committees on the Judiciary, Intelligence, and Foreign Relations of the Senate and the Committees on the Judiciary, Intelligence, and International Relations of the House of Representatives; and

(4) the term “Secretary” means the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General.

(June 27, 1952, ch. 477, title II, ch. 2, §219, as added Pub. L. 104-132, title III, §302(a), Apr. 24, 1996, 110 Stat. 1248; amended Pub. L. 104-208, div. C, title III, §356, title VI, §671(c)(1), Sept. 30, 1996, 110 Stat. 3009-644, 3009-722; Pub. L. 107-56, title IV, §411(c), Oct. 26, 2001, 115 Stat. 349; Pub. L. 108-458, title VII, §7119(a)-(c), Dec. 17, 2004, 118 Stat. 3801, 3802.)

REFERENCES IN TEXT

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (d)(1), is section 1(a) of Pub. L. 96-456, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

Another section 411(c) of Pub. L. 107-56 enacted provisions set out as an Effective Date of 2001 Amendment note under section 1182 of this title.

AMENDMENTS

2004—Subsec. (a)(3)(B). Pub. L. 108-458, §7119(c)(1)(A), substituted “subsection (c)” for “subsection (b)”.

Subsec. (a)(4)(A). Pub. L. 108-458, §7119(a)(1), substituted “A designation” for “Subject to paragraphs (5) and (6), a designation” and “until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c) of this section” for “for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B)”.

Subsec. (a)(4)(B). Pub. L. 108-458, §7119(a)(2), added subpar. (B) and struck out former subpar. (B) which contained provisions authorizing Secretary to redesignate a foreign organization as a foreign terrorist organization for an additional 2-year period at the end of

<sup>2</sup> So in original. The comma probably should be a semicolon.

the 2-year period referred to in subpar. (A) or at the end of any 2-year redesignation period.

Subsec. (a)(4)(C). Pub. L. 108-458, § 7119(a)(3), added subpar. (C).

Subsec. (a)(6)(A). Pub. L. 108-458, § 7119(c)(1)(B)(i), substituted “at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4)” for “or a redesignation made under paragraph (4)(B)” in introductory provisions.

Subsec. (a)(6)(A)(i). Pub. L. 108-458, § 7119(c)(1)(B)(ii), struck out “or redesignation” after “the designation”.

Subsec. (a)(7). Pub. L. 108-458, § 7119(c)(1)(C), struck out “, or the revocation of a redesignation under paragraph (6),” before “shall not affect”.

Subsec. (a)(8). Pub. L. 108-458, § 7119(c)(1)(D), struck out “, or if a redesignation under this subsection has become effective under paragraph (4)(B),” before “a defendant in a criminal action” and “or redesignation” after “such designation”.

Subsec. (b). Pub. L. 108-458, § 7119(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108-458, § 7119(b)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 108-458, § 7119(c)(2)(A), substituted “in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review” for “of the designation in the Federal Register, an organization designated as a foreign terrorist organization may seek judicial review of the designation”.

Subsec. (c)(2) to (4). Pub. L. 108-458, § 7119(c)(2)(B)–(D), inserted “, amended designation, or determination in response to a petition for revocation” after “designation” wherever appearing.

Subsec. (d). Pub. L. 108-458, § 7119(b)(1), redesignated subsec. (c) as (d).

2001—Subsec. (a)(1)(B). Pub. L. 107-56, § 411(c)(1), inserted “or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism” after “section 1182(a)(3)(B) of this title”.

Subsec. (a)(1)(C). Pub. L. 107-56, § 411(c)(2), inserted “or terrorism” after “the terrorist activity”.

Subsec. (a)(2)(A). Pub. L. 107-56, § 411(c)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Seven days before making a designation under this subsection, the Secretary shall, by classified communication—

“(i) notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees, in writing, of the intent to designate a foreign organization under this subsection, together with the findings made under paragraph (1) with respect to that organization, and the factual basis therefor; and

“(ii) seven days after such notification, publish the designation in the Federal Register.”

Subsec. (a)(2)(B)(i). Pub. L. 107-56, § 411(c)(4), substituted “subparagraph (A)(ii)” for “subparagraph (A)”.

Subsec. (a)(2)(C). Pub. L. 107-56, § 411(c)(5), substituted “paragraph (2)(A)(i)” for “paragraph (2)”.

Subsec. (a)(3)(B). Pub. L. 107-56, § 411(c)(6), substituted “subsection (b) of this section” for “subsection (c) of this section”.

