

Calendar No. 373108TH CONGRESS
1ST SESSION**S. 710**

To amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under that Act with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad.

IN THE SENATE OF THE UNITED STATES

MARCH 26, 2003

Mr. LEAHY (for himself, Mr. HATCH, Mr. LIEBERMAN, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 6, 2003

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under that Act with respect to all alien participants in war crimes, geno-

cide, and the commission of acts of torture and extrajudicial killings abroad.

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 “Anti-Atrocity Alien De-
 5 portation Act of 2003”.

6 **SEC. 2. INADMISSIBILITY AND DEPORTABILITY OF ALIENS**
 7 **WHO HAVE COMMITTED ACTS OF TORTURE**
 8 **OR EXTRAJUDICIAL KILLINGS ABROAD.**

9 (a) INADMISSIBILITY.—Section 212(a)(3)(E) of the
 10 Immigration and Nationality Act (8 U.S.C.
 11 1182(a)(3)(E)) is amended—

12 (1) in clause (ii), by striking “has engaged in
 13 conduct that is defined as genocide for purposes of
 14 the International Convention on the Prevention and
 15 Punishment of Genocide is inadmissible” and insert-
 16 ing “ordered, incited, assisted, or otherwise partici-
 17 pated in conduct outside the United States that
 18 would, if committed in the United States or by a
 19 United States national, be genocide, as defined in
 20 section 1091(a) of title 18, United States Code, is
 21 inadmissible”;

22 (2) by adding at the end the following:

23 “(iii) COMMISSION OF ACTS OF TOR-
 24 TURE OR EXTRAJUDICIAL KILLINGS.—Any

1 alien who, outside the United States, has
 2 committed, ordered, incited, assisted, or
 3 otherwise participated in the commission
 4 of—

5 “(I) any act of torture, as de-
 6 fined in section 2340 of title 18,
 7 United States Code; or

8 “(II) under color of law of any
 9 foreign nation, any extrajudicial kill-
 10 ing, as defined in section 3(a) of the
 11 Torture Victim Protection Act of
 12 1991 (28 U.S.C. 1350 note);

13 is inadmissible.”; and

14 (3) in the subparagraph heading, by striking
 15 “PARTICIPANTS IN NAZI PERSECUTION OR GENO-
 16 CIDE” and inserting “PARTICIPANTS IN NAZI PERSE-
 17 CUTION, GENOCIDE, OR THE COMMISSION OF ANY
 18 ACT OF TORTURE OR EXTRAJUDICIAL KILLING”.

19 (b) DEPORTABILITY.—Section 237(a)(4)(D) of such
 20 Act (8 U.S.C. 1227(a)(4)(D)) is amended—

21 (1) by striking “clause (i) or (ii)” and inserting
 22 “clause (i), (ii), or (iii)”; and

23 (2) in the subparagraph heading, by striking
 24 “ASSISTED IN NAZI PERSECUTION OR ENGAGED IN
 25 GENOCIDE” and inserting “PARTICIPATED IN NAZI

1 PERSECUTION, GENOCIDE, OR THE COMMISSION OF
2 ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING”.

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

6 **SEC. 3. INADMISSIBILITY AND DEPORTABILITY OF FOR-**
7 **IGN GOVERNMENT OFFICIALS WHO HAVE**
8 **COMMITTED PARTICULARLY SEVERE VIOLA-**
9 **TIONS OF RELIGIOUS FREEDOM.**

10 (a) GROUND OF INADMISSIBILITY.—Section
11 212(a)(2)(G) of the Immigration and Nationality Act (8
12 U.S.C. 1182(a)(2)(G)) is amended to read as follows:

13 “(G) FOREIGN GOVERNMENT OFFICIALS
14 WHO HAVE COMMITTED PARTICULARLY SEVERE
15 VIOLATIONS OF RELIGIOUS FREEDOM.—Any
16 alien who, while serving as a foreign govern-
17 ment official, was responsible for or directly
18 carried out, at any time, particularly severe vio-
19 lations of religious freedom, as defined in sec-
20 tion 3 of the International Religious Freedom
21 Act of 1998 (22 U.S.C. 6402), is inadmis-
22 sible.”.

