Title III
of the
USA PATRIOT Act

A Primer
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Introduction: Core Concepts Behind the USA PATRIOT Act

Passed soon after the terrorist attacks of 9/11, the USA PATRIOT Act[1] is one of the most important legislative measures in American history. The Act enables the government to fight what will undoubtedly be a long and difficult war against international terrorism. At the same time, the Act constrains the government, preventing any government attempt to unjustifiably extend its powers.

Yet the USA PATRIOT Act, despite its near-unanimous passage through Congress,[2] has also become one of the most vilified pieces of legislation in living memory. Critics charge that the Act allows for extensive domestic surveillance of US citizens engaged in peaceful, law-abiding activities, and that the Act could potentially turn the United States into a police state. While some of the rhetoric deployed against the PATRIOT Act is hyperbolic, the concerns expressed about official surveillance of United States citizens are reasonable and should be addressed. The vehemence of many of those who oppose the PATRIOT Act is a reflection of their attachment to our Constitution even if many of their fears about government surveillance are unfounded.

The fundamental question facing Americans today is not the false trade-off between security and liberty,[3] but rather how we can use security to protect liberty. Any debate over security and liberty must start with the recognition that the primary threat to American freedom comes from al-Qaeda and other groups that seek to kill Americans, not from the men and women of law enforcement agencies who protect them from that danger. That the American homeland has not suffered another terrorist attack since September 11, 2001, is a testament to the remarkable efforts of law enforcement, intelligence, and homeland security personnel. Their hard work, dedication, and increased coordination have been greatly aided by the tools, resources and guidance that Congress provided in the PATRIOT Act.

To appreciate the difficulty of counterterrorism and the remarkable success of our officials, one need only recount the IRA's statement in 1984 after it had tried unsuccessfully to assassinate British Prime Minister Margaret Thatcher: "Today we were unlucky, but remember we only have to be lucky once. You will have to be lucky always."[4]

Our counterterrorism measures have not been solely defensive. We have taken the offensive. According to the Department of Justice, the United States government has disrupted over 100 terrorist cells and incapacitated over 3,000 al-Qaeda operatives worldwide. The Department of Justice has secured 319 convictions or guilty pleas in terrorism or terrorism-related cases. In addition, the government has initiated 70 investigations into terrorism financing, frozen $133 million in terrorist assets and obtained 23 convictions or guilty pleas.[5]

Counterterrorism has not just been about law enforcement but also law enhancement. Many of the successes of the police and FBI would not have been possible without the PATRIOT Act. The Department of Justice wrote to the House of Representatives' Judiciary Committee on May 13, 2003, that the government's success in preventing another catastrophic attack on the American homeland "would have been much more difficult, if not impossibly so, without the Patriot Act."

Title III Anti-Money Laundering Provisions

The PATRIOT Act provides law enforcement with a wide variety of tools to combat international terrorism. The provisions that directly affect financial institutions[6] are contained in Title III of the Act. In general, Title III amended existing law—primarily the Bank Secrecy Act[7]—to provide the Secretary of the Treasury and other agencies of the federal government with greater authority to identify, deter, and punish international money laundering. This paper will provide a general overview of the most relevant sections of Title III.

Section 312 — Due Diligence for Correspondent and Private Banking Accounts

General Due Diligence Standards. Section 312 requires that all financial institutions that establish, maintain, administer, or manage private banking accounts or correspondent accounts in the United States for non-United States persons[8] or their representatives have "appropriate, specific and, where necessary, enhanced due diligence policies, procedures and controls that are reasonably designed to detect and report instances of money laundering through those accounts." 31 U.S.C. § 5318(i); 31 C.F.R. Part 103.[9]

Additional Due Diligence Standards for Certain Correspondent Accounts. Section 312 requires additional due diligence for money laundering when a United States financial institution maintains correspondent accounts or private banking accounts for foreign banks under three circumstances:

- When the foreign bank operates under an offshore banking license;[10]
- When the foreign bank operates under licenses issued by countries that have been designated by intergovernmental groups as noncooperative with international counter-money-laundering principles; or
- When the foreign bank operates in a jurisdiction designated by the Treasury as warranting special measures because of money-laundering concerns.

