

AMENDMENT TO H.R.
OFFERED BY MR. SMITH OF NEW JERSEY

At the end of title VIII, insert the following:

1 **SEC. 8** . **PROMOTION OF HUMAN RIGHTS IN VIETNAM.**

2 (a) **FINDINGS.**—Congress finds the following:

3 (1) The relationship between the United States
4 and the Socialist Republic of Vietnam has grown
5 substantially since the end of the trade embargo in
6 1994, with annual trade between the two countries
7 exceeding \$15,300,000,000 in 2009.

8 (2) The Government of Vietnam’s transition to-
9 ward greater economic freedom and trade has not
10 been matched by greater political freedom and sub-
11 stantial improvements in basic human rights for Vi-
12 etnamese citizens, including freedom of religion, ex-
13 pression, association, and assembly.

14 (3) The United States Congress agreed to Viet-
15 nam becoming an official member of the World
16 Trade Organization in 2006, amidst assurances that
17 the Government of Vietnam was steadily improving
18 its human rights record and would continue to do so.

19 (4) Vietnam remains a one-party state, ruled
20 and controlled by the Communist Party of Vietnam

1 (CPV), which continues to deny the right of citizens
2 to change their Government.

3 (5) Although in recent years the National As-
4 sembly of Vietnam has played an increasingly active
5 role as a forum for highlighting local concerns, cor-
6 ruption, and inefficiency, the National Assembly re-
7 mains subject to the direction of the CPV and the
8 CPV maintains control over the selection of can-
9 didates in national and local elections.

10 (6) The Government of Vietnam forbids public
11 challenge to the legitimacy of the one-party state, re-
12 stricts freedoms of opinion, the press, and associa-
13 tion and tightly limits access to the Internet and
14 telecommunication.

15 (7) Since Vietnam's accession to the WTO on
16 January 11, 2007, the Government of Vietnam arbi-
17 trarily arrested and imprisoned numerous individ-
18 uals for their peaceful advocacy of religious freedom,
19 democracy, and human rights, including Father
20 Nguyen Van Ly, human rights lawyers Nguyen Van
21 Dai, Le Thi Cong Nhan, Cu Huy Ha Vu, and Le
22 Cong Dinh, and bloggers Nguyen Van Hai and Phan
23 Thanh Hai.

24 (8) The Government of Vietnam continues to
25 detain, imprison, place under house arrest, convict,

1 or otherwise restrict persons for the peaceful expres-
2 sion of dissenting political or religious views.

3 (9) The Government of Vietnam has also failed
4 to improve labor rights, continues to arrest and har-
5 ass labor leaders, and restricts the right to organize
6 independently.

7 (10) The Government of Vietnam continues to
8 limit the freedom of religion, restrict the operations
9 of independent religious organizations, and persecute
10 believers whose religious activities the Government
11 regards as a potential threat to its monopoly on
12 power.

13 (11) Despite reported progress in church open-
14 ings and legal registrations of religious venues, the
15 Government of Vietnam has halted most positive ac-
16 tions with respect to religious freedom since the De-
17 partment of State lifted the “country of particular
18 concern” (CPC) designation for Vietnam in Novem-
19 ber 2006.

20 (12) The Government of Vietnam controls all
21 print and electronic media, including access to the
22 Internet, jams the signals of some foreign radio sta-
23 tions, including Radio Free Asia, and has detained
24 and imprisoned individuals who have posted, pub-

1 lished, sent, or otherwise distributed democracy-re-
2 lated materials.

3 (13) People arrested in Vietnam because of
4 their political or religious affiliations and activities
5 often are not accorded due legal process as they lack
6 full access to lawyers of their choice, may experience
7 closed trials, have often been detained for years
8 without trial, and have been subjected to the use of
9 torture to admit crimes they did not commit or to
10 falsely denounce their own leaders.

11 (14) Vietnam continues to be a source country
12 for the commercial sexual exploitation and forced
13 labor of women and girls, as well as for men and
14 women legally entering into international labor con-
15 tracts who subsequently face conditions of debt
16 bondage or forced labor, and is a destination country
17 for child trafficking and continues to have internal
18 human trafficking.

19 (15) Although the Government of Vietnam re-
20 ports progress in combating human trafficking, it
21 does not fully comply with the minimum standards
22 for the elimination of trafficking, and is not making
23 substantial efforts to comply.

