

PERSIAN GULF WAR POW/MIA ACCOUNTABILITY ACT OF
2002

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OCTOBER 15, 2002.—Ordered to be printed
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Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 1339]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (S. 1339) to amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf War POW/MIAs, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

S. 1339 would provide refugee status to certain aliens (and their immediate relatives) who delivers into the custody of the U.S. government living American prisoners of war from the Persian Gulf War.

BACKGROUND AND NEED FOR THE LEGISLATION

The Bring Them Home Alive Act requires the Attorney General to provide refugee status to any alien (and his or her parent, spouse, or child) who is a national of Vietnam, Cambodia, Laos, China, or any of the independent states of the former Soviet Union, and who personally delivers into the custody of the U.S. government a living American prisoner of war from the Vietnam War. It grants similar status to any alien (and his or her family members) who is a national of North Korea, China, or the independent states of the former Soviet Union, and who delivers a living American prisoner of war from the Korean War. Information regarding the Act is to be broadcast by the International Broadcasting Bureau over Voice of America and other services.

S. 1339 would amend the Bring Them Home Alive Act to encompass the 1990–91 Persian Gulf War and any future American preemptive military operations against Iraq. There have been recent reports that Michael Speicher, a Navy pilot shot down over Iraq in 1991, may still be in Iraqi hands. The nation owes it to him and to all those who may be called to serve in the coming months to take every step possible to ensure that no American soldier is left behind.

The bill provides refugee status to an alien (and his or her parent, spouse, or child) who is a national of Iraq or a nation of the greater Middle East, who personally delivers into the custody of the U.S. government a living American prisoner of war from the Persian Gulf War or subsequent actions against Iraq. To receive refugee status, the alien could not be ineligible for asylum on the basis of the factors set out in section 208(b)(2)(A)(i)-(v) of the Immigration and Nationality Act (such as being a criminal, a terrorist, or a danger to the security of the United States).

HEARINGS

No hearings were held on S. 1339.

COMMITTEE CONSIDERATION

On October 9, 2002, the Committee met in open session and ordered favorably reported the bill S. 1339 without amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes on S. 1339.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

S. 1339 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, S. 1339, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 11, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1339, the Persian Gulf War POW/MIA Accountability Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

S. 1339—Persian Gulf War POW/MIA Accountability Act of 2002.

CBO estimates that implementing this legislation would cost about \$20,000 annually, subject to the availability of appropriated funds. The act also could affect direct spending, but we estimate that any such effects would be less than \$100,000 annually. S. 1339 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not have a significant effect on State budgets. The act would have no effect on local or tribal governments.

S. 1339 would grant refugee status to certain nationals of selected countries if they deliver into the custody of the United States a living American considered to be either a prisoner of war or missing in action from the Persian Gulf war. Those eligible would include nationals of Iraq and other nations of the greater Middle East region, as determined by the Attorney General and the Secretary of State. The act would require the Broadcasting Board of Governors (BBG) to promote the refugee program through radio and television broadcasts to those countries.

Based on information from the BBG, CBO estimates that the cost of additional international broadcasting would be about \$20,000 a year. Enacting S. 1339 also could increase the number of refugees admitted to the United States, which would increase the administrative costs for the Immigration and Naturalization Service and the costs for certain Federal entitlement programs. However, CBO estimates that any increased spending on these activities, which would be classified as direct spending, would be less than \$100,000 in any year because very few additional refugees are expected under S. 1339.

On July 15, 2002, CBO transmitted a cost estimate for S. 1339, as reported by the Senate Committee on the Judiciary on June 27, 2002. The two versions of the legislation are very similar, and the cost estimates are identical.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title.

The short title of the Act is the “Persian Gulf War POW/MIA Accountability Act of 2002.”

Section 2. American Persian Gulf War POW/MIA Asylum Program.