The additional due diligence measures require United States financial institutions to:[11]

- Identify each of the owners of the foreign bank and the nature and extent of each owner's interest, if the foreign bank is not publicly traded;
- Take reasonable steps to conduct enhanced scrutiny of the correspondent account and to report suspicious transactions; and
- Take reasonable steps to ascertain whether the foreign bank provides correspondent accounts to other foreign banks. If so, the United States financial institution must identify those institutions and conduct due diligence on them.

Minimum Due Diligence Standards for Private Banking Accounts. Private banking accounts are defined as accounts with minimum deposits of $1 million that are assigned to or managed by a bank employee who acts as a liaison between the financial institution and the beneficial owner. *See* 31 U.S.C. § 5318(i)(3). In regard to these accounts, financial institutions must at a minimum identify the nominal and beneficial owners of the account and the account's source of funds and report suspicious transactions. The financial institution must also conduct enhanced scrutiny of any account requested or maintained by a "senior foreign political figure, or any immediate family member or close associate" to detect transactions that may involve proceeds of foreign corruption.

Section 313 — Prohibition on Correspondent Accounts with Foreign Shell Banks

Section 313, which became effective on December 25, 2001, bars covered financial institutions from establishing, maintaining, administering or managing correspondent accounts in the United States for foreign "shell" banks–foreign banks that do not have a physical presence in any country.[12] An exception permits covered financial institutions to provide correspondent accounts for foreign shell banks that are affiliated with depository institutions that have a physical presence and that are subject to supervision by a banking regulator.[13]

Section 313 also requires covered financial institutions that maintain correspondent accounts in the United States for a foreign bank to take reasonable steps to ensure that such accounts are not being used by that foreign bank to provide indirect banking services to a foreign shell bank. The Department of the Treasury is directed to issue regulations to define these "reasonable steps" and has published guidance describing a certification process that covered financial institutions may use to comply with section 313 pending issuance of regulations by the Treasury. *See* 66 Fed. Reg. 59342 (Nov. 27, 2001).[14]

Section 315 — Inclusion of Foreign Corruption Offenses as Money Laundering Crimes

Prior to the enactment of the PATRIOT Act, the only foreign crimes listed as predicates for money laundering under 18 U.S.C. §§ 1956 and 1957 were drug trafficking, bank fraud, and certain crimes of violence including murder, kidnaping, robbery, extortion and use of explosives. *See* 18 U.S.C. § 1956(c)(7)(B). Section 315 expands the list to include any crime of violence, bribery of a public official or misappropriation of public funds, smuggling munitions or technology with military applications, and any "offense with respect to which the United States would be obligated by multilateral treaty" to extradite or prosecute the offender.

By adding these offenses to the definition of "specified unlawful activity," Congress makes it possible to prosecute any person who conducts a financial transaction in the United States involving the proceeds of such offense with the requisite specific intent (or with no such intent if, as provided in section 1957, more than $10,000 is involved). Moreover, under section 19569(a)(2)(A), it will be an offense to send any money from any source into or out of the United States with the intent to promote one of the foreign offenses.

Section 317 — Long-arm Jurisdiction Over Foreign Money Launderers

Section 1956(b) creates a civil cause of action by the government against any person who commits a money laundering offense. It is an alternative to a criminal prosecution under section 1956(a) that is sometimes used when the offender is a corporation (including a bank) against whom a criminal prosecution is of less importance than a finding of liability and the imposition of a monetary penalty.

One defect in prior section 1956(b) was that it created a cause of action only for violations of section 1956(a). As amended by section 317, section 1956(b) now permits the government to base its case on a violation of section 1957, which in many instances will be easier for the government to prove.

Second, under prior law there was some question of whether the government could bring a section 1956(b) lawsuit against a foreign person, including a foreign bank, that committed a money laundering offense but could not be found in the United States. For example, if employees of a Mexican bank conducted financial transactions that constituted a violation of section 1956(a), and the government wanted to file a lawsuit against the Mexican bank under section 1956(b), there was uncertainty whether the bank would be subject to the jurisdiction of a United States court if it had no physical presence in the United States. As amended, section 1956(b) now provides that the court has jurisdiction if the money laundering offense occurred in part in the United States, or the foreign bank has a correspondent account in the United States.