23 (b) GROUND OF DEPORTABILITY.—Section 237(a)(4)
24 of the Immigration and Nationality Act (8 U.S.C.

1 1227(a)(4)) is amended by adding at the end the fol-
 2 lowing:

3 “(E) PARTICIPATED IN THE COMMISSION
 4 OF SEVERE VIOLATIONS OF RELIGIOUS FREE-
 5 DOM.—Any alien described in section
 6 212(a)(2)(G) is deportable.”.

7 **SEC. 4. WAIVER OF INADMISSIBILITY.**

8 Section 212(d)(3) of the Immigration and Nationality
 9 Act (8 U.S.C. 1182(d)(3)) is amended—

10 (1) in subparagraph (A), by striking “and
 11 3(E)” and inserting “and clauses (i) and (ii) of
 12 paragraph (3)(E)”; and

13 (2) in subparagraph (B), by striking “and
 14 3(E)” and inserting “and clauses (i) and (ii) of
 15 paragraph (3)(E)”.

16 **SEC. 5. BAR TO GOOD MORAL CHARACTER FOR ALIENS**
 17 **WHO HAVE COMMITTED ACTS OF TORTURE,**
 18 **EXTRAJUDICIAL KILLINGS, OR SEVERE VIO-**
 19 **LATIONS OF RELIGIOUS FREEDOM.**

20 Section 101(f) of the Immigration and Nationality
 21 Act (8 U.S.C. 1101(f)) is amended—

22 (1) by striking the period at the end of para-
 23 graph (8) and inserting “; and”; and

24 (2) by adding at the end the following:

1 “~~(9)~~ one who at any time has engaged in con-
 2 duct described in section 212(a)(3)(E) (relating to
 3 assistance in Nazi persecution, participation in geno-
 4 cide, or commission of acts of torture or
 5 extrajudicial killings) or 212(a)(2)(G) (relating to
 6 severe violations of religious freedom).”.

7 **SEC. 6. ESTABLISHMENT OF THE OFFICE OF SPECIAL IN-**
 8 **VESTIGATIONS.**

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

13 “~~(h)(1)~~ The Attorney General shall establish within
 14 the Criminal Division of the Department of Justice an Of-
 15 fice of Special Investigations with the authority to detect
 16 and investigate, and, where appropriate, to take legal ac-
 17 tion to denaturalize any alien described in section
 18 212(a)(3)(E).

19 “~~(2)~~ The Attorney General shall consult with the Sec-
 20 retary of the Department of Homeland Security in making
 21 determinations concerning the criminal prosecution or ex-
 22 tradition of aliens described in section 212(a)(3)(E).

23 “~~(3)~~ In determining the appropriate legal action to
 24 take against an alien described in section 212(a)(3)(E),
 25 consideration shall be given to—

1 “(A) the availability of criminal prosecution
2 under the laws of the United States for any conduct
3 that may form the basis for removal and
4 denaturalization; or

5 “(B) the availability of extradition of the alien
6 to a foreign jurisdiction that is prepared to under-
7 take a prosecution for such conduct.”.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—

9 (1) IN GENERAL.—There are authorized to be
10 appropriated to the Department of Justice such
11 sums as may be necessary to carry out the addi-
12 tional duties established under section 103(h) of the
13 Immigration and Nationality Act (as added by this
14 Act) in order to ensure that the Office of Special In-
15 vestigations fulfills its continuing obligations regard-
16 ing Nazi war criminals.

17 (2) AVAILABILITY OF FUNDS.—Amounts appro-
18 priated pursuant to paragraph (1) are authorized to
19 remain available until expended.

