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The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens

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Summary

The United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) requires signatory parties to take measures to end torture within their territorial jurisdictions. For purposes of the Convention, torture is defined as an *extreme* form of cruel and inhuman punishment committed under the color of law. The Convention allows for no circumstances or emergencies where torture could be permitted. Additionally, CAT Article 3 requires that no state party expel, return, or extradite a person to another country where there are substantial grounds to believe he would be subjected to torture. CAT Article 3 does not expressly prohibit persons from being removed to countries where they would face cruel, inhuman, or degrading treatment not rising to the level of torture.

The United States ratified CAT subject to certain declarations, reservations, and understandings, including that the Convention was not self-executing, and therefore required domestic implementing legislation to take effect. In accordance with CAT Article 3, the United States enacted statutes and regulations to prohibit the transfer of aliens to countries where they would be tortured, including the Foreign Affairs Reform and Restructuring Act of 1998, chapter 113C of the United States Criminal Code, and certain regulations implemented and enforced by the Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Department of State. These authorities, which require the withholding or deferral of the removal of an alien to a country where he is more likely than not to be tortured, generally provide aliens already residing within the United States a greater degree of protection than aliens arriving to the United States who are deemed inadmissible on security- or terrorism-related grounds. Further, in deciding whether or not to remove an alien to a particular country, these rules permit the consideration of diplomatic assurances that an alien will not be tortured there. Nevertheless, under U.S. law, the removal or extradition of all aliens from the United States must be consistent with U.S. obligations under CAT.

CAT obligations concerning alien removal have additional implications in cases of criminal and other deportable aliens. The Supreme Court's ruling in *Zadvydas v. Davis* suggests that certain aliens receiving protection under CAT cannot be indefinitely detained, raising the possibility that certain otherwise-deportable aliens could be released into the United States if CAT protections make their removal impossible. CAT obligations also have implications for the practice of "extraordinary renditions," by which the U.S. purportedly has transferred aliens suspected of terrorist activity to countries that possibly employ torture as a means of interrogation. For additional background on renditions and other CAT-related issues, see CRS Report RL32890, *Renditions: Constraints Imposed by Laws on Torture*, and CRS Report RL32438, *U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques*, both by Michael John Garcia.

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Overview of Relevant Portions of the Convention Against Torture

In the past several decades the practice of torture by public officials has been condemned by the international community through a number of international treaties and declarations,[1] leading many commentators to conclude that customary international law now prohibits the use of torture by government entities.[2] Perhaps the most notable international agreement prohibiting the use of torture is the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention or CAT),[3] which obligates parties to prohibit the use of torture and to require the punishment or extradition of torturers found within their territorial jurisdiction. Since opening for signature in December 1984, over 140 states, including the United States,[4] have become parties to the Convention.[5]

CAT defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."[6] This definition does not include "pain or suffering arising only from, inherent in or incidental to lawful sanctions."[7]

According to the State Department's analysis of CAT, which was included in President Reagan's transmittal of the Convention to the Senate for its advice and consent, this definition was intended to be interpreted in a "relatively limited fashion, corresponding to the common understanding of torture as an *extreme* practice which is universally condemned."[8] Indeed, CAT Article 16 further obligates signatory parties to take action to prevent "other acts of cruel, inhuman, or degrading

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[1] *See, e.g.*, U.N. CHARTER art. 55 (calling upon U.N. member countries to promote "universal respect for, and observance of, human rights and fundamental freedoms for all.... "); Universal Declaration on Human Rights, UN GAOR, Supp. No. 16, at 52, UN Doc. A/6316, at art. 5 (1948) (providing that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"); International Covenant on Civil and Political Rights, G.A. Res. 2200A, U.N. GAOR, 3rd Comm., 21st Sess., 1496th plen, mtg. at 49, U.N. Doc. A/RES/ 2200A (XXI), at art. 7 (1966) (providing that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment").

[2] *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 702, Reporters note 5(d) (1987). *But see* A. Mark Weisbard, *Customary International Law and Torture: The Case of India*, 2 CHI. J. INT'L. L. 81 (Spring 2001) (arguing that widespread use of torture by states, despite existence of numerous international agreements and declarations condemning it, indicates that the prohibition on torture has not reached the status of customary international law).

[3] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984) [*hereinafter* "CAT"].

[4] The United States has signed and ratified CAT subject to certain declarations, reservations, and understandings. *See infra* at pp. 4-6.

[5] As of January 21, 2009, 146 States were parties to CAT. *See* United Nations, Office of the High Commissioner for Human Rights, Ratifications and Reservations for the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Treaty Body Database, at http://www.unhchr.ch/tbs/doc.nsf [*hereinafter* "CAT ratification"].

[6] CAT at art. 1(1).

[7] *Id*.

[8] President's Message to Congress Transmitting the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Summary and Analysis of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, May 23, 1988, S. TREATY DOC. NO. 100-20, *reprinted in* 13857 U.S. Cong. Serial Set at 3 (1990) [*hereinafter* "State Dept. Summary"].

punishment which do not amount to acts of torture.... "[9] According to the State Department, this distinction reflected the belief by the drafters of CAT that torture must be "severe" and that rough treatment, such as police brutality, "while deplorable, does not amount to 'torture'" for purposes of the Convention.[10] Further, CAT provides that offenses of torture require actual intent to cause severe pain and suffering; an act that results in unanticipated and unintended severity of pain and suffering is not torture for purposes of the Convention.[11]

In accordance with CAT Article 2, parties agree to take effective legislative, administrative, judicial, and other measures to prevent acts of torture from occurring within their territorial jurisdiction. Further, parties are required to ensure that all acts of torture, as well as attempts to commit torture and complicity or participation in torture, are criminal offenses subject to penalty.[12] CAT Article 2 makes clear that "no exceptional circumstances whatsoever," including a state of war or any other public emergency, may be invoked to justify torture.[13] The State Department has claimed that this explicit prohibition of all torture, regardless of the circumstances, was viewed by the drafters of CAT as "necessary if the Convention is to have significant effect, as public emergencies are commonly invoked as a source of extraordinary powers or as a justification for limiting fundamental rights and freedoms."[14]

CAT also imposes specific obligations upon signatory parties with respect to their transfer of individuals to other countries. CAT Article 3 requires that no state party expel, return, or extradite a person to another country where "there are substantial grounds for believing that he would be in danger of being subjected to torture."[15] In determining whether grounds exist to believe an

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[9] CAT at art. 16(2).

