

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2430

To provide a comprehensive program of support for victims of torture.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 1 (legislative day, AUGUST 31), 1998

Mr. GRAMS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

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 Survivors Sup-  
5       port Act”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

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

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

7           (3) By eliminating leadership of their opposi-  
8           tion and frightening the general public, repressive  
9           governments often use torture as a weapon against  
10          democracy.

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

20          (5) A significant number of refugees and  
21          asylees entering the United States have been victims  
22          of torture. Those claiming asylum deserve prompt  
23          consideration of their applications for political asy-  
24          lum to minimize their insecurity and sense of dan-  
25          ger. Many torture survivors now live in the United

1 States. They should be provided with the rehabilita-  
2 tion services which would enable them to become  
3 productive members of our communities.

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

8 (7) There is a need for a comprehensive strat-  
9 egy to protect and support torture victims and their  
10 treatment providers, together with overall efforts to  
11 eliminate torture.

12 (8) By acting to heal the survivors of torture  
13 and protect their families, the United States can  
14 help to heal the effects of torture and prevent its use  
15 around the world.

16 **SEC. 3. DEFINITIONS.**

17 As used in this Act:

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

22 (2) **TORTURE.**—The term “torture” has the  
23 meaning given the term in section 2340(l) of title  
24 18, United States Code, and includes the use of rape  
25 and other forms of sexual violence by a person act-

1       ing under the color of law upon another person  
2       under his custody or physical control.

3   **SEC. 4. UNITED STATES POLICY WITH RESPECT TO THE IN-**  
4                   **VOLUNTARY RETURN OF PERSONS IN DAN-**  
5                   **GER OF SUBJECTION TO TORTURE.**

6       (a) **POLICY.**—It shall be the policy of the United  
7 States not to expel, extradite, or otherwise effect the invol-  
8 untary return of any person to a country in which there  
9 are substantial grounds for believing the person would be  
10 in danger of being subjected to torture, regardless of  
11 whether the person is physically present in the United  
12 States.

13       (b) **REGULATIONS.**—Not later than 120 days after  
14 the date of enactment of this Act, the heads of the appro-  
15 priate agencies shall prescribe regulations to implement  
16 the obligations of the United States under Article 3 of the  
17 United Nations or Degrading Treatment or Punishment,  
18 subject to any reservations, understandings, declarations,  
19 and provisos contained in the United States Senate resolu-  
20 tion of ratification of the Convention.

21       (c) **EXCLUSION OF CERTAIN ALIENS.**—To the maxi-  
22 mum extent consistent with the obligations of the United  
23 States under the Convention, subject to any reservations,  
24 understandings, declarations, and provisos contained in  
25 the United States Senate resolution of ratification of the

1 Convention, the regulations described in subsection (b)  
2 shall exclude from the protection of such regulations aliens  
3 described in section 241(b)(3)(B) of the Immigration and  
4 Nationality Act (8 U.S.C. 1231(b)(3)(B)).

5 (d) REVIEW AND CONSTRUCTION.—Notwithstanding  
6 any other provision of law, and except as provided in the  
7 regulations described in subsection (b), no court shall have  
8 jurisdiction to review the regulations adopted to imple-  
9 ment this section, and nothing in this section shall be con-  
10 strued as providing any court jurisdiction to consider or  
11 review claims raised under the Convention or this section,  
12 or any other determination made with respect to the appli-  
13 cation of the policy set forth in subsection (a), except as  
14 part of the review of a final order of removal pursuant  
15 to section 242 of the Immigration and Nationality Act (8  
16 U.S.C. 1252).

17 (e) AUTHORITY TO DETAIN.—Nothing in this section  
18 shall be construed as limiting the authority of the Attor-  
19 ney General to detain any person under any provision of  
20 law, including, but not limited to, any provision of the Im-  
21 migration and Nationality Act.

22 (f) DEFINITIONS.—

23 (1) CONVENTION DEFINED.—In this section, the  
24 term “Convention” means the United Nations Con-  
25 vention Against Torture and Other Forms of Cruel,

1 Inhuman or Degrading Treatment of Punishment,  
2 done at New York on December 10, 1984.

3 (2) SAME TERMS AS IN THE CONVENTION.—Ex-  
4 cept as otherwise provided, the terms used in this  
5 section have the meanings given those terms in the  
6 Convention, subject to any reservations, understand-  
7 ings, declarations, and provisos contained in the  
8 United States Senate resolution of ratification of the  
9 Convention.

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 Survivors of Torture Support  
14 Act”.

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

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

23           (a) IN GENERAL.—The Attorney General shall pro-  
24 vide training for immigration inspectors and examiners,  
25 immigration officers, asylum officers, immigration judges,

1 and all other relevant officials of the Department of Jus-  
2 tice, and the Secretary of State shall provide training for  
3 consular officers, with respect to—

4 (1) the identification of torture;

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

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

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

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

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

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