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AMENDMENT NO.

Calendar No.

Purpose: To prohibit the rewarding of suicide bombings, to punish kidnappings and rapes committed for terrorist purposes, to punish terrorist hoaxes against the families of United States servicemen, and for other purposes.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

S. 2248

AMENDMENT No. 3928

To By Kyl § 1978,
To: Amend. No. 3911 at Act,

Re 18 and
Page(s)

GPO: 2008 56-772 (M-3)

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KYL to the amendment (No. 3911) proposed by Mr. ROCKEFELLER

Viz:

- 1 On page 88, after line 23, insert the following:
- 2 SEC. __. PREVENTION AND DETERRENCE OF TERRORIST
- 3 SUICIDE BOMBINGS.
- 4 (a) IN GENERAL.—
- 5 (1) OFFENSE OF REWARDING OR FACILITATING
- 6 INTERNATIONAL TERRORIST ACTS.—

1 (A) IN GENERAL.—Chapter 113B of title
2 18, United States Code, is amended by adding
3 at the end the following:

4 **“§ 2339E. Providing material support to international**
5 **terrorism**

6 “(a) DEFINITIONS.—In this section:

7 “(1) The term ‘facility of interstate or foreign
8 commerce’ has the same meaning as in section
9 1958(b)(2).

10 “(2) The term ‘international terrorism’ has the
11 same meaning as in section 2331.

12 “(3) The term ‘material support or resources’
13 has the same meaning as in section 2339A(b).

14 “(4) The term ‘perpetrator of an act’ includes
15 any person who—

16 “(A) commits the act;

17 “(B) aids, abets, counsels, commands, in-
18 duces, or procures its commission; or

19 “(C) attempts, plots, or conspires to com-
20 mit the act.

21 “(5) The term ‘serious bodily injury’ has the
22 same meaning as in section 1365.

23 “(b) PROHIBITION.—Whoever, in a circumstance de-
24 scribed in subsection (c), provides, or attempts or con-
25 spires to provide, material support or resources to the per-

1 perpetrator of an act of international terrorism, or to a family
2 member or other person associated with such perpetrator,
3 with the intent to facilitate, reward, or encourage that act
4 or other acts of international terrorism, shall be fined
5 under this title, imprisoned for any term of years or for
6 life, or both, and, if death results, shall be imprisoned for
7 any term of years not less than 10 or for life.

8 “(e) JURISDICTIONAL BASES.—A circumstance re-
9 ferred to in subsection (b) is that—

10 “(1) the offense occurs in or affects interstate
11 or foreign commerce;

12 “(2) the offense involves the use of the mails or
13 a facility of interstate or foreign commerce;

14 “(3) an offender intends to facilitate, reward, or
15 encourage an act of international terrorism that af-
16 fects interstate or foreign commerce or would have
17 affected interstate or foreign commerce had it been
18 consummated;

19 “(4) an offender intends to facilitate, reward, or
20 encourage an act of international terrorism that vio-
21 lates the criminal laws of the United States;

22 “(5) an offender intends to facilitate, reward, or
23 encourage an act of international terrorism that is
24 designed to influence the policy or affect the conduct
25 of the United States Government;

1 “(6) an offender intends to facilitate, reward, or
2 encourage an act of international terrorism that oc-
3 curs in part within the United States and is de-
4 signed to influence the policy or affect the conduct
5 of a foreign government;

6 “(7) an offender intends to facilitate, reward, or
7 encourage an act of international terrorism that
8 causes or is designed to cause death or serious bod-
9 ily injury to a national of the United States while
10 that national is outside the United States, or sub-
11 stantial damage to the property of a legal entity or-
12 ganized under the laws of the United States (includ-
13 ing any of its States, districts, commonwealths, ter-
14 ritories, or possessions) while that property is out-
15 side of the United States;

16 “(8) the offense occurs in whole or in part with-
17 in the United States, and an offender intends to fa-
18 cilitate, reward or encourage an act of international
19 terrorism that is designed to influence the policy or
20 affect the conduct of a foreign government; or

21 “(9) the offense occurs in whole or in part out-
22 side of the United States, and an offender is a na-
23 tional of the United States, a stateless person whose
24 habitual residence is in the United States, or a legal
25 entity organized under the laws of the United States

1 (including any of its States, districts, common-
2 wealths, territories, or possessions).”

3 (B) TECHNICAL AND CONFORMING AMEND-
4 MENTS.—

5 (i) TABLE OF SECTIONS.—The table
6 of sections for chapter 113B of title 18,
7 United States Code, is amended by adding
8 at the end the following:

“2339D. Receiving military-type training from a foreign terrorist organization.
“2339E. Providing material support to international terrorism.”