[10] State Dept. Summary, *supra* note 8, at 11.

[11] *See* CAT at art. 1.

[12] *Id.* at art. 4.

[13] *Id.* at art. 2(2).

[14] State Dept. Summary, *supra* note 8, at 5. On the other hand, the Bush Administration appeared to take the view that CAT does not apply to armed conflicts. The rule of *lex specialis* provides that when two different legal standards may be applied to the same subject-matter, the more specific standard controls. In a 2006 hearing before the Committee Against Torture, which monitors parties' compliance with CAT, representatives of the U.S. State Department argued that CAT did not apply to detainee operations in Afghanistan, Iraq, and Guantánamo, and that these operations were controlled by the laws of armed conflict (i.e., the 1949 Geneva Conventions). Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention (United States), Summary Record, CAT/C/SR.703 (May 12, 2006).

[15] CAT at art. 3(1). There are important distinctions between the protections afforded to aliens under CAT and under general U.S. asylum law. Asylum is a discretionary remedy available to those who have a well-founded fear of persecution abroad. Whereas asylum applicants only need to prove a well-founded fear of persecution on account of their membership in a particular race, nationality, or social or political group, *see* Immigration and Naturalization Act (INA) §§ 101(a)(42), 208(b), 8 U.S.C. §§ 1101(a)(42), 1158(b), applicants for protection under CAT must prove that it is more likely than not that they would be tortured if removed to a particular country. Proving that torture would more likely than not occur is a more difficult standard to meet than proving that an applicant's fear is "well-founded"—a standard that only requires a fear to be "reasonable." *See* INS v. Cardoza-Fonseca, 480 US 421 (1987). In having a higher burden of proof, CAT protection is similar to withholding removal on the basis of prospective persecution. CAT protections and withholding of removal are also similar in that neither form of relief grants the recipient or his immediate family a legal foothold in the United States. Additionally, "torture" is a more particularized act than "persecution." However, it is important to note that CAT affords certain aliens broader protection than that provided by general asylum law. An alien generally cannot receive asylum or withholding of removal if he, s22 *inter alia*, (1) persecuted another person on account of the person's social or political group membership; (2) committed a particularly serious crime, making him a threat to the community; or (3) is a danger to the security of the United States. *See* INA § 208(b)(2), 8 U.S.C. § 1158(b)(2). On the other hand, CAT protections extend to all classes of aliens, including those generally ineligible for asylum and withholding of removal.

individual would be in danger of being subjected to torture, state parties are required to take into account "all relevant considerations including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights."[16] The State Department has interpreted the words "where applicable" to indicate that competent authorities must decide whether and to what extent these considerations are a relevant factor in a particular case.[17] CAT Article 3 does not expressly prohibit persons from being removed to countries where they would face cruel, inhuman, or degrading treatment not rising to the level of torture.

The Committee Against Torture, the monitoring body created by the parties to the Convention,[18] has interpreted the obligations of Article 3 as placing the burden of proof on an applicant for non-removal to demonstrate that there are substantial grounds to believe that he would be subjected to torture if removed to the proposed country.[19] Further, the Committee has interpreted the non-removal provisions of Article 3 to refer to both direct and indirect removal to a state where the individual concerned would likely be tortured, meaning that a state cannot remove a person to a third country when it knows he would subsequently be removed to a country where he would likely face torture.[20]

Implementation of the Convention Against Torture in the United States

The United States signed CAT on April 18, 1988, and ratified the Convention on October 21, 1994,[21] subject to certain declarations, reservations, and understandings,[22] including a declaration that CAT Articles 1 through 16 were not self-executing, and therefore required domestic implementing legislation.[23] This section will discuss relevant declarations, reservations, and understandings made by the United States to CAT, and U.S. laws and regulations implementing the Convention.

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[16] CAT at art. 3(2).

[17] *See* State Dept. Summary, *supra* note 8, at 7.

[18] *See* CAT at arts. 17-24. The Committee is not a quasi-judicial or administrative body, but rather a monitoring body with declaratory powers only.

[19] United Nations Office of the High Commissioner for Human Rights, Committee Against Torture, Implementation of Article 3 of the Convention in the Context of Article 22, CAT General Comment 1, at ¶ 5 (November 21, 1997), *available at* http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/13719f169a8a4ff78025672b0050eba1?Opendocument. The Committee's interpretation as to the scope of Article 3 was made in the context of CAT Article 22, which permits the Committee, upon recognition by a state party, to receive communications from individuals subject to the state's jurisdiction who claim to be victims of a CAT violation by a state party.

[20] *Id.* at ¶ 2.

[21] CAT ratification, *supra* note 5. The Senate provided its advice and consent to treaty ratification in 1990, but the U.S. did not deposit its instruments of ratification with the U.N. until certain implementing legislation was passed four years later.

[22] *See* SEN. EXEC. RPT. 101-30, Resolution of Advice and Consent to Ratification (1990) [*hereinafter* "Sen. Resolution"].

[23] *Id.* at III.(2).

Relevant Declarations, Reservations, and Understandings Conditioning U.S. Ratification of the Convention Against Torture

The Senate's advice and consent to CAT ratification was subject to the declaration that the Convention was not self-executing.[24] With respect to Article 16 of the Convention, which requires states to prevent lesser forms of cruel and unusual punishment that do not constitute torture, the Senate's advice and consent was based on the reservation that the United States considered itself bound to Article 16 to the extent that such cruel, unusual, and inhumane treatment or punishment was prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the U.S. Constitution.[25] The United States also opted out of the dispute-settlement provisions of CAT Article 30,[26] though it reserved the right to specifically agree to follow its provisions or any other arbitration procedure in resolving a particular dispute as to the Convention's application.

