

1 NATIONAL CAPITOL CONTRACTING

2 RPTS DAVIES

3 HJU111000

4 MARKUP ON:

5 S. 1890, THE "DEFEND TRADE SECRETS ACT OF 2016";

6 S. 125, THE "BULLETPROOF VEST PARTNERSHIP GRANT PROGRAM

7 REAUTHORIZATION ACT OF 2015";

8 H.R. 3380, THE "TRANSNATIONAL DRUG TRAFFICKING ACT OF 2015";

9 AND

10 H.R. 4985, TO AMEND THE FOREIGN NARCOTICS KINGPIN

11 DESIGNATION ACT

12 Wednesday, April 20, 2016

13 House of Representatives,

14 Committee on the Judiciary,

15 Washington, D.C.

16 The committee met, pursuant to call, at 10:00 a.m., in

17 Room 2141, Rayburn House Office Building, Hon. Bob

18 Goodlatte, [chairman of the committee] presiding.

19 Present: Representatives Goodlatte, Sensenbrenner,

20 Smith, Issa, Forbes, King, Franks, Gohmert, Jordan, Poe,

21 Chaffetz, Marino, Gowdy, Labrador, Collins, DeSantis,

22 Walters, Buck, Ratcliffe, Trott, Bishop, Conyers, Nadler,
23 Lofgren, Johnson, Pierluisi, Chu, Bass DelBene, Jeffries,
24 Cicilline, and Peters.

25 Staff Present: Shelley Husband, Staff Director; Branden
26 Ritchie, Deputy Staff Director/Chief Counsel; Zachary
27 Somers, Parliamentarian & General Counsel; Kelsey Williams,
28 Clerk; Robert Parmiter, Counsel, Subcommittee on Crime,
29 Terrorism, Homeland Security and Investigations; Chris
30 Grieco, Counsel, Subcommittee on Crime, Terrorism, Homeland
31 Security and Investigations; John Manning, Professional
32 Staff Member; Vishal Amin, Counsel, Subcommittee on Courts,
33 Intellectual Property, and the Internet; Danielle Brown,
34 Minority Parliamentarian and Chief Legislative Counsel;
35 Arron Hiller, Minority Chief Oversight Counsel; Joe
36 Graupensperger, Minority Chief Counsel, Subcommittee on
37 Crime, Terrorism, Homeland Security and Investigations; and
38 Veronica Eligan, Minority Professional Staff.

39 Chairman Goodlatte. The Judiciary Committee will come
40 to order, and without objection the chair is authorized to
41 declare a recess of the committee at any time. Pursuant to
42 notice, I now call up S. 1890 for purposes of markup and
43 move that the committee report the bill favorably to the
44 house. The clerk will report the bill.

45 Ms. Williams. S. 1890, to amend chapter 90 of Title 18
46 United States code to provide Federal jurisdiction for the
47 theft of trade secrets and for other purposes.

48 [The bill follows:]

49 ***** INSERT 1 *****

50 Chairman Goodlatte. Without objection, the bill is
51 considered as read and open for amendment at any point. I
52 will begin by recognizing myself for an opening statement.

53 Today we are here to markup S. 1890, the Defend Trade
54 Secrets Act of 2016. The bill puts forward modest
55 enhancements to our Federal trade secrets law creating a
56 Federal civil remedy for trade secret misappropriation that
57 will help American innovators protect their intellectual
58 property from criminal theft by foreign agents and those
59 engaging in economic espionage.

60 This bill will help U.S. competitiveness, job creation,
61 and our economy. Trade secrets occupy a unique place in the
62 I.P. portfolios of our most innovative companies. They can
63 include confidential formulas, manufacturing techniques, and
64 even customer lists.

65 Examples of trade secrets include the formula for Coca-
66 Cola, and the Colonel's secret recipe. But because they are
67 unregistered and not formally reviewed like patents, there
68 are no limitations on discovering a trade secret by fair,
69 lawful methods such as reverse engineering or independent
70 development. In innovative industries, that is simply the
71 free market at work.

72 Though trade secrets are not formally reviewed, they
73 are protected from misappropriation, which includes

74 obtaining the trade secret through improper or unlawful
75 means, and misappropriation can take many forms, whether it
76 is an employee selling blueprints to a competitor or a
77 foreign agent hacking into a server. In addition, one could
78 argue that even a foreign government's policies to require
79 force to technology transfer is a form of misappropriation.

80 Though most States base their trade secret laws on the
81 Uniform Trade Secrets Act, the Federal Government protects
82 trade secrets through the Economic Espionage Act. In the
83 112th Congress, this committee helped enact two pieces of
84 legislation to improve the protection of trade secrets. And
85 in the 113th Congress, we introduced and passed the first
86 version of this trade secrets bill out of the committee
87 unanimously.

88 Today we are taking up the Senate's corollary bill to
89 the House trade secrets legislation. The Senate-passed bill
90 also includes several important updates. The Senate-passed
91 bill provides that only the owner of a trade secret may
92 bring a civil action for the secret's misappropriation,
93 reduces the period of limitations from five to 3 years to
94 align with the USTA, and amends the definitions of trade
95 secret and improper means.

96 The bill also makes clear that ex parte seizures are
97 only available in extraordinary circumstances, and places
98 other limitations on the breadth of seizures. The bill

99 further clarifies the appropriate scope of injunctions
100 relating to employment, to ensure that court orders are not
101 contrary to applicable State laws.

102 Finally, the Senate bill adds language expressing the
103 sense of Congress that it is important to balance the
104 interests of all parties when issuing an ex parte seizure,
105 and instructing the Federal Judicial Center to develop best
106 practices for the execution of seizures and the storage of
107 seized information.

108 The bill also includes a provision to provide
109 protection to whistle blowers who disclose trade secrets to
110 law enforcement in confidence for the purpose of reporting
111 or investigating a suspected violation of the law. These
112 changes were accepted by the Senate Judiciary Committee on a
113 voice vote without objection.

114 Today, in this committee, we are taking a significant
115 and positive step toward improving our Nation's trade secret
116 laws, and continuing to build on our important work in this
117 area of intellectual property. And I urge my colleagues to
118 support this bill.

119 It is now my pleasure to recognize the ranking member
120 of the committee, the gentleman from Michigan, Mr. Conyers,
121 for his opening statement.

122 [The statement of Chairman Goodlatte follows:]

123 ***** COMMITTEE INSERT *****

124 Mr. Conyers. Thank you, Chairman Goodlatte. Members
125 of the committee, although trade secrets are fundamental to
126 success of any business, United States companies have
127 struggled to protect these valuable assets, especially in a
128 digital age of smartphones and the Internet. S. 1890, the
129 Defend Trade Secrets Act of 2106, amends the Economic
130 Espionage Act of 1996 to create a Federal civil cause of
131 action and facilitate expedited ex parte seizure of
132 property, when necessary, to preserve evidence or to prevent
133 dissemination. This is important legislation.

134 Like its House counterpart, enjoys broad bipartisan
135 support -- the Senate passed S. 1890 by a vote of 87 to zero
136 earlier this month. And the House bill H.R. 3326, which was
137 introduced by our committee colleagues, Representatives Doug
138 Collins and Jerry Nadler, has 155 bipartisan cosponsors,
139 including myself.

140 I support this legislation for several reasons. To
141 begin with, S. 1890 will enhance the protection of trade
142 secrets, which is integral to the success of any business.
143 It is estimated that the value of trade secrets owned by
144 United States companies as of 2009 was approximately \$5
145 trillion. Unfortunately, it is becoming more difficult for
146 American companies to protect trade secrets. The loss of
147 trade secrets as a result of cyber espionage costs these

148 businesses -- it is estimated -- between \$200 billion and
149 \$300 billion every year. Thieves take advantage of ever-
150 evolving, innovative technologies to access sensitive trade
151 secret information, and to distribute it immediately.

152 While Federal law protects other forms of intellectual
153 property by providing access to Federal courts for aggrieved
154 parties to seek redress, there is no Federal civil cause of
155 action for enforcement of trade secret's protection. S.
156 1890 addresses this need by establishing a Federal cause of
157 action for trade secret owners to obtain injunctive and
158 monetary relief, which will be a powerful new tool to
159 protect their intellectual property.

160 Another reason I support this bill is that it would
161 foster uniformity among the States. Although States provide
162 several remedies for trade secret theft, these laws often
163 fall short when trade secrets are taken across State lines.
164 As a result, businesses that have nationwide operations must
165 deal with various differing State laws, which can be too
166 costly for some businesses.

