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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

To prohibit the transfer or return of persons by the United States, for the purpose of detention, interrogation, trial, or otherwise, to countries where torture or other inhuman treatment of persons occurs.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To prohibit the transfer or return of persons by the United States, for the purpose of detention, interrogation, trial, or otherwise, to countries where torture or other inhuman treatment of persons occurs.

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 Outsourcing
5 Prevention Act”.



1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The Universal Declaration of Human
4 Rights states that “No one shall be subjected to tor-
5 ture or to cruel, inhuman, or degrading treatment or
6 punishment.”.

7 (2) The United Nations Convention against
8 Torture and Other Cruel, Inhuman or Degrading
9 Treatment or Punishment (in this Act referred to as
10 the “Convention against Torture”) defines torture
11 as “any act by which severe pain or suffering,
12 whether physical or mental, is intentionally inflicted
13 on a person for such purposes as obtaining from him
14 or a third person information or a confession. . . .”,
15 and which may be “inflicted by or at the instigation
16 of or acquiescence of a public official or other person
17 acting in an official capacity.”.

18 (3) Article 4 of the Convention against Torture
19 obligates State parties to ensure that all acts of tor-
20 ture are criminal offenses under domestic legislation,
21 and current United States law, under section 2340A
22 of title 18, United States Code, makes torture a
23 crime when committed outside of the United States.

24 (4) Article 3 of the Convention against Torture
25 expressly prohibits sending a person to another
26 State “where there are substantial grounds for be-



1 lieving that he would be in danger of being subjected
2 to torture.” It further provides that in making such
3 determinations, governments must take into account
4 the existence of “a consistent pattern of gross, fla-
5 grant, or mass violations of human rights.”.

6 (5) In order to discourage the use of torture in
7 interrogation, Article 15 of the Convention against
8 Torture requires all state Parties to “ensure that
9 any statement which is established to have been
10 made as a result of torture shall not be invoked as
11 evidence in any proceedings”.

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

16 (A) Article 7 of the International Covenant
17 on Civil and Political Rights (ICCPR), ratified
18 by 154 countries, including the United States in
19 1992;

20 (B) the Convention against Torture, rati-
21 fied by 139 countries, including the United
22 States in 1994;

23 (C) the American Convention on Human
24 Rights;



1 (D) the European Convention for the Pro-
2 tection of Human Rights and Fundamental
3 Freedoms; and

4 (E) the African Charter on Human and
5 Peoples' Rights.

6 (7) The prohibition against torture and inhu-
7 mane treatment is also fundamental to the laws gov-
8 erning the conduct of parties in armed conflicts, as
9 enshrined in the Geneva Conventions of 1949 and
10 their Protocols, which establish a duty to protect the
11 life, health, and safety of civilians and other non-
12 combatants, including soldiers who are captured or
13 who have laid down their arms, prohibit "violence of
14 life and person, in particular murder of all kinds,
15 mutilation, cruel treatment, and torture", "outrages
16 upon personal dignity, in particular humiliating, and
17 degrading treatment", and prohibit the use of force
18 to obtain information, stipulating that "No physical
19 or moral coercion shall be exercised against pro-
20 tected persons, in particular to obtain information
21 from them or from third parties."

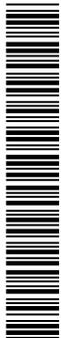
22 (8) The United States Government informed
23 the United Nations in 1999 that in the United
24 States, the use of torture "is categorically denounced
25 as a matter of policy and as a tool of state authority



1 . . . No official of the government, Federal, State,
2 or local, civilian, or military, is authorized to commit
3 or to instruct anyone else to commit torture. Nor
4 may any official condone or tolerate torture in any
5 form . . . Every act of torture within the meaning
6 of the [Convention against Torture] is illegal under
7 existing Federal and State law, and any individual
8 who commits such an act is subject to penal sanc-
9 tions as specified in criminal statutes.”.

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

23 (10) In numerous cases, the United States Su-
24 preme Court has condemned the use of force
25 amounting to torture or other forms of ill treatment



1 during interrogations, including such practices as
2 whipping, slapping, depriving a prisoner of food,
3 water, or sleep, keeping a prisoner naked or in a
4 small cell for prolonged periods, holding a gun to a
5 prisoner's head, or threatening a prisoner with mob
6 violence.

7 (11) Section 2242(a) of the Foreign Affairs Re-
8 form and Restructuring Act of 1998 (Public Law
9 105-277; 8 U.S.C. 1231 note) states that "It shall
10 be the policy of the United States not to expel, ex-
11 tradite, or otherwise effect the involuntary return of
12 any person to a country in which there are substan-
13 tial grounds for believing the person would be in
14 danger of being subjected to torture, regardless of
15 whether the person is physically present in the
16 United States." . To do otherwise would violate our
17 obligations under Article 3 of the Convention against
18 Torture.