In providing its advice and consent to CAT, the Senate also provided a detailed list of understandings concerning the scope of the Convention's definition of torture. These understandings are generally reflected via the specific U.S. laws and regulations implementing the Convention. Importantly, under U.S. implementing legislation and regulations, CAT requirements are understood to apply to acts of torture committed by or *at the acquiescence* of a public official or other person acting in an official capacity.[27] Thus, persons operating under the color of law do not necessarily need to directly engage in acts of torture to be culpable for them. For a public official to acquiesce to an act of torture, that official must, "prior to the activity constituting torture, have *awareness* of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity."[28] Subsequent jurisprudence and administrative decisions have recognized that "willful blindness" by officials to torture may constitute "acquiescence" warranting protection under CAT.[29] However, acquiescence does not occur when a government is aware of third-party torture but is unable to stop it, unless the government also breached its legal responsibility to intervene to prevent such activity.[30] In

[24] *Id.*

[25] *Id.* at I.(2).

[26] *See id.* at I.(3). CAT article 30 provides that disputes between two or more signatory parties concerning the interpretation and application of the Convention can be submitted to arbitration upon request. CAT at art. 30(1). If, within six months of the date of request for arbitration, the parties are unable to agree upon the organization of the arbitration, any of the parties may refer the dispute to the International Court of Justice. *Id*. Article 30 contains an "opt-out" provision that enabled the United States to make a reservation to CAT's dispute-settlement procedure. *Id.* at art. 30(2).

[27] Sen. Resolution, *supra* note 22, at II.(1)(b).

[28] *Id.*

[29] *See, e.g.*, Silva-Rengifo v. Atty. Gen. of United States, 473 F.3d 58, 70 (3rd Cir. 2007) ("acquiescence to torture requires only that government officials remain willfully blind to torturous conduct and breach their legal responsibility to prevent it"); Zheng v. Ashcroft, 332 F.3d 1186 (9th Cir. 2003) (declaring that the correct inquiry in deciding whether a Chinese immigrant was entitled to relief from removal from U.S. under CAT was not whether Chinese officials would commit torture against him, but whether public officials would turn a blind eye to the immigrant's torture by specified individuals); Ontunez-Turios v. Ashcroft, 303 F.3d 341 (5th Cir. 2002) (upholding Board of Immigation Appeals' deportation order, but noting that "willful blindness" constitutes acquiescence under CAT); *see also* Pascual-Garcia v. Ashcroft, 73 Fed.Appx. 232 (9th Cir. 2003) (holding that relief under CAT does not require that torture will occur while victim is in the custody or physical control of a public official).

[30] *See, e.g.*, 8 C.F.R. § 208.18(a)(7); Rodriguez Morales v. United States Atty. Gen., 488 F.3d 884 (11th Cir. 2007) ("acquiescence" to torture means that the government was aware of the torture, yet breached responsibility to intervene); Moshud v. Blackman, 68 Fed. Appx. 328 (3rd Cir. 2003) (denying alien's claim to reopen removal proceedings to assert a CAT claim based on her fear of female genital mutilation in Ghana, because although the (continued...)

addition, mere noncompliance with applicable legal procedural standards does not *per se* constitute torture.[31]

The Senate's advice and consent to CAT was also subject to particular understandings concerning "mental torture," a term that is not specifically defined by the Convention. The United States understands mental torture to refer to prolonged mental harm caused or resulting from (1) the intentional infliction or threatened infliction of severe physical pain and suffering; (2) the administration of mind-altering substances or procedures to disrupt the victim's senses; (3) the threat of imminent death; or (4) the threat of imminent death, severe physical suffering, or application of mind-altering substances to another.

With respect to the provisions of CAT Article 3 prohibiting expulsion or refoulement of persons to states where substantial grounds exist for believing the person would be subjected to torture, the United States declared its understanding that this requirement refers to situations where it would be "more likely than not" that an alien would be tortured, a standard commonly used by the United States in determining whether to withhold removal of an alien for fear of persecution.[32]

Foreign Affairs Reform and Restructuring Act of 1998

The Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) announced the policy of the United States not to expel, extradite, or otherwise effect the involuntary removal of any person to a country where there are substantial grounds for believing that the person would be in danger of being subjected to torture.[33]

FARRA also required relevant agencies to promulgate and enforce regulations to implement CAT, subject to the understandings, declarations, and reservations made by the Senate resolution of ratification.[34] In doing so, however, Congress required that, "to the maximum extent consistent" with Convention obligations, these regulations exclude from their protection those aliens described in § 241(b)(3)(B) of the Immigration and Nationality Act (INA).[35] INA § 241(b)(3)(B) acts as an exception to the general U.S. prohibition on the removal of otherwise removable aliens to countries where they would face persecution. An alien may be removed despite the prospect of likely persecution if the alien:

- participated in genocide, Nazi persecution, or any act of torture or extrajudicial killing;

(...continued)

practice was widespread, the Ghanian government had not acquiesced to the practice because it had been made illegal and public officials had condemned the practice).

[31] Sen. Resolution, *supra* note 22, at II.(1)(e).

[32] *Id.* at II.(2). *See generally* INS v. Stevic, 467 U.S. 407, 429-30 (1984). This standard is in contrast to the lower standard for determining whether an alien is eligible for consideration for asylum based on a "well-founded fear of persecution" if transferred to a particular country. To demonstrate a "well-founded" fear, an alien only needs to prove that the fear is reasonable, not that it is based on a clear probability of persecution. *See* INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). *See also supra* at note 15.

[33] P.L. 105-277 [*hereinafter* "FARRA"], at § 2242(a) (1998).

[34] *Id.* at § 2242(b).

[35] *Id.*

- ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion;
- having been convicted of a particularly serious crime, is a danger to the community of the United States;
- is strongly suspected to have committed a serious nonpolitical crime outside the United States prior to arrival; or
- is believed, on the basis of serious grounds, to be a danger to the security of the United States.[36]
- Aliens who are described in the terrorism-related grounds for deportation, including those who have provided material support to terrorist organizations or have espoused terrorist activity, are considered a security threat covered under INA § 241(b)(3)(B), and are thus removable and excludable from entry into the United States despite facing prospective persecution abroad.[37]
- FARRA generally specifies that no judicial appeal or review is available for any action, decision or claim raised under CAT, except as part of a review of a final order of alien removal pursuant to § 242 of the INA.[38] The ability of a person to raise a CAT-based claim in non-removal proceedings (e.g., in the case of extradition), is the subject of debate and conflicting jurisprudence. The Ninth Circuit Court of Appeals held in one case that an individual subject to an extradition order may appeal under the Administrative Procedures Act (APA), when his surrender would be contrary to U.S. laws and regulations implementing CAT.[39] The precedential value of this decision, however, is unclear.[40] The Fourth Circuit Court of Appeals, in contrast, has held that judicial review (including habeas review) is unavailable with respect to CAT-based challenges to an extradition order and interpreted FARRA as barring judicial review of CAT-based actions in non-immigration proceedings.[41]

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[36] INA § 241(b)(3)(B), 8 U.S.C. § 1231(b)(3)(B).