167 This also prevents businesses from taking full
168 advantage of the rights that they have under the law. This
169 law would provide trade secret owners access to uniform
170 national law, and the ability to make their case in Federal
171 courts. Finally, I support this bill because it reflects
172 constructive feedback from various stakeholders. Many of us

173 have been working on this legislation for nearly 2 years.
174 It reflects the input from a broad spectrum of stakeholders.
175 And the bill is an excellent example of what can be achieved
176 when there is bipartisan collaborations.

177 And so I am pleased to urge my colleagues to join us in
178 support of the legislation. And, Mr. Chairman, I yield back
179 the balance of my time.

180 [The statement of Mr. Conyers follows:]

181 ***** COMMITTEE INSERT *****

182 Chairman Goodlatte. Thank you, Mr. Conyers. And
183 without objection, all other members' opening statements
184 will be made a part of the record.

185 [The information follows:]

186 ***** COMMITTEE INSERT *****

187 Chairman Goodlatte. Are there any amendments to S.
188 1890? For what purpose does the gentleman from Georgia seek
189 recognition?

190 Mr. Collins. Move to strike the last word, Mr.
191 Chairman.

192 Chairman Goodlatte. The gentleman is recognized for 5
193 minutes.

194 Mr. Collins. Thank you, Mr. Chairman. And I want to
195 thank you for holding today's markup of S. 1890 the Defend
196 Trade Secrets Act. And I appreciate your work and that of
197 Mr. Conyers in bringing this bill forward. I also want to
198 thank my friend from New York, Mr. Nadler and Mr. Jeffries,
199 as well, for their leadership and work on this bill.

200 It has been a long time coming, and we have worked
201 diligently and I think it is a great example of how we can
202 work together to move good legislation forward.

203 I would like to request unanimous consent to submit the
204 letters of support from the San Jose, Silicon Valley Chamber
205 of Commerce, the National Association of Manufacturers and a
206 coalition letter for more than 45 businesses and groups for
207 the record.

208 Chairman Goodlatte. Without objection, it will be made
209 a part of the record.

210 [The information follows:]

211 ***** COMMITTEE INSERT *****

212 Mr. Collins. The Defend Trade Secrets Act passed the
213 Senate by a vote of 87 to zero. The House companion has
214 more than 150 cosponsors, including the majority of the
215 members of this committee. Trade secrets are critical form
216 of intellectual property, yet they do not enjoy the same
217 protections that apply to other forms of intellectual
218 property such as copyrights, patents, and trademarks.

219 Trade secrets include everything from business
220 information to designs, prototypes, and formulas, but the
221 current lack of a uniform civil remedy for misuse and
222 misappropriation leaves the American companies vulnerable.
223 This means that each year billions of dollars are lost to
224 trade secrets theft. Trade secret theft not only harms the
225 viability of businesses, it deters American innovation,
226 investments in research and development, and American
227 competitiveness.

228 The Defend Trade Secrets Act creates a Federal remedy
229 for trade secret misappropriation, and provides trade secret
230 owners the ability to make their case in Federal courts. It
231 also provides for equitable remedies and the award of
232 damages.

233 In short, the Defend Trade Secrets Act ensures that the
234 innovation can continue to flourish in the United States.

235 It takes important steps to update Federal law so that it
236 matches today's needs and establishes intellectual property
237 protections. Today we have a meaningful chance to curb
238 trade secret theft. Passing of this bill means that we are
239 one step closer to preventing the loss of billions of
240 American dollars, and the associated jobs. I would
241 encourage my colleagues to support this legislation as it
242 passed the Senate, and I yield back.

243 Chairman Goodlatte. The chair thanks the gentleman,
244 and thanks him for his good work on this issue. For what
245 purposes does the gentleman from New York seek recognition?

246 Mr. Nadler. To strike the last word, Mr. Chairman.

247 Chairman Goodlatte. The gentleman is recognized for 5
248 minutes.

249 Mr. Nadler. Thank you, Mr. Chairman, for holding this
250 markup of S. 1890, the Defend Trade Secrets Act of 2016. I
251 also want to thank the gentleman from Georgia, Mr. Collins,
252 for introducing H.R. 3326 the House companion to this
253 important legislation, which will create a Federal course of
254 action for theft of trade secrets. I was proud to join him
255 as the lead Democratic cosponsor of H.R. 3326, and I
256 appreciate everything that he, Mr. Jeffries, Ranking Member
257 Conyers and our Senate colleagues, particularly Senators
258 Coons and Hatch, have done to get us to this point today.

259 Mr. Chairman, trade secrets are proprietary business

260 information that derive their value from being and remaining
261 secret. This includes secret recipes, software codes, and
262 manufacturing processes; information that, if disclosed,
263 could prove ruinous to a company. As the United States
264 continues to grow into a knowledge and service-based
265 economy, trade secrets are increasingly becoming the
266 foundation of businesses across the country, with one
267 estimate placed on the value of trade secrets in the U.S. at
268 \$5 trillion.

269 Unfortunately, with such fortunes resting on trade
270 secrets, theft of this valuable intellectual property is
271 inevitable. And in today's digital environment, it has
272 never been easier to transfer it across the globe with the
273 click of a cell phone, tablet, or computer key. By one
274 estimate, the American economy loses annually as much as
275 \$300 billion or more due to misappropriation of trade
276 secrets, leading to a loss of up to 2.1 million jobs each
277 year.

278 The same report found that trade secret theft is a drag
279 on U.S. economic growth and diminishes the incentive to
280 innovate. With so much at stake, it is absolutely vital
281 that the law includes strong protections against theft of
282 trade secrets.

283 However, our current framework of Federal criminal laws
284 and the state civil remedies has proven inadequate to the

285 job. Under current law, the Federal Government may bring
286 criminal prosecutions or request civil injunctive relief
287 under the Economic Espionage Act. While the EEA is an
288 important tool in fighting trade secret theft, the
289 Department of Justice has limited resources, and is able to
290 pursue only a very limited number of cases each year.

291 For example, last year the Department brought just 15
292 cases of criminal trade secret theft. In addition, although
293 prosecution does well at punishing perpetrators, it often
294 falls short in compensating victims. Today a victim of
295 misappropriation must turn to State law to sue for money
296 damages; 47 States and the District of Columbia have enacted
297 the Uniform Trade Secrets Act, while the other three States
298 have a similar form of trade secret protection through
299 different laws. While this system has worked relatively
300 well for local and intra-state disputes, it has not proven
301 efficient or effective for incidents across State and
302 sometimes international borders.

303 Once upon a time, trade secrets might be kept in a file
304 cabinet somewhere, and would-be thieves would have to spirit
305 away a physical copy, making it likely that they would be
306 caught before crossing State lines. But today, trade
307 secrets can be loaded onto a thumb drive and mailed out of
308 State, or even sent electronically anywhere across the globe
309 in an instant. Pursuing a defendant and the evidence in

310 dispute across State lines presents a host of challenges to
311 victims of trade secret theft, particularly when time is of
312 the essence.

313 For example, it can be difficult to facilitate
314 discovery, serve defendants and witnesses, or preserve
315 evidence in a timely fashion when operating across multiple
316 jurisdictions. The need for a Federal solution is clear.
317 The Defend Trade Secrets Act would create a uniform Federal
318 civil cause of action for misappropriation of trade secrets.
319 It would also provide for expedited ex parte seizure of the
320 property in question, but only in extraordinary
321 circumstances when necessary to preserve evidence or to
322 prevent dissemination. The bill we are considering today
323 represents the culmination of over 2 years of negotiations
324 with various stakeholders, and has strong bipartisan
325 support. H.R. 3326 has 155 cosponsors, including most of
326 the members of this committee and Senate at 1890 has 65
327 cosponsors in the other body.

328 During the Senate Judiciary Committee's markup, the
329 bill was further improved to harmonize various provisions
330 with the Uniform Trade Secrets Act, providing additional
331 protections for defendants subject to ex parte seizure,
332 preserving mobility of employees, and protecting whistle
333 blowers.

334 This is strong legislation that carefully balances the

335 rights of defendants and the needs of American businesses to
336 protect their most valuable assets. With a yes vote, we can
337 send this on to the House floor, and then to the President
338 for his signature. I urge my colleagues to support the
339 bill. I again thank you, Mr. Chairman, and I yield back the
340 balance of my time.

341 Chairman Goodlatte. The chair thanks gentleman, and
342 the chair asks unanimous consent to submit for the record a
343 letter from the American Bar Association section of
344 Intellectual Property Law, dated October 5, 2015, in support
345 of H.R. 3326 the House companion to the Senate bill.
346 Without objection, it will be made a part of the record.

