

Jones (2014). Ted Cruz proposes an unconstitutional bill.

Jingoistic Americans Get Reday to be Duped Again. Ted Cruz wants to be your *next* Constitution-shredding leader.

On 1 April 2014, Ted Cruz (R-TX), submitted a bill to Congress, S. 2195¹, designed to do one thing – prevent the U.S. State Department from issuing a visa to Hamid Aboutalebi, then nominated by the government of the Islamic Republic of Iran (IRI), to serve as the IRI ambassador to the UN in New York.²

What should be known to Americans who care about the rule of law, and the idea that promises – like that of Cruz, who swore an oath to uphold and support the Constitution³ – mean something, is that the text of S. 2195 is patently unconstitutional. And is unconstitutional for at least two, if not three reasons! The text constitutes a Bill of Attainder, and if enacted, will be an *ex post facto* law. If that were not enough, arguably, the bill conflicts with an existing treaty between the United States and the United Nations.

According to Article I, section 9, clause 3 of the U.S. Constitution, “No Bill of Attainder or *ex post facto* law shall be passed.” As Article I addresses the Legislative branch of government, the clause is a strict prohibition on Congress – and there are no exceptions. Additionally, Article VI says that Treaties are Supreme Law. Instead of sponsoring this bill, why didn't Cruz just urge fellow members of the Senate to amend the treaty?

Ordinarily, I might grant a pass to certain members of Congress for their legislative gaffs – especially if they lacked a legal background. But Cruz has no excuse. Cruz was a law clerk (meaning research assistant, legal scholar and opinion writer) to and for the federal Fourth Circuit Court of Appeals in 1995, and then for the United States Supreme Court (under then Chief Justice Rehnquist) in 1996.⁴ At Harvard law school, he was primary editor of the *Harvard Law Review*, executive editor of the *Harvard Journal of Law and Public Policy*, and a founding editor of the *Harvard Latino Law Review*. Reflecting back, in 2013, his professor, and advocate for torture, Alan Dershowitz, called Cruz, “off the charts, brilliant.”⁵

Unlike his fellow Harvard alum and editor of the *Harvard Law Review*, Barack “Barry” Obama who, we told, taught Constitutional law at the University of Chicago, Cruz put Constitutional principles in practice, working for Bush on the infamous *Bush v. Gore* – voter suppression case. Later, Cruz was the top prosecutor and Constitutional law expert for the State of Texas, as its

1 <https://www.govtrack.us/congress/bills/113/s2195/text>; the identical text of the House version, HR 4357, was sponsored by Doug Lamborn (R-CO, 5th District). <https://www.govtrack.us/congress/bills/113/hr4357/text>

2 http://www.cruz.senate.gov/?p=press_release&id=1083;

[http://en.wikipedia.org/wiki/Bill_to_deny_visas_to_some_United_Nations_ambassadors_\(S._2195;_113th_Congress\)](http://en.wikipedia.org/wiki/Bill_to_deny_visas_to_some_United_Nations_ambassadors_(S._2195;_113th_Congress))

3 Such oath is required for Members of Congress under Article IV, clause 3. And also supported by legislation. See reference at: http://www.ilonanickels.com/CC_oathoffice.html

4 http://en.wikipedia.org/wiki/Ted_Cruz#Early_life. Ironically, Rehnquist wrote about the Constitutional prohibition on Bills of Attainder, also called Bills of Pains and Penalties, in his 1987 book, *The Supreme Court: How it was, how it is* (New York: Morrow & Co).

5 Johnson, Charles C. 2013. "Dershowitz: Ted Cruz one of Harvard Law's smartest students". *Daily Caller*, May 9. Retrieved August 17, 2013.

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Solicitor General from 2003-2008. So how is that now, Senator Cruz, would push an unconstitutional law? Maybe he thinks that the sheeple just do not care?

Legal Analysis

What are the problems with the Cruz bill? The language directs:

“the President of the United States to deny U.S. admission to any representative of the United Nations (U.N.) who: (1) has been found to have been engaged in espionage activities or a terrorist activity against the United States or its allies, and (2) may pose a threat to U.S. national security interests.”⁶

And by the way, the meaning of *terrorist activity* is that which is defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii)).⁷

As it stands, this bill, if signed by Obama, would amend the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991. That is to say, arguably there already is a Bill of Attainder on the books – but that is surely no excuse for Cruz ... if he gave a damn about the Constitution and his oath to it.

Why is this language unconstitutional?

The Cruz bill is unconstitutional because:

(a) it imposes a punishment – purporting to deny issuance of a diplomatic or other visa to someone, though under U.S. treaty and law,⁸ such a person, like Aboutalebi, is entitled to the visa; even though

(b) Aboutalebi has been not be convicted of, much less charged with, a crime.

That is, the law defines Aboutalebi as a criminal (a terrorist), and assesses a punishment (denial of a visa or diplomatic immunity), without: (1) the need for criminal charge; (2) submission of evidence – subject to scrutiny in a court hearing; and (3) finding of guilt by an independent jury. Such is the definition of a Bill of Attainder.