Section 2 of the bill adds a new section 3A to the Bring Them Home Alive Act of 2000.¹ Section 3A provides that the Attorney General shall grant refugee status upon application from an alien who is a national of Iraq or a nation of the Greater Middle East Region (as determined by the Attorney General in consultation with the Secretary of State) and who personally delivers into the custody of the U.S. government a living American “POW/MIA” from the Persian Gulf War or subsequent actions. Such status shall also be granted to any parent, spouse, or child of such an alien.

However, under section 3A, an alien would not be eligible for refugee status if the Attorney General in his sole unreviewable discretion determines that the alien 1) has ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion, 2) has been convicted by a final judgment of a particularly serious crime constituting a danger to the community of the U.S., 3) has committed a serious nonpolitical crime outside the U.S. prior to his arrival in the U.S., 4) is a danger to the security of the U.S., 5) is inadmissible for certain terrorism-related activities set forth in section 212(a)(3)(B)(i)(I)-(IV), (VI) of the INA, including engaging in or inciting terrorist activity, being a representative of a terrorist organization or an organization that endorses terrorist activity (unless the Attorney General deter-

¹Pub. L. No. 106–484, 114 Stat. 2195, 8 U.S.C. sec. 1157 note.

mines that there are not reasonable grounds for regarding the alien as a danger to the security of the U.S.) , or endorsing or espousing terrorist activity or persuading others to engage in terrorist activity, or 6) is deportable for engaging in terrorist activity as set forth in section 237(a)(4)(B) of the INA.

Section 3A of the bill defines an American Persian Gulf War POW/MIA as an individual who is a member of the uniformed services of the U.S. or a U.S. government employee, who is in a “missing” status (including being missing, missing in action, interned in a foreign country, captured, beleaguered, or besieged by a hostile force, or being detained in a foreign country against his will) as a result of the Persian Gulf War, or any successor conflict, operation, or action such as that American might undertake against Iraq in the coming months. Such term does not include a person who it has been officially determined is officially absent from his post of duty without authority. Missing status also requires that the individual at the time he went missing be performing service in Kuwait, Iraq, or elsewhere in the Greater Middle East Region.

The Bring Them Home Alive Act requires the International Broadcasting Bureau to broadcast, through WORLDNET Television and Film Service and Radio, VOA-TV, VOA Radio, or otherwise, information that promotes the refugee program created by the Act in Vietnam, Cambodia, Laos, China, North Korea, Russia and the other independent states of the former Soviet Union. Section 3A of the bill adds to this list Iraq, Kuwait, or any other country of the Greater Middle East Region.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

BRING THEM HOME ALIVE ACT OF 2000

* * * * *

SEC. 3A. AMERICAN PERSIAN GULF WAR POW/MIA ASYLUM PROGRAM.

(a) ASYLUM FOR ELIGIBLE ALIENS.—Notwithstanding any other provision of law, the Attorney General shall grant refugee status in the United States to any alien described in subsection (b), upon the application of that alien.

(b) ELIGIBILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), an alien described in this subsection is—

(A) any alien who—

(i) is a national of Iraq or a nation of the Greater Middle East Region (as determined by the Attorney General in consultation with the Secretary of State); and

(ii) personally delivers into the custody of the United States Government a living American Persian Gulf War POW/MIA; and

(B) any parent, spouse, or child of an alien described in subparagraph (A).

(2) *EXCEPTIONS.*—An alien described in this subsection does not include a terrorist, a persecutor, a person who has been convicted of a serious criminal offense, or a person who presents a danger to the security of the United States, as set forth in clauses (i) through (v) of section 208(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)).

(c) *DEFINITIONS.*—In this section:

(1) *AMERICAN PERSIAN GULF WAR POW/MIA.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), the term “American Persian Gulf War POW/MIA” means an individual—

(i) who is a member of a uniformed service (within the meaning of section 101(3) of title 37, United States Code) in a missing status (as defined in section 551(2) of such title and this subsection) as a result of the Persian Gulf War, or any successor conflict, operation, or action; or

(ii) who is an employee (as defined in section 5561(2) of title 5, United States Code) in a missing status (as defined in section 5561(5) of such title) as a result of the Persian Gulf War, or any successor conflict, operation, or action.

