

109TH CONGRESS
1ST SESSION

S. 1874

To amend title 28, United States Code, to clarify jurisdiction of Federal Courts over a tort action brought by an alien, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2005

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to clarify jurisdiction of Federal Courts over a tort action brought by an alien, 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.**

4 This Act may be cited as the “Alien Tort Statute Re-
5 form Act”.

6 **SEC. 2. SUITS BY ALIENS.**

7 Section 1350 of title 28, United States Code, is
8 amended to read as follows:

1 **“§ 1350. Alien’s action for tort**

2 “(a) JURISDICTION OF DISTRICT COURTS.—The dis-
 3 trict courts shall have original and exclusive jurisdiction
 4 of any civil action brought by an alien asserting a claim
 5 of torture, extrajudicial killing, genocide, piracy, slavery,
 6 or slave trading if a defendant is a direct participant act-
 7 ing with specific intent to commit the alleged tort. The
 8 district courts shall not have jurisdiction over such civil
 9 suits brought by an alien if a foreign state is responsible
 10 for committing the tort in question within its sovereign
 11 territory.

12 “(b) DEFINITIONS.—For the purposes of this section:

13 “(1) DEFENDANT.—The term ‘defendant’
 14 means any person subject to the jurisdiction of the
 15 district courts of the United States, including—

16 “(A) a United States citizen;

17 “(B) a natural person who is a permanent
 18 resident of the United States;

19 “(C) a natural person who resides in the
 20 United States; or

21 “(D) a partnership, corporation, or other
 22 legal entity organized under the laws of the
 23 United States or of a foreign state.

24 “(2) FOREIGN STATE.—The term ‘foreign state’
 25 has the meaning given that term in section 1603 of
 26 title 28, United States Code.

1 “(3) EXTRAJUDICIAL KILLING.—The term
2 ‘extrajudicial killing’—

3 “(A) means a deliberated killing, which—

4 “(i) notwithstanding the jurisdictional
5 limitations referred to in subsection (a), is
6 carried out by an individual under actual
7 or apparent authority, or color of law, of
8 any foreign state;

9 “(ii) is directed against another indi-
10 vidual in the offender’s custody or physical
11 control; and

12 “(iii) is not authorized by a previous
13 judgment pronounced by a regularly con-
14 stituted court affording all the judicial
15 guarantees which are recognized as indis-
16 pensable by civilized peoples; and

17 “(B) does not include any such killing
18 that, under international law, is lawfully carried
19 out under the authority of a foreign state.

20 “(4) GENOCIDE.—The term ‘genocide’ means,
21 whether in time of peace or in time of war, an act
22 carried out, or an attempt to carry out an act, with
23 the specific intent to destroy, in whole or in substan-
24 tial part, a national, ethnic, racial, or religious group
25 as such, which—

1 “(A) kills members of that group;

2 “(B) causes serious bodily injury to mem-
3 bers of that group;

4 “(C) causes the permanent impairment of
5 the mental faculties of members of the group
6 through drugs, torture, or similar techniques;

7 “(D) subjects the group to conditions of
8 life that are intended to cause the physical de-
9 struction of the group in whole or in part;

10 “(E) imposes measures intended to prevent
11 births within the group; or

12 “(F) transfers by force children of the
13 group to another group.

14 “(5) PIRACY.—The term ‘piracy’ means—

15 “(A) any illegal acts of violence or deten-
16 tion, or any act of depredation, committed for
17 private ends by the crew or the passengers of
18 a private ship or a private aircraft, and di-
19 rected—

20 “(i) on the high seas, against another
21 ship or aircraft, or against persons or
22 property on board such ship or aircraft; or

23 “(ii) against a ship, aircraft, persons,
24 or property in a place outside the jurisdic-
25 tion of any country;

1 “(B) any act of voluntary participation in
2 the operations of a ship or of an aircraft with
3 knowledge of facts making it a pirate ship or
4 aircraft; or

5 “(C) any act of inciting or of intentionally
6 facilitating an act described in subparagraph
7 (A) or (B).

8 “(6) SLAVE TRADING.—The term ‘slave trad-
9 ing’ includes—

10 “(A) all acts involved in the capture, acqui-
11 sition, or disposal of a person with intent to re-
12 duce such person to slavery;

13 “(B) all acts involved in the acquisition of
14 a slave with a view to selling or exchanging
15 such slave;

16 “(C) all acts of disposal by sale or ex-
17 change of a slave acquired with a view to being
18 sold or exchanged; and

19 “(D) in general, every act of trade or
20 transport of slaves.

21 “(7) SLAVERY.—The term ‘slavery’ means the
22 status or condition of a person over whom any or all
23 of the powers attaching to the right of ownership are
24 exercised.

25 “(8) TORTURE.—

1 “(A) IN GENERAL.—Notwithstanding the
2 jurisdictional limitations referred to in sub-
3 section (a), the term ‘torture’ means any act,
4 carried out by an individual under actual or ap-
5 parent authority, or color of law, of any foreign
6 state, directed against another individual in the
7 offender’s custody or physical control, by which
8 severe pain or suffering (other than pain or suf-
9 fering arising only from or inherent in, or inci-
10 dental to, lawful sanctions), whether physical or
11 mental, is intentionally inflicted on that indi-
12 vidual for such purposes as obtaining from that
13 individual or a third person information or a
14 confession, punishing that individual for an act
15 that individual or a third person has committed
16 or is suspected of having committed, intimi-
17 dating or coercing that individual or a third
18 person, or for any reason based on discrimina-
19 tion of any kind.

20 “(B) MENTAL PAIN OR SUFFERING.—In
21 subparagraph (A), mental pain or suffering re-
22 fers to prolonged mental harm caused by or re-
23 sulting from—

1 “(i) the intentional infliction or
2 threatened infliction of severe physical pain
3 or suffering;

4 “(ii) the administration or application,
5 or threatened administration or applica-
6 tion, of mind altering substances, or other
7 procedures calculated to disrupt profoundly
8 the senses or the personality;

9 “(iii) the threat of imminent death; or

10 “(iv) the threat that another indi-
11 vidual will imminently be subjected to
12 death, severe physical pain or suffering, or
13 the administration or application of mind
14 altering substances or other procedures
15 calculated to disrupt profoundly the senses
16 or personality.

17 “(c) LIABILITY FOR DAMAGES.—Any defendant who
18 is a direct participant acting with specific intent to commit
19 a tort referred to in subsection (a) against an alien shall
20 be liable for damages to that alien or to any person who
21 may be a claimant in an action for the wrongful death
22 of that alien.

23 “(d) EXHAUSTION OF REMEDIES.—A district court
24 shall abstain from the exercise of jurisdiction over a civil
25 action described in subsection (a) if the claimant has not

1 exhausted adequate and available remedies in the place in
2 which the injury occurred. Adequate and available rem-
3 edies include those available through local courts, claims
4 tribunals, and similar legal processes.

5 “(e) FOREIGN POLICY INTERESTS OF THE UNITED
6 STATES.—No court in the United States shall proceed in
7 considering the merits of a claim under subsection (a) if
8 the President, or a designee of the President, adequately
9 certifies to the court in writing that such exercise of juris-
10 diction will have a negative impact on the foreign policy
11 interests of the United States.

12 “(f) PROCEDURAL REQUIREMENTS.—

13 “(1) SPECIFICITY.—In any action brought
14 under this section, the complaint shall state with
15 particularity specific facts that—

16 “(A) describe each tort alleged to have
17 been committed and demonstrate the reason or
18 reasons why the tort action may be brought
19 under this section, provided that if an allegation
20 is made on information and belief, the com-
21 plaint shall state with particularity all facts on
22 which that belief is formed; and

23 “(B) demonstrate that the defendant had
24 the specific intent to commit the tort alleged to
25 have been committed.

1 “(2) MOTION TO DISMISS.—In any action
2 brought under this section, the court shall, on the
3 motion of any defendant, dismiss the complaint if
4 the requirements of subparagraphs (A) and (B) of
5 paragraph (1) are not met.

6 “(3) STAY OF DISCOVERY.—In any action
7 brought under this section, all discovery related to
8 the merits of the claim and other proceedings shall
9 be stayed during the pendency of any motion to dis-
10 miss, unless the court finds upon the motion of any
11 party that particularized discovery is necessary to
12 preserve evidence or to prevent undue prejudice to
13 that party.

14 “(4) PLAINTIFF IDENTITY.—

15 “(A) REQUIREMENT.—Subject to subpara-
16 graph (B), in any action brought under this
17 section, the first and last names of all plaintiffs
18 shall be disclosed in the complaint filed with the
19 court.

20 “(B) EXCEPTION.—A court may permit an
21 anonymous filing of a complaint if a plaintiff’s
22 life or safety would be endangered by publicly
23 disclosing the plaintiff’s identity.

1 “(g) FEES.—Contingency fee arrangements are pro-
2 hibited in any action brought under the jurisdiction pro-
3 vided in this section.

4 “(h) STATUTE OF LIMITATIONS.—No action shall be
5 maintained under this section unless it is commenced not
6 later than 10 years from the date the injury occurred.

7 “(i) APPLICATION OF OTHER LAWS.—Nothing in
8 this section may be construed to waive or modify the appli-
9 cation of any provision of the Class Action Fairness Act
10 of 2005 (Public Law 109–2; 119 Stat. 4) and any amend-
11 ment made by that Act, or of title 28, United States Code,
12 to any class action law suit brought under this section.”.

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