Third, section 1956(b) was amended to permit a court to take jurisdiction over an action brought by the government to enforce a forfeiture judgment based on a violation of section 1956. Section 317 provides that if property is ordered forfeited under section 982(a)(1) due to violation of section 1956, and the government files suit against a foreign person who has converted that property to his own use instead of turning it over to the government, the district court will have jurisdiction over the foreign person. What the amendment does is eliminate any uncertainty over what circumstances will permit a court to exercise long-arm jurisdiction in such cases. Finally, section 317 amends section 1956(b) to authorize a court to enter a restraining order to ensure "that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section." The court is also authorized to appoint, at the request of the Attorney General, a receiver to manage assets in three categories of cases: 1) where assets are subject to a civil penalty under section 1956(b); 2) where assets are subject to any civil or criminal forfeiture under sections 981 or 982; and 3) where assets are subject to a restitution order in a section 1956 or 1957 criminal case. This authority—both to enter restraining orders and to appoint receivers—appears to be limited, however, to cases in which the court is exercising its long-arm authority over a foreign person.

Section 318 — Laundering Money Through a Foreign Bank

18 U.S.C. § 1956 prohibits conducting a transaction involving a financial institution if the transaction involves criminally derived property. Similarly, section 1957 creates an offense relating to the deposit, withdrawal, transfer or exchange of criminally derived funds "by, to or through a financial institution." Both statutes employ the definition of "financial institution" found in 31 U.S.C. § 5312. *See* 18 U.S.C. § 1956(c)(6); 18 U.S.C. § 1957(f).

Prior to the enactment of the PATRIOT Act, the definition of "financial institution" did not explicitly include foreign banks. Such banks arguably fell within the definition of "commercial bank" in the statute, but there was confusion over whether the government could rely on section 5312 to prosecute an offense under either section 1956 or 1957 involving a transaction through a foreign bank. Section 318 ends the confusion by explicitly including foreign banks within the definition of "financial institution" in section 1956(c)(6).

Section 319 — Forfeiture of Funds in United States Interbank Accounts; Production of Bank Records

It is common for foreign criminals to deposit money derived from crimes committed in the United States into foreign financial institution accounts. This is often done by depositing the money directly into the correspondent account that a foreign financial institution maintains at another bank in the United States. When the government tries to seize and forfeit the money in the correspondent account, however, the foreign financial institution, which is considered the owner of the funds in its correspondent account, is able to assert an innocent owner defense under 18 U.S.C. § 983(d). In section 319, Congress has addressed this problem by creating a new provision codified as 18 U.S.C. § 981(k).

Section 981(k)(l) provides that if funds are deposited into an account in a foreign financial institution, and that foreign financial institution has a correspondent account in the United States, "the funds deposited into the [foreign financial institution] shall be deemed to have been deposited into the correspondent account in the United States," and the government may seize, arrest or restrain the funds in the correspondent a "up to the value of the funds deposited" into the foreign financial institution. Moreover, section 981(k)(2) provides that when a forfeiture action is brought against those funds, "the government shall not be required to establish that such funds are directly traceable to the funds [that were deposited into the foreign financial institution], nor shall it be necessary for the government to rely on the application of Section 984." Thus, if a drug dealer deposits funds into a foreign financial institution that has a correspondent account in the United States, the government can now seize and bring a forfeiture action against an equivalent sum of money in the correspondent account, regardless of whether the money in the correspondent account is traceable to the foreign deposit, and without having to be concerned with the application of the fungible property provisions of 18 U.S.C. § 984.

Section 981(k)(3) and (4) provide that for purposes of the application of the innocent owner defense in section 983(d), the "owner" of the funds is the person who deposited the funds into the foreign financial institution, not the foreign financial institution or intermediary institution that may have been involved in the transfer of the funds. As explained in the legislative history, "[u]nder this arrangement, if funds traceable to criminal activity are deposited into a foreign bank, the government may bring a forfeiture action against funds in that bank's correspondent account, and only the initial depositor, and not the intermediary bank, would have standing to contest it." *See* H. Rep. 107-250. The only exception to this rule applies when the government's theory of forfeiture is that the foreign financial institution was itself the wrongdoer (thus subjecting the money in its correspondent account to civil forfeiture), or when the foreign depositor had already withdrawn his money from the foreign financial institution before the money in the correspondent account was restrained, seized or arrested.