24 (16) United States refugee resettlement pro-
25 grams, including the Humanitarian Resettlement

1 (HR) Program, the Orderly Departure Program
2 (ODP), Resettlement Opportunities for Vietnamese
3 Returnees (ROVR) Program, general resettlement of
4 boat people from refugee camps throughout South-
5 east Asia, the Amerasian Homecoming Act of 1988,
6 and the Priority One Refugee resettlement category,
7 have helped rescue Vietnamese nationals who have
8 suffered persecution on account of their associations
9 with the United States or, in many cases, because of
10 such associations by their spouses, parents, or other
11 family members, as well as other Vietnamese nation-
12 als who have been persecuted because of race, reli-
13 gion, nationality, political opinion, or membership in
14 a particular social group.

15 (17) While previous programs have served their
16 purposes well, a significant number of eligible refu-
17 gees from Vietnam were unfairly denied or excluded,
18 including Amerasians, in some cases by vindictive or
19 corrupt Vietnamese officials who controlled access to
20 the programs, and in others by United States per-
21 sonnel who imposed unduly restrictive interpreta-
22 tions of program criteria. In addition, the Govern-
23 ment of Vietnam has denied passports to persons
24 who the United States has found eligible for refugee
25 admission.

1 (18) Congress has passed numerous resolutions
2 condemning human rights abuses in Vietnam, indi-
3 cating that although there has been an expansion of
4 relations with the Government of Vietnam, it should
5 not be construed as approval of the ongoing and se-
6 rious violations of fundamental human rights in
7 Vietnam.

8 (b) PROHIBITION ON INCREASED NONHUMANI-
9 TARIAN ASSISTANCE TO THE GOVERNMENT OF VIET-
10 NAM.—

11 (1) ASSISTANCE.—

12 (A) IN GENERAL.—Except as provided in
13 paragraph (2), the Federal Government may
14 not provide any nonhumanitarian assistance au-
15 thorized to be appropriated by this Act or any
16 amendment made by this Act to the Govern-
17 ment of Vietnam during any fiscal year in an
18 amount that exceeds the amount of such assist-
19 ance provided during fiscal year 2011 unless—

20 (i) the Federal Government provides
21 assistance supporting the creation and fa-
22 cilitation of human rights training, civil so-
23 ciety capacity building, noncommercial rule
24 of law programming, and exchange pro-
25 grams between the Vietnamese National

1 Assembly and the United States Congress
2 at levels commensurate with, or exceeding,
3 any increases in nonhumanitarian assist-
4 ance to Vietnam authorized to be appro-
5 priated by this Act or any amendment
6 made by this Act;

7 (ii) with respect to the limitation for
8 fiscal year 2012, the President determines
9 and certifies to Congress, not later than 30
10 days after the date of the enactment of
11 this Act, that the requirements of clauses
12 (i) through (vii) of subparagraph (B) have
13 been met during the 12-month period end-
14 ing on the date of the certification; and

15 (iii) with respect to the limitation for
16 subsequent fiscal years, the President de-
17 termines and certifies to Congress every 12
18 months after the certification required pur-
19 suant to clause (ii) of this subparagraph,
20 that the requirements of subparagraphs (i)
21 through (vii) of subparagraph (B) have
22 been met during the 12-month period prior
23 to such certification.

24 (B) REQUIREMENTS.—The requirements
25 of this subparagraph are the following:

1 (i) The Government of Vietnam has
2 made substantial progress toward releasing
3 all political and religious prisoners from
4 imprisonment, house arrest, and other
5 forms of detention.

6 (ii) The Government of Vietnam has
7 made substantial progress toward—

8 (I) respecting the right to free-
9 dom of religion, including the right to
10 participate in religious activities and
11 institutions without interference, har-
12 assment, or involvement of the Gov-
13 ernment, for all of Vietnam's diverse
14 religious communities; and

15 (II) returning estates and prop-
16 erties confiscated from the churches
17 and religious communities.

18 (iii) The Government of Vietnam has
19 made substantial progress toward respect-
20 ing the right to freedom of expression, as-
21 sembly, and association, including the re-
22 lease of independent journalists, bloggers,
23 and democracy and labor activists.

24 (iv) The Government of Vietnam has
25 made substantial progress toward repeal-

1 ing or revising laws that criminalize peace-
2 ful dissent, independent media,
3 unsanctioned religious activity, and non-
4 violent demonstrations and rallies, in ac-
5 cordance with international standards and
6 treaties to which Vietnam is a party.

7 (v) The Government of Vietnam has
8 made substantial progress toward allowing
9 Vietnamese nationals free and open access
10 to United States refugee programs.

11 (vi) The Government of Vietnam has
12 made substantial progress toward respect-
13 ing the human rights of members of all
14 ethnic and minority groups.

