

DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS REFORM ACT

MARKUP

BEFORE THE
SUBCOMMITTEE ON
INTERNATIONAL TERRORISM, NONPROLIFERATION
AND HUMAN RIGHTS
OF THE

COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

H.R 3978

MARCH 17, 2004

Serial No. 108-85

Printed for the use of the Committee on International Relations



Available via the World Wide Web: http://www.house.gov/international_relations

U.S. GOVERNMENT PRINTING OFFICE

92-610PDF

WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
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DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS REFORM ACT

WEDNESDAY, MARCH 17, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL TERRORISM,
NONPROLIFERATION AND HUMAN RIGHTS,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:12 p.m. in Room 2200, Rayburn House Office Building, Hon. Elton Gallegly (Chairman of the Subcommittee) presiding.

Mr. GALLEGLY. Pursuant to notice, I call up bill H.R. 3978, the Designation of Foreign Terrorist Organizations Reform Act, for purposes of markup. Without objection, the bill will be considered as read and open for amendment at any time.

[H.R. 3978 follows:]

108TH CONGRESS
2D SESSION

H. R. 3978

To amend the Immigration and Nationality Act to modify provisions relating to designation of foreign terrorist organizations, to amend the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, to include in annual Department of State country reports on terrorism information on terrorist groups that seek weapons of mass destruction and groups that have been designated as foreign terrorist organizations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2004

Mr. GALLEGLY (for himself and Mr. PITTS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to modify provisions relating to designation of foreign terrorist organizations, to amend the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, to include in annual Department of State country reports on terrorism information on terrorist groups that seek weapons of mass destruction and groups that have been designated as foreign terrorist organizations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Designation of Foreign
3 Terrorist Organizations Reform Act”.

4 **SEC. 2. DESIGNATION OF FOREIGN TERRORIST ORGANIZA-**
5 **TIONS.**

6 (a) PERIOD OF DESIGNATION.—Section 219(a)(4) of
7 the Immigration and Nationality Act (8 U.S.C.
8 1189(a)(4)) is amended—

9 (1) in subparagraph (A)—

10 (A) by striking “Subject to paragraphs (5)
11 and (6), a” and inserting “A”; and

12 (B) by striking “for a period of 2 years be-
13 ginning on the effective date of the designation
14 under paragraph (2)(B)” and inserting “until
15 revoked under paragraph (5) or (6) or set aside
16 pursuant to subsection (c)”;

17 (2) by striking subparagraph (B) and inserting
18 the following:

19 “(B) REVIEW OF DESIGNATION UPON PE-
20 TITION.—

21 “(i) IN GENERAL.—The Secretary
22 shall review the designation of a foreign
23 terrorist organization under the procedures
24 set forth in clauses (iii) and (iv) if the des-
25 ignated organization files a petition for

1 revocation within the petition period de-
2 scribed in clause (ii).

3 “(ii) PETITION PERIOD.—For pur-
4 poses of clause (i)—

5 “(I) if the designated organiza-
6 tion has not previously filed a petition
7 for revocation under this subpara-
8 graph, the petition period begins 2
9 years after the date on which the des-
10 ignation was made; or

11 “(II) if the designated organiza-
12 tion has previously filed a petition for
13 revocation under this subparagraph,
14 the petition period begins 2 years
15 after the date of the determination
16 made under clause (iv) on that peti-
17 tion.

18 “(iii) PROCEDURES.—Any foreign ter-
19 rorist organization that submits a petition
20 for revocation under this subparagraph
21 must provide evidence in that petition that
22 the relevant circumstances described in
23 paragraph (1) have changed in such a
24 manner as to warrant revocation with re-
25 spect to the organization.

1 “(iv) DETERMINATION.—

2 “(I) IN GENERAL.—Not later
3 than 180 days after receiving a peti-
4 tion for revocation submitted under
5 this subparagraph, the Secretary shall
6 make a determination as to such rev-
7 ocation.

8 “(II) CLASSIFIED INFORMA-
9 TION.—The Secretary may consider
10 classified information in making a de-
11 termination in response to a petition
12 for revocation. Classified information
13 shall not be subject to disclosure for
14 such time as it remains classified, ex-
15 cept that such information may be
16 disclosed to a court ex parte and in
17 camera for purposes of judicial review
18 under subsection (c).

19 “(III) PUBLICATION OF DETER-
20 MINATION.—A determination made by
21 the Secretary under this clause shall
22 be published in the Federal Register.

23 “(IV) PROCEDURES.—Any rev-
24 ocation by the Secretary shall be

1 made in accordance with paragraph
2 (6).”; and

3 (3) by adding at the end the following:

4 “(C) OTHER REVIEW OF DESIGNATION.—

5 “(i) IN GENERAL.—If in a 4-year pe-
6 riod no review has taken place under sub-
7 paragraph (B), the Secretary shall review
8 the designation of the foreign terrorist or-
9 ganization in order to determine whether
10 such designation should be revoked pursu-
11 ant to paragraph (6).

12 “(ii) PROCEDURES.—If a review does
13 not take place pursuant to subparagraph
14 (B) in response to a petition for revocation
15 that is filed in accordance with that sub-
16 paragraph, then the review shall be con-
17 ducted pursuant to procedures established
18 by the Secretary. The results of such re-
19 view and the applicable procedures shall
20 not be reviewable in any court.

21 “(iii) PUBLICATION OF RESULTS OF
22 REVIEW.—The Secretary shall publish any
23 determination made pursuant to this sub-
24 paragraph in the Federal Register.”.

1 (b) ALIASES.—Section 219 of the Immigration and
2 Nationality Act (8 U.S.C. 1189) is amended—

3 (1) by redesignating subsections (b) and (c) as
4 subsections (c) and (d), respectively; and

5 (2) by inserting after subsection (a) the fol-
6 lowing new subsection (b):

7 “(b) AMENDMENTS TO A DESIGNATION.—

8 “(1) IN GENERAL.—The Secretary may amend
9 a designation under this subsection if the Secretary
10 finds that the organization has changed its name,
11 adopted a new alias, dissolved and then reconsti-
12 tuted itself under a different name or names, or
13 merged with another organization.

14 “(2) PROCEDURE.—Amendments made to a
15 designation in accordance with paragraph (1) shall
16 be effective upon publication in the Federal Register.
17 Subparagraphs (B) and (C) of subsection (a)(2)
18 shall apply to an amended designation upon such
19 publication. Paragraphs (2)(A)(i), (4), (5), (6), (7),
20 and (8) of subsection (a) shall also apply to an
21 amended designation.

22 “(3) ADMINISTRATIVE RECORD.—The adminis-
23 trative record shall be corrected to include the
24 amendments as well as any additional relevant infor-
25 mation that supports those amendments.

1 “(4) CLASSIFIED INFORMATION.—The Sec-
2 retary may consider classified information in amend-
3 ing a designation in accordance with this subsection.
4 Classified information shall not be subject to disclo-
5 sure for such time as it remains classified, except
6 that such information may be disclosed to a court ex
7 parte and in camera for purposes of judicial review
8 under subsection (c).”.

9 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
10 Section 219 of the Immigration and Nationality Act (8
11 U.S.C. 1189) is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (3)(B), by striking “sub-
14 section (b)” and inserting “subsection (c)”;

15 (B) in paragraph (6)(A)—

16 (i) in the matter preceding clause (i),
17 by striking “or a redesignation made under
18 paragraph (4)(B)” and inserting “at any
19 time, and shall revoke a designation upon
20 completion of a review conducted pursuant
21 to subparagraphs (B) and (C) of para-
22 graph (4)”;

23 (ii) in clause (i), by striking “or redес-
24 ignation”;

1 (C) in paragraph (7), by striking “, or the
2 revocation of a redesignation under paragraph
3 (6),”; and

4 (D) in paragraph (8)—

5 (i) by striking “, or if a redesignation
6 under this subsection has become effective
7 under paragraph (4)(B),”; and

8 (ii) by striking “or redesignation”;
9 and

10 (2) in subsection (c), as so redesignated—

11 (A) in paragraph (1), by striking “of the
12 designation in the Federal Register,” and all
13 that follows through “review of the designa-
14 tion” and inserting “in the Federal Register of
15 a designation, an amended designation, or a de-
16 termination in response to a petition for revoca-
17 tion, the designated organization may seek judi-
18 cial review”;

19 (B) in paragraph (2), by inserting “,
20 amended designation, or determination in re-
21 sponse to a petition for revocation” after “des-
22 ignation”;

23 (C) in paragraph (3), by inserting “,
24 amended designation, or determination in re-

1 sponse to a petition for revocation” after “des-
2 ignation”; and

3 (D) in paragraph (4), by inserting “,
4 amended designation, or determination in re-
5 sponse to a petition for revocation” after “des-
6 ignation” each place that term appears.

7 (d) SAVINGS PROVISION.—For purposes of applying
8 section 219 of the Immigration and Nationality Act on
9 or after the date of enactment of this Act, the term “des-
10 ignation”, as used in that section, includes all redesigna-
11 tions made pursuant to section 219(a)(4)(B) of the Immi-
12 gration and Nationality Act (8 U.S.C. 1189(a)(4)(B))
13 prior to the date of enactment of this Act, and such redес-
14 ignations shall continue to be effective until revoked as
15 provided in paragraph (5) or (6) of section 219(a) of the
16 Immigration and Nationality Act (8 U.S.C. 1189(a)).

17 **SEC. 3. INCLUSION IN ANNUAL DEPARTMENT OF STATE**
18 **COUNTRY REPORTS ON TERRORISM OF IN-**
19 **FORMATION ON TERRORIST GROUPS THAT**
20 **SEEK WEAPONS OF MASS DESTRUCTION AND**
21 **GROUPS THAT HAVE BEEN DESIGNATED AS**
22 **FOREIGN TERRORIST ORGANIZATIONS.**

23 (a) INCLUSION IN REPORTS.—Section 140 of the
24 Foreign Relations Authorization Act, Fiscal Years 1988
25 and 1989 (22 U.S.C. 2656f) is amended—

1 (1) in subsection (a)(2)—

2 (A) by inserting “any terrorist group
3 known to have obtained or developed, or to have
4 attempted to obtain or develop, weapons of
5 mass destruction,” after “during the preceding
6 five years,”; and

7 (B) by inserting “any group designated by
8 the Secretary as a foreign terrorist organization
9 under section 219 of the Immigration and Na-
10 tionality Act (8 U.S.C. 1189),” after “Export
11 Administration Act of 1979,”;

12 (2) in subsection (b)(1)(C)(iii), by striking
13 “and” at the end;

14 (3) in subsection (b)(1)(C)—

15 (A) by redesignating clause (iv) as clause
16 (v); and

17 (B) by inserting after clause (iii) the fol-
18 lowing new clause:

19 “(iv) providing weapons of mass de-
20 struction, or assistance in obtaining or de-
21 veloping such weapons, to terrorists or ter-
22 rorist groups; and”;

23 (4) in subsection (b)(2)—

1 (A) by redesignating subparagraphs (C),
2 (D), and (E) as (D), (E), and (F), respectively;
3 and

4 (B) by inserting after subparagraph (B)
5 the following new subparagraph:

6 “(C) efforts by those groups to obtain or
7 develop weapons of mass destruction;”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 subsection (a) shall apply beginning with the first report
10 under section 140 of the Foreign Relations Authorization
11 Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f), sub-
12 mitted more than one year after the date of the enactment
13 of this Act.

○

Mr. GALLEGLY. Are there opening statements? I have a brief one, then I will yield to my friend from California.

Today the Subcommittee on International Terrorism, Non-proliferation and Human Rights will consider H.R. 3978, the Designation of Foreign Terrorist Organizations Reform Act. H.R. 3978 would streamline the procedure for redesignating a group as a foreign terrorist organization, thereby allowing the State Department, Treasury Department, FBI and our intelligence agencies to better concentrate their efforts on actually fighting terrorism and preventing new attacks.