⁶ <https://www.govtrack.us/congress/bills/113/hr4357/text>

⁷ <https://www.govtrack.us/congress/bills/113/hr4357/text>

⁸ See Agreement Between the United Nations and the United States Regarding the Headquarters of the United Nations, Article IV. Communications and Transit, Sections 11 and 13(a). They read in part: “The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of (1) representatives of Members or officials of the United Nations ...” And “Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11. When visas are required for persons referred to in [Section 11], they shall be granted without charge and as promptly as possible. See text at: http://avalon.law.yale.edu/20th_century/decad036.asp

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It was the ubiquity of such Bills, issued by the British Parliament, against political enemies of the Crown,⁹ that motivated the drafters of the Constitution to put that limitation on Congress in the first place. After all, how can one defend themselves against a law that defines them as a criminal? Writing in *Federalist #84* (1788) Alex Hamilton called the Constitution a bulwark against tyranny specifically because Congress would be prevented from passing Bills of Attainder.¹⁰ I guess Cruz, and his allies, in Congress, do not believe that a government should refrain from acting in a tyrannical manner.

But as I expressed above, as it reads, the new Act is also an unconstitutional *ex post facto* law. Let us presume that Cruz is correct, and Aboutalebi broke some U.S. law in 1979. The only punishment that U.S. law could impose on him is that which existed *at the time* of the supposed act. But with his bill, Cruz is seeking to add additional penalties against Aboutalebi – after the fact! That is the very definition of an *ex post facto* law.¹¹

What is the point of having a Constitution, and or requiring that Members of Congress swear and oath to it, if they feel comfortable submitting and passing bills that contravene it?

Lastly, there is the purported treaty, or at least a legally binding agreement, from 1947, between the United States and the UN¹² – which requires the visas to be issued. Even if the Joint Resolution of Congress is a mere Act (i.e., is a statute), why wouldn't Cruz, and the rest of the Congress, just seek to repeal that language?

And in all honesty, since 9/11, Bush and now Obama have had no qualms against bombing weddings to kill *one* suspect.¹³ They have ordered kidnappings and that people are shipped to black sites to be tortured.¹⁴ They have told the Supreme Court that they need no evidence wrongdoing, before they choose to order the execution of an American citizen.¹⁵ Why this bill, now?

It does not take a political scientist (though I am one) or a rocket scientist (but my father was that) to see that this is little more than political theater. Cruz is trying to get his *bona fides* for a shot at the Republican nomination – despite the fact that he is clearly ineligible to be president, given that he was born in Canada. Maybe his contempt for the Constitution is based in his hostility to the clause of Article II, section 1, that limits eligibility of the president to one who is a natural-born citizen? Recall, even Arnold Schwarzenegger acknowledged that there would have to be a Constitutional amendment to allow him to serve.¹⁶ Why is Cruz looking for short cuts

9 <http://www.historylearningsite.co.uk/Bill-of-Attainder.htm>

10 <http://www.constitution.org/fed/federa84.htm>

11 The United States Supreme Court has interpreted the ex post facto Clause to bar any legislation: ... increasing the punishment for a crime after the commission, or depriving the accused of any legal defense available at the time the crime was committed. *Collins v. Young*, 497 U.S. 37, 42 (1990).

12 http://avalon.law.yale.edu/20th_century/decad036.asp

13 http://investigations.nbcnews.com/_news/2013/02/04/16843014-justice-department-memo-reveals-legal-case-for-drone-strikes-on-americans?lite

14 <http://ccrjustice.org/learn-more/faqs/faqs%3A-what-are-ghost-detentions-and-black-sites>

15 http://www.washingtonpost.com/world/national-security/judge-dismisses-lawsuit-over-drone-strikes-in-yemen-that-killed-american-anwar-al-awlaki/2014/04/04/3dca8ee4-bc4c-11e3-9a05-c739f29ccb08_story.html

16 <http://www.infowars.com/schwarzenegger-wants-constitution-changed-for-a-2016-presidential-run/>

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over the rule of law? Again, perhaps it has something to do with his wife, a vice-president at Goldman-Sachs – we know of their overt criminality. And Mrs. Cruz is not scoring any congeniality points with those of us who were *not* on the receiving end of the bankster bailouts¹⁷ and coming bail-ins.¹⁸

Maybe Cruz, and his friends inside Congress (be they Republi-Crats or Demo-Publicans) and on Wall Street, are only looking to test the waters of unconstitutional tyranny once again. Bush and Cheney admitted they ordered torture.¹⁹ Bush and Cheney lied to the American public and pushed the nation into an unconstitutional, and illegal war of aggression.²⁰ Obama has continued the warrantless spying program,²¹ and torture,²² and extra-judicial killings.

If Americans will continue to show a preference for war-mongering or rants about Iran, instead of fealty to the Constitution, by the time 2016 rolls around, *Team Cruz* will happily offer up another dose of Constitution-free government.

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19 <http://www.theguardian.com/world/2010/jun/03/george-bush-us-waterboarded-terror-mastermind;>

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21 <http://www.breitbart.com/Big-Government/2012/09/28/ACLU-Obama-Has-Quadrupled-Warrantless-Wiretaps>

22 http://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations