H.R. _____

To prohibit the return of persons by the United States, for purposes of detention, interrogation, or trial, to countries engaging in torture or other inhuman treatment of persons.

IN THE HOUSE OF REPRESENTATIVES

Mr. Markey introduced the following bill; which was referred to the Committee on __________________

A BILL

To prohibit the return of persons by the United States, for purposes of detention, interrogation, or trial, to countries engaging in torture or other inhuman treatment of persons.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds the following:

(1) The United Nations Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (in this section referred to as the “Convention against Torture”) defines torture as “any act by which severe pain or suffering,
whether physical or mental, is intentionally inflicted
on a person for such purposes as obtaining from him
or a third person information or a confession. . . .”, and that it may be “inflicted by or at
the instigation of or acquiescence of a public official
or other person acting in an official capacity.”.

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

(3) The prohibition on torture and other ill-
treatment has been incorporated into the numerous
international and regional human rights treaties,
including—

(A) Article 7 of the International Covenant
on Civil and Political Rights (ICCPR), ratified
by 153 countries, including the United States in
1992;

(B) the Convention against Torture, rati-
fied by 136 countries, including the United
States in 1994;

(C) the European Convention for the Pro-
tection of Human Rights and Fundamental
Freedoms;
(D) the African Charter on Human and Peoples’ Rights; and

(E) the American Convention on Human Rights.

(4) The prohibition against torture is also fundamental to the laws governing the conduct of parties in armed conflicts, which establish a duty to protect the life, health, and safety of civilians and other noncombatants, including soldiers who are captured or who have laid down their arms, including the Geneva Conventions which prohibit “violence of life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture”, “outrages upon personal dignity, in particular humiliating, and degrading treatment”, and the use of force to obtain information, stipulating that “No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.”

(5) The United States Government informed the United Nations in 1999 that in the United States, the use of torture “is categorically denounced as a matter of policy and as a tool of state authority...No official of the government, Federal, State, or local, civilian, or military, is authorized to commit or
to instruct anyone else to commit torture. Nor may any official condone or tolerate torture in any form...Every act of torture within the meaning of the [Convention against Torture] is illegal under existing Federal and State law, and any individual who commits such an act is subject to penal sanctions as specified in criminal statutes.”.

(6) The practice of torture violates numerous provisions of the United States Constitution and its Bill of Rights, including the right under the Fourth Amendment to be free of unreasonable search or seizure, which encompasses the right not to be abused by the police, the right under the Fifth Amendment against self-incrimination, which encompasses the right to remain silent during interrogations, the guarantees of due process under the Fifth and the Fourteenth Amendments, which ensure fundamental fairness in criminal justice system, and the right under the Eighth Amendment to be free of cruel or unusual punishment.

(7) In numerous cases, the United States Supreme Court has condemned the use of force amounting to torture or other forms of ill treatment during interrogations, including such practices as whipping, slapping, depriving a prisoner of food,
water, or sleep, keeping a prisoner naked or in a small cell for prolonged periods, holding a gun to a prisoner’s head, or threatening a prisoner with mob violence.

(8) Article 4 of the Convention against Torture obligates State parties to ensure that all acts of torture are criminal offenses under domestic legislation, and the United States has insisted that existing Federal and State laws render illegal any act falling with the definition of torture under the Convention against Torture.

(9) Article 3 of the Convention against Torture expressly prohibits sending a person to another State “where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

(10) Section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in Public Law 105–277 (8 U.S.C. 1231 note) states that “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.’’.

(11) Transferring, rendering, returning, or extraditing persons in the custody of the United States to any other country where torture or cruel, inhuman, or degrading treatment is commonly used by the government in interrogation and detention is inconsistent with international human rights law, the Constitutional protections against torture or inhuman treatment, and the values and principles upon which the United States was founded.

SEC. 2. TRANSFER OF PERSONS IN CUSTODY.

(a) REPORTS TO CONGRESS.—Beginning 6 months after the date of the enactment of this Act and every 6 months thereafter, the Secretary of State shall submit to the appropriate congressional committees a list of each country where torture or cruel, inhuman, or degrading treatment is commonly used by the government of that country in interrogation and detention.

(b) PROHIBITION ON TRANSFERRING PERSONS.—No person in the custody of a United States Government department, agency, or official may be transferred, rendered, or returned to the custody of the government of a country included on the most recent list submitted under sub-
section (a) for the purpose of detention, interrogation, or trial.

(c) WAIVERS.—

(1) AUTHORITY.—The Secretary of State may waive the prohibition contained in subsection (b) with respect to the government of a country if the Secretary certifies to the appropriate congressional committees that—

(A) that government has made significant, verifiable progress in eliminating the acts of torture or cruel, inhuman, or degrading treatment that were the basis for the inclusion of that country on the list; or

(B) there is in place a mechanism that assures the United States in a verifiable manner that a person transferred, rendered, or returned will not be tortured or subjected to cruel, inhuman, or degrading treatment in that country, including, at a minimum, immediate, unfettered, and continuing access, from the point of return, to each such person by an independent humanitarian organization.

(2) ASSURANCES INSUFFICIENT.—Written or verbal assurances made to the United States by the government of a country that persons in its custody
will not be tortured or subjected to cruel, inhuman, or degrading treatment, are not sufficient to meet the requirements of paragraph (1)(B).

(d) Treaty-Based Extradition Exemption.—

The prohibition contained in subsection (b) shall not be construed to apply to the legal extradition of a person under a bilateral or multilateral extradition treaty if, prior to such extradition, that person has recourse to a court in the United States of competent jurisdiction to challenge the extradition on the basis that there are substantial grounds for believing that the person would be in danger of being subjected to torture or cruel, inhuman, or degrading treatment in the country requesting such extradition.