Currently one of the U.S. Government's most effective tools in the fight against international terrorism is the provision enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996 that makes it illegal to provide funds and other forms of material support to foreign terrorist organizations. The law authorizes the Secretary of State to designate foreign terrorist organizations, makes it illegal for persons to knowingly contribute material support to such groups, and requires U.S. banks to freeze their assets. This statute also makes members of such groups inadmissible to the U.S.

The Justice Department has used the law to investigate and obtain convictions of persons providing material support to terrorist groups, and it has helped curb the flow of terrorist funding.

However, experience with the law over the past 7 years shows the need to refine it and make it more effective in the fight against global terrorism. Under existing law, the U.S. Government must devote significant amounts of its counterterrorism resources to the FTO redesignation effort. This bureaucratic process must take place every 2 years, even though the vast majority of these groups do not even dispute their designation as terrorists. And, as we all know, some of the groups, such as al Qaeda, openly boast of their terrorist activities.

H.R. 3978 would make two principal changes in the law regarding the designation of foreign terrorist organizations. First, it would replace the requirement to formally redesignate terrorist organizations every 2 years with a procedure allowing groups to request a review at 2-year intervals, as well as a simplified procedural requirement to review each group every 4 years. This change would allow the State Department and other agencies to focus more of their scarce resources on responding to the new terrorist threats or tracking and analyzing newer groups that emerge on the horizon.

For example, last year 29 of the 36 organizations on the U.S. Government's foreign terrorist list were due for redesignation. As a result, State, Justice, Treasury and the intelligence community expended thousands of hours in preparing a detailed administrative record for each of these groups. There are at least 20 steps in the process. Each case requires clearance from 10 different offices in the State Department and similar clearance processes at Justice and Treasury. Over a dozen lawyers at Justice are taking time from their other counterterrorism and law enforcement responsibilities to review each one of these voluminous administrative records so they can be used in court cases, if necessary. The administrative process has been repeated without exception every 2 years.

The modified redesignation requirement proposed by H.R. 3978 will still provide designated terrorist groups with plenty of procedural safeguards. Under the legislation, a group can still request a court review of a designation within 30 days after it is first designated. In addition, the bill allows all designated organizations to petition the Secretary every 2 years to revoke its designation. The Secretary of State has to respond within 180 days. If that review is not to the group's satisfaction, the designation can also be challenged in court. Furthermore, even if a group has not requested a review, the Secretary of State will have to formally review its designation every 4 years.

The legislation would also establish a new procedure for handling the situation in which a terrorist organization changes its name and uses new aliases. The new provision allows the government to amend the underlying administrative record instead of re-creating a voluminous document every time a group takes on a new alias. A group will be able to appeal these additional designations.

Under H.R. 3978, a group's ability to challenge a designation or redesignation are essentially unchanged. The main difference is that the U.S. Government does not have to spend scarce resources formally redesignating groups every 2 years when there is no doubt or challenge to the redesignations.

The language on foreign terrorist organizations is identical to the provisions contained in an en bloc amendment to H.R. 1950, the Department of State Authorization bill that was passed by voice vote on the House Floor. The same language was also included in two separate versions of the State Department Authorization bill approved by the Senate Foreign Relations Committee, S. 925, passed on April 24th of last year, and S. 2144, passed on March 4th of this year. However, the State Department Authorization bill has not yet passed the Senate and may not pass during this Congress. Given the importance of this measure, we are marking up this provision as a separate bill. I will urge the Full Committee and the leadership of the House to take action on this bill at the earliest possible date, hopefully next week.

In addition, this provision has the support of both the State Department and the Justice Department.

Lastly, section 3 of the bill requires that the State Department's annual report on terrorism include information on countries and terrorist groups that are seeking to obtain weapons of mass destruction. Experts on terrorism both within and outside the government agree that the nexus between terrorism and weapons of mass destruction is the most dangerous security threat faced by the United States and our allies. Therefore, it makes absolute sense to have the State Department's main report on terrorism discuss this linkage.

