

106TH CONGRESS  
1ST SESSION

# S. 1754

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IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 1999

Referred to the Committee on the Judiciary

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## AN ACT

To deny safe havens to international and war criminals,  
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,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Denying Safe Havens to International and War Crimi-  
6 nals Act of 1999”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DENYING SAFE HAVENS TO INTERNATIONAL  
 CRIMINALS

Sec. 101. Temporary transfer of persons in custody for prosecution.

Sec. 102. Prohibiting fugitives from benefiting from fugitive status.

Sec. 103. Transfer of foreign prisoners to serve sentences in country of origin.

Sec. 104. Transit of fugitives for prosecution in foreign countries.

TITLE II—PROMOTING GLOBAL COOPERATION IN THE FIGHT  
 AGAINST INTERNATIONAL CRIME

Sec. 201. Streamlined procedures for execution of MLAT requests.

Sec. 202. Temporary transfer of incarcerated witnesses.

TITLE III—ANTI-ATROCITY ALIEN DEPORTATION

Sec. 301. Inadmissibility and removability of aliens who have committed acts of  
 torture abroad.

Sec. 302. Establishment of the Office of Special Investigations.

3 **TITLE I—DENYING SAFE HAVENS**  
 4 **TO INTERNATIONAL CRIMINALS**

5 **SEC. 101. TEMPORARY TRANSFER OF PERSONS IN CUSTODY**  
 6 **FOR PROSECUTION.**

7 (a) IN GENERAL.—Chapter 306 of title 18, United  
 8 States Code, is amended by adding at the end the fol-  
 9 lowing:

10 **“§ 4116. Temporary transfer for prosecution**

11 “(a) STATE DEFINED.—In this section, the term  
 12 ‘State’ includes a State of the United States, the District  
 13 of Columbia, and a commonwealth, territory, or possession  
 14 of the United States.

15 “(b) AUTHORITY OF ATTORNEY GENERAL WITH RE-  
 16 SPECT TO TEMPORARY TRANSFERS.—

1           “(1) IN GENERAL.—Subject to subsection (d),  
2           if a person is in pretrial detention or is otherwise  
3           being held in custody in a foreign country based  
4           upon a violation of the law in that foreign country,  
5           and that person is found extraditable to the United  
6           States by the competent authorities of that foreign  
7           country while still in the pretrial detention or cus-  
8           tody, the Attorney General shall have the  
9           authority—

10                   “(A) to request the temporary transfer of  
11                   that person to the United States in order to  
12                   face prosecution in a Federal or State criminal  
13                   proceeding;

14                   “(B) to maintain the custody of that per-  
15                   son while the person is in the United States;  
16                   and

17                   “(C) to return that person to the foreign  
18                   country at the conclusion of the criminal pros-  
19                   ecution, including any imposition of sentence.

20           “(2) REQUIREMENTS FOR REQUESTS BY AT-  
21           TORNEY GENERAL.—The Attorney General shall  
22           make a request under paragraph (1) only if the At-  
23           torney General determines, after consultation with  
24           the Secretary of State, that the return of that per-  
25           son to the foreign country in question would be con-

1       sistent with international obligations of the United  
2       States.

3       “(c) AUTHORITY OF ATTORNEY GENERAL WITH RE-  
4       SPECT TO PRETRIAL DETENTIONS.—

5               “(1) IN GENERAL.—

6                       “(A) AUTHORITY OF ATTORNEY GEN-  
7                       ERAL.—Subject to paragraph (2) and sub-  
8                       section (d), the Attorney General shall have the  
9                       authority to carry out the actions described in  
10                      subparagraph (B), if—

11                               “(i) a person is in pretrial detention  
12                               or is otherwise being held in custody in the  
13                               United States based upon a violation of  
14                               Federal or State law, and that person is  
15                               found extraditable to a foreign country  
16                               while still in the pretrial detention or cus-  
17                               tody pursuant to section 3184, 3197, or  
18                               3198; and

19                               “(ii) a determination is made by the  
20                               Secretary of State and the Attorney Gen-  
21                               eral that the person will be surrendered.