9 (ii) OTHER AMENDMENT.—Section
10 2332b(g)(5)(B)(i) of title 18, United
11 States Code, is amended by inserting
12 “2339E (relating to providing material
13 support to international terrorism),” before
14 “or 2340A (relating to torture)”

15 (2) INCREASED PENALTIES FOR PROVIDING MA-
16 TERIAL SUPPORT TO TERRORISTS.—

17 (A) PROVIDING MATERIAL SUPPORT TO
18 DESIGNATED FOREIGN TERRORIST ORGANIZA-
19 TIONS.—Section 2339B(a) of title 18, United
20 States Code, is amended by striking “15 years”
21 and inserting “30 years”.

22 (B) PROVIDING MATERIAL SUPPORT OR
23 RESOURCES IN AID OF A TERRORIST CRIME.—
24 Section 2339A(a) of title 18, United States

1 Code, is amended by striking “imprisoned not
2 more than 15 years” and all that follows
3 through “life.” and inserting “imprisoned for
4 any term of years or for life, or both, and, if
5 the death of any person results, shall be impris-
6 oned for any term of years not less than 10 or
7 for life.”.

8 (C) RECEIVING MILITARY-TYPE TRAINING
9 FROM A FOREIGN TERRORIST ORGANIZATION.—
10 Section 2339D(a) of title 18, United States
11 Code, is amended by striking “ten years” and
12 inserting “25 years”.

13 (D) ADDITION OF ATTEMPTS AND CON-
14 SPIRACIES TO AN OFFENSE RELATING TO MILI-
15 TARY TRAINING.—Section 2339D(a) of title 18,
16 United States Code, is amended by inserting “,
17 or attempts or conspires to receive,” after “re-
18 ceives”.

19 (b) TERRORIST MURDERS, KIDNAPPINGS, AND AS-
20 SAULTS.—

21 (1) PENALTIES FOR TERRORIST MURDER AND
22 MANSLAUGHTER.—Section 2332(a) of title 18,
23 United States Code, is amended—

24 (A) in paragraph (1), by striking “, pun-
25 ished by death” and all that follows and insert-

1 ing “and punished by death or imprisoned for
2 life;”; and

3 (B) in paragraph (2), by striking “ten
4 years” and inserting “30 years”.

5 (2) ADDITION OF OFFENSE OF TERRORIST KID-
6 NAPPING.—Section 2332 of title 18, United States
7 Code, is amended—

8 (A) by redesignating subsections (c) and
9 (d) as subsections (d) and (e), respectively; and

10 (B) by inserting after subsection (b) the
11 following:

12 “(c) KIDNAPPING.—Whoever outside the United
13 States unlawfully seizes, confines, inveigles, decoys, kid-
14 naps, abducts, or carries away, or attempts or conspires
15 to seize, confine, inveigle, decoy, kidnap, abduct or carry
16 away, a national of the United States shall be fined under
17 this title and imprisoned for any term of years or for life.”.

18 (3) ADDITION OF SEXUAL ASSAULT TO DEFINI-
19 TION OF OFFENSE OF TERRORIST ASSAULT.—Sec-
20 tion 2332(d) of title 18, United States Code, as re-
21 designated by paragraph (2) of this subsection, is
22 amended—

23 (A) in paragraph (1), by inserting “(as de-
24 fined in section 1365, including any conduct
25 that, if the conduct occurred in the special mar-

1 not less than 2 years nor more than 10
2 years”;

3 (ii) in subparagraph (B), by striking
4 “, imprisoned not more than 20 years, or
5 both” and inserting “and imprisoned for
6 not less than 5 years nor more than 25
7 years”; and

8 (iii) in subparagraph (C), by striking
9 “, imprisoned for any term of years or for
10 life, or both” and inserting “and impris-
11 oned for any term of years not less than
12 10 or for life”.

13 (2) **ATTACKS ON UNITED STATES SERVICE-**
14 **MEN.—**

15 (A) **IN GENERAL.**—Chapter 67 of title 18,
16 United States Code, is amended by adding at
17 the end the following:

18 **“§ 1389. Prohibition on attacks on United States serv-**
19 **icemen on account of service**

20 **“(a) IN GENERAL.**—Whoever knowingly assaults or
21 batters a United States serviceman or an immediate fam-
22 ily member of a United States serviceman, or who know-
23 ingly destroys or injures the property of such serviceman
24 or immediate family member, on account of the military
25 service of that serviceman or status of that individual as

1 a United States serviceman, or who attempts or conspires
2 to do so, shall—

3 “(1) in the case of a simple assault, or destruc-
4 tion or injury to property in which the damage or
5 attempted damage to such property is not more than
6 \$500, be fined under this title in an amount not less
7 than \$500 nor more than \$10,000 and imprisoned
8 not more than 2 years;

9 “(2) in the case of destruction or injury to
10 property in which the damage or attempted damage
11 to such property is more than \$500, be fined under
12 this title in an amount not less than \$1000 nor more
13 than \$100,000 and imprisoned not less than 90 days
14 nor more than 10 years; and

15 “(3) in the case of a battery, or an assault re-
16 sulting in bodily injury, be fined under this title in
17 an amount not less than \$2500 and imprisoned not
18 less than 2 years nor more than 30 years.

