

**AMNESTY  
INTERNATIONAL**



June 28, 2017

**Amnesty International USA urges a vote “NO” on H.R. 3003 and H.R. 3004**

Dear Representative:

On behalf of Amnesty International USA (“AIUSA”) and our more than one million members and supporters nationwide, we strongly urge you to oppose the No Sanctuary for Criminals Act (H.R. 3003) and Kate’s Law (H.R. 3004). Both bills are scheduled for House floor votes as early as June 28. If passed, both bills would pave the way for and accelerate the implementation of policies that increase the criminalization and detention of immigrants and asylum seekers, thereby violating the United States’ obligations under international law.

AIUSA will be scoring these votes.

- I. The No Sanctuary for Criminals Act (H.R. 3003) would prevent municipalities from determining how law enforcement agencies are engaging in immigration enforcement, and would dramatically expand indefinite detention and mandatory detention of immigrants in jail-like facilities with subpar dangerous conditions, in violation of international human rights standards.**

H.R. 3003 would prevent localities from enacting community trust policies that instruct local police not to carry out federal immigration enforcement, thereby undermining policing practices designed to build trust and confidence between local law enforcement and the communities they serve. This bill would open the door to racial profiling against Latinos and other communities of color, including U.S. citizens.

International law firmly prohibits discrimination, and the United States’ commitment to those obligations applies to citizens and non-citizens alike.

States that have passed anti-immigrant legislation that requires local law enforcement to cooperate with immigration agencies or to inquire about immigration status regarding any interactions with law enforcement have compromised the right to justice for immigrant communities by discouraging immigrant survivors from reporting crimes.

The U.S. government has an obligation to prevent and address abuse of immigrants and ensure that all immigrants are able to access available remedies. This includes acting with due diligence to investigate and punish criminal conduct committed by private individuals, and guaranteeing access to justice for immigrant victims of crime.

Amnesty International has also documented how the increased involvement of state and local law enforcement agencies in immigration enforcement, without adequate oversight and

accountability to prevent abuses, contributes to the rise in reports of racial profiling for Latino communities and other communities of color. Numerous studies have demonstrated that programs that integrate the criminal justice system and law enforcement as an entry point for immigration enforcement have led to racial profiling and other abuses.

In addition, H.R. 3003 would dramatically expand the Department of Homeland Security (“DHS”) immigration detention powers by authorizing mandatory detention “without time limitation.” This would empower the DHS to detain untold numbers of immigrants for as long as it takes to conclude immigration court removal proceedings, even if that takes years. Section 4 would also authorize indefinite mandatory detention without providing the basic due process of an immigration judge bond hearing to determine if the immigrant’s imprisonment was justified in the first place. Finally, section 4 would expand mandatory detention of immigrants with no criminal record whatsoever, including immigrants who overstayed a visa or lack legal papers.

The mandatory detention system, which provides for the automatic detention of individuals, amounts to arbitrary detention, and is in violation of international law, which requires that detention be justified in each individual case and be subject to judicial review. The expansion of offenses which would fall under mandatory detention as demonstrated in H.R. , as proposed by H.R. 3003, amounts to arbitrary detention, and is in violation of international law, which requires that detention be justified in each individual case and be subject to judicial review. U.S. federal courts have also consistently held that detaining immigrants for months and years without bond hearings raises serious problems under the Due Process Clause of the Constitution.

The proposed dramatic expansion of immigration detention powers envisioned in H.R. 3003 comes at a time when immigration detention has already hit record-highs, with the average daily population (“ADP”) exceeding 40,000 in comparison to a 34,000 ADP for the preceding seven years. This sharp escalation in the number of detained immigrants also comes at a time when Human Rights Watch (“HRW”)<sup>1</sup> has reported new evidence of dangerously subpar medical care in immigration detention, including unreasonable delays in care and unqualified medical staff that are likely to expose a record number of immigrants to dangerous conditions. This recent HRW report is only the latest of a series of shocking reports documenting DHS’s failure to provide care to ill or injured immigrants in its custody.

The International Covenant on Civil and Political Rights (ICCPR), which the United States has ratified, guarantees all people the rights to be free from discrimination and arbitrary arrest and detention, and the right to due process, including fair deportation procedures. Finally, non-citizens who are detained have a right to humane conditions of detention and are entitled to prompt review of their detention by an independent court.

The mass expansion of mandatory detention and immigration detention proposed by H.R. 3003 violates all of these international human rights standards.