347 [The information follows:]

348 ***** COMMITTEE INSERT *****

349 Chairman Goodlatte. For what purpose does the
350 gentlewoman from California seek recognition?

351 Ms. Lofgren. To strike the last word.

352 Chairman Goodlatte. The gentlewoman is recognized for
353 5 minutes.

354 Ms. Lofgren. Thank you, Mr. Chairman. I think this is
355 an important piece of legislation, especially since the
356 Senate made significant improvements to the bill that we
357 marked up. One improvement, in particular, I would like to
358 mention is language protecting employee mobility by
359 preventing court injunctions that would violate State laws
360 on employee mobility, or laws prohibiting anti-compete
361 agreements, which was an issue I raised during the last
362 markup.

363 I also wanted to mention another amendment that I was
364 working on with my Senate colleagues that would have made

365 changing venue for the post-seizure hearing easier for small
366 companies.

367 Now, for a little company or a startup, it could be
368 difficult to secure counsel, and travel across the country
369 in 7 days. And it might be important to have the hearing in
370 a home jurisdiction. I believe that there was agreement in
371 the Senate on the substance of this matter, but there really
372 was not time or the possibility, procedurally, to get it
373 done.

374 Now I think this bill would be improved with that
375 amendment, but I understand that we want to get this
376 directly to the President. So I do not want to offer the
377 amendment today, and create a problem that would prevent
378 this bill from becoming law in an expeditious manner.

379 But, Mr. Chairman, I hope that we might reexamine this
380 issue of small and startups at a later date, on whether the
381 venue provisions might be tweaked in some way, so that they
382 would have an opportunity to be heard.

383 And I just wanted to mention that concern on the
384 record; although I think the bill is a good one, I am glad
385 that we are going to send it directly to the floor and to
386 the President, with the hopes that we might also attend to
387 this at some later date. And, with that, I would yield
388 back.

389 Chairman Goodlatte. The chair thanks the gentlewoman.

390 For what purpose does the gentleman from Georgia seek
391 recognition?

392 Mr. Johnson. Move to strike the last word.

393 Chairman Goodlatte. The gentleman is recognized for 5
394 minutes.

395 Mr. Johnson. Thank you, Mr. Chairman. I would like to
396 thank Mr. Nadler and also Doug Collins from Georgia, the
397 sponsor of this bill. And I would like to thank them for
398 their hard work. As a member of the I.P. Subcommittee, I am
399 pleased to support this legislation that would protect and
400 encourage innovation by helping entrepreneurs protect and
401 capture the benefit of their research and development.

402 My home State of Georgia has experienced exponential
403 growth in the technology sector. The Technology Association
404 of Georgia reports that there are 268,000 Georgians working
405 in the technology fields with a growth rate of 8 percent per
406 year. Industry specializing in communication services,
407 interactive marketing, financial transactions, logistics,
408 health information technology, information security, energy
409 management, and mission critical systems have made strong
410 investments in communities across the State, and that is
411 what makes this legislation so important, parochially.

412 This legislation will ensure that inventors and
413 innovators in my district and throughout Georgia will
414 continue to focus on technological advancements instead of,

415 or at least with greater assurance that their trade secrets
416 will not be misappropriated. I would like to ask my
417 colleagues to support this legislation, and I yield back.

418 Chairman Goodlatte. The chair thanks the gentleman.
419 For what purposes does the gentleman from New York seek
420 recognition?

421 Mr. Jeffries. Move to strike the last word.

422 Chairman Goodlatte. The gentleman is recognized for 5
423 minutes.

424 Mr. Jeffries. Let me begin by just thanking the
425 chairman and Mr. Collins, Mr. Nadler, as well as Mr. Conyers
426 for all of your leadership and working together in advancing
427 the Defend Trade Secrets Act of 2016, as well as for the
428 hard work that has been employed over the last few years to
429 develop language that reflects a really balanced approach to
430 dealing with this complicated and important problem that we
431 confront here in America.

432 I also want to thank the coalition of stakeholders who
433 have supported this effort and this bill from the outset,
434 and helped us to navigate the really complex landscape of
435 issues necessary in order to arrive at a point where we are
436 prepared to create a Federal-civil cause of action to combat
437 the growing and significant problem of trade secret
438 misappropriation.

439 As we have often discussed in this committee, strong

440 intellectual property protection is critical for continued
441 American innovation and economic growth, and will continue
442 to serve as an engine for industry and jobs in this country.
443 Trade secrets, of course, are unique, among other forms of
444 intellectual property, in that once they are stolen or
445 disclosed, their protection is completely gone. Securing
446 and enforcing trade secrets are critical to U.S. businesses
447 across almost every sector of our economy.

448 From the detailed processes of how to make Corning
449 Glass or the formula for Coca-Cola, to the manufacturing
450 process for Kevlar, trade secrets pervade every facet of
451 American life. \$300 billion is the amount that the U.S.
452 Chamber of Commerce estimates is stolen as a result of trade
453 secret theft and misappropriation each and every year.

454 The Defend Trade Secrets Act of 2016 represents an
455 important milestone to the creation of this Federal-civil
456 cause of action and, it complements existing Federal
457 criminal law in this area. The legislation will allow for
458 the creation of a uniform body of trade secret law,
459 replacing the current and insufficient patchwork of State
460 trade secret laws all throughout the country, in an
461 environment where trade secret theft is increasingly multi-
462 state and multi-national in nature.

463 The bill, of course, will allow owners to enforce their
464 trade secrets in Federal district court directly instead of

465 simply relying on the valiant efforts of our law enforcement
466 community. While law enforcement has been tremendous in
467 this regard, as Director Comey himself has said, the FBI has
468 done its best, but can use additional tools in its toolbox
469 when it comes to trade secret theft. And Congress is on the
470 verge of providing our companies with one.

471 Patents, Federally registered trademarks, and
472 copyrights are already enforced in district courts, and it
473 only makes sense to include trade secrets within the Federal
474 court jurisdiction as well, providing trade secret owners
475 with the ability to exercise nationwide jurisdiction and
476 subpoena power.

477 In closing, this bill, most importantly, provides trade
478 secret rights holders with the ability to seek narrowly-
479 tailored civil ex parte seizures under exigent and emergency
480 circumstances. Because trade secret protection disappears
481 at the time of disclosure, an ex parte seizure is essential
482 to prevent unlawful dissemination. Throughout this process,
483 the provision has been strengthened to provide guidance to
484 the Federal courts as to when ex parte seizure is warranted,
485 and that is an important improvement in this legislation.
486 The bill has been passed unanimously in the Senate, and
487 today, we are taking an incredible important step forward in
488 the grandest, bipartisan tradition of this committee. I
489 thank all my colleagues for their leadership, and I yield

490 back the balance of my time.

491 Chairman Goodlatte. The chair thanks the gentleman.

492 Are there any amendments to S. 1890? A reporting quorum
493 being present, the question is on the motion to report the
494 bill S. 1890 favorably to the House.

495 Those in favor, respond by saying aye.

496 Those opposed, no.

497 The ayes have it and the bill is ordered reported
498 favorably. Members will have 2 days to submit views.

499 Pursuant to notice, I now call up S. 125 for purposes
500 of markup and move that the committee report the bill
501 favorably to the House. The clerk will report the bill.

502 Ms. Williams. S. 125, to amend Title I of the Omnibus
503 Crime Control and Safe Streets Act of 1968, to extend the
504 authorization of the Bulletproof Vest Partnership Grant
505 Program through fiscal year 2020, and for other purposes.

506 [The bill follows:]

507 ***** INSERT 2 *****

508 Chairman Goodlatte. Without objection, the bill is
509 considered as read and open for amendment at any point. I
510 will begin by recognizing myself for an opening statement.

511 Since 1999, the Bulletproof Vest Program, or BVP, has
512 awarded more than 13,000 jurisdictions Federal funds for the
513 purpose of over 1 million bulletproof vests. The
514 Bulletproof Vest Grant Program is a critical resource for
515 State and local jurisdictions that have been proven to save
516 lives.

517 This committee has worked tirelessly on criminal
518 justice reform, and we will continue to do so in the future.
519 At the same time, we must be sure that our law enforcement

520 officers are protected from the risks inherent in the job.

521 Based on data collected and recorded by the Department
522 of Justice, protective vests were directly attributable to
523 saving the lives of at least 33 law enforcement and
524 corrections officers in 20 different States in a single
525 year. At least 14 of those life-saving vests had been
526 purchased, in part, with BVP funds.

