

SENATE RESOLUTION 423—SEEKING THE RETURN OF THE USS PUEBLO TO THE UNITED STATES NAVY

Mr. ALLARD (for himself, Mr. INOUE, Mr. BIDEN, and Mr. SALAZAR) submitted the following resolution; which was considered and agreed to:

S. RES. 423

Whereas the USS Pueblo, which was attacked and captured by the Navy of North Korea on January 23, 1968, was the first ship of the United States Navy to be hijacked on the high seas by a foreign military force in more than 150 years;

Whereas 1 member of the USS Pueblo crew, Duane Hodges, was killed in the assault, while the other 82 crew members were held in captivity, often under inhumane conditions, for 11 months;

Whereas the USS Pueblo, an intelligence collection auxiliary vessel, was operating in international waters at the time of the capture, and therefore did not violate the territorial waters of North Korea;

Whereas the capture of the USS Pueblo resulted in no reprisals against the Government or people of North Korea and no military action at any time; and

Whereas the USS Pueblo, though still the property of the United States Navy, has been retained by the Government of North Korea for 40 years, was subjected to exhibition in the North Korean cities of Wonsan and Hungnam, and is now on display in Pyongyang, the capital city of North Korea: Now, therefore, be it

Resolved, That the Senate—

(1) desires the return of the USS Pueblo to the United States Navy;

(2) would welcome the return of the USS Pueblo as a goodwill gesture from the North Korean people to the American people; and

(3) directs the Secretary of the Senate to transmit copies of this resolution to the President, the Secretary of Defense, and the Secretary of State.

SENATE RESOLUTION 424—ELECTING LULA JOHNSON DAVIS, OF MARYLAND, AS SECRETARY FOR THE MAJORITY OF THE SENATE

Mr. REID submitted the following resolution; which was considered and agreed to:

S. RES. 424

Resolved, that Lula Johnson Davis, of Maryland, be and she is hereby, elected Secretary for the Majority of the Senate.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3901. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table.

SA 3902. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3903. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3904. Mr. CONRAD submitted an amendment intended to be proposed by him

to the bill S. 1200, to amend the Indian Health Care Improvement Act to revise and extend the Act; which was ordered to lie on the table.

SA 3905. Mr. SPECTER (for himself and Mr. WHITEHOUSE) submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table.

SA 3906. Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 3899 proposed by Mr. DORGAN (for himself, Ms. MURKOWSKI, Mr. BAUCUS, Mr. KENNEDY, Mr. SMITH, Mr. NELSON of Nebraska, and Mr. SALAZAR) to the bill S. 1200, to amend the Indian Health Care Improvement Act to revise and extend the Act; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3901. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, line 4, strike “2013.” and insert the following: “2010. Notwithstanding any other provision of this Act, the transitional procedures under paragraphs (2)(B) and (3)(B) of section 302(c) shall apply to any order, authorization, or directive, as the case may be, issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2010.”.

SA 3902. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . PREVENTION AND DETERRENCE OF TERRORIST SUICIDE BOMBINGS.

(a) IN GENERAL.—

(1) OFFENSE OF REWARDING OR FACILITATING INTERNATIONAL TERRORIST ACTS.—

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

“§ 2339E. Providing material support to international terrorism

“(a) DEFINITIONS.—In this section:

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

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

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

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

“(A) commits the act;

“(B) aids, abets, counsels, commands, induces, or procures its commission; or

“(C) attempts, plots, or conspires to commit the act.

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

“(b) PROHIBITION.—Whoever, in a circumstance described in subsection (c), pro-

vides, or attempts or conspires to provide, material support or resources to the perpetrator of an act of international terrorism, or to a family member or other person associated with such perpetrator, with the intent to facilitate, reward, or encourage that act or other acts of international terrorism, shall be fined under this title, imprisoned for any term of years or for life, or both, and, if death results, shall be imprisoned for any term of years not less than 10 or for life.