[37] *See* INA §§ 237(a)(4)(B), 241(b)(3)(B), 8 U.S.C. §§ 1227(a)(4)(B), 1231(b)(3)(B). For a discussion of the terrorism-related grounds for deportation and inadmissibility, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion and Removal of Aliens*, by Michael John Garcia and Ruth Ellen Wasem.

[38] FARRA, *supra* note 33 at § 2242(d).

[39] Cornejo-Barreto v. Seifert, 218 F.3d 1004 (9th Cir. 2000) ("*Cornejo-Barreto I*")(finding that the duty to consider prospective torture in making an extradition decision is a clear and nondiscretionary duty, and therefore such consideration is subject to the Administrative Procedure Act, 5 U.S.C. §§ 551, *et seq*.).

[40] The holding in *Cornejo-Barreto I* was subsequently rejected. Cornejo-Barreto v. Siefert, 379 F.3d 1075 (9th Cir. 2004) ("*Cornejo-Barreto II*"). However, the Court of Appeals, sitting *en banc*, later vacated *Cornejo-Barreto II* and denied the government's request to vacate *Cornejo-Barreto I*. Cornejo-Barreto v. Siefert, 389 F.3d 1307 (9th Cir. 2004) (*en banc*). *Cornejo-Barreto I* continues to be cited as good law by the Ninth Circuit. *See* Prasoprat v. Benov, 421 F.3d 1009, 1012 (9th Cir. 2005). *But see* Hoxha v. Levi, 465 F.3d 554, 565 (3rd Cir. 2006) (describing *Cornejo-Barreto I* as lacking binding precedential value in the Ninth Circuit).

[41] Mironescu v. Costner, 480 F.3d 664 (4th Cir. 2007), *cert. dismissed*, 2008 WL 94735 (U.S. January 9, 2008) (finding that FARRA § 2242(d) precludes review of an alien's CAT-based habeas petition in an extradition proceeding, because it provides that no judicial appeal or review is available for any action, decision or claim raised under CAT, except as part of a review of a final order of alien removal pursuant to § 242 of the Immigration and Nationality Act). *See also* O.K. v. Bush 377, F.Supp.2d 102, n. 17 (D.D.C. 2005) (finding that CAT-based claims were not cognizable in Guantanamo transfer decisions).

Application of the Convention Against Torture to U.S. Regulations Concerning the Removal of Aliens

The requirements of CAT Article 3 take the form of a two-track system requiring the withholding or deferral of an alien's removal to a proposed receiving state if it is more likely than not that he would be tortured there. Reliance on these protections by aliens in removal proceedings has been frequent, though usually unsuccessful. In 2007, for example, immigration courts considered 28,130 claims for CAT-based relief, and granted such relief in 541cases.[42] DHS has estimated that in the first four years following the implementation of regulations implementing CAT Article 3, approximately 1,700 aliens were granted deferral or withholding of removal based on CAT protections.[43] In 2007, deferral of removal was granted in 92 cases, compared to 173 cases in 2006 and 70 cases in 2005.[44]

General Removal Guidelines Concerning the Convention Against Torture

CAT-implementing regulations concerning the removal of aliens from the United States are primarily covered under §§ 208.16-208.18 and 1208.16-1208.18 of title 8 of the Code of Federal Regulations (C.F.R.), and prohibit the removal of aliens to countries where they would more likely than not be subjected to torture. DHS has primary day-to-day authority to implement and enforce these regulations, with the DOJ, through the Executive Office of Immigration Review (EOIR), having adjudicative authority over detention and removal. For purposes of these regulations, "torture" is understood to have the meaning prescribed in CAT Article 1, subject to the reservations and understandings, declarations, and provisos contained in the Senate's resolution of ratification of the Convention.[45] In accordance with this definition, indefinite detention in substandard prison conditions has been recognized as not constituting torture when there is no evidence that such conditions are intentional and deliberate.[46] In at least certain circumstances, however, EOIR or courts reviewing EOIR rulings have found that rape,[47] domestic violence permitted by local law enforcement,[48] and intentional and repeated cigarette burns

[42] U.S. Department of Justice, Executive Office of Immigration Review, Statistical Yearbook 2007, at M1 (April 2007) [*hereinafter* "2007 Yearbook"]. In 2006, immigration courts considered 31,364 claims for CAT relief, and relief was granted in 578 cases. U.S. Department of Justice, Executive Office of Immigration Review, Statistical Yearbook 2006, at M1 (February 2007) [*hereinafter* "2006 Yearbook"].

[43] *See Immigration Relief under the Convention Against Torture for Serious Criminals and Human Rights Violators*; Hearing Before the House Subcomm. on Immigration, Border Security, and Claims of the House Comm. on the Judiciary, 108th Cong., 1st sess. 45, Serial No. 34, at 11 (2003) (prepared statement of C. Stewart Verdery, Asst. Secretary for Policy and Planning, Border and Transportation Security Directorate, U.S. Dept. of Homeland Security) [*hereinafter* "DHS Testimony"].

[44] 2007 Yearbook at M1; 2006 Yearbook at M1; U.S. Department of Justice, Executive Office of Immigration Review, Statistical Yearbook 2005, at M1 (February 2006).

[45] 8 C.F.R. § 208.18(a). For example, for purposes of U.S. rules and regulations concerning the expulsion of aliens, torture is specified as being an "extreme" form of cruel and unusual punishment that "does not include lesser forms of cruel, inhuman, or degrading treatment or punishment that do not amount to torture." 8 C.F.R. § 208.18(a)(2).

[46] Settenda v. Ashcroft, 377 F.3d 89 (1st Cir. 2004); Matter of J-E-, 23 I&N Dec. 291 (BIA 2002), *overruled on other grounds by* Azanor v. Ashcroft, 364 F.3d 1013 (9th Cir. 2004).