527 This bill re-authorizes BVP grants at \$25 million per
528 year and extends the authorization through 2020. The bill
529 has the support of all major law enforcement organizations,
530 has been approved by the Senate. And with this
531 authorization, we will immediately be impacting the safety
532 of our law enforcement officers. Law enforcement officers
533 across the United States put their lives on the line every
534 day to protect their communities and fellow citizens. As
535 they continually make sacrifices for us, we must ensure that
536 we provide them with resources to protect their lives as
537 they protect ours.

538 Today's approval of legislation re-authorizing a
539 critical Bulletproof Vest Grant Program for State and law
540 local enforcement officers will save lives. I want to thank
541 Representative LoBiondo and Senate Judiciary Committee
542 Ranking Member Leahy for their work on this issue, and
543 dedication to our Nation's law enforcement officers. I urge
544 my colleagues to support this legislation.

545 It is now my pleasure to recognize the ranking member
546 of the committee, the gentleman from Michigan, Mr. Conyers,
547 for his opening statement.

548 [The statement of Chairman Goodlatte follows:]

549 ***** COMMITTEE INSERT *****

550 Mr. Conyers. Thank you, Chairman Goodlatte. Members
551 of the committee, S. 125, the Bulletproof Vest Partnership
552 Grant Program, would provide matching grants to State,
553 local, and tribal law enforcement agencies so that they can
554 purchase bullet-resistant vests for their officers. There
555 are several reasons for supporting this measure.

556 To begin with, S. 125 will facilitate the provision of
557 critical protection to law enforcement officers who risk
558 their lives while patrolling our communities. While some of
559 the approximately 800,000 law enforcement officers

560 throughout the United States do have some form of bullet-
561 resistance armor, far too many of these brave men and women
562 are not afforded the same protection due to State and local
563 budget constraints.

564 In 1998, the Bulletproof Vest Partnership Grant Program
565 was established to assist State and local enforcement
566 agencies in obtaining the necessary protective equipment to
567 safeguard the lives of their officers. Since it was
568 established, this program has provided more than 1 million
569 officers with life-saving vests.

570 During the past 30 years, bullet-resistant vests have
571 saved the lives of more than 3,000 law enforcement officers.
572 In 2012, for example, these vests were credited with saving
573 the lives of 33 law enforcement officers in 20 different
574 States. Fourteen of these vests were purchased with the
575 help of Bulletproof Vest Partnership Program funds.

576 In my home district, the police departments for the
577 cities of Highland Park, Melvindale, Romulus City, and Wayne
578 County have received funds through this important program.

579 Second, the bill addresses a real need. Many local
580 departments, police departments, as a result of budget cuts,
581 just simply cannot afford to bring or to provide up-to-date
582 protective equipment for their officers. The Bulletproof
583 Vest Partnership Program is critical, because it provides up
584 to 50 percent of the costs for an officer's new armor vest.

585 The officer's department, in turn, pays the remaining costs.
586 Importantly, smaller police departments that service areas
587 with less than 100,000 residents receive priority funding
588 under this measure.

589 And lastly, S. 125 responds to the critical concern
590 that bullet-resistant vests, to achieve their intended goal
591 of protecting an officer from life-threatening gunshots must
592 meet certain standards. To this end, the bill requires a
593 law enforcement agency to purchase body armor that meets
594 strict performance standards set by the National Institute
595 of Justice. Additionally, the agency must have a policy
596 that encourages officers to wear their vests while on duty,
597 and the agency must ensure that these vests properly fit
598 female officers.

599 In closing, I note that we expect our officers to
600 protect those who are unable to protect themselves. To do
601 so, however, we must ensure that these brave men and women
602 are themselves protected. Accordingly, I urge support for
603 this bill. I thank the chair and yield back the balance of
604 my time.

605 [The statement of Mr. Conyers follows:]

606 ***** COMMITTEE INSERT *****

607 Chairman Goodlatte. Without objection, all of the
608 members' opening statements will be made a part of the
609 record.

610 [The information follows:]

611 ***** COMMITTEE INSERT *****

612 Chairman Goodlatte. For what purpose does the
613 gentleman from Texas seek recognition?

614 Mr. Poe. Mr. Chair, I move to strike the last word.

615 Chairman Goodlatte. The gentleman is recognized for 5
616 minutes.

617 Mr. Poe. I thank the chairman. Thank you for bringing
618 up this bill, the Bulletproof Vest Partnership bill. A week

619 ago today, in Houston, Texas, Harris County Deputy Constable
620 Alden Clopton had a traffic stop. After he had finished the
621 traffic stop, he was at a convenience store, talking to a
622 trainee with the constable's office whereupon he is
623 encountered, or a criminal started firing at the deputy. He
624 was shot six times.

625 He survived because he had a bulletproof vest on. It
626 saved one life, and I am sure Deputy Constable Clopton is
627 grateful that he had the opportunity to wear a vest. Many
628 law enforcement agencies do not have them. They cannot
629 afford them. And so, I totally support this legislation on
630 behalf of the police officers of the Houston area, and other
631 police officers who wear these vests to protect them from
632 these criminals that are roaming streets. So, I yield back.

633 Chairman Goodlatte. The chair thanks the gentleman.
634 Are there any amendments to S. 125? A reporting quorum
635 being present, the question is on the motion to report the
636 bill S. 125 favorably to the House.

637 Those in favor, say aye.

638 Those opposed, no.

639 The ayes have it and the bill is ordered reported
640 favorably. Members will have 2 days to submit views.

641 Pursuant to notice, I now call-up H.R. 3380 for
642 purposes of markup and move that the committee report the
643 bill favorably to the House. The clerk will report the

644 bill.

645 Ms. Williams. H.R. 3380, to provide the Department of
646 Justice with additional tools to target extraterritorial
647 drug-trafficking activity and for other purposes.

648 [The bill follows:]

649 ***** INSERT 3 *****

650 Chairman Goodlatte. Without objection, the bill is
651 considered as read and open for amendment at any point, and
652 I will begin by recognizing myself for an opening statement.

653 Today we consider H.R. 3380, the Transnational Drug
654 Trafficking Act of 2015, which was introduced by our
655 Judiciary Committee colleagues Tom Marino of Pennsylvania

656 and Pedro Pierluisi of Puerto Rico. This legislation makes
657 important changes to our Federal drug laws to ensure that
658 law enforcement has the tools it needs to combat
659 extraterritorial drug trafficking. It also is the first
660 bill this committee will consider as part of the House's
661 comprehensive responsive to the ongoing opioid epidemic that
662 plagues our Nation.

663 It is often said in Washington that Federal law cannot
664 keep up with lawbreakers. H.R. 3380 is a timely and
665 appropriate response to that reality. In recent years, drug
666 organizations in Colombia, Peru, and other Central and South
667 American source nations have increasingly relied upon
668 Mexican drug-trafficking organizations to import their
669 narcotics into the United States.

670 Under current law, it is very difficult for Federal
671 prosecutors to make cases against such source nation
672 manufacturers, wholesale distributors, brokers, and
673 transporters, since direct evidence of their intent that the
674 drugs are bound for the United States is difficult, if not
675 impossible, to develop. The result is that source nation
676 malefactors who produce and distribute illegal narcotics
677 escape prosecution under U.S. law because they feign
678 ignorance of the drugs' ultimate destination.

679 This has happened with increasing regularity over the
680 past several years, and it is Congress' responsibility to

681 address this problem. H.R. 3380 does so by amending the
682 Controlled Substances Import and Export Act to stipulate
683 that when a narcotics trafficker or manufacturer has a
684 reasonable cause to believe that the illegal narcotics he
685 produces or traffics will be sent into the United States,
686 then the U.S. may prosecute him. This amendment will permit
687 Federal prosecutors to pursue extraterritorial drug
688 traffickers who are not directly smuggling drugs into the
689 United States, but who facilitate it.

690 H.R. 3380 also amends the Import-Export Act to address
691 the increasingly prevalent problem of trafficking in listed
692 chemicals, which are chemicals regulated by the DEA because
693 they are used in the manufacture of controlled substances.

694 During a recent codel to South and Central America,
695 several of my colleagues and I heard firsthand how drug
696 trafficking organizations have relied on shadowy chemical
697 suppliers in the manufacture of methamphetamine, heroin,
698 cocaine, and other dangerous narcotics. In H.R. 3380, we
699 would enable Federal prosecutors to reach chemical
700 traffickers who knowingly facilitate and benefit from the
701 illicit production and smuggling of listed chemicals.