15 (vii) Neither any official of the Gov-
16 ernment of Vietnam nor any agency or en-
17 tity wholly or partly owned by the Govern-
18 ment of Vietnam was complicit in a severe
19 form of trafficking in persons, or the Gov-
20 ernment of Vietnam took all appropriate
21 steps to end any such complicity and hold
22 such official, agency, or entity fully ac-
23 countable for its conduct.

24 (2) EXCEPTION.—

1 (A) CONTINUATION OF ASSISTANCE IN
2 THE NATIONAL INTEREST.—Notwithstanding
3 the failure of the Government of Vietnam to
4 meet the requirements of clauses (i) through
5 (vii) of paragraph (1)(B), the President may
6 waive the application of paragraph (1) for any
7 fiscal year if the President determines that the
8 provision to the Government of Vietnam of in-
9 creased nonhumanitarian assistance authorized
10 to be appropriated by this Act or any amend-
11 ment made by this Act would promote the pur-
12 pose of this section or is otherwise in the na-
13 tional interest of the United States.

14 (B) EXERCISE OF WAIVER AUTHORITY.—
15 The President may exercise the authority under
16 subparagraph (A) with respect to—

17 (i) all United States nonhumanitarian
18 assistance to Vietnam authorized to be ap-
19 propriated by this Act or any amendment
20 made by this Act; or

21 (ii) one or more programs, projects, or
22 activities of such assistance.

23 (3) DEFINITIONS.—In this section:

1 (A) NONHUMANITARIAN ASSISTANCE.—

2 The term “nonhumanitarian assistance”
3 means—

4 (i) any assistance under the Foreign
5 Assistance Act of 1961 (including pro-
6 grams under title IV of chapter 2 of part
7 I of that Act, relating to the Overseas Pri-
8 vate Investment Corporation) authorized to
9 be appropriated by this Act or any amend-
10 ment made by this Act, other than—

11 (I) disaster relief assistance, in-
12 cluding any assistance under chapter
13 9 of part I of that Act;

14 (II) assistance which involves the
15 provision of food (including monetiza-
16 tion of food) or medicine;

17 (III) assistance for refugees; and

18 (IV) assistance to combat HIV/
19 AIDS, including any assistance under
20 section 104A of that Act; and

21 (ii) sales, or financing on any terms,
22 under the Arms Export Control Act.

23 (B) SEVERE FORMS OF TRAFFICKING IN
24 PERSONS.—The term “severe form of traf-
25 ficking in persons” means any activity de-

1 scribed in section 103(8) of the Trafficking Vic-
2 tims Protection Act of 2000 (Public Law 106–
3 386 (114 Stat. 1470); 22 U.S.C. 7102(8)).

4 (c) EFFECTIVE DATE.—This section shall take effect
5 on the date of the enactment of this Act and shall apply
6 with respect to the provision of nonhumanitarian assist-
7 ance to the Government of Vietnam authorized to be ap-
8 propriated by this Act or any amendment made by this
9 Act during fiscal year 2012 and subsequent fiscal years.

10 (d) UNITED STATES PUBLIC DIPLOMACY.—

11 (1) RADIO FREE ASIA TRANSMISSIONS TO VIET-
12 NAM.—It is the policy of the United States to take
13 such measures as are necessary to overcome the
14 jamming of Radio Free Asia by the Government of
15 Vietnam.

16 (2) UNITED STATES EDUCATIONAL AND CUL-
17 TURAL EXCHANGE PROGRAMS WITH VIETNAM.—It is
18 the policy of the United States that programs of
19 educational and cultural exchange with Vietnam
20 should actively promote progress toward freedom
21 and democracy in Vietnam by providing opportuni-
22 ties to Vietnamese nationals from a wide range of
23 occupations and perspectives to see freedom and de-
24 mocracy in action and, also, by ensuring that Viet-
25 namese nationals who have already demonstrated a

1 commitment to these values are included in such
2 programs.

3 (e) REFUGEE RESETTLEMENT FOR NATIONALS OF
4 VIETNAM.—It is the policy of the United States to offer
5 refugee resettlement to nationals of Vietnam (including
6 members of the Montagnard ethnic minority groups) who
7 were eligible for the Orderly Departure Program (ODP),
8 the Humanitarian Resettlement (HR) Program, the Re-
9 settlement Opportunities for Vietnamese Returnees
10 (ROVR) Program, the Amerasian Homecoming Act of
11 1988, or any other United States refugee program and
12 who were deemed ineligible due to administrative error or
13 who for reasons beyond the control of such individuals (in-
14 cluding insufficient or contradictory information or the in-
15 ability to pay bribes demanded by officials of the Govern-
16 ment of Vietnam) were unable or failed to apply for such
17 programs in compliance with deadlines imposed by the De-
18 partment of State.