19 (12) Transferring, rendering, removing, return-
20 ing, or extraditing persons in the custody of the
21 United States to any other country where torture or
22 cruel, inhuman, or degrading treatment is commonly
23 used in the detention and interrogation of individ-
24 uals is inconsistent with international human rights
25 law, including various human rights treaties ratified



1 by the United States, the Constitutional protections
2 against torture or inhuman treatment, and the val-
3 ues and principles upon which the United States was
4 founded.

5 (13) Recent practices have weakened the safe-
6 guards under applicable laws, such as the procedures
7 under the immigration laws of the United States
8 governing removals from the United States, and per-
9 sons have been transferred from the custody of the
10 United States to that of other governments entirely
11 outside of any legal framework.

12 (14) It is critically important that all transfers
13 of individuals to other countries occur with full due
14 process of law and in conformity with the obligations
15 of the United States under article 3 of the Conven-
16 tion Against Torture.

17 (15) The reliance on diplomatic or other assur-
18 ances from a government that it will not torture or
19 ill-treat a person returned to that government is an
20 ineffective safeguard for protecting persons from
21 torture or ill treatment. Such assurances from a gov-
22 ernment known to engage in systematic torture are
23 inherently unreliable. There is strong evidence that
24 governments such as those of Egypt, Syria, and



1 Uzbekistan have violated such assurances they have
2 provided.

3 (16) The United Nation's leading expert on tor-
4 ture, the Special Rapporteur on Torture, recently ex-
5 amined the practice of rendition in situations that
6 implicate the prohibition on returning persons to
7 countries where they may face torture. The Special
8 Rapporteur noted with concern that such practices
9 appear to be on the rise over the past 3 years. After
10 examining the growing use of diplomatic or other as-
11 surances described in paragraph (14), the Special
12 Rapporteur stated that such assurances may not be
13 used in circumstances where a country has a record
14 of "systematic practice of torture". In such cases,
15 the individual's right not to be subjected to torture
16 must be respected, and the individual may not be re-
17 turned to that country.

18 **SEC. 3. TRANSFER OF PERSONS.**

19 (a) REPORTS TO CONGRESS.—Beginning 30 days
20 after the date of the enactment of this Act and every 12
21 months thereafter, the Secretary of State shall complete
22 and submit to the appropriate congressional committees
23 a list of countries where there are substantial grounds for
24 believing that torture or cruel, inhuman, or degrading
25 treatment is commonly used in the detention of or interro-



1 gation of individuals. The list shall be compiled on the
2 basis of the information contained in the most recent an-
3 nual report of the Secretary of State submitted to the
4 Speaker of the House of Representatives and the Com-
5 mittee on Foreign Relations of the Senate under section
6 116(d) of the Foreign Assistance Act of 1961 (22 U.S.C.
7 2151n(d)).

8 (b) PROHIBITION ON TRANSFERRING PERSONS.—
9 Any person who is imprisoned, detained, or held for trans-
10 fer to another country by, or is otherwise in the custody
11 of, a department, agency, or official of the United States
12 Government, or any contractor of any such department
13 or agency, may not be transferred, rendered, or
14 returned—

15 (1) to a country included on the most recent list
16 submitted under subsection (a), for the purpose of
17 detention, interrogation, trial, or otherwise; or

18 (2) to any other country if there are substantial
19 grounds to believe that the person will be transferred
20 to a country included in the most recent list sub-
21 mitted under subsection (a).

22 (c) WAIVERS.—

23 (1) AUTHORITY.—The Secretary of State may
24 waive the prohibition contained in subsection (b)
25 with respect to the government of a country if the



1 Secretary certifies to the appropriate congressional
2 committees that—

3 (A) that government has ended the acts of
4 torture or cruel, inhuman, or degrading treat-
5 ment that were the basis for the inclusion of
6 that country on the list; and

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

16 (2) ASSURANCES INSUFFICIENT.—Written or
17 verbal assurances made to the United States by the
18 government of a country that persons transferred,
19 rendered, or returned to the country will not be tor-
20 tured or subjected to cruel, inhuman, or degrading
21 treatment, are not sufficient to meet the require-
22 ments of paragraph (1)(B).

23 (d) TREATY-BASED EXTRADITION EXEMPTION.—(1)
24 The prohibition contained in subsection (b) shall not be
25 construed to apply to the legal extradition of a person



1 under a bilateral or multilateral extradition treaty if, prior
2 to such extradition, that person has recourse to a court
3 in the United States of competent jurisdiction to challenge
4 the extradition on the basis that there are substantial
5 grounds for believing that the person would be in danger
6 of being subjected to torture or cruel, inhuman, or degrad-
7 ing treatment in the country requesting such extradition.