22                               “(B) ACTIONS.—If the conditions de-  
23                               scribed in subparagraph (A) are met, the Attor-  
24                               ney General shall have the authority to—

1           “(i) temporarily transfer the person  
2           described in subparagraph (A) to the for-  
3           eign country of the foreign government re-  
4           questing the extradition of that person in  
5           order to face prosecution;

6           “(ii) transport that person from the  
7           United States in custody; and

8           “(iii) return that person in custody to  
9           the United States from the foreign coun-  
10          try.

11          “(2) CONSENT BY STATE AUTHORITIES.—If the  
12          person is being held in custody for a violation of  
13          State law, the Attorney General may exercise the au-  
14          thority described in paragraph (1) if the appropriate  
15          State authorities give their consent to the Attorney  
16          General.

17          “(3) CRITERION FOR REQUEST.—The Attorney  
18          General shall make a request under paragraph (1)  
19          only if the Attorney General determines, after con-  
20          sultation with the Secretary of State, that the return  
21          of the person sought for extradition to the foreign  
22          country of the foreign government requesting the ex-  
23          tradition would be consistent with United States  
24          international obligations.

1           “(4) EFFECT OF TEMPORARY TRANSFER.—

2           With regard to any person in pretrial detention—

3                   “(A) a temporary transfer under this sub-  
4                   section shall result in an interruption in the  
5                   pretrial detention status of that person; and

6                   “(B) the right to challenge the conditions  
7                   of confinement pursuant to section 3142(f) does  
8                   not extend to the right to challenge the condi-  
9                   tions of confinement in a foreign country while  
10                  in that foreign country temporarily under this  
11                  subsection.

12          “(d) CONSENT BY PARTIES TO WAIVE PRIOR FIND-  
13          ING OF WHETHER A PERSON IS EXTRADITABLE.—The  
14          Attorney General may exercise the authority described in  
15          subsections (b) and (c) absent a prior finding that the per-  
16          son in custody is extraditable, if the person, any appro-  
17          priate State authorities in a case under subsection (c), and  
18          the requesting foreign government give their consent to  
19          waive that requirement.

20          “(e) RETURN OF PERSONS.—

21                  “(1) IN GENERAL.—If the temporary transfer  
22                  to or from the United States of a person in custody  
23                  for the purpose of prosecution is provided for by this  
24                  section, that person shall be returned to the United  
25                  States or to the foreign country from which the per-

1 son is transferred on completion of the proceedings  
2 upon which the transfer was based.

3 “(2) STATUTORY INTERPRETATION.—In no  
4 event shall the return of a person under paragraph  
5 (1) require extradition proceedings.”.

6 (b) CLERICAL AMENDMENT.—The analysis for chap-  
7 ter 306 of title 18, United States Code, is amended by  
8 adding at the end the following:

“4116. Temporary transfer for prosecution.”.

9 **SEC. 102. PROHIBITING FUGITIVES FROM BENEFITING**  
10 **FROM FUGITIVE STATUS.**

11 (a) IN GENERAL.—Chapter 163 of title 28, United  
12 States Code, is amended by adding at the end the fol-  
13 lowing:

14 **“§ 2466. Fugitive disentitlement**

15 “A person may not use the resources of the courts  
16 of the United States in furtherance of a claim in any re-  
17 lated civil forfeiture action or a claim in third party pro-  
18 ceedings in any related criminal forfeiture action if that  
19 person—

20 “(1) purposely leaves the jurisdiction of the  
21 United States;

22 “(2) declines to enter or reenter the United  
23 States to submit to its jurisdiction; or





1       “(b) LIMITATION ON JUDICIAL REVIEW.—A deter-  
2 mination by the Attorney General to permit or not to per-  
3 mit a temporary transit described in subsection (a) shall  
4 not be subject to judicial review.

5       “(c) CUSTODY.—If the Attorney General permits a  
6 temporary transit under subsection (a), Federal law en-  
7 forcement personnel may hold the person subject to that  
8 transit in custody during the transit of the person through  
9 the United States.

10       “(d) CONDITIONS APPLICABLE TO PERSONS SUB-  
11 JECT TO TEMPORARY TRANSIT.—Notwithstanding any  
12 other provision of law, a person who is subject to a tem-  
13 porary transit through the United States under this sec-  
14 tion shall—

15               “(1) be required to have only such documents  
16 as the Attorney General shall require; and

17               “(2) not be considered to be admitted or pa-  
18 roled into the United States.”.