702 Both of these amendments will allow Federal law
703 enforcement to go after not the lowly drug mules moving
704 drugs into the United States, but the criminals who
705 facilitate at a high level within the source nation the

706 trafficking of narcotics and precursor chemicals into the
707 United States. As one law enforcement official has said to
708 me, it is better to fight this battle there than here.

709 In addition to these important reforms, H.R. 3380 also
710 amends the criminal counterfeit law to include an intent
711 requirement for trafficking in counterfeit drugs.
712 Throughout my chairmanship, I have paid special attention to
713 the need for appropriate mens rea protections in Federal
714 law, and have stressed that Congress must speak clearly on
715 the matter when writing criminal law. Though this is a
716 small change, it is an important one, as are the other
717 changes in this legislation, and I am pleased to support
718 them today.

719 H.R. 3380 is bipartisan, bicameral, responsible
720 legislation. Earlier this year, the Senate passed by
721 unanimous consent an identical bill sponsored by Democratic
722 Senator Dianne Feinstein of California. It is time for the
723 House to act, and I urge my colleagues to support this
724 important legislation.

725 And it is now my pleasure to recognize the ranking
726 member of the committee, the gentleman from Michigan, Mr.
727 Conyers, for his opening statement.

728 [The statement of Chairman Goodlatte follows:]

729 ***** COMMITTEE INSERT *****

730 Mr. Conyers. Thank you, Chairman Goodlatte. Members
731 of the committee, H.R. 3380, the Transnational Drug-
732 Trafficking Act, is intended to make it easier for
733 prosecutors to convict foreign drug traffickers who are

734 responsible for importing into the United States illegal
735 drugs and chemicals used to make those drugs.

736 Drug abuse has taken a devastating toll on communities
737 across our Nation. It is clear that we must take steps to
738 reduce the flow of illegal drugs into the United States.
739 3380 attempts to address this problem by amending Section
740 959 of the Controlled Substances Act. Section 959 makes it
741 a Federal offense for individuals to manufacture or to
742 distribute drugs or chemicals used to manufacture drugs with
743 the intent or knowledge that their products will be
744 unlawfully imported into the United States. A conviction
745 under this statute may result in a mandatory minimum
746 sentence of 5 or 10 years, depending on the quantity and
747 type of substance involved.

748 Under current Section 959, a foreign drug kingpin can
749 avoid prosecution by simply feigning ignorance as to the
750 ultimate destination of their product. Prosecutors who lack
751 direct evidence that a foreign drug kingpin actually knew
752 their product was going to be shipped to the United States
753 or intended for their product to be shipped to the United
754 States may be unable to convict the kingpin under section
755 959.

756 H.R. 3380 is meant to better facilitate the conviction
757 of these criminals, and I strongly support the bill's intent
758 to help stem the flow of drugs into our Nation. But I am

759 concerned that H.R. 3380 accomplishes this goal by lowering
760 the level of intent a prosecutor must prove to reasonable
761 cause to believe.

762 As a result of the bill's reduced mens rea standard,
763 the legislation would subject more individuals to mandatory
764 minimum sentences which, of course, concerns me greatly.

765 Accordingly, I intend to offer an amendment to address
766 this issue, while not harming in any way the important goals
767 of this bill. I also note that H.R. 3380 adds a knowledge
768 requirement to Section 2320 of Title 18. As a result of
769 this amendment, a prosecutor must prove that an individual
770 trafficking in a drug with a counterfeit mark knew that the
771 drug had a counterfeit mark in order to obtain a conviction
772 under that provision.

773 I have no objection to this aspect of the bill. I look
774 forward to our discussion of H.R. 3380, and I yield back,
775 Mr. Chairman, the balance of my time. Thank you.

776 [The statement of Mr. Conyers follows:]

777 ***** COMMITTEE INSERT *****

778 Chairman Goodlatte. Without objection all other

779 members' opening statements will be made a part of the
780 record.

781 [The information follows:]

782 ***** COMMITTEE INSERT *****

783 Chairman Goodlatte. Are there amendments to H.R. 3380?
784 For what purpose does the gentleman from Pennsylvania seek
785 recognition?

786 Mr. Marino. I move to strike the last word.

787 Chairman Goodlatte. The gentleman is recognized for 5
788 minutes.

789 Mr. Marino. Thank you. Mr. Chairman, I want to thank
790 you for bringing this bill up today. I also would like to
791 thank my colleague Congressman Pierluisi for sponsoring this
792 legislation with me. The chairman is correct in recognizing
793 that Federal law often fails to keep up with the
794 lawbreakers. As a former prosecutor I am currently and
795 acutely aware of this.

796 My experiences have shown that, when there is a hole in
797 the law, sophisticated criminal organizations will find ways
798 to use it. I would like to make a key point about the
799 purpose of this bill, and the type of organizations it
800 targets.

801 Our focus through this bill is sophisticated, often
802 multi-national, organizations with expansive networks of
803 distribution. These operations produce drugs, primarily in
804 South and Central America, with the intent of distributing
805 them into much more distant countries. We do not intend to
806 confront petty dealers or low level smugglers who may lie at
807 the narcotics' final destination.

808 Federal law already gives law enforcement tools for
809 these concerns. And I want reiterate that. Federal law
810 already gives law enforcement tools for these concerns. Our
811 bill focuses on their superiors, the presidents, chief
812 executives, and managers located outside of the United
813 States, source nations where narcotics are made.

814 Under their direction, drugs are manufactured and
815 packaged for illegal wholesale distribution in these
816 countries in South and Central America. In many instances,
817 the final destination is the United States. But, due to a
818 hole in current law, the ones who make these drugs and send
819 them to our communities can evade prosecution. The law
820 allows them to claim ignorance of an intent to do harm here,
821 and simply put the blame on those who do their bidding.
822 Without these source nation manufacturers and wholesalers,
823 the flow of deadly narcotics across our borders would be
824 greatly reduced.

825 My district, and many of my colleagues' district, face
826 a growing heroin epidemic. Our upcoming efforts to counter
827 this crisis are crucial to stopping them. The bill removes
828 the shield by which the manufacturers of death and addiction
829 have evaded justice.

830 The Senate has already acted to bring these criminals
831 to justice. An identical bipartisan bill sponsored by
832 Senators Feinstein and Grassley passed with the unanimous

833 consent of all senators just last year. I urge my
834 colleagues to support the bill in its current form so that
835 it can quickly move on into law. Thank you again for the
836 time, and I yield back the remainder.

837 Chairman Goodlatte. The chair thanks the gentleman.
838 For what purpose does the gentleman from Puerto Rico seek
839 recognition?

840 Mr. Pierluisi. I move to strike the last word.

841 Chairman Goodlatte. The gentleman is recognized for 5
842 minutes.

843 Mr. Pierluisi. Thank you. I want to begin by thanking
844 Congressman Marino for working with me on this bipartisan
845 bill, which is designed to remove an unwarranted obstacle to
846 the successful prosecution of leaders of international drug
847 cartels based in foreign countries.

848 I also want to thank Chairman Goodlatte for scheduling
849 this bill for a markup. I will briefly explain the problem
850 we are trying to address with the bill, and then explain why
851 I believe any amendment to the bill, however well
852 intentioned, is unnecessary, based on unfounded concerns,
853 and will complicate the effort to enact the bill into law.

854 Let me begin by noting that this bill has been approved
855 by the Senate four times since 2011, three times by
856 unanimous consent, and once in the form of an amendment to
857 another bill where the amendment was approved by a vote of

858 94 to zero. The Senate version of the bill, which is
859 identical to this bill, is sponsored by Senator Feinstein of
860 California, and Senator Grassley of Iowa, who lead the
861 Senate caucus on international narcotics control. The bill
862 was carefully vetted with Senator Leahy of Vermont, Senator
863 Durbin of Illinois, and other senators who cared deeply
864 about balancing public safety and due process for
865 defendants.

866 The bill has been endorsed by the Department of
867 Justice. The background of the bill is as follows -- South
868 America is the primary source of the cocaine, and a
869 significant amount of the heroin that is illegally imported
870 into the United States. Often, drug trafficking
871 organizations based in South America manufacture a
872 controlled substance and transport it to Central America,
873 Mexico, and the Caribbean, where other trafficking
874 organizations based in Mexico or other countries, take
875 possession of the controlled substance, and then import it
876 into the United States.

877 Under current Federal law, in order to prosecute a
878 cartel leader in Federal court in the United States for his
879 or her extraterritorial activities under the so called Long
880 Arms Statute, Federal prosecutors must provide direct proof
881 that the defendant manufacturer distributed a controlled
882 substance, and intended or knew that the controlled

883 substance would be illegally imported into the United
884 States.

