



Country File UNITED STATES

Last Updated: 19.08.2013

Region	Americas
Legal System	Common Law
UNCAT Ratification, Accession (a), or Succession (d)	21 October 1994
Relevant Laws and Regulations	<ul style="list-style-type: none">- The Constitution of the United States of America (“Constitution”)- 8 U.S.C. § 1252 – Judicial review of orders of removal- 18 U.S.C. § 242 – Deprivation of rights under color of law- 18 U.S.C. § 2340, et. seq. (crime of torture)- 18 U.S.C. § 2441 – War crimes- 22 USC § 2152 – Assistance for victims of torture- 28 USC § 1350 – Alien’s action for tort- 42 USC § 2000dd, et. seq.- Foreign Affairs Reform and Restructuring Act of 1998, § 2242, Pub. L. 105-277, 112 Stat. 2681- Torture Victim Protection Act of 1991, Pub. L. 102-256, 106 Stat. 73
Relevant Articles	
Definition of Torture (General) (Article 1)	When it ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United States deposited a reservation and understandings concerning its interpretation of the definitions of torture and of cruel, inhuman or degrading treatment or punishment, which the Committee against Torture has recommended be withdrawn (see Comments).
Prohibition on Torture (Article 1)	<ul style="list-style-type: none">- Fifth, Eighth and Fourteenth Amendments to the United States Constitution. See Common Core Document of the United States of America: Submitted With the Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights concerning the International Covenant on Civil and Political Rights (30 Dec. 2011) (“Protection against torture and cruel, inhuman or degrading punishment or treatment is provided by the Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution”) available at http://www.state.gov/j/drl/rls/179780.htm.- 42 U.S.C. §§ 2000dd; § 2000dd–0

<p>Crime of Torture (Article 4)</p> <ul style="list-style-type: none"> ▪ Definition ▪ Statute of Limitations ▪ Penalties ▪ Other 	<p>The United States has adopted a federal crime of torture only with respect to acts of torture that occur outside of the United States, 18 U.S.C. §§ 2340, 2340A.</p> <p>The United States of America’s position, as articulated in its most recent report to the Committee against Torture, is that acts of torture committed in the United States are prohibited through other criminal statutes, such as assault, rape, murder, etc., and that acts of torture can be prosecuted under 18 U.S.C. § 242 as a deprivation of a constitutional right. See Committee against Torture, Convention against Torture, Periodic Report of the United States of America ¶¶ 8-9 (received on 12 Aug. 2013).</p> <p>The Committee against Torture has nevertheless previously recommended that the United States adopt a federal crime of torture (see Comments below).</p> <p>- 18 U.S.C. § 2340</p> <p>- 18 U.S.C. § 2340A</p> <p>- 18 U.S.C. § 242 - Deprivation of rights under color of law</p> <p>- 42 USC § 2000dd-1 - Protection of United States Government personnel engaged in authorized interrogations</p>
<p>Universal Jurisdiction & Cooperation (Articles 5, 9)</p>	<p>- 18 U.S.C. § 2340A (b)</p>
<p>Investigations (Articles 12, 13)</p>	
<p>Remedies and Reparations (Article 14)</p>	<p>- Torture Victims Protection Act (TVPA), Act of 1991, Pub. L. 102-256, 106 Stat. 73.</p> <p>The TVPA grants a victim of torture, the “legal representative” of a victim of enforced disappearance, or a person eligible to file a wrongful death claim (enforced disappearance cases) access to United States Courts to file a civil claim against “an individual who, under actual or apparent authority, or color of law, of any foreign nation” subjected an individual to torture or enforced disappearance.</p> <p>- Alien Tort Statute (ATS), 28 U.S.C. § 1350.</p> <p>The ATS grants “aliens” access to United States Courts to file a civil action in “tort” (wrongful act) “committed in violation of the law of nations or a treaty of the United States”. The ATS has been used by victims of torture to pursue civil actions against perpetrators of</p>