I urge passage of this important legislation, and I would now yield to the gentleman from California Mr. Sherman.

[The prepared statement of Mr. Gallegly follows:]

PREPARED STATEMENT OF THE HONORABLE ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL TERRORISM, NONPROLIFERATION AND HUMAN RIGHTS

Today, the Subcommittee on International Terrorism, Nonproliferation and Human Rights will consider H.R. 3978, the Designation of Foreign Terrorist Organi-

zations Reform Act. H.R. 3978 would streamline the procedure for redesignating a group as a foreign terrorist organization, thereby allowing the State Department, Treasury Department, FBI and our intelligence agencies to better concentrate their efforts on actually fighting terrorism and preventing new attacks.

Currently, one of the U.S. government's most effective tools in the fight against international terrorism is the provision enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996 that makes it illegal to provide funds and other forms of material support to foreign terrorist organizations ("FTOs").

This law authorizes the Secretary of State to designate foreign terrorist organizations, makes it illegal for persons to knowingly contribute material support to such groups and requires U.S. banks to freeze their assets. This statute also makes members of such groups inadmissible to the U.S.

The Justice Department has used the law to investigate and obtain convictions of persons providing material support to terrorist groups, and it has helped curbed the flow of terrorist funding.

However, experience with the law over the past seven years shows the need to refine it to make it more even more effective in the fight against global terrorism. Under existing law, the U.S. government must devote significant amounts of its counterterrorist resources to the FTO redesignation effort. This bureaucratic process must take place every two years, even though the vast majority of these groups do not even dispute their designation as terrorists. And as we all know, some groups such as Al Qaeda openly boast of their terrorist activity.

H.R. 3978 would make two principal changes to the current law regarding the designation of foreign terrorist organizations:

First, it would replace the requirement to formally redesignate terrorist organizations every two years with a procedure allowing groups to request a review at two-year intervals, as well as a simplified procedural requirement to review each group every four years.

This change would allow the State Department and other government agencies to focus more of their scarce resources on responding to new terrorist threats or tracking and analyzing newer groups that emerge on the horizon.

For example, last year 29 of the 36 organizations on the U.S. Government's foreign terrorist list were due for redesignation. As a result, State, Justice, Treasury, and the intelligence community expended thousands of hours in preparing a detailed administrative record for each of these groups. There are at least 20 steps in this process. Each case requires clearance from 10 different offices in the State Department, and similar clearance processes at Justice and Treasury. Over a dozen lawyers at Justice are taking time from their other counterterrorism and law enforcement responsibilities to review each one of these voluminous administrative records so they can be used in court cases if necessary. This administrative process has to be repeated, without exception, every two years.

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Furthermore, even if a group has not requested a review, the Secretary of State will have to formally review each designation every four years.

The legislation would also establish a new procedure for handling the situation in which a terrorist organization changes its name or uses new aliases. The new provision allows the government to amend the underlying administrative record instead of re-creating a voluminous document every time a group takes on a new alias. A group will be able to appeal these additional designations.

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I will urge the full committee and the leadership of the House to take action on this bill at the earliest possible date.

In addition, this provision has the support of both the State Department and the Justice Department.

Lastly, section 3 of the bill requires that the State Department's annual report on terrorism include information on countries and terrorist groups that are seeking to obtain weapons of mass destruction. Experts on terrorism both within and outside of government agree that the nexus between terrorism and weapons of mass destruction is the most dangerous security threat faced by the United States and our allies. Therefore, it makes absolute sense to have the State Department's main report on terrorism discuss this linkage.

I urge passage of this important legislation and I yield back the balance of my time.

Mr. SHERMAN. Thank you, Mr. Chairman. Thank you for bringing up this critical legislation. I look forward to other markups here in the Subcommittee where we can deal with other important legislation, and I want to commend you and our Committee Chairman for moving to the Full Committee the legislation on Iran and its nuclear proliferation program.