“(c) JURISDICTIONAL BASES.—A circumstance referred to in subsection (b) is that—

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

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

“(3) an offender intends to facilitate, reward, or encourage an act of international terrorism that affects interstate or foreign commerce or would have affected interstate or foreign commerce had it been consummated;

“(4) an offender intends to facilitate, reward, or encourage an act of international terrorism that violates the criminal laws of the United States;

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

“(6) an offender intends to facilitate, reward, or encourage an act of international terrorism that occurs in part within the United States and is designed to influence the policy or affect the conduct of a foreign government;

“(7) an offender intends to facilitate, reward, or encourage an act of international terrorism that causes or is designed to cause death or serious bodily injury to a national of the United States while that national is outside the United States, or substantial damage to the property of a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions) while that property is outside of the United States;

“(8) the offense occurs in whole or in part within the United States, and an offender intends to facilitate, reward or encourage an act of international terrorism that is designed to influence the policy or affect the conduct of a foreign government; or

“(9) the offense occurs in whole or in part outside of the United States, and an offender is a national of the United States, a stateless person whose habitual residence is in the United States, or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions).”.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—

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

“2339D. Receiving military-type training from a foreign terrorist organization.

“2339E. Providing material support to international terrorism.”.

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

(2) INCREASED PENALTIES FOR PROVIDING MATERIAL SUPPORT TO TERRORISTS.—

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

(B) PROVIDING MATERIAL SUPPORT OR RESOURCES IN AID OF A TERRORIST CRIME.—Section 2339A(a) of title 18, United States Code, is amended by striking “imprisoned not more than 15 years” and all that follows through “life.” and inserting “imprisoned for any term of years or for life, or both, and, if the death of any person results, shall be imprisoned for any term of years not less than 10 or for life.”.

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

(D) ADDITION OF ATTEMPTS AND CONSPIRACIES TO AN OFFENSE RELATING TO MILITARY TRAINING.—Section 2339D(a) of title 18, United States Code, is amended by inserting “, or attempts or conspires to receive,” after “receives”.

(b) TERRORIST MURDERS, KIDNAPPINGS, AND ASSAULTS.—

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

(A) in paragraph (1), by striking “, punished by death” and all that follows and inserting “and punished by death or imprisoned for life;”; and

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

(2) ADDITION OF OFFENSE OF TERRORIST KIDNAPPING.—Section 2332 of title 18, United States Code, is amended—

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

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

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

(3) ADDITION OF SEXUAL ASSAULT TO DEFINITION OF OFFENSE OF TERRORIST ASSAULT.—Section 2332(d) of title 18, United States Code, as redesignated by paragraph (2) of this subsection, is amended—

(A) in paragraph (1), by inserting “(as defined in section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242)” after “injury”; and

(B) in paragraph (2), by inserting “(as defined in section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242)” after “injury”; and

(C) in the matter following paragraph (2), by striking “or imprisoned” and all that follows and inserting “and imprisoned for any term of years not less than 30 or for life.”.

(c) TERRORIST HOAXES AGAINST FAMILIES OF UNITED STATES SERVICEMEN.—

(1) HOAX STATUTE.—Section 1038 of title 18, United States Code, is amended—

(A) in subsections (a)(1) and (b), by inserting “or any other offense listed under section 2332b(g)(5)(B) of this title” after “title 49”; and

(B) in subsection (a)(2)—

(i) in subparagraph (A), by striking “, imprisoned not more than 5 years, or both” and inserting “and imprisoned for not less than 2 years nor more than 10 years”; and

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

(iii) in subparagraph (C), by striking “, imprisoned for any term of years or for life, or both” and inserting “and imprisoned for any term of years not less than 10 or for life”.