This provision facilitates the ability of federal prosecutors to forfeit funds that domestic criminals seek to insulate from forfeiture by depositing them in foreign financial institutions and then hiding behind the institutions' innocent owner defenses, even though the funds are safely maintained in a correspondent account in the United States.

In another part of section 319, Congress also created a mechanism for serving a subpoena for bank records on a foreign bank. 31 U.S.C. § 5318(k)(3) provides that the Attorney General or the Secretary of the Treasury may serve "a summons or subpoena" on any foreign financial institution that has a correspondent account in the United States, and request records relating to that correspondent account or any "records maintained outside of the United States relating to the deposit of funds into the foreign bank." *See* H. Rep. 107-250 ("Under this provision, a foreign bank that maintains a correspondent account in the United States must have a representative in the United States who will accept service of a subpoena for any records of any transaction with the foreign bank that occurs overseas."). Therefore, when the government wishes to obtain records maintained by the foreign financial institution in its offices overseas, it is no longer necessary to seek those records pursuant to a mutual legal assistance treaty or other procedure that is dependent upon the cooperation of a foreign government. Rather, the government could proceed by serving a summons or subpoena, issued by the Department of Justice or the Department of the Treasury, on the person the foreign bank is required to designate to "accept service of legal process" in the United States.

The 120 Hour Rule. Section 319(b) requires United States covered financial institutions to comply, within 120 hours, with an appropriate federal banking agency's request for information and documentation concerning any account opened, maintained, administered or managed in the United States by that financial institution. The rule also covers requests for information and documentation on the nature of a covered financial institution's or covered financial institution customer's anti-money-laundering compliance. 31 U.S.C. § 5318(k)(3) provides a sanction for a foreign financial institution's failure to comply with the "summons or subpoena." Upon notification by either the Secretary of the Treasury or the Attorney General that a foreign financial institution has failed to comply with a summons or subpoena issued under the new statute, a U.S. bank that maintains a correspondent account for the foreign bank must close that account or face civil penalties of up to $10,000 per day "until the correspondent relationship is terminated."

Finally, section 319 gives the courts explicit authority to order the repatriation of assets in criminal cases. While numerous courts have directed criminal defendants to repatriate assets to the United States for the purpose of forfeiture as part of a pre-trial restraining order, this provision establishes clear statutory authority for that practice. Section 319 amends 21 U.S.C. § 853(e) to include a new paragraph explicitly authorizing a court to order a defendant to repatriate any property subject to forfeiture to the United States, and to deposit it with the Marshals Service, the Secretary of the Treasury, or in the registry of the court. Moreover, the same section amends the substitute asset provision in 21 U.S.C. § 853(p) to provide that in addition to ordering the forfeiture of substitute assets, the court may order a defendant who has placed his forfeitable property beyond the jurisdiction of the court to "return the property to the jurisdiction of the court so that the property may be seized and forfeited." Section 853(e)(4) also includes a provision giving the court the authority to sanction a defendant who fails to comply with a repatriation order by increasing his sentence under obstruction of justice provisions of the sentencing guidelines or by holding the defendant in contempt of court.

Section 320 — Proceeds of Foreign Crimes

Under 18 U.S.C. § 981(a)(l)(C), as amended by CAFRA, any proceeds of any offense listed in the definition of "specified unlawful activity" are subject to civil forfeiture. Thus, Congress automatically created authority to forfeit the proceeds of the expanded list of foreign crimes merely by including them in section 1956(c)(7)(B). However, section 320 also amends 18 U.S.C. § 981(a)(1)(B) to authorize the forfeiture of both the proceeds of, *and any property used to facilitate*, any offense listed in section 1956(c)(7)(B), if the offense would be a felony if committed within the jurisdiction of the United States.

Section 323 — Enforcement of Foreign Judgments

CAFRA gave the federal courts authority to enforce foreign forfeiture judgments. Under 28 U.S.C. § 2467, a judgment of forfeiture of property located in the United States that is issued by a foreign court can be certified by the Attorney General and presented to a federal district court to be registered and enforced. This statute contained two major deficiencies: first, it provided no mechanism for preserving the property while the foreign forfeiture action was pending in the foreign court; and second, it applied only to a narrow range of foreign offenses such as drug trafficking and bank fraud.