Subsec. (a)(4)(B). Pub. L. 107-56, § 411(c)(7), inserted after first sentence “The Secretary also may redesignate such organization at the end of any 2-year redesignation period (but not sooner than 60 days prior to the termination of such period) for an additional 2-year period upon a finding that the relevant circumstances described in paragraph (1) still exist. Any redesignation shall be effective immediately following the end of the prior 2-year designation or redesignation period unless a different effective date is provided in such redesignation.”

Subsec. (a)(6)(A). Pub. L. 107-56, § 411(c)(8)(A), inserted “or a redesignation made under paragraph (4)(B)” after “paragraph (1)” in introductory provisions.

Subsec. (a)(6)(A)(i). Pub. L. 107-56, § 411(c)(8)(B), inserted “or redesignation” after “basis for the designation” and struck out “of the designation” before semicolon.

Subsec. (a)(6)(A)(ii). Pub. L. 107-56, § 411(c)(8)(C), struck out “of the designation” before period at end.

Subsec. (a)(6)(B). Pub. L. 107-56, § 411(c)(9), substituted “and (3)” for “through (4)” and inserted “Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.” at end.

Subsec. (a)(7). Pub. L. 107-56, § 411(c)(10), inserted “, or the revocation of a redesignation under paragraph (6),” after “paragraph (5) or (6)”.

Subsec. (a)(8). Pub. L. 107-56, § 411(c)(11), substituted “paragraph (2)(B), or if a redesignation under this subsection has become effective under paragraph (4)(B)” for “paragraph (1)(B)” and inserted “or an alien in a removal proceeding” after “criminal action” and “or redesignation” before “as a defense”.

1996—Pub. L. 104-208, § 671(c)(1), made technical amendment to section catchline.

Subsec. (b)(3)(D), (E). Pub. L. 104-208, § 356, added subpars. (D) and (E).

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-56 effective Oct. 26, 2001, and applicable to actions taken by an alien before, on, or after Oct. 26, 2001, and to all aliens, regardless of date of entry or attempted entry into the United States, in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date) or seeking admission to the United States on or after such date, with special rules and exceptions, see section 411(c) of Pub. L. 107-56, set out as a note under section 1182 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 356 of Pub. L. 104-208 effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, see section 358 of Pub. L. 104-208, set out as a note under section 1182 of this title.

Section 671(c)(7) of div. C of Pub. L. 104-208 provided that: “The amendments made by this subsection [amending this section and sections 1105a and 1252a of this title] shall take effect as if included in the enactment of subtitle A of title IV of AEPDA [AEDPA, Pub. L. 104-132].”

#### ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

#### SAVINGS PROVISION

Pub. L. 108-458, title VII, § 7119(d), Dec. 17, 2004, 118 Stat. 3803, provided that: “For purposes of applying section 219 of the Immigration and Nationality Act [8 U.S.C. 1189] on or after the date of enactment of this Act [Dec. 17, 2004], the term ‘designation’, as used in that section, includes all redesignations made pursuant to section 219(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(4)(B)) prior to the date of enactment of this Act, and such redesignations shall continue to be effective until revoked as provided in paragraph (5) or (6) of section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).”

#### PART III—ISSUANCE OF ENTRY DOCUMENTS

### § 1201. Issuance of visas

#### (a) Immigrants; nonimmigrants

(1) Under the conditions hereinafter prescribed and subject to the limitations prescribed in this

1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, or 2340A of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), section 46502 or 60123(b) of title 49, or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B) or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.

(b) DEFINITIONS.—As used in this section—

(1) the term “material support or resources” means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials;

(2) the term “training” means instruction or teaching designed to impart a specific skill, as opposed to general knowledge; and

(3) the term “expert advice or assistance” means advice or assistance derived from scientific, technical or other specialized knowledge.

(Added Pub. L. 103–322, title XII, § 120005(a), Sept. 13, 1994, 108 Stat. 2022; amended Pub. L. 104–132, title III, § 323, Apr. 24, 1996, 110 Stat. 1255; Pub. L. 104–294, title VI, §§ 601(b)(2), (s)(2), (3), 604(b)(5), Oct. 11, 1996, 110 Stat. 3498, 3502, 3506; Pub. L. 107–56, title VIII, §§ 805(a), 810(c), 811(f), Oct. 26, 2001, 115 Stat. 377, 380, 381; Pub. L. 107–197, title III, § 301(c), June 25, 2002, 116 Stat. 728; Pub. L. 107–273, div. B, title IV, § 4002(a)(7), (c)(1), (e)(11), Nov. 2, 2002, 116 Stat. 1807, 1808, 1811; Pub. L. 108–458, title VI, § 6603(a)(2), (b), Dec. 17, 2004, 118 Stat. 3762; Pub. L. 109–177, title I, § 110(b)(3)(B), Mar. 9, 2006, 120 Stat. 208.)