(2) ATTACKS ON UNITED STATES SERVICEMEN.—

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

“§1389. Prohibition on attacks on United States servicemen on account of service

“(a) IN GENERAL.—Whoever assaults, batters, or knowingly destroys or injures the property of a United States serviceman or of a member of the immediate family of a United States serviceman, on account of the military service of that serviceman or status of that individual as a United States serviceman, or who attempts or conspires to do so, shall—

“(1) in the case of a simple assault, or destruction or injury to property in which the damage or attempted damage to such property is not more than \$500, be fined under this title in an amount not less than \$500 and imprisoned not more than 2 years;

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

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

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

“(c) DEFINITION.—In this section, the term ‘United States serviceman’—

“(1) means a member of the Armed Forces, as that term is defined in section 1388; and

“(2) includes a former member of the Armed Forces during the 5-year period beginning on the date of the discharge from the Armed Forces of that member of the Armed Forces.”.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 67 of title 18, United States Code, is amended by adding at the end the following:

“1389. Prohibition on attacks on United States servicemen on account of service.”.

(3) THREATENING COMMUNICATIONS.—

(A) MAILED WITHIN THE UNITED STATES.—Section 876 of title 18, United States Code, is amended by adding at the end the following:

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

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

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

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

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

“§2339F. Denial of Federal benefits to terrorists

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

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

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 113B of title 18, United States Code, as amended by this section, is amended by adding at the end the following:

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

(e) INVESTIGATION OF TERRORIST CRIMES.—

(1) NONDISCLOSURE OF FISA INVESTIGATIONS.—The following provisions of the Foreign Intelligence Surveillance Act of 1978 are each amended by inserting “(other than in proceedings or other civil matters under the immigration laws, as that term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)))” after “authority of the United States”:

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

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

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

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

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

“(A) a Federal crime of terrorism (as defined in section 2332b(g)(g) of title 18, United States Code); or

“(B) an offense under section 1001 or 1505 of title 18, United States Code, relating to information or purported information concerning a Federal crime of terrorism (as defined in section 2332b(g)(5) of title 18, United States Code)—having authority in any district in which activities related to the Federal crime of terrorism or offense may have occurred, may issue a warrant for a person or property within or outside that district.”.

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

(f) IMPROVEMENTS TO THE CLASSIFIED INFORMATION PROCEDURES ACT.—

(1) INTERLOCUTORY APPEALS UNDER THE CLASSIFIED INFORMATION PROCEDURES ACT.—Section 7(a) of the Classified Information Procedures Act (18 U.S.C. App.) is amended by adding at the end “The Government’s right to appeal under this section applies without regard to whether the order appealed from was entered under this Act.”.

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

(A) in the second sentence—

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

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

(B) in the third sentence—

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

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

(3) APPLICATION OF CLASSIFIED INFORMATION PROCEDURES ACT TO NONDOCUMENTARY INFORMATION.—Section 4 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

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

(B) by inserting “(a) DISCOVERY OF CLASSIFIED INFORMATION FROM DOCUMENTS.—” before the first sentence; and

(C) by adding at the end the following:

“(b) ACCESS TO OTHER CLASSIFIED INFORMATION.—

“(1) If the defendant seeks access through deposition under the Federal Rules of Criminal Procedure or otherwise to non-documentary information from a potential witness or other person which he knows or reasonably believes is classified, he shall notify the attorney for the United States and the district court in writing. Such notice shall specify with particularity the classified information sought by the defendant and the legal basis for such access. At a time set by the court, the United States may oppose access to the classified information.

“(2) If, after consideration of any objection raised by the United States, including any objection asserted on the basis of privilege, the court determines that the defendant is legally entitled to have access to the information specified in the notice required by paragraph (1), the United States may request the substitution of a summary of the classified information or the substitution of a statement admitting relevant facts that the classified information would tend to prove.

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

“(4) The court shall grant the request of the United States to substitute a summary of the classified information or to substitute a statement admitting relevant facts that the classified information would tend to prove if it finds that the summary or statement will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information.

“(5) A defendant may not obtain access to classified information subject to this subsection except as provided in this subsection. Any proceeding, whether by deposition under the Federal Rules of Criminal Procedure or otherwise, in which a defendant seeks to obtain access to such classified information not previously authorized by a court for disclosure under this subsection must be discontinued or may proceed only as to lines of inquiry not involving such classified information.”.