885 In the past, when Columbian cartels controlled an
886 entire transport route, from South America to the United
887 States, it was not difficult to obtain evidence that a
888 defendant knew the ultimate destination of the drug.
889 However, with the rise of Mexican and other cartels as
890 intermediaries, it has become much more difficult to prove
891 that leaders of South American drug trafficking
892 organizations knew the ultimate destination of the drugs
893 they sold to their Mexican and Caribbean customers.

894 Indeed, sophisticated cartel leaders understand how
895 cases are prosecuted in the United States, and often avoid
896 discussion of the final destination of their drug shipments
897 in order to facilitate the U.S. prosecution of high level
898 leaders of international drug trafficking organizations.
899 Our bill amends 21 U.S.C. section 959 to impose penalties
900 for extraterritorial drug trafficking when the prosecution
901 can prove that the defendant manufactured or distributed a
902 controlled substance and intended, knew -- and this is the
903 only change -- had reasonable cause to believe that the
904 controlled substance would be imported into the United
905 States.

906 For instance, if the drug transaction is financed using
907 U.S. dollars, the package branding suggests a U.S.

908 destination, or the drug route suggests that the ultimate
909 destination is the United States, then DOJ would be able to
910 present that evidence to demonstrate that the traffickers
911 violated the drug trafficking Long Arm Statute. Likewise,
912 our bill amends 21 U.S.C. section 959 to impose penalties on
913 producers of precursor chemicals from other countries who
914 intended or knew that these chemicals would be used to
915 manufacture illegal drugs, and who intended, knew, or --
916 again, this is the only change -- had reasonable cause to
917 believe that the drug would be imported into the United
918 States.

919 Let me quickly address the ranking member's concerns in
920 the time remaining. And I might expand my comments later on
921 at this markup. I do believe I am the first one who has
922 concerns with minimum sentencing guidelines, and minimum
923 sentences, and so on. This bill does not address that at
924 all. It does not change the legal framework in terms of
925 minimum sentences. And it is not expanding the minimum
926 sentences in America. The bill is intended to assist
927 prosecutors, Federal prosecutors, in using the Long Arm
928 Statute.

929 The bill also does not change the mens rea requirement
930 on the underlying offense. It simply deals with the level
931 of intent required to exercise personal jurisdiction over
932 these traffickers. And, obviously, DOJ is not going to be

933 extraditing mules or low level traffickers. They will be
934 targeting the leaders and managers of the drug trafficking
935 organizations that are plaguing us and affecting our quality
936 of life. I yield back.

937 Chairman Goodlatte. The chair thanks the gentleman.
938 Are there amendments to H.R. 3380? For what purpose does
939 the gentleman from Rhode Island seek recognition?

940 Mr. Cicilline. I move to strike the last word.

941 Chairman Goodlatte. The gentleman is recognized for 5
942 minutes.

943 Mr. Cicilline. Thank you, Mr. Chairman. I wish to
944 speak in support of Mr. Conyers' amendment. As everyone
945 knows, mandatory minimums remove the ability of the trial
946 court to consider the facts and circumstances of the
947 particular defendant before the court. And Mr. Conyers'
948 amendment is intended to address an unforeseen consequence
949 of the existing legislation.

950 Now, we have all seen too often the severe and unfair
951 consequences of mandatory minimum sentences that are
952 imposed, regardless of the particular circumstances of the
953 case or the defendant. And, to reduce the burden of proof
954 and continue this practice would mean that mandatory
955 sentences would be imposed coupled with a reduction of mens
956 rea. And so that we will make this situation even more, I
957 think, troublesome. And we will see more instances of

958 individuals who are subjected to mandatory minimum sentences
959 who are not intended to be covered by the law.

960 So, I think what the amendment does, is it will insure
961 that this reduced mens rea standard applies to leaders, and
962 organizers, and drug kingpins, as it should. And I think
963 that is the intention of the legislation. And so, in fact,
964 insuring that there are not unintended consequences of
965 swooping in a whole new group of individuals who may be low
966 level offenders into very severe mandatory minimums because
967 we have reduced the standard significantly, the mens rea
968 requirement, which I think is not the intention. And so, I
969 strongly support Mr. Conyers' amendment, urge my colleagues
970 to do the same, and I yield back.

971 Chairman Goodlatte. For what purpose does the
972 gentleman from Georgia seek recognition?

973 Mr. .Johnson. I move to strike the last word.

974 Chairman Goodlatte. The gentleman is recognized for 5
975 minutes.

976 Mr. Johnson. And I speak in support of the amendment.
977 I would ask the authors of this legislation whether or not
978 this reduced mens rea requirement would apply to lower level
979 domestic co-conspirators. And I would also ask whether or
980 not, in light of the sentencing guidelines, which provide
981 for base offense levels, and in conspiracy cases one co-
982 conspirator down line is responsible for the total amount of

983 the conspiracy, including people up line.

984 So, in other words, a domestic codefendant charged in a
985 conspiracy with an international drug kingpin, whether or
986 not this legislation would reduce the mens rea requirement
987 for that domestic codefendant lower level, and whether or
988 not the liability under the sentencing guidelines to a down
989 line co-conspirator would cause that co-conspirator to be
990 responsible, or liable, for the total amount of the drug
991 conspiracy.

992 Chairman Goodlatte. Would the gentleman yield?

993 Mr. Johnson. Yes, I will.

994 Chairman Goodlatte. This amendment has not been
995 introduced yet. So, perhaps we should go ahead and get the
996 amendment introduced and --

997 Mr. Johnson. Okay. Well, then, my question is a
998 little premature. But I would hate to have to restate it.
999 But I will.

1000 Chairman Goodlatte. For what purpose does the
1001 gentleman from Michigan seek recognition?

1002 Mr. Conyers. I offer an amendment. And it is at the
1003 desk, Mr. Chairman.

1004 Chairman Goodlatte. The clerk will report the
1005 amendment.

1006 Ms. Williams. amendment to H.R. 3380, offered by Mr.
1007 Conyers -- Page 2, line 7, strike and --

1008 [The amendment of Mr. Conyers follows:]

1009 ***** INSERT 4 *****

1010 Chairman Goodlatte. Without objection the amendment is
1011 considered as read, and the gentleman is recognized for 5
1012 minutes on his amendment.

1013 Mr. Conyers. I thank the chair. Members of the
1014 committee, I am overwhelmed by your anticipation of this
1015 amendment. And I have never had one that was supported
1016 before it was introduced. So, I would like the record to
1017 reflect that I am very proudly aware of this honor.

1018 Members, I offer this amendment to adjust the scope of
1019 H.R. 3380, in light of the fact that the bill would, in
1020 effect, expand the use of mandatory minimum penalties. It
1021 does this by reducing the intent requirement in Section 959
1022 of the Controlled Substances Act from intent or knowledge
1023 that drugs were imported into the United States to a
1024 reasonable cause to believe that the drugs were destined for

1025 the United States.

1026 Now, while this change may make sense in the abstract,
1027 I have concerns based on the application of penalties under
1028 Section 9960 of the Controlled Substances Act, which include
1029 potential mandatory minimum sentences.

1030 By lowering the level of intent that a prosecutor must
1031 prove, we will subject more people to mandatory minimum
1032 sentences. As a matter of principle, it is my view, and I
1033 think a growing number of members on the committee, that
1034 mandatory minimum sentences are unjust and unwise. Their
1035 application is plagued with problems, and has led to
1036 extraordinary injustice, prison overcrowding, and increasing
1037 cost to taxpayers.

1038 Although I appreciate the efforts of the chairman of
1039 this committee, and my colleagues on this committee to work
1040 together to reduce some mandatory minimum sentences, and
1041 expand safety valves for them, I remain committed to
1042 exposing their expansion, even indirectly.

1043 While I prefer to eliminate the mandatory minimums
1044 altogether, my amendment does not go that far, but instead
1045 takes an approach that I believe is consistent with the
1046 goals of this bill. I propose that the reduction of the
1047 intent requirement to reasonable cause to believe only be
1048 applied to those who are leaders or organizers of the
1049 criminal activity we are seeking to address. This is also

1050 consistent with the original intent of mandatory minimum
1051 sentences, that they be reserved for application to
1052 kingpins.

1053 The application to leaders or organizers of an
1054 organization of five or more members is based on provisions
1055 that already exist in the Federal sentencing guidelines.
1056 These guidelines allow adjustments to offense levels based
1057 on the role a defendant played, or the defendant's level of
1058 participation in the commission of an offense. Aggravating
1059 role adjustments are assigned level increases. Organizers
1060 and leaders of criminal activity that involve five or more
1061 participants receive the greatest increase in levels.