#### AMENDMENTS

2006—Subsec. (a). Pub. L. 109–177 struck out “1993,” after “1992.”

2004—Subsec. (a). Pub. L. 108–458, § 6603(a)(2)(B), which directed amendment of this section by inserting “or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B)” after “section 60123(b) of title 49,” was executed by making the insertion in subsec. (a) after “section 46502 or 60123(b) of title 49,” to reflect the probable intent of Congress.

Pub. L. 108–458, § 6603(a)(2)(A), struck out “or” before “section 46502”.

Subsec. (b). Pub. L. 108–458, § 6603(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “In this section, the term ‘material support or resources’ means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”

2002—Subsec. (a). Pub. L. 107–273, § 4002(a)(7), (e)(11), struck out “2332c,” after “2332b,” and substituted “of an escape” for “or an escape”.

Pub. L. 107–197 inserted “2332f,” before “or 2340A”.

Subsec. (b). Pub. L. 107–273, § 4002(c)(1), repealed amendment by Pub. L. 104–294, § 601(b)(2). See 1996 Amendment note below.

2001—Subsec. (a). Pub. L. 107–56, § 811(f), inserted “or attempts or conspires to do such an act,” before “shall be fined”.

Pub. L. 107–56, § 810(c)(1), substituted “15 years” for “10 years”.

Pub. L. 107–56, § 810(c)(2), which directed substitution of “, and, if the death of any person results, shall be imprisoned for any term of years or for life.” for period, was executed by making the substitution for the period at end of the first sentence to reflect the probable intent of Congress and the intervening amendment by section 805(a)(1)(F) of Pub. L. 107–56. See below.

Pub. L. 107–56, § 805(a)(1)(F), inserted at end “A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.”

Pub. L. 107–56, §§ 805(a)(1)(A)–(E), struck out “, within the United States,” after “Whoever”, and inserted “229,” after “175,” “1993,” after “1992,” “, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284),” after “2340A of this title”, and “or 60123(b)” after “section 46502”.

Subsec. (b). Pub. L. 107–56, § 805(a)(2), substituted “or monetary instruments or financial securities” for “or other financial securities” and inserted “expert advice or assistance,” after “training.”

1996—Pub. L. 104–294, § 604(b)(5), amended directory language of Pub. L. 103–322, § 120005(a), which enacted this section.

Pub. L. 104–132 amended section generally, reenacting section catchline without change and redesignating provisions which detailed what constitutes offense, formerly contained in subsec. (b), as subsec. (a), inserting references to sections 37, 81, 175, 831, 842, 956, 1362, 1366, 2155, 2156, 2332, 2332a, 2332b, and 2340A of this title, striking out references to sections 36, 2331, and 2339 of this title, redesignating provisions which define “material support or resource”, formerly contained in subsec. (a), as subsec. (b), substituting provisions excepting medicine or religious materials from definition for provisions excepting humanitarian assistance to persons not directly involved in violations, and struck out subsec. (c) which authorized investigations into possible violations, except activities involving First Amendment rights.

Subsec. (a). Pub. L. 104–294, § 601(s)(2), (3), inserted “930(c),” before “956,” “1992,” before “2155,” “2332c,” before “or 2340A of this title”, and “or an escape” after “concealment”.

Subsec. (b). Pub. L. 104–294, § 601(b)(2), which directed substitution of “2332” for “2331”, “2332a” for “2339”, “37” for “36”, and “or an escape” for “of an escape” and which could not be executed after the general amendment by Pub. L. 104–132, was repealed by Pub. L. 107–273, § 4002(c)(1). See above.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 604(b)(5) of Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

### § 2339B. Providing material support or resources to designated foreign terrorist organizations

(a) PROHIBITED ACTIVITIES.—

(1) UNLAWFUL CONDUCT.—Whoever knowingly provides material support or resources to a

foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

(2) FINANCIAL INSTITUTIONS.—Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall—

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

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

(b) CIVIL PENALTY.—Any financial institution that knowingly fails to comply with subsection (a)(2) shall be subject to a civil penalty in an amount that is the greater of—

(A) \$50,000 per violation; or

(B) twice the amount of which the financial institution was required under subsection (a)(2) to retain possession or control.