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<sup>1</sup> Grace Meng, Human Rights Watch, *US: Detention Hazardous to Immigrants’ Health: More Preventable Deaths Likely Under Trump Policies* (May 2017) at <https://www.hrw.org/news/2017/05/08/us-detention-hazardous-immigrants-health>

## **II. H.R. 3004 would increase mass incarceration of immigrants, including survivors of persecution or torture, by increasing criminal penalties for the mere act of migration – in violation of international human rights standards.**

Current law already criminalizes illegal reentry in violation of international law and standards under 8 U.S.C. § 1326, imposing a sentence of up to 20 years on anyone convicted of illegal reentry after committing an aggravated felony. According to data compiled by the Transactional Records Access Clearinghouse at Syracuse University, in fiscal year 2016 federal criminal prosecutions for illegal entry, reentry, and similar immigration violations made up 52 percent of all federal prosecutions nationwide<sup>2</sup>—surpassing drugs, weapons, fraud and thousands of other crimes.

Criminal penalties for unauthorized entry are obstacles for identifying the victims of human rights abuses, and prevent victims from seeking justice. They undermine human rights protections afforded in international law, including the right to seek asylum. The Special Rapporteur on the Human Rights of Migrants has repeatedly stressed that where detention is used as a punitive measure, it is disproportionate and inappropriate, and stigmatizes undocumented immigrants as criminals.

The criminal prosecution of illegal reentry has grown exponentially over the past decade. In 2002 there were 8,000 prosecutions for illegal reentry; in 2012 these prosecutions had increased to 37,000.<sup>3</sup> Nearly 99 percent of illegal reentry defendants were sentenced to federal prison time, ranging from a few days to 10 years or more for felony reentry before they are eventually deported.

Beyond the trend towards more aggressive criminal prosecutions for illegal reentry, a 2015 U.S. Sentencing Commission report found nearly 50 percent of people sentenced in fiscal 2013 for illegal re-entry had at least one child living in the U.S.<sup>4</sup> Many of the individuals charged with illegal reentry previously resided in the U.S. for many years and are desperate to return to their family in the U.S.

On top of this longstanding trend of harsher criminal prosecution for illegal reentry – the sponsors of H.R. 3004 would seek to expand the category of individuals subject to illegal reentry prosecution to include people who surrender themselves at the southern border to seek protection in the U.S. The bill would also expand sentencing enhancements for illegal reentry, and would prosecute people for illegal reentry even if their previous removal orders were unlawful or deprived them of the opportunity to seek protection. For example, the bill would criminalize

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<sup>2</sup> “Immigration cases swamp federal court system”, *Albuquerque Journal* (Dec. 26, 2016) at <https://www.abqjournal.com/916079/immigration-cases-swamp-court-system.html>

<sup>3</sup> Human Rights Watch, *Turning Migrants into Criminals The Harmful Impact of US Border Prosecutions* (2013) at [https://www.hrw.org/sites/default/files/reports/us0513\\_ForUpload\\_2.pdf](https://www.hrw.org/sites/default/files/reports/us0513_ForUpload_2.pdf)

<sup>4</sup> U.S. Sentencing Commission, *Illegal Reentry Offenses* (Apr. 2015) at [http://www.ussc.gov/sites/default/files/pdf/research-andpublications/research-projects-and-surveys/immigration/2015\\_Illegal-Reentry-Report.pdf](http://www.ussc.gov/sites/default/files/pdf/research-andpublications/research-projects-and-surveys/immigration/2015_Illegal-Reentry-Report.pdf) (accessed July 17, 2015).

asylum seekers who return to the U.S. after being previously denied the opportunity to present their claims for protection.

While all sovereign states have a legitimate interest in regulating entry into their territories, they can only do so within the limits of their obligations under international law. The U.S. government has an obligation under international human rights law to ensure that its laws, policies, and practices do not place immigrants at an increased risk of human rights abuses. Specifically, individuals have a right to seek asylum from persecution and protection from refoulement, and prosecuting asylum seekers prior to adjudication of their asylum applications violates U.S. obligations under the Refugee Convention. Similarly the Convention Against Torture prohibits a State from expelling, returning, or extraditing a person to another State where there are substantial grounds for believing that s/he would be in danger of being subjected to torture. Finally, all individuals, regardless of immigration status, have a right to family unity which can include limits on the State's power to deport, as recognized by the Human Rights Committee's interpretation of ICCPR obligations

All of these international human rights standards are violated by H.R. 3004.

AIUSA strongly urges you to oppose both H.R. 3003 and H.R. 3004. For more information, please contact me at [jlin@aiusa.org](mailto:jlin@aiusa.org) or 202/509-8151.

Sincerely,



Joanne Lin  
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