19 “(b) EXCEPTION.—This section shall not apply to
20 conduct by a person who is subject to the Uniform Code
21 of Military Justice.

22 “(c) DEFINITIONS.—In this section—

23 “(1) the term ‘Armed Forces’ has the meaning
24 given that term in section 1388;

1 “(2) the term ‘immediate family member’ has
2 the meaning given that term in section 115; and

3 “(3) the term ‘United States serviceman’—

4 “(A) means a member of the Armed
5 Forces; and

6 “(B) includes a former member of the
7 Armed Forces during the 5-year period begin-
8 ning on the date of the discharge from the
9 Armed Forces of that member of the Armed
10 Forces.”.

11 (B) TECHNICAL AND CONFORMING AMEND-
12 MENT.—The table of sections for chapter 67 of
13 title 18, United States Code, is amended by
14 adding at the end the following:

“1389. Prohibition on attacks on United States servicemen on account of serv-
ice.”.

15 (3) THREATENING COMMUNICATIONS.—

16 (A) MAILED WITHIN THE UNITED
17 STATES.—Section 876 of title 18, United States
18 Code, is amended by adding at the end the fol-
19 lowing:

20 “(e) For purposes of this section, the term ‘addressed
21 to any other person’ includes an individual (other than the
22 sender), a corporation or other legal person, and a govern-
23 ment or agency or component thereof.”.

1 (B) MAILED TO A FOREIGN COUNTRY.—
2 Section 877 of title 18, United States Code, is
3 amended by adding at the end the following:

4 “For purposes of this section, the term ‘addressed to
5 any person’ includes an individual, a corporation or other
6 legal person, and a government or agency or component
7 thereof.”.

8 (d) DENIAL OF FEDERAL BENEFITS TO CONVICTED
9 TERRORISTS.—

10 (1) IN GENERAL.—Chapter 113B of title 18,
11 United States Code, as amended by this section, is
12 amended by adding at the end the following:

13 **“§ 2339F. Denial of Federal benefits to terrorists**

14 “(a) IN GENERAL.—Any individual who is convicted
15 of a Federal crime of terrorism (as defined in section
16 2332b(g)) shall, as provided by the court on motion of
17 the Government, be ineligible for any or all Federal bene-
18 fits for any term of years or for life.

19 “(b) FEDERAL BENEFIT DEFINED.—In this section,
20 ‘Federal benefit’ has the meaning given that term in sec-
21 tion 421(d) of the Controlled Substances Act (21 U.S.C.
22 862(d)).”.

23 (2) TECHNICAL AND CONFORMING AMEND-
24 MENT.—The table of sections for chapter 113B of
25 title 18, United States Code, as amended by this

1 section, is amended by adding at the end the fol-
2 lowing:

“Sec. 2339F. Denial of Federal benefits to terrorists.”.

3 (e) INVESTIGATION OF TERRORIST CRIMES.—

4 (1) NONDISCLOSURE OF FISA INVESTIGA-
5 TIONS.—The following provisions of the Foreign In-
6 telligence Surveillance Act of 1978 are each amend-
7 ed by inserting “(other than in proceedings or other
8 civil matters under the immigration laws, as that
9 term is defined in section 101(a)(17) of the Immi-
10 gration and Nationality Act (8 U.S.C.
11 1101(a)(17)))” after “authority of the United
12 States”:

13 (A) Subsections (c), (e), and (f) of section
14 106 (50 U.S.C. 1806).

15 (B) Subsections (d), (f), and (g) of section
16 305 (50 U.S.C. 1825).

17 (C) Subsections (c), (e), and (f) of section
18 405 (50 U.S.C. 1845).

19 (2) MULTIDISTRICT SEARCH WARRANTS IN
20 TERRORISM INVESTIGATIONS.—Rule 41(b)(3) of the
21 Federal Rules of Criminal Procedure is amended to
22 read as follows:

23 “(3) a magistrate judge—in an investigation
24 of—

1 “(A) a Federal crime of terrorism (as de-
2 fined in section 2332b(g)(g) of title 18, United
3 States Code); or

4 “(B) an offense under section 1001 or
5 1505 of title 18, United States Code, relating
6 to information or purported information con-
7 cerning a Federal crime of terrorism (as de-
8 fined in section 2332b(g)(5) of title 18, United
9 States Code)—having authority in any district
10 in which activities related to the Federal crime
11 of terrorism or offense may have occurred, may
12 issue a warrant for a person or property within
13 or outside that district.”.