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

(d) EXTRATERRITORIAL JURISDICTION.—

(1) IN GENERAL.—There is jurisdiction over an offense under subsection (a) if—

(A) an offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)));

(B) an offender is a stateless person whose habitual residence is in the United States;

(C) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

(D) the offense occurs in whole or in part within the United States;

(E) the offense occurs in or affects interstate or foreign commerce; or

(F) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

(2) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

(e) INVESTIGATIONS.—

(1) IN GENERAL.—The Attorney General shall conduct any investigation of a possible violation of this section, or of any license, order, or regulation issued pursuant to this section.

(2) COORDINATION WITH THE DEPARTMENT OF THE TREASURY.—The Attorney General shall work in coordination with the Secretary in investigations relating to—

(A) the compliance or noncompliance by a financial institution with the requirements of subsection (a)(2); and

(B) civil penalty proceedings authorized under subsection (b).

(3) REFERRAL.—Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other Federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action.

(f) CLASSIFIED INFORMATION IN CIVIL PROCEEDINGS BROUGHT BY THE UNITED STATES.—

(1) DISCOVERY OF CLASSIFIED INFORMATION BY DEFENDANTS.—

(A) REQUEST BY UNITED STATES.—In any civil proceeding under this section, upon request made ex parte and in writing by the United States, a court, upon a sufficient showing, may authorize the United States to—

(i) redact specified items of classified information from documents to be introduced into evidence or made available to the defendant through discovery under the Federal Rules of Civil Procedure;

(ii) substitute a summary of the information for such classified documents; or

(iii) substitute a statement admitting relevant facts that the classified information would tend to prove.

(B) ORDER GRANTING REQUEST.—If the court enters an order granting a request under this paragraph, the entire text of the documents to which the request relates shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(C) DENIAL OF REQUEST.—If the court enters an order denying a request of the United States under this paragraph, the United States may take an immediate, interlocutory appeal in accordance with paragraph (5). For purposes of such an appeal, the entire text of the documents to which the request relates, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

(2) INTRODUCTION OF CLASSIFIED INFORMATION; PRECAUTIONS BY COURT.—

(A) EXHIBITS.—To prevent unnecessary or inadvertent disclosure of classified informa-

tion in a civil proceeding brought by the United States under this section, the United States may petition the court ex parte to admit, in lieu of classified writings, recordings, or photographs, one or more of the following:

- (i) Copies of items from which classified information has been redacted.
- (ii) Stipulations admitting relevant facts that specific classified information would tend to prove.
- (iii) A declassified summary of the specific classified information.

(B) DETERMINATION BY COURT.—The court shall grant a request under this paragraph if the court finds that the redacted item, stipulation, or summary is sufficient to allow the defendant to prepare a defense.

(3) TAKING OF TRIAL TESTIMONY.—

(A) OBJECTION.—During the examination of a witness in any civil proceeding brought by the United States under this subsection, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

(B) ACTION BY COURT.—In determining whether a response is admissible, the court shall take precautions to guard against the compromise of any classified information, including—

- (i) permitting the United States to provide the court, ex parte, with a proffer of the witness's response to the question or line of inquiry; and
- (ii) requiring the defendant to provide the court with a proffer of the nature of the information that the defendant seeks to elicit.

(C) OBLIGATION OF DEFENDANT.—In any civil proceeding under this section, it shall be the defendant's obligation to establish the relevance and materiality of any classified information sought to be introduced.

(4) APPEAL.—If the court enters an order denying a request of the United States under this subsection, the United States may take an immediate interlocutory appeal in accordance with paragraph (5).

(5) INTERLOCUTORY APPEAL.—

(A) SUBJECT OF APPEAL.—An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of a district court—

- (i) authorizing the disclosure of classified information;
- (ii) imposing sanctions for nondisclosure of classified information; or
- (iii) refusing a protective order sought by the United States to prevent the disclosure of classified information.

(B) EXPEDITED CONSIDERATION.—

(i) IN GENERAL.—An appeal taken pursuant to this paragraph, either before or during trial, shall be expedited by the court of appeals.

(ii) APPEALS PRIOR TO TRIAL.—If an appeal is of an order made prior to trial, an appeal shall be taken not later than 10

days after the decision or order appealed from, and the trial shall not commence until the appeal is resolved.

(iii) APPEALS DURING TRIAL.—If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals—

- (I) shall hear argument on such appeal not later than 4 days after the adjournment of the trial;
- (II) may dispense with written briefs other than the supporting materials previously submitted to the trial court;
- (III) shall render its decision not later than 4 days after argument on appeal; and
- (IV) may dispense with the issuance of a written opinion in rendering its decision.

