

105TH CONGRESS
2D SESSION

H. R. 3161

To fully implement the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and to provide a comprehensive program of support for victims of torture.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1998

Mr. SMITH of New Jersey (for himself, Mr. LANTOS, Mr. GILMAN, Mr. WOLF, Mr. SANDERS, Mr. KING, Ms. KAPTUR, Mr. MINGE, Mr. SABO, Mr. EVANS, Mr. OBERSTAR, Mr. PETERSON of Minnesota, Mr. SHAYS, Ms. WOOLSEY, and Mr. RAMSTAD) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on International Relations, and Commerce, 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 fully implement the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and to provide a comprehensive program of support for victims of torture.

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 “Torture Victims Relief
5 Act”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The American people abhor torture by any
4 government or person. The existence of torture cre-
5 ates a climate of fear and international insecurity
6 that affects all people.

7 (2) Torture is the deliberate mental and phys-
8 ical damage caused by governments to individuals to
9 destroy individual personality and terrorize society.
10 The effects of torture are long term. Those effects
11 can last a lifetime for the survivors and affect future
12 generations.

13 (3) By eliminating leadership of their opposi-
14 tion and frightening the general public, repressive
15 governments often use torture as a weapon against
16 democracy.

17 (4) Torture survivors remain under physical
18 and psychological threats, especially in communities
19 where the perpetrators are not brought to justice. In
20 many nations, even those who treat torture survivors
21 are threatened with reprisals, including torture, for
22 carrying out their ethical duties to provide care.
23 Both the survivors of torture and their treatment
24 providers should be accorded protection from further
25 repression.

1 (5) A significant number of refugees and
2 asylees entering the United States have been victims
3 of torture. Those claiming asylum deserve prompt
4 consideration of their applications for political asy-
5 lum to minimize their insecurity and sense of dan-
6 ger. Many torture survivors now live in the United
7 States. They should be provided with the rehabilita-
8 tion services which would enable them to become
9 productive members of our communities.

10 (6) The development of a treatment movement
11 for torture survivors has created new opportunities
12 for action by the United States and other nations to
13 oppose state-sponsored and other acts of torture.

14 (7) There is a need for a comprehensive strat-
15 egy to protect and support torture victims and their
16 treatment providers, together with overall efforts to
17 eliminate torture.

18 (8) By acting to heal the survivors of torture
19 and protect their families, the United States can
20 help to heal the effects of torture and prevent its use
21 around the world.

22 (9) The United States became a party to the
23 Convention Against Torture and Other Cruel, Inhu-
24 man, or Degrading Treatment or Punishment on

1 November 20, 1994, but has not implemented Arti-
2 cle 3 of the Convention.

3 **SEC. 3. DEFINITIONS.**

4 As used in this Act:

5 (1) **IN GENERAL.**—Except as otherwise pro-
6 vided, the terms used in this Act have the meanings
7 given those terms in section 101(a) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1101(a)).

9 (2) **TORTURE.**—The term “torture” has the
10 meaning given the term in section 2340(1) of title
11 18, United States Code, and includes the use of rape
12 and other forms of sexual violence by a person act-
13 ing under the color of law upon another person
14 under his custody or physical control.

15 **SEC. 4. PROHIBITION ON INVOLUNTARY RETURN OF PER-**
16 **SONS FEARING SUBJECTION TO TORTURE.**

17 (a) **PROHIBITION.**—Notwithstanding any other provi-
18 sion of law, the United States shall not expel, remove, ex-
19 tradite, or otherwise return involuntarily an individual to
20 a country if there is substantial evidence that a reasonable
21 person in the circumstances of that individual would fear
22 subjection to torture in that country.

23 (b) **DEFINITION.**—For purposes of this section, the
24 term “to return involuntarily”, in the case of an individ-
25 ual, means—

1 (1) to return the individual without the individ-
2 ual's consent, whether or not the return is induced
3 by physical force and whether or not the person is
4 physically present in the United States; or

5 (2) to take an action by which it is reasonably
6 foreseeable that the individual will be returned,
7 whether or not the return is induced by physical
8 force and whether or not the person is physically
9 present in the United States.

10 **SEC. 5. IMMIGRATION PROCEDURES FOR TORTURE VIC-**
11 **TIMS.**

12 (a) COVERED ALIENS.—An alien described in this
13 section is any alien who presents a claim of having been
14 subjected to torture, or whom there is reason to believe
15 has been subjected to torture.

16 (b) CONSIDERATION OF THE EFFECTS OF TOR-
17 TURE.—In considering an application by an alien de-
18 scribed in subsection (a) for refugee status under section
19 207 of the Immigration and Nationality Act, asylum under
20 section 208 of that Act, or withholding of removal under
21 section 241(b)(3) of that Act, the appropriate officials
22 shall take into account—

23 (1) the manner in which the effects of torture
24 might affect the applicant's responses in the applica-

1 tion and in the interview process or other immigra-
2 tion proceedings, as the case may be;

3 (2) the difficulties torture victims often have in
4 recounting their suffering under torture; and

5 (3) the fear victims have of returning to their
6 country of nationality where, even if torture is no
7 longer practiced or the incidence of torture is re-
8 duced, their torturers may have gone unpunished
9 and may remain in positions of authority.