[47] *See* Zubeda v. Ashcroft, 333 F.3d 463 (3rd Cir. 2003).

[48] *See* Ali v. Reno, 237 F.3d 591, 598 (6th Cir. 2001) (rejecting applicant's CAT claim on other grounds).

coupled with severe beatings,[49] may constitute torture under the Convention and prevent an alien's removal to a particular country.

Generally, an applicant for non-removal under CAT Article 3 has the burden of proving that it is more likely than not that he would be tortured if removed to the proposed country.[50] If credible, the applicant's testimony may be sufficient to sustain this burden without additional corroboration.[51] In assessing whether it is "more likely than not" that an applicant would be tortured if removed to the proposed country, all evidence relevant to the possibility of future torture is required to be considered, including, *inter alia*, (1) evidence of past torture inflicted upon the applicant; (2) a pattern or practice of gross human rights violations within the proposed country of removal; and (3) other relevant information regarding conditions in the country of removal.[52] The Board of Immigration Appeals (BIA), the appellate administrative body within EOIR, has recognized that evidence concerning the likelihood of torture must be particularized; evidence of the torture of similarly-situated individuals is insufficient alone to demonstrate that it is more likely than not that an applicant would be tortured if removed to a proposed country.[53]

If the immigration judge considering a CAT application determines that an alien is more likely than not to be tortured in the country of removal, the alien is entitled to protection under the Convention.[54] Protection will either be granted through the withholding of removal or deferral of removal. Unless the alien is of a class subject to mandatory denial of withholding of removal on security, criminal, or related grounds, as provided by INA § 241(b)(3)(B), CAT-based relief is granted in the form of withholding of removal. However, aliens falling under a category listed under INA § 241(b)(3)(B) cannot have their removal withheld, but only deferred.[55] A number of courts has recognized that an alien's inability to establish a more general claim for asylum, which is based on a well-founded fear of persecution on account of belonging to one of five designated types of groups, does not necessarily preclude a separate claim of relief under CAT.[56]

Deferral of removal is a lesser protection than withholding of removal, and arguably reflects Congress's intent that aliens falling under a category established by INA § 241(b)(3)(B), "to the maximum extent possible," be excluded from protections afforded to other classes of aliens under regulations implementing CAT requirements.[57] Aliens granted deferral of removal to a country where they would likely face torture may instead be removed at any time to another country where they would not likely face torture.[58] Further, such aliens are subject to post-removal order

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[49] *See* Al-Shaer v. INS, 268 F.3d 1143 (9th Cir. 2001).

[50] 8 C.F.R. § 208.16(c)(2).

[51] *Id. See also* Sarsoza v. INS, 22 Fed. Appx. 719 (9th Cir. 2001) (recognizing that BIA has discretion in determining whether or not applicant's credible testimony satisfies burden for non-removal under CAT).

[52] 8 C.F.R. § 1208.16(c)(3).

[53] *See* Matter of M-B-A, 23 I&N Dec. 474 (BIA 2002).

[54] 8 C.F.R. § 1208.16(c)(4).

[55] *Id.*

[56] *See, e.g.*, Li v. INS, 33 Fed. Appx 353 (9th Cir. 2002) (affirming immigration judge's decision denying relief under CAT, but noting that failure of petitioner to meet general standard for asylum eligibility did not preclude, separate, distinct relief available under CAT); Xu v. INS, 18 Fed. Appx. 542 (9th Cir. 2001) (noting that the BIA erred in concluding that because petitioner failed to establish asylum eligibility, he necessarily failed to establish a prima facie case for relief under CAT); Kamalthas v. INS, 251 F.3d 1279 (9th Cir. 2001) (holding that inability to state cognizable asylum claim does not necessarily preclude relief under CAT Article 3).

[57] FARRA, *supra* note 33, at § 2242(d).

[58] *See* 8 C.F.R. § 208.17(b)(2).

detention for such periods as prescribed by regulation.[59] Deferral may be terminated either (1) at the request of the alien; (2) following a determination by an immigration judge that the alien would no longer likely be tortured in the country to which removal had been deferred; or (3) following a determination by the Attorney General that deferral should be terminated on the basis of diplomatic assurances forwarded by the Secretary of State that indicate that the alien would not be tortured in the receiving country. [60]

Summary Exclusion of Arriving Aliens Inadmissible on Security and Related Grounds [61]

U.S. law designates certain arriving aliens as inadmissible on security-related grounds, including for having engaged in terrorist activities.[62] The regulatory framework for proceedings to remove such aliens, outlined in 8 C.F.R. § 235.8, is more streamlined than the general regulatory framework for alien removal, providing more discretion to the Attorney General or DHS Secretary with respect to the method in which CAT obligations are assessed.

When a DHS Bureau of Customs and Border Protection (CBP) officer *suspects* that an arriving alien is inadmissible on security or related grounds, the officer is required to temporarily order the alien removed and report such action promptly to the CBP district director with administrative jurisdiction over the place where the alien has arrived or is being held.[63] If possible, the relevant officer must take a brief statement from the alien, and the alien must be notified of the actions being taken against him and of his right to submit a written statement and additional information for consideration by the Attorney General, who has authority to assess whether grounds exist to remove the alien.[64] The CBP district director's report is forwarded to the regional director for further action. Essentially, this process ensures that final decisions to remove aliens on security or related grounds are made at the highest levels.

If the alien's designation as inadmissible is based on non-confidential information, however, the regional director has discretion to either conduct a further examination of the alien concerning his admissibility or refer the alien's case to an immigration judge for a hearing prior to ordering removal.[65] The regional director's written, signed decision must be served to the alien unless it contains confidential information prejudicial to U.S. security, in which case the alien shall be served a separate written order indicating disposition of the case, but with confidential information deleted.[66]

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[59] *See* 8 C.F.R. § 241.13-14.

[60] *See* 8 C.F.R. § 208.17(d)-(f).

[61] Arriving aliens who lack necessary documentation to enter the United States (or used fraud or misrepresentation to obtain such documentation) are subject to removal under INA § 235(b). 8 U.S.C. § 1225(b). If an alien falling under this category indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer will refer the alien to an asylum officer for an interview. 8 C.F.R. § 235.3(b)(4). If the asylum officer determines that the alien's fear is credible, the alien's removal will be conducted through normal removal proceedings and the alien's CAT-based claims will be considered under that system of review. 8 C.F.R. § 208.30.