1062 Designation of an organizational or a leadership role
1063 is not based merely on titles. The courts are instructed to
1064 consider the actual conduct of the defendant to determine if
1065 the defendant was an organizer or a leader. The conduct to
1066 be considered includes the following considerations -- the
1067 exercise of decision making authority, the nature of
1068 participation in the commission of the offense, the
1069 recruitment of other participants, the right to claim a
1070 larger share of the profits, the degree of participation in
1071 planning or organizing the offense, the nature and scope of
1072 the offense, and finally, the degree of authority and
1073 control the defendant exerted over others.

1074 Now, members, my amendment would not mean that lower-

1075 level offenders are not liable under the statute, but it
1076 would simply preserve the status quo for anyone who is not
1077 an organizer or leader, and reserve the lower intent
1078 requirement for the true kingpins.

1079 By using standard language from the guidelines, my
1080 amendment preserves the intended application of the
1081 legislation, while recognizing that mandatory minimums
1082 should be used in more limited circumstances. I think we
1083 will arrive at a reasonable application of the amendment.
1084 May I commend the sponsors of this bill, Mr. Marino and Mr.
1085 Pierluisi, for their work on this legislation?

1086 But additionally, I ask that they and my colleagues
1087 support my amendment. I thank the chair and yield back the
1088 balance of my time.

1089 Chairman Goodlatte. The chair thanks the gentleman and
1090 recognizes himself. I must oppose the amendment, however.
1091 The intent of H.R. 3380 is to give the U.S. Government the
1092 ability to pursue and prosecute members of a drug-
1093 trafficking organization who are located in the source
1094 nation, specifically, the criminals who are cutting,
1095 smuggling, brokering, and supplying for sale illicit
1096 narcotics.

1097 These individuals have thus far been able to evade
1098 prosecution for their illicit activity, but have benefited
1099 handsomely from it. Indeed, many drug traffickers have

1100 become so familiar with U.S. drug statutes that they know
1101 not to discuss things like the ultimate destination of a
1102 drug shipment.

1103 This amendment seeks to limit the application of this
1104 legislation. That would have the effect of protecting
1105 Colombian, Peruvian, Honduran, Salvadoran, Guatemalan, and
1106 other foreign nationals who are members of a drug-
1107 trafficking organization. In doing so, this amendment would
1108 gut the core purpose of the bill, which is to target these
1109 drug-trafficking organizations at their heart.

1110 I remind my colleagues that this legislation passed the
1111 Senate by unanimous consent earlier this year. The concerns
1112 highlighted in this amendment did not cause a single Senator
1113 to oppose the bill. I oppose the amendment, and I urge my
1114 colleagues to do so as well.

1115 The question occurs on the amendment offered by the
1116 gentleman from Michigan.

1117 All those in favor, respond by saying aye.

1118 Those opposed.

1119 Mr. Johnson. Mr. Chairman -- strike the last word.

1120 Chairman Goodlatte. The gentleman's request comes in
1121 the middle of a vote, and I think his request is not timely.

1122 All those opposed to the amendment, respond by saying
1123 no.

1124 Mr. Johnson. Mr. Chairman, point of order. Point of

1125 order.

1126 Chairman Goodlatte. The gentleman will state his point
1127 of order.

1128 Mr. Johnson. Prior to a vote being called on a
1129 particular amendment, prior to a vote actually having taken
1130 place and a member ask for a time to speak on the amendment,
1131 is it then too late for the chair to entertain that request
1132 to strike the last word?

1133 Chairman Goodlatte. The chair will advise the
1134 gentleman that we were halfway through a vote. However, in
1135 comedy, I will recognize the gentleman for his remarks, but
1136 I would ask him, in the future, when we pause, and there is
1137 opportunity given for members to request time, that he take
1138 advantage of that time before we move into a vote.

1139 Mr. Johnson. Thank you, Mr. Chairman. And I
1140 appreciate your forbearance. I have the question that I
1141 asked before, about this amendment, which I rise in support
1142 of; and the question applies to the overall bill itself,
1143 even without amendment. And the question is this: When an
1144 international drug trafficker, or kingpin, an organizer, or
1145 a leader -- which we refer to as a kingpin -- is accused in
1146 an indictment that involves U.S. citizens operating here in
1147 the United States who are alleged to be a part of conspiracy
1148 with the kingpin -- the foreign kingpin -- does the lowering
1149 of the mens rea requirement apply to those domestic down-

1150 line co-conspirators?

1151 And also, if those conspirators should be convicted, do
1152 the sentencing guidelines, which include base offense
1153 levels, which anticipates the amount of a drug conspiracy --
1154 is the total amount of the drugs distributed by that kingpin
1155 attributable to the people down the line, domestic drug
1156 dealers who were caught up and convicted in that conspiracy?

1157 Chairman Goodlatte. Will the gentleman yield?

1158 Mr. Johnson. Yes.

1159 Chairman Goodlatte. The answer to your question is no,
1160 it does not apply to those U.S. citizen down-line
1161 participants in the organization, because this is an
1162 amendment to the Import-Export Act and only applies to non-
1163 citizens.

1164 Mr. Johnson. And what about the amount of the drug
1165 conspiracy, for sentencing purposes?

1166 Chairman Goodlatte. Again, since it only applies to
1167 non-citizens, I believe that it would not apply to U.S.
1168 citizens.

1169 Mr. Johnson. The chair stands by its previous --

1170 Chairman Goodlatte. The chair stands by his answer.

1171 Mr. Johnson. All right. Thank you.

1172 Chairman Goodlatte. All right. The question occurs on
1173 the amendment offered by the gentleman from Michigan.

1174 Again, all those in favor, respond by saying aye.

1175 Those opposed, no.

1176 In the opinion of the chair, the noes have it, and the
1177 amendment is not agreed to.

1178 Mr. Conyers. Could I get a recorded vote, Mr.
1179 Chairman?

1180 Chairman Goodlatte. A recorded vote is requested, and
1181 the clerk will call the roll.

1182 Mr. Conyers. Thank you.

1183 Ms. Williams. Mr. Goodlatte?

1184 Chairman Goodlatte. No.

1185 Ms. Williams. Mr. Goodlatte votes no.

1186 Mr. Sensenbrenner?

1187 Mr. Sensenbrenner. No.

1188 Ms. Williams. Mr. Sensenbrenner votes no.

1189 Mr. Smith?

1190 [No response.]

1191 Mr. Chabot?

1192 [No response.]

1193 Mr. Issa?

1194 [No response.]

1195 Mr. Forbes?

1196 [No response.]

1197 Mr. King?

1198 Mr. King. No.

1199 Ms. Williams. Mr. King votes no.

1200 Mr. Franks?
1201 Mr. Franks. No.
1202 Ms. Williams. Mr. Franks votes no.
1203 Mr. Gohmert?
1204 [No response.]
1205 Mr. Jordan?
1206 Mr. Jordan. No.
1207 Ms. Williams. Mr. Jordan votes no.
1208 Mr. Poe?
1209 [No response.]
1210 Mr. Chaffetz?
1211 [No response.]
1212 Mr. Marino?
1213 Mr. Marino. No.
1214 Ms. Williams. Mr. Marino votes no.
1215 Mr. Gowdy?
1216 [No response.]
1217 Mr. Labrador?
1218 Mr. Labrador. Yes.
1219 Ms. Williams. Mr. Labrador votes yes.
1220 Mr. Farenthold?
1221 [No response.]
1222 Mr. Collins?
1223 Mr. Collins. No.
1224 Ms. Williams. Mr. Collins votes no.

1225 Mr. DeSantis?
1226 Mr. DeSantis. No.
1227 Ms. Williams. Mr. DeSantis votes no.
1228 Ms. Walters?
1229 Ms. Walters. No.
1230 Ms. Williams. Ms. Walters votes no.
1231 Mr. Buck?
1232 Mr. Buck. No.
1233 Ms. Williams. Mr. Buck votes no.
1234 Mr. Ratcliffe?
1235 [No response.]
1236 Mr. Trott?
1237 Mr. Trott. No.
1238 Ms. Williams. Mr. Trott votes no.
1239 Mr. Bishop?
1240 Mr. Bishop. No.
1241 Ms. Williams. Mr. Bishop votes no.
1242 Mr. Conyers?
1243 Mr. Conyers. Aye.
1244 Ms. Williams. Mr. Conyers votes aye.
1245 Mr. Nadler?
1246 [No response.]
1247 Ms. Lofgren?
1248 [No response.]
1249 Ms. Jackson Lee?