10 (c) EXPEDITED PROCESSING OF REFUGEE ADMIS-
11 SIONS.—For purposes of section 207(e) of the Immigra-
12 tion and Nationality Act (8 U.S.C. 1157(e)), refugees who
13 have been subjected to torture shall be considered to be
14 refugees of special humanitarian concern to the United
15 States and shall be accorded priority for resettlement at
16 least as high as that accorded any other group of refugees.

17 (d) PROCESSING FOR ASYLUM AND WITHHOLDING
18 OF REMOVAL.—Section 235(b)(1)(A) of the Immigration
19 and Nationality Act (8 U.S.C. 1225(b)(1)(A)) is amended
20 by adding at the end the following new clause:

21 “(iv) SPECIAL PROCEDURES FOR
22 ALIENS WHO ARE THE VICTIMS OF TOR-
23 TURE.—

24 “(I) EXPEDITED PROCEDURES.—

25 With the consent of the alien, an asy-

1 lum officer or immigration judge shall
2 expedite the scheduling of an asylum
3 interview or a removal proceeding for
4 any alien who presents a claim of hav-
5 ing been subjected to torture, unless
6 the evidence indicates that a delay in
7 making a determination regarding the
8 granting of asylum under section 208
9 of the Immigration and Nationality
10 Act or the withholding of removal
11 under section 241(b)(3) of that Act
12 with respect to the alien would not ag-
13 gravate the physical or psychological
14 effects of torture upon the alien.

15 “(II) DELAY OF PROCEEDINGS.—
16 With the consent of the alien, an asy-
17 lum officer or immigration judge shall
18 postpone an asylum interview or a re-
19 moval proceeding for any alien who
20 presents a claim of having been sub-
21 jected to torture, if the evidence indi-
22 cates that, as a result of the alien’s
23 mental or physical symptoms resulting
24 from torture, including the alien’s in-
25 ability to recall or relate the events of

1 the torture, the alien will require more
2 time to recover or be treated before
3 being required to testify.

4 (e) PAROLE IN LIEU OF DETENTION.—The finding
5 that an alien is a person described in subsection (a) shall
6 be a strong presumptive basis for a grant of parole, under
7 section 212(d)(5) of the Immigration and Nationality Act
8 (8 U.S.C. 1182(d)(5)), in lieu of detention.

9 (f) EXEMPTION FROM EXPEDITED REMOVAL.—Sec-
10 tion 235(b)(1)(F) of the Immigration and Nationality Act
11 (8 U.S.C. 1225(b)(1)(F)) is amended by inserting before
12 the period at the end the following: “, or to an alien de-
13 scribed in section 5(a) of the Torture Victims Relief Act”.

14 (g) SENSE OF CONGRESS.—It is the sense of Con-
15 gress that the Attorney General should allocate resources
16 sufficient to maintain in the Resource Information Center
17 of the Immigration and Naturalization Service current in-
18 formation relating to the use of torture in foreign coun-
19 tries.

20 **SEC. 6. SPECIALIZED TRAINING FOR CONSULAR, IMMIGRA-**
21 **TION, AND ASYLUM PERSONNEL.**

22 (a) IN GENERAL.—The Attorney General shall pro-
23 vide training for immigration inspectors and examiners,
24 immigration officers, asylum officers, immigration judges,
25 and all other relevant officials of the Department of Jus-

1 tice, and the Secretary of State shall provide training for
2 consular officers, with respect to—

3 (1) the identification of torture;

4 (2) the identification of the surrounding cir-
5 cumstances in which torture is most often practiced;

6 (3) the long-term effects of torture upon a vic-
7 tim;

8 (4) the identification of the physical, cognitive,
9 and emotional effects of torture, and the manner in
10 which these effects can affect the interview or hear-
11 ing process; and

12 (5) the manner of interviewing victims of tor-
13 ture so as not to retraumatize them, eliciting the
14 necessary information to document the torture expe-
15 rience, and understanding the difficulties victims
16 often have in recounting their torture experience.

17 (b) GENDER-RELATED CONSIDERATIONS.—In con-
18 ducting training under subsection (a) (4) or (5), gender-
19 specific training shall be provided on the subject of inter-
20 acting with women and men who are victims of torture
21 by rape or any other form of sexual violence.

22 **SEC. 7. DOMESTIC TREATMENT CENTERS.**

23 (a) AMENDMENT OF THE IMMIGRATION AND NA-
24 TIONALITY ACT.—Section 412 of the Immigration and

1 Nationality Act (8 U.S.C. 1522) is amended by adding
2 at the end the following new subsection:

3 “(b) ASSISTANCE FOR TREATMENT OF TORTURE
4 VICTIMS.—The Secretary may provide grants to programs
5 in the United States to cover the cost of the following serv-
6 ices:

7 “(1) Services for the rehabilitation of victims of
8 torture, including treatment of the physical and psy-
9 chological effects of torture.