20 **SEC. 7. REPORT ON IMPLEMENTATION OF THE ACT.**

21 Not later than 180 days after the date of enactment
22 of this Act, the Attorney General, in consultation with the
23 Secretary of Homeland Security, shall submit to the Com-
24 mittees on the Judiciary of the Senate and the House of

1 Representatives a report on implementation of this Act
 2 that includes a description of—

3 (1) the procedures used to refer matters to the
 4 Office of Special Investigations and other compo-
 5 nents within the Department of Justice and the De-
 6 partment of Homeland Security in a manner con-
 7 sistent with the amendments made by this Act;

8 (2) the revisions, if any, made to immigration
 9 forms to reflect changes in the Immigration and Na-
 10 tionality Act made by the amendments contained in
 11 this Act; and

12 (3) the procedures developed, with adequate due
 13 process protection, to obtain sufficient evidence to
 14 determine whether an alien may be inadmissible
 15 under the terms of the amendments made by this
 16 Act.

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Anti-Atrocity Alien De-*
 19 *portation Act of 2003”.*

20 **SEC. 2. INADMISSIBILITY AND DEPORTABILITY OF ALIENS**

21 **WHO HAVE COMMITTED ACTS OF TORTURE**

22 **OR EXTRAJUDICIAL KILLINGS ABROAD.**

23 (a) *INADMISSIBILITY.*—*Section 212(a)(3)(E) of the*
 24 *Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(E))*
 25 *is amended—*

1 (1) *in clause (ii), by striking “has engaged in*
2 *conduct that is defined as genocide for purposes of the*
3 *International Convention on the Prevention and Pun-*
4 *ishment of Genocide is inadmissible” and inserting*
5 *“ordered, incited, assisted, or otherwise participated*
6 *in conduct outside the United States that would, if*
7 *committed in the United States or by a United States*
8 *national, be genocide, as defined in section 1091(a) of*
9 *title 18, United States Code, is inadmissible”;*

10 (2) *by adding at the end the following:*

11 *“(iii) COMMISSION OF ACTS OF TOR-*
12 *TURE OR EXTRAJUDICIAL KILLINGS.—Any*
13 *alien who, outside the United States, has*
14 *committed, ordered, incited, assisted, or oth-*
15 *erwise participated in the commission of—*

16 *“(I) any act of torture, as defined*
17 *in section 2340 of title 18, United*
18 *States Code; or*

19 *“(II) under color of law of any*
20 *foreign nation, any extrajudicial kill-*
21 *ing, as defined in section 3(a) of the*
22 *Torture Victim Protection Act of 1991*
23 *(28 U.S.C. 1350 note);*

24 *is inadmissible.”; and*

1 (3) *in the subparagraph heading, by striking*
 2 “PARTICIPANTS IN NAZI PERSECUTION OR GENOCIDE”
 3 *and inserting “PARTICIPANTS IN NAZI PERSECUTION,*
 4 *GENOCIDE, OR THE COMMISSION OF ANY ACT OF TOR-*
 5 *TURE OR EXTRAJUDICIAL KILLING”.*

6 (b) *DEPORTABILITY.—Section 237(a)(4)(D) of such*
 7 *Act (8 U.S.C. 1227(a)(4)(D)) is amended—*

8 (1) *by striking “clause (i) or (ii)” and inserting*
 9 *“clause (i), (ii), or (iii)”;* *and*

10 (2) *in the subparagraph heading, by striking*
 11 “ASSISTED IN NAZI PERSECUTION OR ENGAGED IN
 12 GENOCIDE” *and inserting “PARTICIPATED IN NAZI*
 13 *PERSECUTION, GENOCIDE, OR THE COMMISSION OF*
 14 *ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING”.*

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

18 **SEC. 3. INADMISSIBILITY AND DEPORTABILITY OF FOREIGN**
 19 **GOVERNMENT OFFICIALS WHO HAVE COM-**
 20 **MITTED PARTICULARLY SEVERE VIOLATIONS**
 21 **OF RELIGIOUS FREEDOM.**

22 (a) *GROUND OF INADMISSIBILITY.—Section*
 23 *212(a)(2)(G) of the Immigration and Nationality Act (8*
 24 *U.S.C. 1182(a)(2)(G)) is amended to read as follows:*