19       (b) CLERICAL AMENDMENT.—The analysis for chap-  
20 ter 305 of title 18, United States Code, is amended by  
21 adding at the end the following:

“4087. Transit through the United States of persons wanted in a foreign coun-  
try.”.

1 **TITLE II—PROMOTING GLOBAL**  
2 **COOPERATION IN THE FIGHT**  
3 **AGAINST INTERNATIONAL**  
4 **CRIME**

5 **SEC. 201. STREAMLINED PROCEDURES FOR EXECUTION OF**  
6 **MLAT REQUESTS.**

7 (a) IN GENERAL.—Chapter 117 of title 28, United  
8 States Code, is amended by adding at the end the fol-  
9 lowing:

10 **“§ 1785. Assistance to foreign authorities**

11 “(a) IN GENERAL.—

12 “(1) PRESENTATION OF REQUESTS.—The At-  
13 torney General may present a request made by a  
14 foreign government for assistance with respect to a  
15 foreign investigation, prosecution, or proceeding re-  
16 garding a criminal matter pursuant to a treaty, con-  
17 vention, or executive agreement for mutual legal as-  
18 sistance between the United States and that govern-  
19 ment or in accordance with section 1782, the execu-  
20 tion of which requires or appears to require the use  
21 of compulsory measures in more than 1 judicial dis-  
22 trict, to a judge or judge magistrate of—

23 “(A) any 1 of the districts in which per-  
24 sons who may be required to appear to testify  
25 or produce evidence or information reside or are

1 found, or in which evidence or information to be  
2 produced is located; or

3 “(B) the United States District Court for  
4 the District of Columbia.

5 “(2) AUTHORITY OF COURT.—A judge or judge  
6 magistrate to whom a request for assistance is pre-  
7 sented under paragraph (1) shall have the authority  
8 to issue those orders necessary to execute the re-  
9 quest including orders appointing a person to direct  
10 the taking of testimony or statements and the pro-  
11 duction of evidence or information, of whatever na-  
12 ture and in whatever form, in execution of the re-  
13 quest.

14 “(b) AUTHORITY OF APPOINTED PERSONS.—A per-  
15 son appointed under subsection (a)(2) shall have the au-  
16 thority to—

17 “(1) issue orders for the taking of testimony or  
18 statements and the production of evidence or infor-  
19 mation, which orders may be served at any place  
20 within the United States;

21 “(2) administer any necessary oath; and

22 “(3) take testimony or statements and receive  
23 evidence and information.

24 “(c) PERSONS ORDERED TO APPEAR.—A person or-  
25 dered pursuant to subsection (b)(1) to appear outside the

1 district in which that person resides or is found may, not  
2 later than 10 days after receipt of the order—

3 “(1) file with the judge or judge magistrate who  
4 authorized execution of the request a motion to ap-  
5 pear in the district in which that person resides or  
6 is found or in which the evidence or information is  
7 located; or

8 “(2) provide written notice, requesting appear-  
9 ance in the district in which the person resides or  
10 is found or in which the evidence or information is  
11 located, to the person issuing the order to appear,  
12 who shall advise the judge or judge magistrate au-  
13 thorizing execution.

14 “(d) TRANSFER OF REQUESTS.—

15 “(1) IN GENERAL.—The judge or judge mag-  
16 istrate may transfer a request under subsection (c),  
17 or that portion requiring the appearance of that per-  
18 son, to the other district if—

19 “(A) the inconvenience to the person is  
20 substantial; and

21 “(B) the transfer is unlikely to adversely  
22 affect the effective or timely execution of the re-  
23 quest or a portion thereof.

24 “(2) EXECUTION.—Upon transfer, the judge or  
25 judge magistrate to whom the request or a portion



1           “(B) transport that person from the  
2           United States in custody;

3           “(C) make appropriate arrangements for  
4           custody for that person while outside the  
5           United States; and

6           “(D) return that person in custody to the  
7           United States from the foreign country.