[62] INA § 212(a)(3), 8 U.S.C. § 1182(a)(3).

[63] 8 C.F.R. § 235.8(a).

[64] *Id.*; INA § 235(c)(2)(B), 8 U.S.C. § 1225(c)(2)(B).

[65] 8 C.F.R. § 235.8(b)(2); INA § 235(c)(2)(B)-(C), 8 U.S.C. § 1225(c)(2)(B)-(C).

[66] 8 C.F.R. § 235.8(b)(3).

The regional director has broad discretion in determining application of CAT Article 3 to removal decisions made under 8 C.F.R. § 235.8. The regulatory provisions concerning consideration or review of normal removal orders are explicitly deemed inapplicable in the cases described above.[67] Instead, the regional director is generally required "not to execute a removal order under this section under circumstances that violate ... Article 3 of the Convention Against Torture."[68] No further guidance is provided with respect to determining whether or not an alien is more likely than not to be tortured in the proposed country of removal. Unlike in cases involving CAT applications of non-arriving aliens, the regional director's decision for arriving aliens deemed inadmissible on security or related grounds is final when it is served upon the alien, with no further administrative right to appeal.[69]

Effect of Diplomatic Assurances on Removal Proceedings

U.S. immigration regulations implementing CAT include a provision concerning "diplomatic assurances," which may terminate deliberation of an alien's claim for non-removal. Pursuant to this provision, the Secretary of State is permitted to "forward ... assurances that the Secretary has obtained from the government of a specific country that an alien would not be tortured there if the alien were removed to that country."[70] If such assurances are forwarded for consideration to the Attorney General or DHS Secretary, the official to whom this information is forwarded shall then determine, in consultation with the Secretary of State, whether such assurances are "sufficiently reliable" to permit the alien's removal to that country without violating U.S. obligations under CAT Article 3.[71] If such assurances are provided, an alien's claims for protection under Article 3 "shall not be considered further by an immigration judge, the Board of Immigration Appeals, or an asylum officer" and the alien may be removed.[72] In 2008, the Third Circuit Court of Appeals held that aliens who have shown a likelihood of facing torture have a right under the Due Process Clause of the Fifth Amendment to challenge the sufficiency of diplomatic assurances obtained by immigration authorities to effectuate their removal.[73]

It should be noted that CAT Article 3 provides little guidance as to the application of diplomatic assurances to decisions as to whether to remove an alien to a designated country. While Article 3 obligates signatory parties to take into account the proposed receiving state's human rights record, it requires the proposed sending state take into account "all relevant considerations" when assessing whether to remove an individual to the proposed receiving state.[74] Further, Article 3 does not provide guidelines for how these considerations should be weighed in determining whether substantial grounds exist to believe an alien would be tortured in the proposed receiving state. Accordingly, it does not necessarily appear that the use of diplomatic assurances by the U.S. conflicts with its obligations under CAT. However, the United States has an obligation under customary international law to execute its Convention obligations in good faith,[75] and is therefore

[67] 8 C.F.R. § 235.8(b)(4).

[68] *Id. See also* 8 C.F.R. § 208.18(d).

[69] 8 C.F.R. § 235.8(c).

[70] 8 C.F.R. § 208.18(c)(1).

[71] 8 C.F.R. § 208.18(c)(2).

[72] 8 C.F.R. § 208.18(c)(3).

[73] Khuzam v. Muckasey,549 F.3d 235 (3rd Cir. 2008).

[74] CAT at art. 3(2).

[75] *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 321 (1987) (recognizing that "every international agreement in (continued...)

required under international law to exercise appropriate discretion in its use of diplomatic assurances. It could be argued, for example, that if a country demonstrated a consistent pattern of acting in a manner contrary to its diplomatic assurances to the United States, the United States would need to look beyond the face of these assurances before permitting transfer to that country. For its part, the CAT Committee has opined that diplomatic assurances that provide no mechanism for enforcement do not adequately protect against the risk of torture, and therefore do not absolve the sending country of its responsibility under CAT Article 3.[76] In 2006, the Committee recommended that the United States "establish and implement clear procedures for obtaining such assurances, with adequate judicial mechanisms for review, and effective post-return monitoring arrangements."[77]

Application of the Convention Against Torture in Extradition Cases

CAT Article 3 also has implications upon the extradition policy of the United States. Pursuant to 18 U.S.C. chapter 209, the Secretary of State is responsible for determining whether to surrender a fugitive to a foreign country by means of extradition. Decisions on extradition are presented to the Secretary of State following a fugitive being found extraditable by a United States judicial officer.[78] In cases where torture allegations are made or otherwise brought to the State Department's attention, appropriate Department officers are required to review relevant information and prepare for the Secretary a recommendation as to whether or not to extradite and whether to surrender the fugitive subject to certain conditions.[79]

As with U.S. regulations concerning the deportation of aliens, regulations concerning the extradition of fugitives reflect CAT requirements. Before permitting the extradition of a person to another country, the State Department must determine whether the person facing extradition is more likely than not to be tortured in the requesting state if extradited.[80] For the purpose of determining whether such grounds exist, the State Department must take into account "all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."[81] One consideration presumably taken into account are any diplomatic assurances obtained from the state requesting extradition. Extraditions are prohibited in cases where the State Department concludes that it is more likely than not that the person facing extradition would be tortured.[82] However, courts have split on the availability of judicial review (including habeas review) of extradition decisions by the Secretary of State that allegedly violate CAT-implementing legislation.[83]

(...continued)

force is binding upon the parties to it and must be performed by them in good faith").

[76] *See* Committee against Torture, Communication No 233/2003: Sweden. 24/05/2005 (Agiza v. Sweden), CAT/C/34/D/233/2003 (2005) at para. 13.4., *reprinted in* 44 ILM 1103 (2005).

[77] Conclusions and Recommendations of the Committee against Torture regarding the United States of America, July 25, 2006, *available at* http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/e2d4f5b2dccc0a4cc12571ee00290ce0/$FILE/G0643225.pdf, at para. 21.

[78] 18 U.S.C. §§ 3184-3186.

[79] 22 C.F.R. § 95.3.