(B) *EXCLUSION.*—Such term does not include an individual with respect to whom it is officially determined under section 552(c) of title 37, United States Code, that such individual is officially absent from such individual’s post of duty without authority.

(2) *MISSING STATUS.*—The term “missing status”, with respect to the Persian Gulf War, or any successor conflict, operation, or action, means the status of an individual as a result of the Persian Gulf War, or such conflict, operation, or action, if immediately before that status began the individual—

(A) was performing service in Kuwait, Iraq, or another nation of the Greater Middle East Region; or

(B) was performing service in the Greater Middle East Region in direct support of military operations in Kuwait or Iraq.

(3) *PERSIAN GULF WAR.*—The term “Persian Gulf War” means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

SEC. 4. BROADCASTING INFORMATION ON THE “BRING THEM HOME ALIVE” PROGRAM.

(a) *REQUIREMENT.*—

(1) * * *

(2) *COVERED COUNTRIES.*—The foreign countries covered by paragraph (1) are—

(A) Vietnam, Cambodia, Laos, China, and North Korea; [and]

(B) Russia and the other independent states of the former Soviet Union[.]; and

(C) Iraq, Kuwait, or any other country of the Greater Middle East Region (as determined by the International

*Broadcasting Bureau in consultation with the Attorney
General and the Secretary of State).*

* * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, OCTOBER 9, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 11:25 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner [Chairman of the Committee] presiding.

* * * * *

Chairman SENSENBRENNER. Now, pursuant to notice, I call up the bill Senate 1339, the "Persian Gulf War POW-MIA Accountability Act of 2002," and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.
[The bill, S. 1339, follows:]

107TH CONGRESS
2^D SESSION

S. 1339

AN ACT

To amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf War POW/MIAs, 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 “Persian Gulf War
5 POW/MIA Accountability Act of 2002”.

1 **SEC. 2. AMERICAN PERSIAN GULF WAR POW/MIA ASYLUM**
2 **PROGRAM.**

3 (a) ASYLUM PROGRAM.—The Bring Them Home
4 Alive Act of 2000 (Public Law 106–484; 114 Stat. 2195;
5 8 U.S.C. 1157 note) is amended by inserting after section
6 3 the following new section:

7 **“SEC. 3A. AMERICAN PERSIAN GULF WAR POW/MIA ASYLUM**
8 **PROGRAM.**

9 “(a) ASYLUM FOR ELIGIBLE ALIENS.—Notwith-
10 standing any other provision of law, the Attorney General
11 shall grant refugee status in the United States to any alien
12 described in subsection (b), upon the application of that
13 alien.

14 “(b) ELIGIBILITY.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), an alien described in this subsection is—

17 “(A) any alien who—

18 “(i) is a national of Iraq or a nation
19 of the Greater Middle East Region (as de-
20 termined by the Attorney General in con-
21 sultation with the Secretary of State); and

22 “(ii) personally delivers into the cus-
23 tody of the United States Government a
24 living American Persian Gulf War POW/
25 MIA; and

1 “(B) any parent, spouse, or child of an
2 alien described in subparagraph (A).

3 “(2) EXCEPTIONS.—An alien described in this
4 subsection does not include a terrorist, a persecutor,
5 a person who has been convicted of a serious criminal
6 offense, or a person who presents a danger to
7 the security of the United States, as set forth in
8 clauses (i) through (v) of section 208(b)(2)(A) of the
9 Immigration and Nationality Act (8 U.S.C.
10 1158(b)(2)(A)).

11 “(e) DEFINITIONS.—In this section:

12 “(1) AMERICAN PERSIAN GULF WAR POW/
13 MIA.—

14 “(A) IN GENERAL.—Except as provided in
15 subparagraph (B), the term ‘American Persian
16 Gulf War POW/MIA’ means an individual—

17 “(i) who is a member of a uniformed
18 service (within the meaning of section
19 101(3) of title 37, United States Code) in
20 a missing status (as defined in section
21 551(2) of such title and this subsection) as
22 a result of the Persian Gulf War, or any
23 successor conflict, operation, or action; or

24 “(ii) who is an employee (as defined
25 in section 5561(2) of title 5, United States

1 Code) in a missing status (as defined in
2 section 5561(5) of such title) as a result of
3 the Persian Gulf War, or any successor
4 conflict, operation, or action.