8 (2) ASSURANCES INSUFFICIENT.—Written or verbal
9 assurances made to the United States by the government
10 of a country that persons transferred, rendered, or re-
11 turned to the country will not be tortured or subjected
12 to cruel, inhuman, or degrading treatment, are not suffi-
13 cient basis for believing that the person would not be in
14 subjected to torture or cruel, inhuman, or degrading treat-
15 ment in the country requesting such extradition pursuant
16 to paragraph (1).

17 **SEC. 4. IMPLEMENTATION OF OBLIGATION NOT TO RE-**
18 **TURN TO RISK OF TORTURE.**

19 (a) IN GENERAL.—Section 2242 of the Foreign Af-
20 fairs Reform and Restructuring Act of 1998 (8 U.S.C.
21 1231 note) is amended by striking subsection (b) and in-
22 serting the following:

23 “(b) REGULATIONS.—

24 “(1) ISSUANCE.—Not later than 120 days after
25 the date of the enactment of the Torture



1 Outsourcing Prevention Act, the heads of the appro-
2 priate Government agencies shall prescribe regula-
3 tions to implement the obligations of the United
4 States under Article 3 of the United Nations Con-
5 vention Against Torture and Other Cruel, Inhuman
6 or Degrading Treatment or Punishment, subject to
7 any reservations, understandings, declarations and
8 provisos contained in the United States Senate reso-
9 lution of ratification of the Convention.

10 “(2) REQUIREMENTS OF REGULATIONS.—Regu-
11 lations issued by the head of an agency under para-
12 graph (1) shall set forth—

13 “(A) the responsibilities of the agency, its
14 employees, and its contractors to comply, both
15 within and outside of the United States, with
16 the obligations of the United States under Arti-
17 cle 3 of the Convention Against Torture re-
18 ferred to in paragraph (1); and

19 “(B) the process by which a person may
20 raise and adjudicate in an independent judicial
21 forum a claim that his or her transfer would be
22 in violation of Article 3 of the Convention
23 Against Torture referred to in paragraph (1),
24 including the process by which the individual
25 being transferred can challenge any diplomatic



1 or other assurances received from the govern-
2 ment to which the individual would be returned
3 that the individual will not be subjected to tor-
4 ture or ill treatment.

5 “(3) DEFINITION.—For purposes of this sub-
6 section, the term ‘appropriate Government agencies’
7 means the intelligence community (as defined in sec-
8 tion 3(4) of the National Security Act of 1947 (50
9 U.S.C. 401a(4))), the Departments of State, De-
10 fense, Homeland Security, and Justice, the United
11 States Secret Service, the United States Marshals
12 Service, and any other law enforcement, national se-
13 curity, intelligence, or homeland security agency
14 which imprisons, detains, or transfers prisoners or
15 detainees, or which otherwise takes or assumes cus-
16 tody of persons, or transfers persons to another
17 country.”.

18 (b) EXISTING REGULATIONS.—

19 (1) IN GENERAL.—The amendment made by
20 subsection (a) does not nullify any regulations issued
21 by an agency, before the effective date of this Act,
22 under section 2242(b) of the Foreign Affairs Reform
23 and Restructuring Act of 1998. In such a case, the
24 agency shall amend such regulations to comply with



1 the amendment made by subsection (a) of this sec-
2 tion.

3 (2) SPECIAL RULE CONCERNING IMMIGRATION
4 LAWS.—Notwithstanding any other provision of this
5 Act, or any amendment made by this Act, nothing
6 in this Act shall be construed to affect immigration
7 laws (as defined in section 101(a)(17) of the Immi-
8 gration and Nationality Act (8 U.S.C.
9 1101(a)(17))), or regulations issued pursuant to im-
10 migration laws, except that the Secretary of Home-
11 land Security, not later than 120 days after the date
12 of the enactment of this Act, shall revise the regula-
13 tions issued by the Secretary to implement section
14 2242 of the Foreign Affairs Reform and Restruc-
15 turing Act of 1998 (8 U.S.C. 1231 note) so as to
16 ensure that written or verbal assurances made by
17 the government of a country that a person in immi-
18 gration proceedings in the United States (including
19 asylum proceedings) will not be tortured or sub-
20 jected to cruel, inhuman, or degrading treatment if
21 the person is removed by the United States to the
22 country are not, standing alone, a sufficient basis
23 for believing that the person would not be tortured
24 or subjected to such treatment if the alien were re-
25 moved to the country.



1 **SEC. 5. SAVINGS CLAUSE.**

2 Nothing in this Act or the amendments made by this
3 Act shall be construed to eliminate, limit, or constrain in
4 any way the rights that an individual has under the Con-
5 vention Against Torture or any other applicable law.

6 **SEC. 6. EFFECTIVE DATE.**

7 This Act takes effect on the date that is 30 days after
8 the date of the enactment of this Act.