This bill would reduce the workload of the State Department. Currently staff who could be conducting counterterrorism activities must instead spend their time going through an arduous administrative process every 2 years to redesignate an organization on the foreign terrorist organization list, the FTO list. You and I know that during that 2-year period nothing has happened that would cause most of these organizations to even assert that they should be taken off the list.

Hamas is a terrorist organization yesterday and today, and they plan to be tomorrow. Nonetheless, every designation expires under the current law every 2 years, and the Department must go through the process of affirmatively redesignating the same groups that will earn their terrorist designation. They have to create an administrative record, spend hours upon hours justifying what we already know is true, what they already justified just 2 years earlier. Last year some 29 groups had to go through this redesignation process, and as a result of this distraction, a number of other groups that deserve to be on the list may not get there simply because of this misdirection of administrative resources.

There are currently 37 organizations on the list. Obviously there are more than 37 terrorist organizations worldwide. Additional organizations should have been added to this list, and I note that Ansar al-Islam, an organization operating in Iraq and known to us to be a terrorist organization, is only now being so designated. I think we can do better, and I think this bill will help.

This bill will leave a group on the FTO list indefinitely. The organization may petition the Secretary after 2 years. And I should point out that they can in effect send a letter to the Secretary at any time, and the Secretary can at any time, or upon the receipt of this 2-year petition, conduct an independent review if there has been none after 4 years. It leaves in place existing judicial review provisions, allowing the group to take a designation to the DC Court of Appeals.

The bill will also allow the Department to easily amend designations to add aliases without having to conduct a full investigation. Many of these terrorist groups make up a new name every day. We

need to be able to designate those new names as aliases and as terrorist organizations just as quickly as they can be made up.

And I should point out that it is my understanding of this bill that the word "alias" would apply even if there is some slight difference in the board or makeup or organization, so that if you have a terrorist organization controlled by six individuals, and then five of those individuals walk into the next room and say, we will leave one guy in the other room, now we are a different organization, that is still a mere alias, an organization under the same control dedicated to the same purposes.

This bill would provide the State Department's Global Pattern Terrorism Report will include information on WMD activities of terrorist organizations and state sponsors of terrorism. This is also a desirable change. Similar legislation to this bill has been included in the State Department Authorization bill, which, of course, remains in legislative limbo. I would hope that the leadership of both Houses would move forward with that bill, but in the absence of that, we need to move these provisions as a separate bill.

Again, I thank Chairman Gallegly for his work on this important legislation and look forward to passing this bill through the Full Committee and to the House.

Mr. GALLEGLY. Thank the gentleman from California.

Are there any amendments? Hearing no requests, the Chair would now entertain a motion that the bill be reported favorably to the full House.

Mr. SHERMAN. Mr. Chairman, I wonder if there are others with brief opening statements? And it appears not. Good.

Mr. SCHIFF. Mr. Chairman, I would just move to strike the last word.

Mr. GALLEGLY. There is a pending motion. So, would you like to withdraw your pending motion?

Mrs. NAPOLITANO. I withdraw.

Mr. SCHIFF. I was going to move to strike the last word on the pending motion. But, Mr. Chairman, I just wanted to thank you for bringing this bill up expeditiously and add my voice of support to it. To the degree that we can streamline the process in identifying terrorist organizations, those that fund them, and accelerate the investigation and prosecution of these organizations and the funders, it is extremely beneficial, and just want to add my voice of support. And I yield back the balance of my time.

Mr. GALLEGLY. I thank the gentleman from California, and I would now reentertain the motion.

Mrs. NAPOLITANO. So moved.

Mr. GALLEGLY. The gentlelady from California has moved that the bill be reported favorably to the Full Committee. All in favor, say aye.

Any opposed?

That will be the order. The motion is approved, and the bill is reported favorably to the House.

Thank you very much for attending the markup, and the meeting is adjourned.

[Whereupon, at 1:25 p.m., the Subcommittee was adjourned.]