8           “(2) PERSONS HELD FOR STATE LAW VIOLA-  
9           TIONS.—If the person is being held in custody for a  
10          violation of State law, the Attorney General may ex-  
11          ercise the authority described in this subsection if  
12          the appropriate State authorities give their consent.

13          “(c) RETURN OF PERSONS TRANSFERRED.—

14               “(1) IN GENERAL.—If the transfer to or from  
15          the United States of a person in custody for the pur-  
16          pose of giving testimony is provided for by treaty or  
17          convention, by this section, or both, that person shall  
18          be returned to the United States, or to the foreign  
19          country from which the person is transferred.

20               “(2) LIMITATION.—In no event shall the return  
21          of a person under this subsection require any re-  
22          quest for extradition or extradition proceedings.

23          “(d) APPLICABILITY OF INTERNATIONAL AGREE-  
24          MENTS.—If there is an international agreement between  
25          the United States and the foreign country in which a wit-

1 ness is being held in custody or to which the witness will  
 2 be transferred from the United States, that provides for  
 3 the transfer, custody, and return of those witnesses, the  
 4 terms and conditions of that international agreement shall  
 5 apply. If there is no such international agreement, the At-  
 6 torney General may exercise the authority described in  
 7 subsections (a) and (b) if both the foreign country and  
 8 the witness give their consent.”.

9 (b) CLERICAL AMENDMENT.—The analysis for chap-  
 10 ter 223 of title 18, United States Code, is amended by  
 11 striking the item relating to section 3508 and inserting  
 12 the following:

“3508. Temporary transfer of witnesses in custody.”.

13 **TITLE III—ANTI-ATROCITY**  
 14 **ALIEN DEPORTATION**

15 **SEC. 301. INADMISSIBILITY AND REMOVABILITY OF ALIENS**  
 16 **WHO HAVE COMMITTED ACTS OF TORTURE**  
 17 **ABROAD.**

18 (a) INADMISSIBILITY.—Section 212(a)(3)(E) of the  
 19 Immigration and Nationality Act (8 U.S.C.  
 20 1182(a)(3)(E)) is amended by adding at the end the fol-  
 21 lowing:

22 “(iii) COMMISSION OF ACTS OF TOR-  
 23 TURE.—Any alien who, outside the United  
 24 States, has committed any act of torture,

1 as defined in section 2340 of title 18,  
2 United States Code, is inadmissible.”.

3 (b) REMOVABILITY.—Section 237(a)(4)(D) of that  
4 Act (8 U.S.C. 1227(a)(4)(D)) is amended by striking  
5 “clause (i) or (ii)” and inserting “clause (i), (ii), or (iii)”.

6 (c) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to offenses committed before, on,  
8 or after the date of enactment of this Act.

9 **SEC. 302. ESTABLISHMENT OF THE OFFICE OF SPECIAL IN-**  
10 **VESTIGATIONS.**

11 (a) AMENDMENT OF THE IMMIGRATION AND NA-  
12 TIONALITY ACT.—Section 103 of the Immigration and  
13 Nationality Act (8 U.S.C. 1103) is amended by adding  
14 at the end the following:

15 “(g) The Attorney General shall establish within the  
16 Criminal Division of the Department of Justice an Office  
17 of Special Investigations with the authority of inves-  
18 tigating, and, where appropriate, taking legal action to re-  
19 move, denaturalize (as otherwise authorized by law), or  
20 prosecute any alien found to be in violation of clause (i),  
21 (ii), or (iii) of section 212(a)(3)(E).”.

22 (b) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) IN GENERAL.—There are authorized to be  
24 appropriated to the Department of Justice for the  
25 fiscal year 2000 such sums as may be necessary to



1 carry out the additional duties established under sec-  
2 tion 103(g) of the Immigration and Nationality Act  
3 (as added by this Act) in order to ensure that the  
4 Office of Special Investigations fulfills its continuing  
5 obligations regarding Nazi war criminals.

6 (2) AVAILABILITY OF FUNDS.—Amounts appro-  
7 priated pursuant to paragraph (1) are authorized to  
8 remain available until expended.

Passed the Senate November 4, 1999.

Attest:

GARY SISCO,  
*Secretary.*