[80] 22 C.F.R. § 95.2(b).

[81] 22 C.F.R. § 95.2(a)(2).

[82] 22 C.F.R. § 95.2(a)(2).

[83] *See supra* at 8; *see also* 22 C.F.R. § 95.4 (stating that CAT-related extradition decisions by the Secretary of State (continued...)

Criminalization of Torture Occurring Outside the United States

Articles 4 and 5 of CAT obligate each state party to criminalize torture and establish jurisdiction over offenses when such offenses are (1) committed within their territory or aboard a registered vessel or aircraft of the state; (2) committed by a national of the state; or (3) committed by a person within its territory and the state chooses not to extradite him.[84] Following ratification of the Convention, the United States enacted chapter 113C of the United States Criminal Code to criminalize acts of torture occurring outside its territorial jurisdiction.[85] Pursuant to 18 U.S.C. § 2340A, any person who commits or attempts to commit an act of torture outside the United States is subject to a fine and/or imprisonment for up to 20 years, except in circumstances where death results from the prohibited conduct, in which case the offender faces imprisonment for any term of years up to life or the death penalty.[86] Persons who conspire to commit an act of torture outside the United States are generally subject to the same penalties faced by those who commit or attempt to commit acts of torture, except that they cannot receive the death penalty.[87] The United States claims jurisdiction over these prohibited actions when (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 offender.[88]

Potential Issues Arising Under Implementation of the Convention Against Torture Concerning Removal of Aliens

Implications of the Convention Against Torture on U.S. Alien Detention Policy

The provisions of CAT Article 3 appear to protect all individuals from removal to a state where they are likely to be tortured, regardless of whether these individuals engaged in criminal practices themselves.[89] However, while CAT obligates the United States not to remove aliens to countries where they are likely to be tortured, the Convention does not require the United States to permit such aliens' open presence in its territory. The question thus occurs as to what happens in the case of an otherwise inadmissible or deportable alien whose removal is effectively barred by CAT.

(...continued)

"are matters of executive discretion not subject to judicial review").

[84] *See* CAT at art. 5.

[85] Prior to ratifying CAT, acts of torture committed within the United States were already subject to various state and federal criminal statutes. For additional background, see CRS Report RL32438, *U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques*, by Michael John Garcia.

[86] 18 U.S.C. § 2340A(a).

[87] *Id.*

[88] 18 U.S.C. § 2340A(b).

[89] *See* CAT at art. 3(1).

In *Zadvydas v. Davis*, the Supreme Court concluded that the indefinite detention of deportable aliens (e.g., aliens who were admitted into the U.S., and thereafter committed an immigration violation that caused them to become removable) would raise significant due process concerns. The Court interpreted the applicable immigration statute governing the removal of deportable aliens as only permitting the detention of aliens following an order of removal for so long as is "reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention."[90] The Court found that the presumptively reasonable limit for the post-removal-period detention is six months, but indicated that continued detention may be warranted when the policy is limited to specially dangerous individuals and strong procedural protections are in place.[91] Subsequently, the Supreme Court ruled that aliens who have been deemed inadmissible (i.e., arriving aliens who have not been granted legal entry, as well as those aliens who have been "paroled" into the country by immigration authorities) also could not be indefinitely detained, but the Court's holding was based on statutory construction of the applicable immigration law, and it did not consider whether such aliens were owed the same due process protections as aliens who had been legally admitted into the United States.[92]

It is important to note, however, that despite generally rejecting the practice of indefinite detention, the *Zadvydas* Court nevertheless suggested that the continued detention of particular aliens past the statutory period for removal might be warranted in limited cases where the alien was "specially dangerous."[93] Though the Court only specifically mentioned mental illness as a special circumstance perhaps warranting indefinite detention,[94] it appears that aliens detained on security or related grounds, such as terrorists, might also be considered "specially dangerous" and warrant indefinite detention as well.[95]

Following the Court's ruling in *Zadvydas*, new regulations were issued to comply with the Court's holding.[96] After a six-month detention period, which the *Zadvydas* Court found to be presumptively reasonable, an alien's request for release from detention, accompanied by evidence that his removal would not otherwise be effected in the reasonably foreseeable future, may be reviewed by the DHS's Bureau of Immigration and Customs Enforcement (ICE).[97] Following consideration of this evidence, the ICE is required to issue a written decision either ordering the alien released or continuing his detention.[98] DHS regulations permit the continued detention of certain classes of aliens on account of special circumstances, including, *inter alia*, any alien who is detained on account of (1) serious adverse foreign policy consequences of release; (2) security or terrorism concerns; or (3) being considered specially dangerous due to having committed one or more crimes of violence and having a mental condition making it likely that the alien will commit acts of violence in the future.[99]

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[90] Zadyvydas v. Davis, 533 U.S. 678, 689 (2001).

[91] *Id.* at 690, 701.

[92] Clark v. Martinez, 543 U.S. 371 (2005).

[93] Zadvydas, 533 U.S. at 690-691.

[94] *See id.* at 690.

[95] *Id.* at 696 (noting that the Court did not "consider terrorism or other special circumstances where special arguments might be made for forms of preventive detention and for heightened deference to the judgments of the political branches with respect to matters of national security").

[96] *See* 8 C.F.R. §§ 241.13-14.

[97] 8 C.F.R. § 241.13.

[98] 8 C.F.R. § 241.13(g).

[99] 8 C.F.R. § 241.14.

As a result of the *Zadvydas* decision, some criminal aliens afforded non-refoulement protection under CAT may be required to be eventually released from detention, even though such aliens would otherwise be subject to removal from the United States.[100] According to the DHS, "in all but the most serious cases, a criminal alien who cannot be returned—regardless of the reason—may be subject to release after six months."[101] In 2003, the DHS stated that in practice less than one percent of criminal aliens who have received CAT protection have been released from custody following a final order of removal.[102] However, given the Court's ruling in *Zadvydas* and subsequent jurisprudence suggesting that the use of indefinite detention may be severely limited, as well as the growing number of aliens who have been granted deferral of removal under CAT,[103] the magnitude of this potential obstacle to alien removal may increase over time.