Section 323 corrects both of these problems. First, it inserts new language in section 2467(d)(3) authorizing a district court to "preserve the availability of property subject to a foreign forfeiture or confiscation judgment" by issuing a civil forfeiture restraining order pursuant to 18 U.S.C. § 983(j). The order may be issued "at any time before or after" the government receives a final judgment of forfeiture from the foreign court. The new statute provides that no person may contest the issuance of the restraining order "on any ground that is the subject of parallel litigation involving the same property that is pending in a foreign court." This provision avoids the "two bites at the apple" problem that often arises when the United States asks a foreign country to restrain property in that jurisdiction that is subject to forfeiture in a case pending in the United States. Almost invariably, the foreign court that restrains the property will allow potential claimants to object to the restraining order on grounds (such as an innocent owner defense) that could also be raised in the forfeiture proceeding underway in the United States. This gives the foreign claimant the advantage of being able to attack the forfeiture twice on the same grounds: if he is unsuccessful in persuading the foreign court to vacate the restraining order, he may file a claim in the United States and assert the same defense all over again. (While the amendment to section 2467 can do nothing to prevent foreign courts from continuing to give their citizens two bites at the apple, the change to the federal statute will provide an example for other countries to follow in reforming their own laws.)

Second, to rectify the narrow application of section 2467, Congress amended section 2467(a)(2)(A) to provide that federal courts may enforce a foreign forfeiture order based on "any violation of foreign law that would constitute a violation of an offense for which property could be forfeited under Federal law if the offense were committed in the United States."

Section 326 — Verification of Identification

Section 326(a) requires that the Treasury prescribe, by regulation, minimum standards that financial institutions must follow to verify the identity of customers, both foreign and domestic, when a customer opens an account. As part of the verification, financial institutions must consult lists, provided by a governmental agency, of known or suspected terrorists or terrorist organizations and keep records of the information used to verify the customer's identity.[15]

Section 371 — Bulk Cash Smuggling Into or Out of the United States

In *United States v. Bajakajian*, 524 U.S. 321 (1998), the Supreme Court held that forfeiture of 100 percent of the unreported currency in a CMIR case would be "grossly disproportional to the gravity of the offense," unless the currency was involved in some other criminal activity. In so holding, the Court ruled that the unreported currency is not the *corpus delicti* of the crime. This contrasts, the Court said, with the various anti-smuggling statutes which authorize the forfeiture of 100 percent of the items concealed from the Customs Service or imported in violation of the Customs laws.

Section 371 makes currency smuggling a criminal offense, thus elevating the seriousness of smuggling currency into or out of the United States to the same level as the smuggling of firearms, jewels or counterfeit merchandise. As codified at 31 U.S.C. § 5332(a), the new statute makes it an offense for any person, with the intent to evade a currency reporting requirement under section 5316, to conceal more than $10,000 in currency in any fashion, and to transport, or attempt to transport, such currency into or out of the United States. Section 5332(b) provides for criminal forfeiture of the property involved in the offense, including a personal money judgment if the directly forfeitable property cannot be found and the defendant does not have sufficient substitute assets to satisfy the forfeiture judgment. Section 5332(c) authorizes civil forfeiture for the same offense.

In anticipation of legal attacks suggesting that the new statute is nothing more than a recodification of the existing penalties for violating the CMIR requirement, and that forfeiture of 100 percent of the smuggled currency would still violate the Eighth Amendment, Congress made findings emphasizing the seriousness of currency smuggling and the importance of authorizing confiscation of the smuggled money. In particular, the "findings" state that the intentional transportation of currency into or out of the United States "in a manner designed to circumvent the mandatory reporting [requirements] is the equivalent of, and creates the same harm as, smuggling goods." Moreover, the findings state that "only the confiscation of smuggled bulk cash can effectively break the cycle of criminal activity of which the laundering of bulk cash is a critical part." The findings conclude that "in cases where the only criminal violation under current law is a reporting offense, the law does not adequately provide for the confiscation of smuggled currency." "In contrast," Congress found, "if the smuggling of bulk cash were itself an offense, the cash could be confiscated as the *corpus delicti* of the smuggling offense." The House Report on this provision specifies that "[t]he civil forfeiture provision would apply to conduct occurring before the effective date of the act."