1 “(G) *FOREIGN GOVERNMENT OFFICIALS*
 2 *WHO HAVE COMMITTED PARTICULARLY SEVERE*
 3 *VIOLATIONS OF RELIGIOUS FREEDOM.—Any*
 4 *alien who, while serving as a foreign government*
 5 *official, was responsible for or directly carried*
 6 *out, at any time, particularly severe violations of*
 7 *religious freedom, as defined in section 3 of the*
 8 *International Religious Freedom Act of 1998 (22*
 9 *U.S.C. 6402), is inadmissible.”.*

10 (b) *GROUND OF DEPORTABILITY.—Section 237(a)(4)*
 11 *of the Immigration and Nationality Act (8 U.S.C.*
 12 *1227(a)(4)) is amended by adding at the end the following:*

13 “(E) *PARTICIPATED IN THE COMMISSION OF*
 14 *SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—*
 15 *Any alien described in section 212(a)(2)(G) is*
 16 *deportable.”.*

17 **SEC. 4. WAIVER OF INADMISSIBILITY.**

18 *Section 212(d)(3) of the Immigration and Nationality*
 19 *Act (8 U.S.C. 1182(d)(3)) is amended—*

20 (1) *in subparagraph (A), by striking “and 3(E)”*
 21 *and inserting “and clauses (i) and (ii) of paragraph*
 22 *(3)(E)”;* *and*

23 (2) *in subparagraph (B), by striking “and 3(E)”*
 24 *and inserting “and clauses (i) and (ii) of paragraph*
 25 *(3)(E)”.*

1 **SEC. 5. BAR TO GOOD MORAL CHARACTER, ASYLUM AND**
 2 **REFUGEE STATUS, AND WITHHOLDING OF RE-**
 3 **MOVAL FOR ALIENS WHO HAVE COMMITTED**
 4 **ACTS OF TORTURE, EXTRAJUDICIAL**
 5 **KILLINGS, OR SEVERE VIOLATIONS OF RELI-**
 6 **GIOUS FREEDOM.**

7 (a) *GOOD MORAL CHARACTER.*—Section 101(f) of the
 8 *Immigration and Nationality Act* (8 U.S.C. 1101(f)) is
 9 amended—

10 (1) *by striking the period at the end of para-*
 11 *graph (8) and inserting “; and”; and*

12 (2) *by adding at the end the following:*

13 “(9) *one who at any time has engaged in con-*
 14 *duct described in section 212(a)(3)(E) (relating to as-*
 15 *sistance in Nazi persecution, participation in geno-*
 16 *cide, or commission of acts of torture or extrajudicial*
 17 *killings) or 212(a)(2)(G) (relating to severe violations*
 18 *of religious freedom).”.*

19 (b) *ASYLUM.*—Section 208(b)(2)(A) of the *Immigra-*
 20 *tion and Nationality Act* (8 U.S.C. 1158(b)(2)(A)) is
 21 amended—

22 (1) *in clause (v), by striking “or” at the end;*

23 (2) *in clause (vi), by striking the period and in-*
 24 *serting “; or”; and*

25 (3) *by adding at the end the following:*

1 “(vii) the alien is inadmissible under
2 section 212(a)(3)(E).”.

3 (c) *REFUGEES*.—Section 101(a)(42) of the *Immigra-*
4 *tion and Nationality Act (8 U.S.C. 1101(a)(42))* is amend-
5 *ed in the second sentence (regarding exclusions to the term*
6 *“refugee”)* by inserting “, or any person who is inadmis-
7 *sible under section 212(a)(3)(E)”* after “or political opin-
8 *ion”*.

9 (d) *WITHHOLDING OF REMOVAL*.—Section
10 *241(b)(3)(B) of the Immigration and Nationality Act (8*
11 *U.S.C. 1231(b)(3)(B))* is amended—

12 (1) *in clause (iii), by striking “or” at the end;*

13 (2) *in clause (iv), by striking the period and in-*
14 *serting “; or”; and*

15 (3) *by adding at the end the following:*

16 “(v) the alien is inadmissible under
17 section 212(a)(3)(E).”.