1250 [No response.]

1251 Mr. Cohen?

1252 [No response.]

1253 Mr. Johnson?

1254 Mr. Johnson. Aye.

1255 Ms. Williams. Mr. Johnson votes aye.

1256 Mr. Pierluisi?

1257 Mr. Pierluisi. No.

1258 Ms. Williams. Mr. Pierluisi votes no.

1259 Ms. Chu?

1260 [No response.]

1261 Mr. Deutch?

1262 [No response.]

1263 Mr. Gutierrez?

1264 [No response.]

1265 Ms. Bass?

1266 [No response.]

1267 Mr. Richmond?

1268 [No response.]

1269 Ms. DelBene?

1270 [No response.]

1271 Mr. Jeffries?

1272 Mr. Jeffries. Aye.

1273 Ms. Williams. Mr. Jeffries votes aye.

1274 Mr. Cicilline?

1275 Mr. Cicilline. Aye.

1276 Ms. Williams. Mr. Cicilline votes aye.

1277 Mr. Peters?

1278 Mr. Peters. No.

1279 Ms. Williams. Mr. Peters votes no.

1280 Chairman Goodlatte. The gentleman from Virginia, Mr.

1281 Forbes.

1282 Mr. Forbes. No.

1283 Ms. Williams. Mr. Forbes votes no.

1284 Chairman Goodlatte. The gentlewoman from California,

1285 Ms. Chu.

1286 Ms. Chu. Aye.

1287 Ms. Williams. Ms. Chu votes aye.

1288 Chairman Goodlatte. Has every member voted who wishes

1289 to vote? The gentleman from South Carolina, Mr. Gowdy.

1290 Mr. Gowdy. No.

1291 Ms. Williams. Mr. Gowdy votes no.

1292 Chairman Goodlatte. The clerk will report.

1293 Ms. Williams. Mr. Chairman, 6 members voted aye, 16

1294 members voted no.

1295 Chairman Goodlatte. And the amendment is not agreed

1296 to. Are there further amendments to H.R. 3380? A reporting

1297 quorum being present, the question is on the motion to

1298 report the bill H.R. 3380 favorably to the House.

1299 Those in favor, respond by saying aye.

1300 Those opposed, no.

1301 In the opinion of the chair, the ayes have it, and the
1302 bill is ordered reported favorably. Members will have 2
1303 days to submit views.

1304 Pursuant to notice, I now call up H.R. 4985 for
1305 purposes of markup and move that the committee report the
1306 bill favorably to the House. The clerk will report the
1307 bill.

1308 Ms. Williams. H.R. 4985, to amend the Foreign
1309 Narcotics Kingpin Designation Act to protect classified
1310 information in Federal court challenges.

1311 [The bill follows:]

1312 ***** INSERT 5 *****

1313 Chairman Goodlatte. Without objection, the bill is
1314 considered as read and open for amendment at any point, and
1315 I will begin by recognizing myself for an opening statement.

1316 Nearly 21 years ago, the President issued an executive
1317 order to deal with the unusual and extraordinary threat to
1318 our national security, foreign policy, and economy posed by

1319 narcotics traffickers centered in Colombia. The actions of
1320 these narcotics traffickers produced an extreme level of
1321 violence, corruption, and harm in the United States and
1322 abroad. The following year, the U.S. Department of the
1323 Treasury's Office of Foreign Assets Control issued the
1324 Narcotics Trafficking Sanctions Regulations, which
1325 implemented that executive order. These regulations block
1326 the property and interest in property in the United States
1327 or in the possession or control of U.S. persons or anyone
1328 determined to be a specially-designated narcotics
1329 trafficker.

1330 After OFAC had demonstrated success in using its
1331 authorities under the executive order, Congress decided that
1332 similar authorities should be used worldwide. Congress
1333 passed the Foreign Narcotics Kingpin Designation Act in
1334 December 3, 1999. The President signed into law the Kingpin
1335 Act, which applied the same types of authority that were
1336 previously used against Colombian narcotics traffickers to
1337 traffickers worldwide.

1338 The names of persons and entities designated pursuant
1339 to the Kingpin Act whose property and interests in property
1340 are therefore blocked are published in the Federal Register
1341 and incorporated into the list of Specially-Designated
1342 Nationals and blocked persons. The SDN list is available
1343 through the OFAC's website. Whenever OFAC makes a

1344 designation, the list is updated and distributed in various
1345 forms to banks and financial institutions.

1346 Since 2000, OFAC has designated more than 1,800 persons
1347 under the Kingpin Act, all of whom are non-U.S. persons.
1348 Listed individuals are permitted to seek removal of the OFAC
1349 sanctions via a de-listing process and challenge adverse
1350 findings in Federal court.

1351 OFAC's designations under both the International
1352 Emergency Economic Powers Act and the Kingpin Act are often
1353 based upon classified information. Under the International
1354 Emergency Economic Powers Act, OFAC is permitted to submit
1355 such information ex parte and in camera to a court.
1356 However, the Kingpin Act does not contain such a mechanism
1357 to protect classified information from release during a de-
1358 listing process. That means OFAC may lose the opportunity
1359 to designate a high-level drug kingpin because it cannot
1360 risk the disclosure of classified information.

1361 H.R. 4985 would address this issue by ensuring that
1362 OFAC can submit classified information to defend its
1363 designations, ex parte and in camera, thereby harmonizing
1364 the Kingpin Act with the OFAC authorities under IEEPA and
1365 protecting classified information from disclosure. Such
1366 protections are critical to defend the Kingpin Act
1367 designations based upon classified information, and I urge
1368 my colleagues to support this important measure.

1369 It is now my pleasure to recognize the ranking member,
1370 Mr. Conyers, for his opening statement.

1371 [The statement of Chairman Goodlatte follows:]

1372 ***** COMMITTEE INSERT *****

1373 Mr. Conyers. Thank you, Mr. Chairman. Members of the
1374 committee, the Kingpin Designation Improvement Act amends
1375 the Foreign Narcotics Kingpin Designation Act to ensure
1376 classified information is not disclosed when individuals
1377 challenge their designation as kingpins under their act.

1378 Our law enforcement agencies should have necessary legal
1379 tools to enforce sanctions against individuals who traffic
1380 significant quantities of illegal narcotics internationally.

1381 I support 4985 because it appropriately targets the
1382 actual leaders and organizers of foreign-based drug cartels
1383 who traffic massive amounts of illegal narcotics into our
1384 communities. The bill does not apply to individuals who
1385 have committed low-level non-violent drug offenses, nor does
1386 this measure further the misguided application of mandatory
1387 minimum sentences to those who commit such offenses. H.R.
1388 4985 will effectively prevent individuals who engage in
1389 significant foreign narcotics trafficking to obtain access
1390 to United States banks and other financial systems.

1391 Equally important, this bill maintains the required
1392 process the government must adhere to when making kingpin
1393 designations. To that end, five separate departments must
1394 coordinate and confer with one another prior to making such
1395 designations.

1396 Included in this decision-making process are the
1397 Secretary of the Treasury, the Attorney General, the
1398 Secretary of State, the Secretary of Defense, the Secretary
1399 of Homeland Security, and the Director of the CIA.

1400 Additionally, the President must report annually to our
1401 committee, among others, on the foreign persons selected for
1402 designation. Given these safeguards, the changes made by

1403 this bill will help ensure that individuals engaged in
1404 global narcotics trafficking cannot hide behind their ill-
1405 gotten gains in our Nation's financial system.

1406 Accordingly, I urge support for H.R. 4985. I thank the
1407 chair and yield back the balance of my time.

1408 [The statement of Mr. Conyers follows:]

1409 ***** COMMITTEE INSERT *****

1410 Chairman Goodlatte. Thank you, Mr. Conyers. Without
1411 objection, all other members' opening statements will be
1412 made a part of the record.

1413 [The information follows:]

1414 ***** COMMITTEE INSERT *****

1415 Chairman Goodlatte. Are there any amendments to H.R.

1416 4985?

1417 A reporting quorum being present, the question is on

1418 the motion to report the bill H.R. 4985 favorably to the

1419 House. Those in favor will respond by saying aye.

1420 Those opposed, no.

1421 The ayes have it and the bill is ordered favorably.

1422 Members will have 2 days to submit views.

1423 This concludes our business today. I thank all the

1424 members for their expeditious work on this legislation and

1425 thank them for attending. The markup is adjourned.

1426 [Whereupon, at 11:29 a.m., the committee adjourned

1427 subject to the call of the chair.]