14 (3) INCREASED PENALTIES FOR OBSTRUCTION
15 OF JUSTICE IN TERRORISM CASES.—Sections
16 1001(a) and 1505 of title 18, United States Code,
17 are amended by striking “8 years” and inserting
18 “10 years”.

19 (f) IMPROVEMENTS TO THE CLASSIFIED INFORMA-
20 TION PROCEDURES ACT.—

21 (1) INTERLOCUTORY APPEALS UNDER THE
22 CLASSIFIED INFORMATION PROCEDURES ACT.—Sec-
23 tion 7(a) of the Classified Information Procedures
24 Act (18 U.S.C. App.) is amended by adding at the
25 end “The Government’s right to appeal under this

1 section applies without regard to whether the order
2 appealed from was entered under this Act.”.

3 (2) EX PARTE AUTHORIZATIONS UNDER THE
4 CLASSIFIED INFORMATION PROCEDURES ACT.—Sec-
5 tion 4 of the Classified Information Procedures Act
6 (18 U.S.C. App.) is amended—

7 (A) in the second sentence—

8 (i) by striking “may” and inserting
9 “shall”; and

10 (ii) by striking “written statement to
11 be inspected” and inserting “statement to
12 be made ex parte and to be considered”;
13 and

14 (B) in the third sentence—

15 (i) by striking “If the court enters an
16 order granting relief following such an ex
17 parte showing, the” and inserting “The”;
18 and

19 (ii) by inserting “, as well as any
20 summary of the classified information the
21 defendant seeks to obtain,” after “text of
22 the statement of the United States”.

23 (3) APPLICATION OF CLASSIFIED INFORMATION
24 PROCEDURES ACT TO NONDOCUMENTARY INFORMA-

1 TION.—Section 4 of the Classified Information Pro-
2 cedures Act (18 U.S.C. App.) is amended—

3 (A) in the section heading, by inserting “,
4 AND ACCESS TO,” after “OF”;

5 (B) by inserting “(a) DISCOVERY OF CLAS-
6 SIFIED INFORMATION FROM DOCUMENTS.—”
7 before the first sentence; and

8 (C) by adding at the end the following:

9 “(b) ACCESS TO OTHER CLASSIFIED INFORMA-
10 TION.—

11 “(1) If the defendant seeks access through dep-
12 osition under the Federal Rules of Criminal Proce-
13 dure or otherwise to non-documentary information
14 from a potential witness or other person which he
15 knows or reasonably believes is classified, he shall
16 notify the attorney for the United States and the
17 district court in writing. Such notice shall specify
18 with particularity the classified information sought
19 by the defendant and the legal basis for such access.
20 At a time set by the court, the United States may
21 oppose access to the classified information.

22 “(2) If, after consideration of any objection
23 raised by the United States, including any objection
24 asserted on the basis of privilege, the court deter-
25 mines that the defendant is legally entitled to have

1 access to the information specified in the notice re-
2 quired by paragraph (1), the United States may re-
3 quest the substitution of a summary of the classified
4 information or the substitution of a statement ad-
5 mitting relevant facts that the classified information
6 would tend to prove.

7 “(3) The court shall permit the United States
8 to make its objection to access or its request for
9 such substitution in the form of a statement to be
10 made ex parte and to be considered by the court
11 alone. The entire text of the statement of the United
12 States, as well as any summary of the classified in-
13 formation the defendant seeks to obtain, shall be
14 sealed and preserved in the records of the court and
15 made available to the appellate court in the event of
16 an appeal.

17 “(4) The court shall grant the request of the
18 United States to substitute a summary of the classi-
19 fied information or to substitute a statement admit-
20 ting relevant facts that the classified information
21 would tend to prove if it finds that the summary or
22 statement will provide the defendant with substan-
23 tially the same ability to make his defense as would
24 disclosure of the specific classified information.

1 “(5) A defendant may not obtain access to clas-
2 sified information subject to this subsection except
3 as provided in this subsection. Any proceeding,
4 whether by deposition under the Federal Rules of
5 Criminal Procedure or otherwise, in which a defend-
6 ant seeks to obtain access to such classified informa-
7 tion not previously authorized by a court for disclo-
8 sure under this subsection must be discontinued or
9 may proceed only as to lines of inquiry not involving
10 such classified information.”.