



September 12, 2017

Amnesty International USA urges a vote “NO” on “Criminal Alien Gang Member Removal Act” (H.R. 3697)

Dear Representative:

On behalf of Amnesty International USA (“AIUSA”) and our more than one million members and supporters nationwide, we strongly urge you to reject the Criminal Alien Gang Member Removal Act (H.R. 3697) introduced by Rep. Comstock (R-VA) last week. The bill is scheduled to come before the House Rules Committee on September 12 and to the House floor in the days immediately thereafter.

AIUSA will be scoring this vote.

As a human rights organization committed to ensuring that the U.S. government does not violate international law, AIUSA opposes H.R. 3697 because it will endanger asylum seekers fleeing persecution and torture, in violation of U.S. treaty obligations under the 1951 Refugee Convention and its 1967 Protocol. Due to its sweeping approach, H.R. 3697, if passed, would imperil Central American children and youth fleeing gang violence and other forms of lethal violence, thereby violating the United States’ obligations under international law.

The U.S. has long been a beacon of hope for those fleeing persecution and oppression, and has long been a global leader in refugee protection. 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. 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.

All of these international standards are violated by H.R. 3697.

H.R. 3697 would endanger Central American youth and families fleeing gang violence, torture, and other lethal violence (Sections 2(f), 2(g), 2(h)).

The bill defines “criminal gang” as a group, club or association of five or more people who, within the last five years, had or has as one of its primary purposes the commission of a wide range of *conduct* including any federally defined felony drug offense, harboring of immigrants

(under INA §274), the use of expired identification documents, or obstruction of justice. This overly broad definition of “criminal gang” could be construed to apply to many groups including congregations engaged in providing sanctuary to asylum seekers and torture survivors.

H.R. 3697 not only gives broad power to immigration officials to designate people as criminal gang members, but it also subjects asylum seekers to deportation, based solely on the mere suspicion of gang association. H.R. 3697 would bar all forms of refugee protection from anyone whom the Department of Homeland Security or an immigration judge “has reason to believe” is or has been a member of a criminal gang or who has participated in the group’s activities, including non-criminal activities.

In addition, H.R. 3697 would dramatically expand the DHS immigration detention powers by imposing mandatory detention on arriving asylum seekers, many of whom are fleeing gang violence in Central America. Thousands of individuals every year, including asylum seekers, are subject to mandatory detention while deportation proceedings take place, meaning that there is no opportunity for an individual hearing to determine whether he or she should be released while pursuing their claim in immigration court. The mandatory detention system amounts to arbitrary detention, which is a violation of the U.S. obligations under international law.

Everyone has the right to liberty and security of the person, including the protection from arbitrary arrest and detention, regardless of legal status. International standards, including instruments to which the United States is a party, contain a strong presumption against the detention of immigrants and asylum seekers. For example, the International Covenant on Civil and Political Rights clearly sets out the right to be free from arbitrary detention. Detention of migrants will only be lawful when the authorities can demonstrate in each individual case that it is necessary and proportionate to the objective being achieved, that alternatives will not be effective, that it is on grounds prescribed by law, and where there is an objective risk of the person absconding. The expansion of mandatory detention to include gang affiliation would further violate these obligations.

Taken together, the provisions of H.R. 3697 would prevent *bona fide* refugees from seeking humanitarian protection in the U.S. This bill could be used to deny these children protection and safe haven in the U.S., deporting them back to conditions of torture or persecution, in violation of U.S. and international legal protections.

AIUSA strongly urges you to reject H.R. 3697. For more information, please contact jlin@aiusa.org or 202/509-8151.

Sincerely,

Joanne Lin
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Advocacy and Government Affairs