	<p>torture. The scope of the ATS was limited in 2013 by the United States Supreme Court in <i>Kiobel v. Royal Dutch Petroleum, Co.</i> 569 U.S. ____ (2013). The impact of that decision on cases brought by torture victims against individual perpetrators is not yet clear. See Center for Justice and Accountability, <i>Kiobel v. Shell, Light Dims on Human Rights Claims in the U.S.</i>, available at http://cja.org/section.php?id=510.</p> <p>- Rehabilitation. 22 USC § 2152.</p>
Exclusion of Evidence (Article 15)	- Fifth Amendment to the United States Constitution
Legal and Procedural Safeguards (Articles 2, 11, 16)	
Non-Refoulement (Article 3)	<p>- 8 USC § 1252 (a)(4); Foreign Affairs Reform and Restructuring Act of 1998, § 2242. Pub. L. 105-277, 112 Stat. 2681.</p> <p>The Code of Federal Regulations contains regulations related to non-refoulement at 8 C.F.R. § 208.16-208.18 (immigration removals); 22 C.F.R. § 95.1-95.4 (extradition) (not reproduced below).</p>
Other	<ul style="list-style-type: none"> ▪ War crime of torture. 18 U.S.C. § 2441– War crimes.
Comments	<p>In its first review of the United States in 2000, the Committee against Torture recommended that the United States withdraw its reservations and understandings to the Convention.</p> <p style="padding-left: 40px;">180. The Committee recommends that the State party:</p> <p style="padding-left: 80px;">(a) Although it has taken many measures to ensure compliance with the provisions of the Convention, also enact a federal crime of torture in terms consistent with article 1 of the Convention and withdraw its reservations, interpretations and understandings relating to the Convention;</p> <p>Report of the Committee against Torture, Twenty-third session (8-19 November 1999), Twenty-fourth session (1-19 May 2000), p. 32, UN Doc. A/55/44 (2000).</p> <p>In its next review in 2006, the Committee against Torture issued the following recommendations related to legislation.</p> <p style="padding-left: 40px;">13. Notwithstanding the statement by the State party that “every act of torture within the meaning of the Convention is illegal under existing federal and/or state law”, the Committee reiterates the concern expressed in its previous conclusions and recommendations with regard to the absence of a federal crime of torture, consistent with article 1 of the Convention, given that sections 2340 and 2340 A of the United States Code limit federal criminal jurisdiction over acts of torture to extraterritorial cases. The Committee also regrets</p>

	<p>that, despite the occurrence of cases of extraterritorial torture of detainees, no prosecutions have been initiated under the extraterritorial criminal torture statute (arts. 1, 2, 4 and 5).</p> <p>The Committee reiterates its previous recommendation that the State party should enact a federal crime of torture consistent with article 1 of the Convention, which should include appropriate penalties, in order to fulfill its obligations under the Convention to prevent and eliminate acts of torture causing severe pain or suffering, whether physical or mental, in all its forms.</p> <p>The State party should ensure that acts of psychological torture, prohibited by the Convention, are not limited to “prolonged mental harm” as set out in the State party’s understandings lodged at the time of ratification of the Convention, but constitute a wider category of acts, which cause severe mental suffering, irrespective of their prolongation or its duration.</p> <p>The State party should investigate, prosecute and punish perpetrators under the federal extraterritorial criminal torture statute. ¶ 13.</p> <p>29. The Committee is concerned at section 1997 e (e) of the 1995 Prison Litigation Reform Act which provides “that no federal civil action may be brought by a prisoner for mental or emotional injury suffered while in custody without a prior showing of physical injury” (art. 14).</p> <p>The State party should not limit the right of victims to bring civil actions and amend the Prison Litigation Reform Act accordingly. ¶ 29.</p> <p>Conclusions and recommendations of the Committee against Torture, United States of America, UN Doc. CAT/C/USA/CO/2 (25 July 2006).</p>
Languages Available	English
Links & Sources	<ul style="list-style-type: none"> - Constitution of the United States of America, available at http://www.law.cornell.edu/constitution/ - United States Code, available at http://uscode.house.gov/ or http://www.law.cornell.edu/uscode/text - Code of Federal Regulations (unofficial), available at http://www.ecfr.gov/cgi-bin/ECFR?page=browse or http://www.law.cornell.edu/uscode/text - Foreign Affairs Reform and Restructuring Act of 1998, § 2242, Pub. L. 105-277, 112 Stat. 2681, available at http://www.uscis.gov/sites/default/files/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-16785.html#0-0-0-2135 - Torture Victim Protection Act of 1991, Pub. L. 102-256, 106 Stat. 73 available at http://www.law.cornell.edu/uscode/text/28/1350 (click on notes).

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	<p>- Reservations and Understandings made upon ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <i>available in</i> United Nations Treaty Collection Database, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#EndDec.</p> <p>- Committee against Torture, Convention against Torture, Periodic Report of the United States of America (received on 12 Aug. 2013) <i>available at</i> http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=USA&Lang=EN.</p>
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Relevant Laws – UNITED STATES

➤ The Constitution of the United States of America

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

EIGHTH AMENDMENT

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

FOURTEENTH AMENDMENT

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[...]

➤ 8 U.S.C. § 1252(a)(4) – Judicial review of orders of removal

(a) Applicable provisions

[....]