Section 372 — Forfeiture in Currency Reporting Cases

Section 372 contains a seemingly minor amendment that strikes the references to 31 U.S.C. sections 5313, 5316 and 5324 from sections 981(a)(l)(A) and 982(a)(1), respectively, and places the authority to forfeit the property involved in those offenses in 31 U.S.C. § 5317(c). Sections 5313, 5316 and 5324 are the provisions requiring the filing of CTR and CMIR reports, and prohibiting the structuring of transactions to evade the reporting requirements.

Sections 981(a)(l)(A) and 982(a)(1) do not provide for the forfeiture of property involved in a conspiracy to commit any of the enumerated currency reporting offenses. Thus, under the prior law, the government could forfeit property involved in a structuring offense under 31 U.S.C. sections 5324(a)(3), but not property involved only in a conspiracy to commit that offense in violation of the general conspiracy statute, 18 U.S.C. section 371. In the revised version of section 5317(c), however, Congress has provided for the forfeiture of all property, real or personal, involved in a violation of sections 5313, 5316 or 5324, "or any conspiracy to commit such offense."

Section 373 — Illegal Money Transmitting Businesses

When it was enacted in 1992, 18 U.S.C. § 1960 made it a federal offense to conduct a money transmitting business without a State license. While in the past this statute has been of limited use to federal law enforcement, section 373's amendments to section 1960 are likely to make the statute a much more effective tool against money laundering.

Under the prior law, the government had to prove that the defendant knew that his money transmitting business was "intentionally operated without an appropriate [State] money transmitting license" or that it did not comply with the registration requirements of 31 U.S.C. § 5330. Arguably, this required the government to prove that the defendant knew of the State licensing requirements or federal registration requirements and knew that his business did not comply with them; it may also have required proof that the defendant knew that operating a business in such circumstances was illegal. Section 373 eliminated this ambiguity by clearly converting section 1960 into a "general intent" crime, making it illegal to conduct any unlicensed money transmitting business, "whether or not the defendant knew that the operation was required to be licensed" or that operation without a license was a criminal offense. Section 373 also makes it an offense for anyone to conduct a money transmitting business that fails to comply with the provisions of section 5330 (or the regulations that the Department of the Treasury is to promulgate within the next few months). *See* H. Rep. 107-250.

Most importantly, section 373 expands the scope of section 1960 to include any business, licensed or unlicensed, that involves the movement of funds that the defendant knows were derived from a criminal offense, or are intended to be used "to promote or support unlawful activity." Thus, under this new provision, a person operating a money transmitting business could be prosecuted for conducting transactions that the defendant knows involve drug proceeds, or that he knows involve funds that someone is planning to use to commit an unlawful act. Moreover, as explained in the House Report, "[i]t would not be necessary for the government to show that the business was a storefront or other formal business open to walk-in trade. To the contrary, it would be sufficient to show that the defendant offered his services as a money transmitter to another." It is already an offense under sections 1956 and 1957, of course, for any person to conduct a financial transaction involving criminally derived property. But section 1957 has a $10,000 threshold requirement, and section 1956 requires proof of specific intent either to promote another offense or to conceal or disguise the criminal proceeds. New section 1960 contains neither of these requirements if the property is criminal proceeds, or alternatively, if there is proof that the purpose of the financial transaction was to commit another offense, it does not require proof that the transmitted funds were tainted by prior misconduct. Thus, in cases where the defendant is a money transmitting business, section 1960 may prove more potent than either section 1956 or 1957 as a tool of the prosecution.

Finally, the changes to section 1960 include an amendment to 18 U.S.C. § 98l(a)(1)(A) authorizing civil forfeiture of all property involved in the section 1960 violation.

References*

[1] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

[2] The House of Representatives passed the Patriot Act on October 24, 2001, by a vote of 357 to 66, with 9 members not voting. 147 Cong. Rec. H7224 (daily ed. Oct. 24, 2001) (roll call vote 398). The Senate followed suit shortly thereafter, passing the act on October 25, 2001, by a vote of 98 to 1, with 1 senator not voting. 147 Cong. Rec. S11,059–60 (daily ed. Oct. 25, 2001) (roll call vote 313).