5 “(B) EXCLUSION.—Such term does not in-
6 clude an individual with respect to whom it is
7 officially determined under section 552(e) of
8 title 37, United States Code, that such indi-
9 vidual is officially absent from such individual’s
10 post of duty without authority.

11 “(2) MISSING STATUS.—The term ‘missing sta-
12 tus’, with respect to the Persian Gulf War, or any
13 successor conflict, operation, or action, means the
14 status of an individual as a result of the Persian
15 Gulf War, or such conflict, operation, or action, if
16 immediately before that status began the
17 individual—

18 “(A) was performing service in Kuwait,
19 Iraq, or another nation of the Greater Middle
20 East Region; or

21 “(B) was performing service in the Greater
22 Middle East Region in direct support of mili-
23 tary operations in Kuwait or Iraq.

24 “(3) PERSIAN GULF WAR.—The term ‘Persian
25 Gulf War’ means the period beginning on August 2,

1 1990, and ending on the date thereafter prescribed
2 by Presidential proclamation or by law.”.

3 (b) BROADCASTING INFORMATION.—Section 4(a)(2)
4 of that Act is amended—

5 (1) by striking “and” at the end of subpara-
6 graph (A);

7 (2) by striking the period at the end of sub-
8 paragraph (B) and inserting “; and”; and

9 (3) by adding at the end the following new sub-
10 paragraph:

11 “(C) Iraq, Kuwait, or any other country of
12 the Greater Middle East Region (as determined
13 by the International Broadcasting Bureau in
14 consultation with the Attorney General and the
15 Secretary of State).”.

Passed the Senate July 29, 2002.

Attest:

Secretary.

Chairman SENSENBRENNER. And the Chair recognizes the gentleman from Pennsylvania, Mr. Gekas, for 5 minutes to explain the bill.

Mr. GEKAS. I thank the Chair. In the 106th Congress, the "Bring Him Home Alive Act" was enacted as Public Law 106-484. This legislation, sponsored by Senator Ben Nighthorse Campbell and Congressman Joel Hefley, offers refugee status to any national of Vietnam, Cambodia, Laos, China, or any of the independent states of the former Soviet Union who personally delivers into the custody of the U.S. Government a living American prisoner of war from the Vietnam War.

It grants similar status to any national of North Korea, China, or the states of the former Soviet Union who delivers a living American prisoner of war from the Korean war.

Information regarding the act is to be broadcast by the International Broadcasting Bureau over Voice of America and other broadcast services. The "Bring Him Home Alive Act" signals our continuing dedication to all the Americans who served in the Vietnam and Korean Wars. It shall be needed until all our soldiers are accounted for.

S. 1339 amends this act to broaden its coverage to account for the Persian Gulf War and any future hostilities in Iraq. There have been recent reports that Michael Spiker, a Navy pilot shot down over Iraq in 1991, may still be in Iraqi hands. We owe it to him and all those who may be called to serve in the coming months to pass this bill.

The bill provides refugee status to a national of Iraq or any other nation of the greater Middle East who personally delivers into the custody of the U.S. Government a living American prisoner of war from the Persian Gulf War or any successor conflict. To receive refugee status, the alien cannot be ineligible for asylum on account of being a criminal, a terrorist, or a danger to the security of the United States.

We urge support of the bill.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will be placed in the record at this point.

[The information follows:]

Chairman SENSENBRENNER. Are there amendments? If there are no amendments, the Chair notes the presence of a reporting quorum, and the question occurs on the motion to report the bill Senate 1339 favorably.

All in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The motion to report favorably is adopted.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by the House rules in which to submit additional dissenting, supplemental, or minority views.