SA 3903. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline

the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 8, between lines 12 and 13 insert the following:

“(3) EXCEPTION.—Paragraph (2) shall not apply to an acquisition by an electronic, mechanical, or other surveillance device outside the United States if a warrant would not be required if such acquisition were conducted outside the United States for law enforcement purposes.

“(4) PROCEDURES.—

SA 3904. Mr. CONRAD submitted an amendment intended to be proposed by him to the bill S. 1200, to amend the Indian Health Care Improvement Act to revise and extend the Act; which was ordered to lie on the table; as follows:

On page 196, line 15, insert “, including programs to provide services using video or electronic delivery methods,” after “trust lands”.

SA 3905. Mr. SPECTER (for himself and Mr. WHITEHOUSE) submitted an amendment intended to be proposed by him to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 46, strike line 5 and all that follows through page 48, line 21, and insert the following:

(6) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term “Foreign Intelligence Surveillance Court” means the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

SEC. 202. SUBSTITUTION OF THE UNITED STATES IN CERTAIN ACTIONS.

(a) IN GENERAL.—

(1) CERTIFICATION.—Notwithstanding any other provision of law, a Federal or State court shall substitute the United States for an electronic communication service provider with respect to any claim in a covered civil action as provided in this subsection, if the Attorney General certifies to that court that—

(A) with respect to that claim, the assistance alleged to have been provided by the electronic communication service provider was—

(i) provided in connection with an intelligence activity involving communications that was—

(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(ii) described in a written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(I) authorized by the President; and

(II) determined to be lawful; or

(B) the electronic communication service provider did not provide the alleged assistance.

(2) SUBSTITUTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subpara-

graph (C), upon receiving a certification under paragraph (1), a Federal or State court shall—

(i) substitute the United States for the electronic communication service provider as the defendant as to all claims designated by the Attorney General in that certification, consistent with the procedures under rule 25(c) of the Federal Rules of Civil Procedure, as if the United States were a party to whom the interest of the electronic communication service provider in the litigation had been transferred; and

(ii) as to that electronic communication service provider—

(I) dismiss all claims designated by the Attorney General in that certification; and

(II) enter a final judgment relating to those claims.

(B) CONTINUATION OF CERTAIN CLAIMS.—If a certification by the Attorney General under paragraph (1) states that not all of the alleged assistance was provided under a written request or directive described in paragraph (1)(A)(ii), the electronic communication service provider shall remain as a defendant.

(C) DETERMINATION.—

(i) IN GENERAL.—Substitution under subparagraph (A) shall proceed only after a determination by the Foreign Intelligence Surveillance Court that—

(I) the written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider under paragraph (1)(A)(ii) complied with section 2511(2)(a)(ii)(B) of title 18, United States Code;

(II) the assistance alleged to have been provided was undertaken by the electronic communication service provider acting in good faith and pursuant to an objectively reasonable belief that compliance with the written request or directive under paragraph (1)(A)(ii) was permitted by law; or

(III) the electronic communication service provider did not provide the alleged assistance.

(ii) CERTIFICATION.—If the Attorney General submits a certification under paragraph (1), the court to which that certification is submitted shall—

(I) immediately certify the questions described in clause (i) to the Foreign Intelligence Surveillance Court; and

(II) stay further proceedings in the relevant litigation, pending the determination of the Foreign Intelligence Surveillance Court.

(iii) PARTICIPATION OF PARTIES.—In reviewing a certification and making a determination under clause (i), the Foreign Intelligence Surveillance Court shall permit any plaintiff and any defendant in the applicable covered civil action to appear before the Foreign Intelligence Surveillance Court pursuant to section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803).

(iv) DECLARATIONS.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a determination made pursuant to clause (i) would harm the national security of the United States, the Foreign Intelligence Surveillance Court shall limit any public disclosure concerning such determination, including any public order following such an ex parte review, to a statement that the conditions of clause (i) have or have not been met, without disclosing the basis for the determination.

