

110TH CONGRESS
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H. R. 1352

To prohibit the return or other transfer of persons by the United States, for the purpose of detention, interrogation, trial, or otherwise, to countries where torture or other inhuman treatment of persons occurs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2007

Mr. MARKEY (for himself, Mr. WAXMAN, Mr. CONYERS, Mr. GEORGE MILLER of California, Mr. CAPUANO, Mr. VAN HOLLEN, Mr. ALLEN, Mr. BLUMENAUER, Mr. DAVIS of Illinois, Mrs. DAVIS of California, Mr. GRIJALVA, Mr. HINCHEY, Mr. HOLT, Mr. KUCINICH, Ms. LEE, Mr. LEWIS of Georgia, Mrs. MALONEY of New York, Ms. MCCOLLUM of Minnesota, Mr. MCGOVERN, Mr. PAYNE, Mr. SERRANO, Mr. PASTOR, Ms. SCHAKOWSKY, Mr. TIERNEY, Ms. WOOLSEY, Ms. BALDWIN, Mrs. CAPPS, Ms. DELAURO, Mr. FARR, Ms. JACKSON-LEE of Texas, Ms. MATSUI, Mr. McNULTY, Mr. MEEHAN, Mr. MICHAUD, Mr. MORAN of Virginia, Mr. NADLER, Mr. OLVER, Mr. PRICE of North Carolina, Mr. ROTHMAN, Mr. THOMPSON of California, Mr. UDALL of New Mexico, Ms. WATSON, Mr. McDERMOTT, Mr. RUSH, Mr. HONDA, and Mr. SIRES) introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To prohibit the return or other transfer of persons by the United States, for the purpose of detention, interrogation, trial, or otherwise, to countries where torture or other inhuman treatment of persons occurs, 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 “Torture Outsourcing
3 Prevention Act”.

4 **SEC. 2. TRANSFER OF PERSONS.**

5 (a) **REPORTS TO CONGRESS.**—Beginning 30 days
6 after the date of the enactment of this Act and every 12
7 months thereafter, the Secretary of State shall complete
8 and submit to the appropriate congressional committees
9 a list of countries where there are substantial grounds for
10 believing that torture or cruel, inhuman, or degrading
11 treatment is commonly used in the detention or interroga-
12 tion of individuals. The list shall be compiled on the basis
13 of the information contained in the most recent annual
14 report of the Secretary of State submitted to the Speaker
15 of the House of Representatives and the Committee on
16 Foreign Relations of the Senate under section 116(d) of
17 the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d)).

18 (b) **PROHIBITION ON TRANSFERRING PERSONS.**—
19 Any person who is imprisoned, detained, or held for trans-
20 fer to another country by, or is otherwise in the custody
21 or control of, a department, agency, or official of the
22 United States Government, or any contractor of any such
23 department or agency, may not, regardless of the nation-
24 ality or location of that person, be rendered, returned, or
25 otherwise transferred—

1 (1) to a country included on the most recent list
2 submitted under subsection (a), for the purpose of
3 detention, interrogation, trial, or otherwise; or

4 (2) to any other country if there are substantial
5 grounds to believe that the person will be transferred
6 to a country included in the most recent list sub-
7 mitted under subsection (a).

8 (c) PROCESS.—A person may not, regardless of the
9 nationality or location of the person, be rendered, re-
10 turned, or otherwise transferred by a department, agency,
11 or official of the United States Government, or any con-
12 tractor of any such department or agency, to any country
13 not otherwise described in paragraph (1) or (2) of sub-
14 section (b), unless the person has been given an oppor-
15 tunity to challenge the rendering, return, or transfer in
16 a court in the United States of competent jurisdiction, on
17 the grounds that the person would, upon such rendering,
18 return, or transfer, be in danger of being subjected to tor-
19 ture or cruel, inhuman, or degrading treatment.

20 (d) WAIVERS.—

21 (1) AUTHORITY.—The Secretary of State may
22 waive the prohibition contained in subsection (b)
23 with respect to the government of a country if the
24 Secretary certifies to the appropriate congressional
25 committees that—

1 (A) that government has ended the acts of
2 torture or cruel, inhuman, or degrading treat-
3 ment that were the basis for the inclusion of
4 that country on the list; and

5 (B) there is in place a mechanism that
6 assures the United States in a verifiable man-
7 ner that a person rendered, returned, or other-
8 wise transferred will not be tortured or sub-
9 jected to cruel, inhuman, or degrading treat-
10 ment in that country, including, at a minimum,
11 immediate, unfettered, and continuing access,
12 from the point of return, to each such person
13 by an independent humanitarian organization.

14 (2) ASSURANCES INSUFFICIENT.—Written or
15 verbal assurances made to the United States by the
16 government of a country that persons rendered, re-
17 turned, or otherwise transferred to the country will
18 not be tortured or subjected to cruel, inhuman, or
19 degrading treatment, are not sufficient to meet the
20 requirements of paragraph (1)(B).

