

108TH CONGRESS
2D SESSION

H. R. _____

To prohibit the return of persons by the United States, for purposes of detention, interrogation, or trial, to countries engaging in torture or other inhuman treatment of persons.

IN THE HOUSE OF REPRESENTATIVES

Mr. MARKEY introduced the following bill; which was referred to the Committee on _____

A BILL

To prohibit the return of persons by the United States, for purposes of detention, interrogation, or trial, to countries engaging in torture or other inhuman treatment of persons.

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. FINDINGS.**

4 The Congress finds the following:

5 (1) The United Nations Convention against
6 Torture or Other Cruel, Inhuman or Degrading
7 Treatment or Punishment (in this section referred to
8 as the “Convention against Torture”) defines tor-
9 ture as “any act by which severe pain or suffering,



1 whether physical or mental, is intentionally inflicted
2 on a person for such purposes as obtaining from him
3 or a third person information or a confes-
4 sion. . . .”, and that it may be “inflicted by or at
5 the instigation of or acquiescence of a public official
6 or other person acting in an official capacity.”.

7 (2) The Universal Declaration of Human
8 Rights states that “No one shall be subjected to tor-
9 ture or to cruel, inhuman, or degrading treatment or
10 punishment.”.

11 (3) The prohibition on torture and other ill-
12 treatment has been incorporated into the numerous
13 international and regional human rights treaties,
14 including—

15 (A) Article 7 of the International Covenant
16 on Civil and Political Rights (ICCPR), ratified
17 by 153 countries, including the United States in
18 1992;

19 (B) the Convention against Torture, rati-
20 fied by 136 countries, including the United
21 States in 1994;

22 (C) the European Convention for the Pro-
23 tection of Human Rights and Fundamental
24 Freedoms;



1 (D) the African Charter on Human and
2 Peoples' Rights; and

3 (E) the American Convention on Human
4 Rights.

5 (4) The prohibition against torture is also fun-
6 damental to the laws governing the conduct of par-
7 ties in armed conflicts, which establish a duty to
8 protect the life, health, and safety of civilians and
9 other noncombatants, including soldiers who are
10 captured or who have laid down their arms, includ-
11 ing the Geneva Conventions which prohibit "violence
12 of life and person, in particular murder of all kinds,
13 mutilation, cruel treatment, and torture", "outrages
14 upon personal dignity, in particular humiliating, and
15 degrading treatment", and the use of force to obtain
16 information, stipulating that "No physical or moral
17 coercion shall be exercised against protected persons,
18 in particular to obtain information from them or
19 from third parties."

20 (5) The United States Government informed
21 the United Nations in 1999 that in the United
22 States, the use of torture "is categorically denounced
23 as a matter of policy and as a tool of state author-
24 ity...No official of the government, Federal, State, or
25 local, civilian, or military, is authorized to commit or



1 to instruct anyone else to commit torture. Nor may
2 any official condone or tolerate torture in any
3 form...Every act of torture within the meaning of
4 the [Convention against Torture] is illegal under ex-
5 isting Federal and State law, and any individual who
6 commits such an act is subject to penal sanctions as
7 specified in criminal statutes.”.

8 (6) The practice of torture violates numerous
9 provisions of the United States Constitution and its
10 Bill of Rights, including the right under the Fourth
11 Amendment to be free of unreasonable search or sei-
12 zure, which encompasses the right not be abused by
13 the police, the right under the Fifth Amendment
14 against self-incrimination, which encompasses the
15 right to remain silent during interrogations, the
16 guarantees of due process under the Fifth and the
17 Fourteenth Amendments, which ensure fundamental
18 fairness in criminal justice system, and the right
19 under the Eighth Amendment to be free of cruel or
20 unusual punishment.

21 (7) In numerous cases, the United States Su-
22 preme Court has condemned the use of force
23 amounting to torture or other forms of ill treatment
24 during interrogations, including such practices as
25 whipping, slapping, depriving a prisoner of food,



1 water, or sleep, keeping a prisoner naked or in a
2 small cell for prolonged periods, holding a gun to a
3 prisoner's head, or threatening a prisoner with mob
4 violence.