(3) PROCEDURES.—

(A) TORT CLAIMS.—Upon a substitution under paragraph (2), for any tort claim—

(i) the claim shall be deemed to have been filed under section 1346(b) of title 28, United States Code, except that sections 2401(b), 2675, and 2680(a) of title 28, United States Code, shall not apply; and

(ii) the claim shall be deemed timely filed against the United States if it was timely filed against the electronic communication service provider.

(B) CONSTITUTIONAL AND STATUTORY CLAIMS.—Upon a substitution under paragraph (2), for any claim under the Constitution of the United States or any Federal statute—

(i) the claim shall be deemed to have been filed against the United States under section 1331 of title 28, United States Code;

(ii) with respect to any claim under a Federal statute that does not provide a cause of action against the United States, the plaintiff shall be permitted to amend such claim to substitute, as appropriate, a cause of action under—

(I) section 704 of title 5, United States Code (commonly known as the Administrative Procedure Act);

(II) section 2712 of title 18, United States Code; or

(III) section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810);

(iii) the statutes of limitation applicable to the causes of action identified in clause (ii) shall not apply to any amended claim under that clause, and any such cause of action shall be deemed timely filed if any Federal statutory cause of action against the electronic communication service provider was timely filed; and

(iv) for any amended claim under clause (ii) the United States shall be deemed a proper defendant under any statutes described in that clause, and any plaintiff that had standing to proceed against the original defendant shall be deemed an aggrieved party for purposes of proceeding under section 2712 of title 18, United States Code, or section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810).

(C) DISCOVERY.—

(i) IN GENERAL.—In a covered civil action in which the United States is substituted as party-defendant under paragraph (2), any plaintiff may serve third-party discovery requests to any electronic communications service provider as to which all claims are dismissed.

(ii) BINDING THE GOVERNMENT.—If a plaintiff in a covered civil action serves deposition notices under rule 30(b)(6) of the Federal Rules of Civil Procedure or requests under rule 36 of the Federal Rules of Civil Procedure for admission upon an electronic communications service provider as to which all claims were dismissed, the electronic communications service provider shall be deemed a party-defendant for purposes rule 30(b)(6) or rule 36 and its answers and admissions shall be deemed binding upon the Government.

(b) CERTIFICATIONS.—

(1) IN GENERAL.—For purposes of substitution proceedings under this section—

(A) a certification under subsection (a) may be provided and reviewed in camera, ex parte, and under seal; and

(B) for any certification provided and reviewed as described in subparagraph (A), the court shall not disclose or cause the disclosure of its contents.

(2) NONDELEGATION.—The authority and duties of the Attorney General under this section shall be performed by the Attorney Gen-

eral or a designee in a position not lower than the Deputy Attorney General.

(c) SOVEREIGN IMMUNITY.—This section, including any Federal statute cited in this section that operates as a waiver of sovereign immunity, constitute the sole waiver of sovereign immunity with respect to any covered civil action.

(d) CIVIL ACTIONS IN STATE COURT.—For purposes of section 1441 of title 28, United States Code, any covered civil action that is brought in a State court or administrative or regulatory bodies shall be deemed to arise under the Constitution or laws of the United States and shall be removable under that section.

(e) RULE OF CONSTRUCTION.—Except as expressly provided in this section, nothing in this section may be construed to limit any immunity, privilege, or defense under any other provision of law, including any privilege, immunity, or defense that would otherwise have been available to the United States absent its substitution as party-defendant or had the United States been the named defendant.

(f) EFFECTIVE DATE AND APPLICATION.—This section shall apply to any covered civil action pending on or filed after the date of enactment of this Act.

SA 3906. Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 3899 proposed by Mr. DORGAN (for himself, Ms. MURKOWSKI, Mr. BAUCUS, Mr. KENNEDY, Mr. SMITH, Mr. NELSON of Nebraska, and Mr. SALAZAR) to the bill S. 1200, to amend the Indian Health Care Improvement Act to revise and extend the Act; which was ordered to lie on the table; as follows:

At the end of title II, add the following:

SEC. ____ . INCREASED CIVIL MONEY PENALTIES AND CRIMINAL FINES FOR MEDICARE FRAUD AND ABUSE.