21 (e) TREATY-BASED EXTRADITION EXEMPTION.—

22 (1) EXEMPTION.—The prohibition contained in
23 subsection (b) shall not be construed to apply to the
24 legal extradition of a person under a bilateral or
25 multilateral extradition treaty if, prior to such extra-

1 dition, that person has recourse to a court in the
2 United States of competent jurisdiction to challenge
3 the extradition on the basis that there are substan-
4 tial grounds for believing that the person would be
5 in danger of being subjected to torture or cruel, in-
6 human, or degrading treatment in the country re-
7 questing such extradition.

8 (2) ASSURANCES INSUFFICIENT.—Written or
9 verbal assurances made to the United States by the
10 government of a country that persons rendered, re-
11 turned, or otherwise transferred to the country will
12 not be tortured or subjected to cruel, inhuman, or
13 degrading treatment, are not a sufficient basis for
14 believing that the person would not be in subjected
15 to torture or cruel, inhuman, or degrading treatment
16 in the country requesting such extradition pursuant
17 to paragraph (1).

18 **SEC. 3. IMPLEMENTATION OF OBLIGATION NOT TO RE-**
19 **TURN TO RISK OF TORTURE.**

20 (a) IN GENERAL.—Section 2242 of the Foreign Af-
21 fairs Reform and Restructuring Act of 1998 (8 U.S.C.
22 1231 note) is amended by striking subsection (b) and in-
23 serting the following:

24 “(b) REGULATIONS.—

1 “(1) ISSUANCE.—Not later than 120 days after
2 the date of the enactment of the Torture
3 Outsourcing Prevention Act, the heads of the appro-
4 priate Government agencies shall prescribe regula-
5 tions to implement the obligations of the United
6 States under Article 3 of the United Nations Con-
7 vention Against Torture and Other Cruel, Inhuman
8 or Degrading Treatment or Punishment, subject to
9 any reservations, understandings, declarations and
10 provisos contained in the United States Senate reso-
11 lution of ratification of the Convention.

12 “(2) REQUIREMENTS OF REGULATIONS.—Regu-
13 lations issued by the head of an agency under para-
14 graph (1) shall set forth—

15 “(A) the responsibilities of the agency, its
16 employees, and its contractors to comply, both
17 within and outside of the United States, with
18 the obligations of the United States under Arti-
19 cle 3 of the Convention Against Torture re-
20 ferred to in paragraph (1); and

21 “(B) the process by which a person may
22 raise and adjudicate in an independent judicial
23 forum a claim that his or her transfer would be
24 in violation of Article 3 of the Convention
25 Against Torture referred to in paragraph (1),

1 including the process by which the individual
2 being transferred can challenge any diplomatic
3 or other assurances received from the govern-
4 ment to which the individual would be returned
5 that the individual will not be subjected to tor-
6 ture or ill treatment.

7 “(3) DEFINITION.—For purposes of this sub-
8 section, the term ‘appropriate Government agencies’
9 means the intelligence community (as defined in sec-
10 tion 3(4) of the National Security Act of 1947 (50
11 U.S.C. 401a(4))), the Departments of State, De-
12 fense, Homeland Security, and Justice, the United
13 States Secret Service, the United States Marshals
14 Service, and any other law enforcement, national se-
15 curity, intelligence, or homeland security agency that
16 imprisons, detains, or transfers prisoners or detain-
17 ees, or that otherwise takes or assumes custody of
18 persons or transfers persons to another country.”.

19 (b) EXISTING REGULATIONS.—

20 (1) IN GENERAL.—The amendment made by
21 subsection (a) does not nullify any regulations issued
22 by an agency, before the effective date of this Act,
23 under section 2242(b) of the Foreign Affairs Reform
24 and Restructuring Act of 1998. In such a case, the
25 agency shall amend such regulations to comply with

1 the amendment made by subsection (a) of this sec-
2 tion.

3 (2) SPECIAL RULE CONCERNING IMMIGRATION
4 LAWS.—Notwithstanding any other provision of this
5 Act, or any amendment made by this Act, nothing
6 in this Act shall be construed to affect immigration
7 laws (as defined in section 101(a)(17) of the Immi-
8 gration and Nationality Act (8 U.S.C.
9 1101(a)(17))), or regulations issued pursuant to im-
10 migration laws, except that the Secretary of Home-
11 land Security, not later than 120 days after the date
12 of the enactment of this Act, shall revise the regula-
13 tions issued by the Secretary to implement section
14 2242 of the Foreign Affairs Reform and Restruc-
15 turing Act of 1998 (8 U.S.C. 1231 note) so as to
16 ensure that written or verbal assurances made by
17 the government of a country that a person in immi-
18 gration proceedings in the United States (including
19 asylum proceedings) will not be tortured or sub-
20 jected to cruel, inhuman, or degrading treatment if
21 the person is removed by the United States to the
22 country are not, standing alone, a sufficient basis
23 for believing that the person would not be tortured
24 or subjected to such treatment if the person were re-
25 moved to the country.

1 **SEC. 4. SAVINGS CLAUSE.**

2 Nothing in this Act or the amendments made by this
3 Act shall be construed to eliminate, limit, or constrain in
4 any way the rights that an individual has under the Con-
5 vention Against Torture and Other Cruel, Inhuman or De-
6 grading Treatment or Punishment, or any other applicable
7 law.

8 **SEC. 5. EFFECTIVE DATE.**

9 This Act takes effect on the date that is 30 days after
10 the date of the enactment of this Act.

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