## 111TH CONGRESS 1ST SESSION

11

## H.R.3133

To improve title 18 of the United States Code.

## IN THE HOUSE OF REPRESENTATIVES

July 8, 2009

Mr. Schiff (for himself and Mr. Daniel E. Lungren of California) introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To improve title 18 of the United States Code.

1	Be it enacted by the Senate and House of Representa-
2	$tives\ of\ the\ United\ States\ of\ America\ in\ Congress\ assembled,$
3	SECTION 1. SHORT TITLE.
4	This Act may be cited as the "Foreign Evidence Re-
5	quest Efficiency Act of 2009".
6	SEC. 2. IMPROVEMENTS TO TITLE 18.
7	Title 18 of the United States Code is amended—
8	(1) in section 2703—
9	(A) in subsection (a), by striking "by a
10	court with jurisdiction over the offense under

investigation or an equivalent State warrant"

1	and inserting "(or, in the case of a State court
2	issued using State warrant procedures) by a
3	court of competent jurisdiction";
4	(B) in subsection (b)(1)(A), by striking
5	"by a court with jurisdiction over the offense
6	under investigation or an equivalent State war-
7	rant" and inserting "(or, in the case of a State
8	court, issued using State warrant procedures)
9	by a court of competent jurisdiction"; and
10	(C) in subsection (c)(1)(A), by striking "by
11	a court with jurisdiction over the offense under
12	investigation or an equivalent State warrant'
13	and inserting "(or, in the case of a State court
14	issued using State warrant procedures) by a
15	court of competent jurisdiction";
16	(2) in section 2711(3), by striking "has the
17	meaning assigned by section 3127, and includes any
18	Federal court within that definition, without geo-
19	graphic limitation; and" and inserting the following
20	"includes—
21	"(A) any district court of the United
22	States (including a magistrate judge of such a
23	court) or any United States court of appeals
24	that—

1	"(i) has jurisdiction over the offense
2	being investigated;
3	"(ii) is in or for a district in which the
4	provider of a wire or electronic communica-
5	tion service is located or in which the wire
6	or electronic communications, records, or
7	other information are stored; or
8	"(iii) is acting on a request for foreign
9	assistance pursuant to section 3512 of this
10	title; or
11	"(B) a court of general criminal jurisdic-
12	tion of a State authorized by the law of that
13	State to issue search warrants; and";
14	(3) in section 3127(2)(A), by striking "having
15	jurisdiction over the offense being investigated;" and
16	inserting the following: "that—
17	"(i) has jurisdiction over the offense
18	being investigated;
19	"(ii) is in or for a district in which the
20	provider of a wire or electronic communica-
21	tion service is located;
22	"(iii) is in or for a district in which a
23	landlord, custodian, or other person subject
24	to subsections (a) or (b) of section 3124 of
25	this title is located: or

1	"(iv) is acting on a request for foreign
2	assistance pursuant to section 3512 of this
3	title;";
4	(4) in chapter 223, by adding at the end the
5	following:
6	"§ 3512. Foreign requests for assistance in criminal
7	investigations and prosecutions
8	"(a) Execution of Request for Assistance.—
9	"(1) In general.—Upon application, duly au-
10	thorized by an appropriate official of the Depart-
11	ment of Justice, of an attorney for the Government,
12	a Federal judge may issue such orders as may be
13	necessary to execute a request from a foreign au-
14	thority for assistance in the investigation or prosecu-
15	tion of criminal offenses, or in proceedings related to
16	the prosecution of criminal offenses, including pro-
17	ceedings regarding forfeiture, sentencing, and res-
18	titution.
19	"(2) Scope of orders.—Any order issued by
20	a Federal judge pursuant to paragraph (1) may in-
21	clude the issuance of—
22	"(A) a search warrant, as provided under
23	rule 41 of the Federal Rules of Criminal Proce-
24	dure;

1	"(B) a warrant or order for contents of
2	stored wire or electronic communications or for
3	records related thereto, as provided under sec-
4	tion 2703 of this title;
5	"(C) an order for a pen register or trap
6	and trace device as provided under section 3123
7	of this title; or
8	"(D) an order requiring the appearance of
9	a person for the purpose of providing testimony
10	or a statement, or requiring the production of
11	documents or other things, or both.
12	"(b) Appointment of Persons To Take Testi-
13	MONY OR STATEMENTS.—
14	"(1) In general.—In response to an applica-
15	tion for execution of a request from a foreign au-
16	thority as described under subsection (a), a Federal
17	judge may also issue an order appointing a person
18	to direct the taking of testimony or statements or of
19	the production of documents or other things, or
20	both.
21	"(2) Authority of appointed person.—Any
22	person appointed under an order issued pursuant to
23	paragraph (1) may—

1	"(A) issue orders requiring the appearance
2	of a person, or the production of documents or
3	other things, or both;
4	"(B) administer any necessary oath; and
5	"(C) take testimony or statements and re-
6	ceive documents or other things.
7	"(c) Filing of Requests.—Except as provided
8	under subsection (d), an application for execution of a re-
9	quest from a foreign authority under this section may be
10	filed—
11	"(1) in the district in which a person who may
12	be required to appear resides or is located or in
13	which the documents or things to be produced are
14	located;
15	"(2) in cases in which the request seeks the ap-
16	pearance of persons or production of documents or
17	things that may be located in multiple districts, in
18	any one of the districts in which such a person, doc-
19	uments, or things may be located; or
20	"(3) in any case, the district in which a related
21	Federal criminal investigation or prosecution is
22	being conducted, or in the District of Columbia.
23	"(d) Search Warrant Limitation.—An applica-
24	tion for execution of a request for a search warrant from
25	a foreign authority under this section, other than an appli-

- 1 cation for a warrant issued as provided under section 2703
- 2 of this title, shall be filed in the district in which the place
- 3 or person to be searched is located.
- 4 "(e) Search Warrant Standard.—A Federal
- 5 judge may issue a search warrant under this section only
- 6 if the foreign offense for which the evidence is sought in-
- 7 volves conduct that, if committed in the United States,
- 8 would be considered an offense punishable by imprison-
- 9 ment for more than one year under Federal or State law.
- 10 "(f) Service of Order or Warrant.—Except as
- 11 provided under subsection (d), an order or warrant issued
- 12 pursuant to this section may be served or executed in any
- 13 place in the United States.
- 14 "(g) Rule of Construction.—Nothing in this sec-
- 15 tion shall be construed to preclude any foreign authority
- 16 or an interested person from obtaining assistance in a
- 17 criminal investigation or prosecution pursuant to section
- 18 1782 of title 28, United States Code.
- 19 "(h) Definitions.—As used in this section, the fol-
- 20 lowing definitions shall apply:
- 21 "(1) FEDERAL JUDGE.—The terms 'Federal
- judge' and 'attorney for the Government' have the
- 23 meaning given such terms for the purposes of the
- Federal Rules of Criminal Procedure.

1	"(2) Foreign Authority.—The term 'foreign
2	authority' means a foreign judicial authority, a for-
3	eign authority responsible for the investigation or
4	prosecution of criminal offenses or for proceedings
5	related to the prosecution of criminal offenses, or an
6	authority designated as a competent authority or
7	central authority for the purpose of making requests
8	for assistance pursuant to an agreement or treaty
9	with the United States regarding assistance in crimi-
10	nal matters."; and

11 (5) in the table of sections for chapter 223, by 12 adding at the end the following:

"3512. For eign requests for assistance in criminal investigations and prosecutions." .