(a) INCREASED CIVIL MONEY PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) is amended—

(1) in subsection (a), in the flush matter following paragraph (7)—

(A) by striking “\$10,000” each place it appears and inserting “\$20,000”;

(B) by striking “\$15,000” and inserting “\$30,000”; and

(C) by striking “\$50,000” and inserting “\$100,000”; and

(2) in subsection (b)—

(A) in paragraph (1), in the flush matter following subparagraph (B), by striking “\$2,000” and inserting “\$4,000”;

(B) in paragraph (2), by striking “\$2,000” and inserting “\$4,000”; and

(C) in paragraph (3)(A)(i), by striking “\$5,000” and inserting “\$10,000”.

(b) INCREASED CRIMINAL FINES.—Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b) is amended—

(1) in subsection (a), in the flush matter following paragraph (6)—

(A) by striking “\$25,000” and inserting “\$100,000”; and

(B) by striking “\$10,000” and inserting “\$20,000”;

(2) in subsection (b)—

(A) in paragraph (1), in the flush matter following subparagraph (B), by striking “\$25,000” and inserting “\$100,000”; and

(B) in paragraph (2), in the flush matter following subparagraph (B), by striking “\$25,000” and inserting “\$100,000”;

(3) in subsection (c), by striking “\$25,000” and inserting “\$100,000”;

(4) in subsection (d), in the second flush matter following subparagraph (B), by striking “\$25,000” and inserting “\$100,000”; and

(5) in subsection (e), by striking “\$2,000” and inserting “\$4,000”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to civil money penalties and fines imposed for actions taken on or after the date of enactment of this Act.

SEC. ____ . INCREASED SENTENCES FOR FELONIES INVOLVING MEDICARE FRAUD AND ABUSE.

(a) FALSE STATEMENTS AND REPRESENTATIONS.—Section 1128B(a) of the Social Security Act (42 U.S.C. 1320a-7b(a)) is amended, in clause (i) of the flush matter following paragraph (6), by striking “not more than 5 years” and inserting “not more than 10 years”.

(b) ANTI-KICKBACK.—Section 1128B(b) of the Social Security Act (42 U.S.C. 1320a-7b(b)) is amended—

(1) in paragraph (1), in the flush matter following subparagraph (B), by striking “not more than 5 years” and inserting “not more than 10 years”; and

(2) in paragraph (2), in the flush matter following subparagraph (B), by striking “not more than 5 years” and inserting “not more than 10 years”.

(c) FALSE STATEMENT OR REPRESENTATION WITH RESPECT TO CONDITIONS OR OPERATIONS OF FACILITIES.—Section 1128B(c) of the Social Security Act (42 U.S.C. 1320a-7b(c)) is amended by striking “not more than 5 years” and inserting “not more than 10 years”.

(d) EXCESS CHARGES.—Section 1128B(d) of the Social Security Act (42 U.S.C. 1320a-7b(d)) is amended, in the second flush matter following subparagraph (B), by striking “not more than 5 years” and inserting “not more than 10 years”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to criminal penalties imposed for actions taken on or after the date of enactment of this Act.

SEC. ____ . INCREASED SURETY BOND REQUIREMENT FOR SUPPLIERS OF DME.

(a) IN GENERAL.—Section 1834(a)(16)(B) of the Social Security Act (42 U.S.C. 1395m(a)(16)(B)) is amended by striking “\$50,000” and inserting “\$500,000”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to the issuance (or renewal) of a provider number for a supplier of durable medical equipment on or after the date of enactment of this Act.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN, Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Thursday, January 31, 2008, at 10 a.m., in room SD-366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on the regulatory aspects of carbon capture, transportation, and sequestration and to receive testimony on two related bills: S. 2323, a bill to provide for the conduct of carbon capture and storage technology research, development and demonstration projects, and for other purposes;