18 **SEC. 6. ESTABLISHMENT OF THE OFFICE OF SPECIAL IN-**
19 **VESTIGATIONS.**

20 (a) *AMENDMENT OF THE IMMIGRATION AND NATION-*
21 *ALITY ACT*.—Section 103 of the *Immigration and Nation-*
22 *ality Act (8 U.S.C. 1103)* is amended by adding at the end
23 *the following:*

24 “(h)(1) *The Attorney General shall establish within the*
25 *Criminal Division of the Department of Justice an Office*

1 *of Special Investigations with the authority to detect and*
2 *investigate, and, where appropriate, to take legal action to*
3 *denaturalize any alien described in section 212(a)(3)(E).*

4 “(2) *The Attorney General shall consult with the Sec-*
5 *retary of the Department of Homeland Security in making*
6 *determinations concerning the criminal prosecution or ex-*
7 *tradition of aliens described in section 212(a)(3)(E).*

8 “(3) *In determining the appropriate legal action to*
9 *take against an alien described in section 212(a)(3)(E),*
10 *consideration shall be given to—*

11 “(A) *the availability of criminal prosecution*
12 *under the laws of the United States for any conduct*
13 *that may form the basis for removal and*
14 *denaturalization; or*

15 “(B) *the availability of extradition of the alien*
16 *to a foreign jurisdiction that is prepared to undertake*
17 *a prosecution for such conduct.”.*

18 (b) *AUTHORIZATION OF APPROPRIATIONS.—*

19 (1) *IN GENERAL.—There are authorized to be ap-*
20 *propriated to the Department of Justice such sums as*
21 *may be necessary to carry out the additional duties*
22 *established under section 103(h) of the Immigration*
23 *and Nationality Act (as added by this Act) in order*
24 *to ensure that the Office of Special Investigations ful-*

1 *fills its continuing obligations regarding Nazi war*
2 *criminals.*

3 (2) *AVAILABILITY OF FUNDS.—Amounts appro-*
4 *priated pursuant to paragraph (1) are authorized to*
5 *remain available until expended.*

6 **SEC. 7. REPORTS ON IMPLEMENTATION OF THE ACT.**

7 (a) *IMPLEMENTATION REPORT.—Not later than 180*
8 *days after the date of enactment of this Act, the Attorney*
9 *General, in consultation with the Secretary of Homeland*
10 *Security, shall submit to the Committees on the Judiciary*
11 *of the Senate and the House of Representatives a report on*
12 *the implementation of this Act that includes a description*
13 *of—*

14 (1) *the procedures used to refer matters to the*
15 *Office of Special Investigations and other components*
16 *within the Department of Justice and the Department*
17 *of Homeland Security in a manner consistent with*
18 *the amendments made by this Act;*

19 (2) *the revisions, if any, made to immigration*
20 *forms to reflect changes in the Immigration and Na-*
21 *tionality Act made by the amendments contained in*
22 *this Act; and*

23 (3) *the procedures developed, with adequate due*
24 *process protection, to obtain sufficient evidence to de-*

1 *termine whether an alien may be inadmissible under*
2 *the terms of the amendments made by this Act.*

3 *(b) ADDITIONAL REPORT.—One year after the date of*
4 *enactment of this Act, and annually thereafter, the Attorney*
5 *General and the Secretary of Homeland Security shall sub-*
6 *mit to the Committees on the Judiciary of the Senate and*
7 *the House of Representatives a report that includes—*

8 *(1) the number of criminal investigations and*
9 *criminal prosecutions conducted pursuant to this Act;*

10 *(2) the number of persons removed from, or de-*
11 *nyed admission to, the United States pursuant to this*
12 *Act; and*

13 *(3) the number and nationality of aliens who*
14 *have been removed from, or denied access to, the*
15 *United states pursuant to this Act.*

Calendar No. 373

108TH CONGRESS
1ST SESSION

S. 710

A BILL

To amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under that Act with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad.

NOVEMBER 6, 2003

Reported with an amendment