5 (8) Article 4 of the Convention against Torture
6 obligates State parties to ensure that all acts of tor-
7 ture are criminal offenses under domestic legislation,
8 and the United States has insisted that existing
9 Federal and State laws render illegal any act falling
10 with the definition of torture under the Convention
11 against Torture.

12 (9) Article 3 of the Convention against Torture
13 expressly prohibits sending a person to another
14 State "where there are substantial grounds for be-
15 lieving that he would be in danger of being subjected
16 to torture."

17 (10) Section 2242(a) of the Foreign Affairs Re-
18 form and Restructuring Act of 1998, as contained in
19 Public Law 105-277 (8 U.S.C. 1231 note) states
20 that "It shall be the policy of the United States not
21 to expel, extradite, or otherwise effect the involun-
22 tary return of any person to a country in which
23 there are substantial grounds for believing the per-
24 son would be in danger of being subjected to torture,



1 regardless of whether the person is physically
2 present in the United States.”.

3 (11) Transferring, rendering, returning, or ex-
4 traditing persons in the custody of the United States
5 to any other country where torture or cruel, inhu-
6 man, or degrading treatment is commonly used by
7 the government in interrogation and detention is in-
8 consistent with international human rights law, the
9 Constitutional protections against torture or inhu-
10 mane treatment, and the values and principles upon
11 which the United States was founded.

12 **SEC. 2. TRANSFER OF PERSONS IN CUSTODY.**

13 (a) REPORTS TO CONGRESS.—Beginning 6 months
14 after the date of the enactment of this Act and every 6
15 months thereafter, the Secretary of State shall submit to
16 the appropriate congressional committees a list of each
17 country where torture or cruel, inhuman, or degrading
18 treatment is commonly used by the government of that
19 country in interrogation and detention.

20 (b) PROHIBITION ON TRANSFERRING PERSONS.—No
21 person in the custody of a United States Government de-
22 partment, agency, or official may be transferred, rendered,
23 or returned to the custody of the government of a country
24 included on the most recent list submitted under sub-



1 section (a) for the purpose of detention, interrogation, or
2 trial.

3 (c) WAIVERS.—

4 (1) AUTHORITY.—The Secretary of State may
5 waive the prohibition contained in subsection (b)
6 with respect to the government of a country if the
7 Secretary certifies to the appropriate congressional
8 committees that—

9 (A) that government has made significant,
10 verifiable progress in eliminating the acts of
11 torture or cruel, inhuman, or degrading treat-
12 ment that were the basis for the inclusion of
13 that country on the list; or

14 (B) there is in place a mechanism that
15 assures the United States in a verifiable man-
16 ner that a person transferred, rendered, or re-
17 turned will not be tortured or subjected to
18 cruel, inhuman, or degrading treatment in that
19 country, including, at a minimum, immediate,
20 unfettered, and continuing access, from the
21 point of return, to each such person by an inde-
22 pendent humanitarian organization.

23 (2) ASSURANCES INSUFFICIENT.—Written or
24 verbal assurances made to the United States by the
25 government of a country that persons in its custody



1 will not be tortured or subjected to cruel, inhuman,
2 or degrading treatment, are not sufficient to meet
3 the requirements of paragraph (1)(B).

4 (d) TREATY-BASED EXTRADITION EXEMPTION.—
5 The prohibition contained in subsection (b) shall not be
6 construed to apply to the legal extradition of a person
7 under a bilateral or multilateral extradition treaty if, prior
8 to such extradition, that person has recourse to a court
9 in the United States of competent jurisdiction to challenge
10 the extradition on the basis that there are substantial
11 grounds for believing that the person would be in danger
12 of being subjected to torture or cruel, inhuman, or degrad-
13 ing treatment in the country requesting such extradition.

