

105TH CONGRESS
2D SESSION

H. R. 4308

To fully implement the Convention Against Torture and Other Cruel,
Inhuman, or Degrading Treatment or Punishment.

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 1998

Mr. SMITH of New Jersey (for himself, Mr. LANTOS, Mrs. MALONEY of New York, Ms. NORTON, Mr. OBERSTAR, Mr. MINGE, Ms. WOOLSEY, Mrs. MORELLA, Mr. LEWIS of Georgia, Mr. DIAZ-BALART, Mr. SABO, Mr. RAMSTAD, Mr. BROWN of Ohio, and Mr. ENGEL) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To fully implement the Convention Against Torture and
Other Cruel, Inhuman, or Degrading Treatment or Pun-
ishment.

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 Pro-
5 tection Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

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

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

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

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

24 (5) A significant number of refugees and
25 asylees entering the United States have been victims

1 of torture. Those claiming asylum deserve prompt
2 consideration of their applications for political asy-
3 lum to minimize the insecurity and sense of danger.
4 Many torture survivors now live in the United
5 States. They should be provided with the rehabilita-
6 tion services which would enable them to become
7 productive members of our communities.

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

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

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

20 (9) The United States became a party to the
21 Convention Against Torture and Other Cruel, Inhu-
22 man, or Degrading Treatment or Punishment on
23 November 20, 1994, but has not enacted legislation
24 to implement Article 3 of the Convention.

1 **SEC. 3. DEFINITIONS.**

2 (a) IN GENERAL.—Except as otherwise provided, the
3 terms used in this Act have the meanings given those
4 terms in section 101(a) of the Immigration and National-
5 ity Act (8 U.S.C. 1101(a)).

6 (b) TORTURE.—The term “torture” has the meaning
7 given the term in section 2340(1) of title 18, United
8 States Code, and includes the use of rape and other forms
9 of sexual violence by a person acting under the color of
10 law upon another person under his custody or physical
11 control.

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

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

20 (b) DEFINITION.—For purposes of this section, the
21 term “to return involuntarily”, in the case of an individ-
22 ual, means—

23 (1) to return the individual without the individ-
24 ual’s consent, whether or not the return is induced
25 by physical force and whether or not the person is
26 physically present in the United States; or

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

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

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

17 “(iv) SPECIAL PROCEDURES FOR
18 ALIENS WHO ARE THE VICTIMS OF TOR-
19 TURE.—

20 “(I) EXPEDITED PROCEDURES.—
21 With the consent of the alien, an asy-
22 lum officer or immigration judge shall
23 expedite the scheduling of an asylum
24 interview or a removal proceeding for
25 any alien who presents a claim of hav-

1 ing been subjected to torture, unless
2 the evidence indicates that a delay in
3 making a determination regarding the
4 granting of asylum under section 208
5 of the Immigration and Nationality
6 Act or the withholding of removal
7 under section 241(b)(3) of that Act
8 with respect to the alien would not ag-
9 gravate the physical or psychological
10 effects of torture upon the alien.

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

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

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

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

17 **SEC. 6. SPECIALIZED TRAINING FOR CONSULAR, IMMIGRA-**
18 **TION, AND ASYLUM PERSONNEL.**

19 (a) IN GENERAL.—The Attorney General shall pro-
20 vide training for immigration inspectors and examiners,
21 immigration officers, asylum officers, immigration judges,
22 and all other relevant officials of the Department of Jus-
23 tice, and the Secretary of State shall provide training for
24 consular officers, with respect to—

25 (1) the identification of torture;

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

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

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

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

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

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