(4) Claims under the United Nations Convention

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e) of this section.

➤ 18 U.S.C. § 242 – Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

➤ 18 U.S.C. § 2340, et. seq. (crime of torture)

18 USC § 2340 - Definitions

As used in this chapter—

(1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

(3) “United States” means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

18 USC § 2340A - Torture

(a) Offense. — Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

(b) Jurisdiction. — There is jurisdiction over the activity prohibited in subsection (a) if—

(1) the alleged offender is a national of the United States; or

(2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

(c) Conspiracy. — A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.

18 USC § 2340B - Exclusive remedies

Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.

➤ 18 U.S.C. § 2441– War crimes

(a) Offense.— Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) Circumstances.— The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) Definition. — As used in this section the term “war crime” means any conduct—

(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;

(2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;

(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or

(4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.

(d) Common Article 3 Violations.—

(1) Prohibited conduct.— In subsection (c)(3), the term “grave breach of common Article 3” means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

(A) Torture. — The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

(B) Cruel or inhuman treatment.— The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

(C) Performing biological experiments.— The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

(D) Murder.— The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

(E) Mutilation or maiming.— The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

(F) Intentionally causing serious bodily injury. — The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

(G) Rape.— The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

(H) Sexual assault or abuse.— The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

(I) Taking hostages. — The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

(2) Definitions. — In the case of an offense under subsection (a) by reason of subsection (c)(3)—

(A) the term “severe mental pain or suffering” shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340 (2) of this title;

(B) the term “serious bodily injury” shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113 (b)(2) of this title;

(C) the term “sexual contact” shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246 (3) of this title;

(D) the term “serious physical pain or suffering” shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

(E) the term “serious mental pain or suffering” shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term “severe mental pain or suffering” (as defined in section 2340 (2) of this title), except that—

(i) the term “serious” shall replace the term “severe” where it appears; and

(ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term “serious and non-transitory mental harm (which need not be prolonged)” shall replace the term “prolonged mental harm” where it appears.

(3) Inapplicability of certain provisions with respect to collateral damage or incident of lawful attack.— The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

(A) collateral damage; or

(B) death, damage, or injury incident to a lawful attack.

(4) Inapplicability of taking hostages to prisoner exchange.— Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.

(5) Definition of grave breaches.— The definitions in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.

➤ 22 USC § 2152 – Assistance for victims of torture

(a) In general

The President is authorized to provide assistance for the rehabilitation of victims of torture.

(b) Eligibility for grants

Such assistance shall be provided in the form of grants to treatment centers and programs in foreign countries that are carrying out projects or activities specifically designed to treat victims of torture for the physical and psychological effects of the torture.

(c) Use of funds

Such assistance shall be available—

(1) for direct services to victims of torture; and

(2) to provide research and training to health care providers outside of treatment centers or programs described in subsection (b) of this section, for the purpose of enabling such providers to provide the services described in paragraph (1).

➤ 28 USC § 1350 – Alien’s action for tort

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

➤ 42 U.S.C. § 2000dd – Prohibition on cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the United States Government

(a) In general

No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(b) Construction

Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.

(c) Limitation on supersedure

The provisions of this section shall not be superseded, except by a provision of law enacted after December 30, 2005, which specifically repeals, modifies, or supersedes the provisions of this section.

(d) Cruel, inhuman, or degrading treatment or punishment defined

In this section, the term “cruel, inhuman, or degrading treatment or punishment” means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(Pub. L. 109–148, div. A, title X, §1003, Dec. 30, 2005, 119 Stat. 2739; Pub. L. 109–163, div. A, title XIV, §1403, Jan. 6, 2006, 119 Stat. 3475.)

➤ 42 U.S.C. § 2000dd–0. Additional prohibition on cruel, inhuman, or degrading treatment or punishment

(1) In general

No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) Cruel, inhuman, or degrading treatment or punishment defined

In this section, the term “cruel, inhuman, or degrading treatment or punishment” means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(3) Compliance

The President shall take action to ensure compliance with this section, including through the establishment of administrative rules and procedures.

(Pub. L. 109–366, §6(c), Oct. 17, 2006, 120 Stat. 2635.)

➤ 42 USC § 2000dd–1 - Protection of United States Government personnel engaged in authorized interrogations

(a) Protection of United States Government personnel

In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person, arising out of the officer, employee, member of the Armed Forces, or other agent's engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

(b) Counsel

The United States Government shall provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution or investigation arising out of practices described in that subsection, whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10.