10 “(2) Social and legal services for victims of tor-
11 ture.

12 “(3) Research and training for health care pro-
13 viders outside of treatment centers, or programs for
14 the purpose of enabling such providers to provide
15 the services described in paragraph (1).”.

16 (b) FUNDING.—

17 (1) AUTHORIZATION OF APPROPRIATIONS.—Of
18 the amounts authorized to be appropriated for the
19 Department of Health and Human Services for fis-
20 cal years 1999 and 2000, there are authorized to be
21 appropriated to carry out section 412(g) of that Act
22 (relating to assistance for domestic centers and pro-
23 grams for the treatment of victims of torture), as
24 added by subsection (a), the following amounts for
25 the following fiscal years:

1 (A) For fiscal year 1999, \$5,000,000.

2 (B) For fiscal year 2000, \$7,500,000.

3 (2) AVAILABILITY OF FUNDS.—Amounts appro-
4 priated pursuant to this subsection shall remain
5 available until expended.

6 (c) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall take effect on October 1, 1998.

8 **SEC. 8. FOREIGN TREATMENT CENTERS.**

9 (a) AMENDMENTS OF THE FOREIGN ASSISTANCE
10 ACT OF 1961.—Part I of the Foreign Assistance Act of
11 1961 (22 U.S.C. 2151 et seq.) is amended by adding at
12 the end of chapter 1 the following new section:

13 **“SEC. 129. ASSISTANCE FOR VICTIMS OF TORTURE.**

14 “(a) IN GENERAL.—The President is authorized to
15 provide assistance for the rehabilitation of victims of tor-
16 ture.

17 “(b) ELIGIBILITY FOR GRANTS.—Such assistance
18 shall be provided in the form of grants to treatment cen-
19 ters and programs in foreign countries that are carrying
20 out projects or activities specifically designed to treat vic-
21 tims of torture for the physical and psychological effects
22 of the torture.

23 “(c) USE OF FUNDS.—Such assistance shall be avail-
24 able—

1 “(1) for direct services to victims of torture;
2 and

3 “(2) to provide research and training to health
4 care providers outside of treatment centers or pro-
5 grams described in subsection (b), for the purpose of
6 enabling such providers to provide the services de-
7 scribed in paragraph (1).”.

8 (b) FUNDING.—

9 (1) AUTHORIZATION OF APPROPRIATIONS.—Of
10 the amounts authorized to be appropriated for fiscal
11 years 1999 and 2000 pursuant to chapter 1 of part
12 I of the Foreign Assistance Act of 1961, there are
13 authorized to be appropriated to the President
14 \$5,000,000 for fiscal year 1999 and \$7,500,000 for
15 fiscal year 2000 to carry out section 129 of the For-
16 eign Assistance Act, as added by subsection (a).

17 (2) AVAILABILITY OF FUNDS.—Amounts appro-
18 priated pursuant to this subsection shall remain
19 available until expended.

20 (c) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall take effect on October 1, 1998.

22 **SEC. 9. MULTILATERAL ASSISTANCE.**

23 (a) FUNDING.—Of the amounts authorized to be ap-
24 propriated for fiscal years 1999 and 2000 pursuant to
25 chapter 3 of part I of the Foreign Assistance Act of 1961,

1 there are authorized to be appropriated to the United Na-
2 tions Voluntary Fund for Victims of Torture (in this sec-
3 tion referred to as the “Fund”) the following amounts for
4 the following fiscal years:

5 (1) FISCAL YEAR 1999.—For fiscal year 1999,
6 \$3,000,000.

7 (2) FISCAL YEAR 2000.—For fiscal year 2000,
8 \$3,000,000.

9 (b) AVAILABILITY OF FUNDS.—Amounts appro-
10 priated pursuant to subsection (a) shall remain available
11 until expended.

12 (c) SENSE OF CONGRESS.—It is the sense of Con-
13 gress that the President, acting through the United States
14 Permanent Representative to the United Nations,
15 should—

16 (1) request the Fund—

17 (A) to find new ways to support and pro-
18 tect treatment centers and programs that are
19 carrying out rehabilitative services for victims
20 of torture; and

21 (B) to encourage the development of new
22 such centers and programs;

23 (2) use the voice and vote of the United States
24 to support the work of the Special Rapporteur on
25 Torture and the Committee Against Torture estab-

1 lished under the Convention Against Torture and
2 Other Cruel, Inhuman or Degrading Treatment or
3 Punishment; and

4 (3) use the voice and vote of the United States
5 to establish a country rapporteur or similar proce-
6 dural mechanism to investigate human rights viola-
7 tions in a country if either the Special Rapporteur
8 or the Committee Against Torture indicates that a
9 systematic practice of torture is prevalent in that
10 country.

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