(C) EFFECT OF RULING.—An interlocutory appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

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

(g) DEFINITIONS.—As used in this section—

(1) the term “classified information” has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

(2) the term “financial institution” has the same meaning as in section 5312(a)(2) of title 31, United States Code;

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

(4) the term “material support or resources” has the same meaning given that term in section 2339A (including the definitions of “training” and “expert advice or assistance” in that section);

(5) the term “Secretary” means the Secretary of the Treasury; and

(6) the term “terrorist organization” means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.

(h) PROVISION OF PERSONNEL.—No person may be prosecuted under this section in connection with the term “personnel” unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with 1 or more individuals (who may be or include himself) to work under that terrorist organization's direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Individuals who act entirely independently of the foreign terror-

ist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization's direction and control.

(i) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution of the United States.

(j) **EXCEPTION.**—No person may be prosecuted under this section in connection with the term “personnel”, “training”, or “expert advice or assistance” if the provision of that material support or resources to a foreign terrorist organization was approved by the Secretary of State with the concurrence of the Attorney General. The Secretary of State may not approve the provision of any material support that may be used to carry out terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act).

(Added Pub. L. 104-132, title III, §303(a), Apr. 24, 1996, 110 Stat. 1250; amended Pub. L. 107-56, title VIII, §810(d), Oct. 26, 2001, 115 Stat. 380; Pub. L. 108-458, title VI, §6603(c)–(f), Dec. 17, 2004, 118 Stat. 3762, 3763.)

#### REFERENCES IN TEXT

Section 212(a)(3)(B) of the Immigration and Nationality Act, referred to in subsecs. (a)(1) and (j), is classified to section 1182(a)(3)(B) of Title 8, Aliens and Nationality.

Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (a)(1), is classified to section 2656f(d)(2) of Title 22, Foreign Relations and Intercourse.

The Federal Rules of Civil Procedure, referred to in subsec. (f)(1)(A)(i), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (g)(1), is section 1(a) of Pub. L. 95-456, which is set out in the Appendix to this title.

Section 219 of the Immigration and Nationality Act, referred to in subsec. (g)(6), is classified to section 1189 of Title 8, Aliens and Nationality.

#### AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-458, §6603(c), struck out “, within the United States or subject to the jurisdiction of the United States,” after “Whoever” and inserted at end “To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).”

Subsec. (d). Pub. L. 108-458, §6603(d), designated existing provisions as par. (2), inserted par. (2) heading, and added par. (1).

Subsec. (g)(4). Pub. L. 108-458, §6603(e), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “the term ‘material support or resources’ has the same meaning as in section 2339A.”

Subsecs. (h) to (j). Pub. L. 108-458, §6603(f), added subsecs. (h) to (j).

2001—Subsec. (a)(1). Pub. L. 107-56 substituted “15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life” for “10 years, or both”.

#### FINDINGS AND PURPOSE

Section 301 of title III of Pub. L. 104-132 provided that:

“(a) **FINDINGS.**—The Congress finds that—

“(1) international terrorism is a serious and deadly problem that threatens the vital interests of the United States;

“(2) the Constitution confers upon Congress the power to punish crimes against the law of nations and to carry out the treaty obligations of the United States, and therefore Congress may by law impose penalties relating to the provision of material support to foreign organizations engaged in terrorist activity;

“(3) the power of the United States over immigration and naturalization permits the exclusion from the United States of persons belonging to international terrorist organizations;

“(4) international terrorism affects the interstate and foreign commerce of the United States by harming international trade and market stability, and limiting international travel by United States citizens as well as foreign visitors to the United States;

“(5) international cooperation is required for an effective response to terrorism, as demonstrated by the numerous multilateral conventions in force providing universal prosecutive jurisdiction over persons involved in a variety of terrorist acts, including hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage;

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

“(7) foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.

“(b) **PURPOSE.**—The purpose of this subtitle [subtitle A (§§301-303) of title III of Pub. L. 104-132, enacting this section and section 1189 of Title 8, Aliens and Nationality] is to provide the Federal Government the fullest possible basis, consistent with the Constitution, to prevent persons within the United States, or subject to the jurisdiction of the United States, from providing material support or resources to foreign organizations that engage in terrorist activities.”

#### § 2339C. Prohibitions against the financing of terrorism

(a) **OFFENSES.**—

(1) **IN GENERAL.**—Whoever, in a circumstance described in subsection (b), by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out—

(A) an act which constitutes an offense within the scope of a treaty specified in subsection (e)(7), as implemented by the United States, or

(B) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act,

shall be punished as prescribed in subsection (d)(1).

(2) **ATTEMPTS AND CONSPIRACIES.**—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(1).