It is important to note that CAT only prohibits signatory parties from expelling persons to states where they would likely to be tortured—it does not provide aliens with protection from removal to states where they would not be tortured, even if such aliens would face cruel, inhuman, or degrading treatment not rising to the level of torture. Reaching agreements with countries to permit the removal of criminal aliens to these countries (possibly for the purpose of prosecuting them), subject to the condition that they will not be tortured or perhaps face other harsh forms of treatment, could be one possible method for handling this potential problem, although it is unclear whether other states would be receptive to such agreements.

Implications of the Convention Against Torture on the Practice of "Extraordinary Renditions" from the United States

When immigration officials identify a suspected foreign terrorist or similar security threat at a port of entry, the government's interest in the alien likely extends beyond simply assuring that the suspect does not enter the United States. Security and criminal law enforcement interests may also come into play. Controversy over how CAT applies in reconciling these diverse interests is illustrated by the case of Maher Arar.

In September 2002, U.S. authorities arrested Mr. Arar, a Canadian citizen born in Syria, at John F. Kennedy Airport in New York while he was waiting for a connecting flight to Canada. According to news reports, U.S. officials allege that Arar was on a terrorist watch list after "multiple international intelligence agencies" linked him to terrorist groups, though Arar has denied any knowing connection to terrorism.[104] Though the particulars remain unclear, Arar alleges that he was detained for several days of interrogation in the United States and asked to voluntarily agree to be transferred to Syria. Arar claims he refused to approve such transfer, but was nevertheless transferred to Jordan and then to Syria, where he was reportedly imprisoned for ten months.[105] At

[100] See Matter of Kebbem (BIA 2000) (upholding CAT relief for a Gambian national who had fled to the United States after murdering another); Matter of Gazlev/Gazieva (BIA 2002) (permitting CAT relief for man implicated in a shootout resulting in five dead in Uzbekistan).

[101] DHS Testimony, *supra* note 43, at 13.

[102] *Id.* at 11.

[103] *See supra* at 8.

[104] DeNeen L. Brown & Dana Priest, *Deported Terror Suspect Details Torture in Syria*, WASH. POST, November 5, 2003, at A1.

[105] DeNeen L. Brown, *Ex-Detainee Details Fearful Path to Syria*, WASH. POST, November 12, 2003, at A14.

the time of Arar's transfer, Syria was listed by the State Department as a regular practitioner of torture.[106] Syria is not a party to CAT. Upon release and his subsequent return to Canada, Arar claims that he was tortured by Syrian officials in an effort to compel him to confess to terrorist activities. Canada subsequently ordered a public inquiry as to what role, if any, Canada played in Arar's transfer to Syria,[107] and Arar filed civil suit in a U.S. federal court against various current and former U.S. officials for their role in his transfer and alleged subsequent torture.[108]

In late 2003, then-Attorney General John Ashcroft was quoted as stating, "In removing Mr. Arar from the U.S., we acted fully within the law and applicable treaties and conventions."[109] The United States reportedly received assurances from Syria that Arar would not be tortured prior to removing him there, and Syria has reportedly stated that Arar was not tortured.[110] It is unclear whether Arar's rendition complied with any legal procedures governing covert renditions that are not handled through either extradition or the general process for alien removal. Further, there appears to be no public information concerning what assurances, if any, were given by Syria to the United States prior to Arar's transfer.

Arar's lawsuit claimed in part that his removal was in violation of regulations concerning the removal of arriving aliens,[111] and U.S. officials have claimed that his removal was conducted pursuant to expedited removal procedures outlined in INA § 235(c).[112] On the other hand, it is possible that Arar's rendition was conducted at least in part pursuant to a law-enforcement action relating to the war on terror rather than pursuant to U.S. immigration laws. Whether Arar's removal to Syria constituted a violation of U.S. obligations under CAT and CAT-implementing laws and regulations may require a finding of fact as to the particular nature of the assurances provided to the United States and the role they played in the decision to remove Arar. Whether such a finding will be made in the foreseeable future remains to be seen. On February 16, 2006, the U.S. District Court for the Eastern District of New York dismissed Arar's civil case on a number of grounds, including that certain claims raised against U.S. officials implicated national security and foreign policy considerations, and the propriety of those considerations was most appropriately reserved to Congress and the executive branch.[113] The district court's dismissal was upheld by a three-judge panel of the Court of Appeals for the Second Circuit on June 30, 2008.[114] A rehearing *en banc* was granted on August 12, 2008, but a ruling has yet to be issued.

The final report of the commission established by the Canadian government to investigate Canada's role in Arar's transfer was released in September 2006. It concluded that Arar had not

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[106] U.S. Dept. of State, Bureau Of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices—2002 (March 31, 2003), *available at* http://www.state.gov/g/drl/rls/hrrpt/2002/18289.htm.

[107] Arar Commission, Homepage, at http://www.ararcommission.ca/eng/index.htm.

[108] Arar's complaint, filed with the U.S. District Court for the Eastern District of New York, can be viewed at http://www.ccr-ny.org/v2/legal/september_11th/docs/ArarComplaint.pdf [*hereinafter* "Arar Complaint"].

[109] *Canadian Sues U.S. Officials*, WASH. POST, January 23, 2004, at A17.

[110] DeNeen L. Brown, *Canadian Sent to Middle East Files Suit*, WASH. POST, November 25, 2003, at A25.

[111] *See* Arar Complaint, *supra* note 108.

[112] *See* U.S. Department of State, U.S. Views Concerning Syrian Release of Mr. Maher Arar, October 6, 2003, available at http://www.state.gov/r/pa/prs/ps/2003/24965.htm. See also, Department of Homeland Security, OIG-08-18, Office of Inspector General, The Removal of a Canadian Citizen to Syria (Unclassified Summary), March 2008.

[113] Arar v. Ashcroft, 414 F.Supp.2d 250 (E.D.N.Y. 2006).

[114] Arar v. Ashcroft, 532 F.3d 157 (2nd Cir. 2008).

been a security threat to Canada, but Canadian officials provided U.S. authorities with inaccurate information regarding Arar that may have led to his transfer.[115]

For a detailed discussion concerning the legality of renditions under the laws on torture, including CAT, see CRS Report RL32890, *Renditions: Constraints Imposed by Laws on Torture*, by Michael John Garcia.

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[115] Arar Commission, Factual Inquiry, at http://www.ararcommission.ca/eng/26.htm.