(Pub. L. 109–148, div. A, title X, §1004, Dec. 30, 2005, 119 Stat. 2740; Pub. L. 109–163, div. A, title XIV, §1404, Jan. 6, 2006, 119 Stat. 3475; Pub. L. 109–366, §8(a), Oct. 17, 2006, 120 Stat. 2636; Pub. L. 110–181, div. A, title X, §1063(d)(1), Jan. 28, 2008, 122 Stat. 323; Pub. L. 110–417, [div. A], title X, §1061(b)(10), Oct. 14, 2008, 122 Stat. 4613.)

➤ Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277, 112 Stat. 2681

SEC. 2242. UNITED STATES POLICY WITH RESPECT TO THE INVOLUNTARY RETURN OF PERSONS IN DANGER OF SUBJECTION TO TORTURE.

(a) POLICY.—It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the heads of the appropriate agencies shall prescribe regulations to implement the obligations of the United States under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.

(c) EXCLUSION OF CERTAIN ALIENS. -- To the maximum extent consistent with the obligations of the United States under the Convention, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, the regulations described in subsection (b) shall exclude from the protection of such regulations aliens described in section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)).

(d) REVIEW AND CONSTRUCTION. -- Notwithstanding any other provision of law, and except as provided in the regulations described in subsection (b), no court shall have jurisdiction to review the regulations adopted to implement this section, and nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section, or any other determination made with respect to the application of the policy set forth in subsection (a), except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(e) AUTHORITY TO DETAIN. -- Nothing in this section shall be construed as limiting the authority of the Attorney General to detain any person under any provision of law, including, but not limited to, any provision of the Immigration and Nationality Act.

(1) CONVENTION DEFINED.—In this section, the term “Convention” means the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984.

(2) SAME TERMS AS IN THE CONVENTION.—Except as otherwise provided, the terms used in this section have the meanings given those terms in the Convention, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.

➤ Torture Victim Protection Act of 1991, Pub. L. 102–256, 106 Stat. 73

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Torture Victim Protection Act of 1991’.

SEC. 2. ESTABLISHMENT OF CIVIL ACTION.

(a) Liability.—An individual who, under actual or apparent authority, or color of law, of any foreign nation—

(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual’s legal representative, or to any person who may be a claimant in an action for wrongful death.

(b) Exhaustion of Remedies.—A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.

(c) Statute of Limitations.—No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.

SEC. 3. DEFINITIONS.

(a) Extrajudicial Killing.—For the purposes of this Act, the term ‘extrajudicial killing’ means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

(b) Torture.—For the purposes of this Act—

(1) the term ‘torture’ means any act, directed against an individual in the offender’s custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind; and

(2) mental pain or suffering refers to prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

➤ Reservations and Understandings made upon ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

"I. The Senate's advice and consent is subject to the following reservations:

(1) That the United States considers itself bound by the obligation under article 16 to prevent 'cruel, inhuman or degrading treatment or punishment', only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.

[...]

II. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Convention:

(1) (a) That with reference to article 1, the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

(b) That the United States understands that the definition of torture in article 1 is intended to apply only to acts directed against persons in the offender's custody or physical control.

(c) That with reference to article 1 of the Convention, the United States understands that 'sanctions' includes judicially-imposed sanctions and other enforcement actions authorized by United States law or by judicial interpretation of such law. Nonetheless, the United States understands that a State Party could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.

(d) That with reference to article 1 of the Convention, the United States understands that the term 'acquiescence' requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity.

(e) That with reference to article 1 of the Convention, the United States understands that noncompliance with applicable legal procedural standards does not per se constitute torture.

(2) That the United States understands the phrase, 'where there are substantial grounds for believing that he would be in danger of being subjected to torture,' as used in article 3 of the Convention, to mean 'if it is more likely than not that he would be tortured.'

(3) That it is the understanding of the United States that article 14 requires a State Party to provide a private right of action for damages only for acts of torture committed in territory under the jurisdiction of that State Party.

(4) That the United States understands that international law does not prohibit the death penalty, and does not consider this Convention to restrict or prohibit the United States from applying the death penalty consistent with the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States, including any constitutional period of confinement prior to the imposition of the death penalty.

(5) That the United States understands that this Convention shall be implemented by the United States Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered by the Convention and otherwise by the state and local governments. Accordingly, in implementing articles 10-14 and 16, the United States Government shall take measures appropriate to the Federal system to the end that the competent authorities of the constituent units of the United States of America may take appropriate measures for the fulfilment of the Convention.

III. The Senate's advice and consent is subject to the following declarations:

(1) That the United States declares that the provisions of articles 1 through 16 of the Convention are not self-executing.