[3] Assistant Attorney General Viet D. Dinh, *Ordered Liberty in the Age of International Terrorism*, Harold Leventhal Talk (June 7, 2002).

[4] Statement of the Provisional Irish Republican Army after Brighton Bomb (Oct. 13, 1984), available at http://news.bbc.co.uk/2/hi/uk_news/1201738.stm.

[5] Figures are available at http://www.bordc.org/resources/dojmyths.pdf and http://www.justice.gov/cjs/docs/terrorism-bush-admin.html. Such freezing results from the designation of terrorist-related groups and individuals under Executive Order 13224 and the International Emergency Economic Powers Act (IEEPA), both of which are enforced by the Treasury Department's Office of Foreign Assets Control (OFAC). In most terrorism cases, it has not been necessary for the Justice Department to seek forfeiture of U.S.-based terrorist assets under the USA PATRIOT Act's new authorities, because the assets had already been frozen by OFAC. "Forfeiture," unlike freezing, enables a court to transfer to the United States the ownership of assets which are the proceeds of or are related to a particular crime. Section 806 of the USA PATRIOT Act expanded the government's authority to forfeit terrorist-related assets; this change was codified at 18 U.S.C. § 981(a)(I)(G). After September 11, 2001, the Department of Justice filed a seizure warrant on a New Jersey bank account suspected of containing assets belonging to one or more of the 19 dead hijackers. The Department also included a forfeiture count in the Texas indictment of Hamas leader Musa Abu Marzook, *United States v. Elashi*, CR No. 3:02-CR-052-R (N.D. Tex. filed Dec. 17, 2002). Each of these actions, however, was based on pre-USA PATRIOT Act authority.

[6] Section 313 of the Act defines a "covered financial institution" by cross reference to 31 U.S.C. § 5312(a)(2)(A) through (G). These include insured banks under 12 U.S.C. § 1813(h); commercial banks or trust companies; private bankers; branches and agencies of foreign banks in the United States; credit unions; and registered brokers and dealers.

[7] Bank Secrecy Act, Pub. L. No. 91-508, 84 Stat. 1305 (1970).

[8] The definition of "person" includes joint stock companies, associations, unincorporated groups, and "all entities cognizable as legal personalities." 31 C.F.R. § 103.11(z); 31 C.F.R. § 103.175(m)

[9] Section 5318(i), added by Title III of the USA Patriot Act, has yet to be applied by the courts, so only statutory and regulatory language guides its application. For regulatory guidance on anti-money programs see 31 C.F.R. § 103.120 (financial institutions regulated by a Federal functional regulator or a self- regulatory organization and casinos); 31 C.F.R. § 103.125 (money services businesses); 31 C.F.R. § 103.130 (mutual funds); and 31 C.F.R. § 103.135 (operators of credit card systems).

[10] Section 312 defines an "offshore banking license" as a license to conduct banking activities, with a condition of the license being that the bank may not offer banking services to citizens of, or in the local currency of, the jurisdiction issuing the license.

[11] *See* 31 U.S.C. § 5318(i)(3)(B).

* Document reviewed and updated Nov. 1, 2011.

[12] 31 U.S.C. § 5318; *see* 31 C.F.R. Part 103, Appendix A (to view certification form).

[13] The act defines an “affiliate” as a foreign bank that is controlled by or under common control with another institution. A bank has a “physical presence” in a jurisdiction if it maintains a place of business at a fixed address, other than a solely electronic address, employs full-time staff, maintains operating records, and is subject to inspection by the bank's licensing authority.

[14] *Available at* http://www.occ.gov/static/news-issuances/memos-advisory-letters/2001/pub-advisory-letter-2001-12a.pdf.

[15] For guidance with customer identification programs see 31 C.F.R. § 103.121 (banks); 3I C.F.R. § 103.122 (broker dealers); 31 C.F.R. § 103.123 (futures commission merchants); 31 C.F.R. § I03.125 (money services businesses); 31 C.F.R. § 103.131 (mutual funds).