



Re: Amnesty International USA Recommends NO VOTE on S.A.1948 and S.A. 1959 (The Secure and Succeed Act) to H.R. 2579

February 15, 2018

Dear Senator,

On behalf of Amnesty International USA (AIUSA) and our more than one million members nationwide, we urge you to **vote NO to S.A.1948, S.A. 1959, [the Grassley Amendment to H.R.2579](#)**.¹ Contrary to the co-sponsors' claims, [The Secure and Succeed Act](#) is far from being a "compassionate compromise," let alone "common sense" or "fair and generous."² The only acceptable immigration reform is one that protects human rights, and these amendments are far from that.³ The Grassley Amendment is discriminatory, criminalizes asylum seekers, and violates U.S human rights obligations.

[The Secure and Succeed Act](#), among others, calls for a \$25 billion in border trust fund for the completion of a 10-year border security plan, additional CBP/ICE agents/officers and other law enforcement personnel, increases penalties for human smuggling, and enacts H.R 3004—the so-called 'Kate's Law'—to increase penalties for multiple illegal entry.

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 or other cruel, inhuman or degrading treatment. 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 the International Convention on Civil and Political Rights obligations. These amendments violate these obligations in multiple ways.

The Secure and Succeed Act Calls for Additional CBP/ICE Agents/Officers and Other Law Enforcement Personnel, Increasing Racial Profiling and Unlawful Detentions

Amnesty International has 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.⁴ Numerous studies have demonstrated that programs that integrate the criminal justice system and law enforcement as an entry point for immigration enforcement have violated people's rights to be free from discrimination.⁵ The Grassley Amendment seeks to "make it easier for our law enforcement to apprehend, detain

¹ The Secure and Succeed Act Framework

<https://www.judiciary.senate.gov/imo/media/doc/Secure%20and%20Succeed%20Act%20of%202018%20-%20One-Page%20Summary.pdf>

² <https://www.grassley.senate.gov/news/news-releases/support-secure-and-succeed-act-what-they-are-saying>

³ Documented in Amnesty International reports such as [Jailed Without Justice: Immigration detention in the USA](#) and [In Hostile Terrain: Human rights violations in immigration enforcement in the U.S. southwest](#).

⁴ https://www.amnestyusa.org/files/ai_inhostileterrain_final031412.pdf, Chapter 4: Profiling and Other Forms of Discrimination

⁵ Ibid.

and speedily remove sex offenders, drug smugglers, human traffickers, international terrorists, criminal gang members, repeat border crossers, drunk drivers and other dangerous individuals," but this greater power will simply lead to an increase in racial profiling and unlawful detentions.⁶

Customs and Border Protection (CBP) agents operate under administrative guidelines that allow them wide discretion, often resulting in arbitrary decisions that violate U.S. and international law. Amnesty International has documented occurrences of non-admission of asylum seekers as early as 2015.⁷ Evidence gathered in 2017 at six major ports of entry⁸ demonstrates that this a recurring practice.⁹ Asylum seekers are routinely told that they cannot apply for asylum in the United States, must return to Mexico, and are ineligible to seek asylum in the United States.¹⁰ There is no written record of these interactions between asylum seekers and CBP officers, and internal compliance bodies rarely conduct supervision visits to ports of entry.¹¹ Adding CBP agents without also increasing oversight and accountability mechanisms will only increase this unlawful behavior.

Enacting H.R. 3004 Increases Penalties for Multiple Illegal Entries and Unlawful Border Crossings, Violating the Protections for Asylum Seekers and Preventing Family Unification.

The Grassley Amendment enacts H.R. 3004, the so-called Kate's Law, which would increase mass incarceration of immigrants, including survivors of persecution or torture, and would increase criminal penalties for the mere act of migration. Due to H.R. 3004, the category of individuals subject to illegal reentry prosecution would expand to include those who surrender themselves at the border to seek protection in the U.S., precluding people from even seeking asylum. H.R. 3004 would expand sentencing enhancements for illegal reentry and prosecute people for illegal reentry, even if their previous removal orders were unlawful or deprived them of the opportunity to seek protection. Criminal penalties for unauthorized entry are obstacles for identifying the victims of human rights abuses, prevent victims from seeking justice, and 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.

Under international law, non-admission of asylum-seekers at the border directly violates the principle of non-*refoulement*, which is binding on the U.S. as a party to the 1967 Protocol of the 1951 UN Convention Relating to the Status of Refugees and as a principle of international customary law. The non-*refoulement* principle, provided for in Article 33 of the Convention, provides that states must not return persons to territories where their "life or freedom" would be threatened.¹² According to international law, the United States must respect the right to establish a family and refrain from arbitrary or unlawful interference with the family.¹³ The Grassley Amendment risks separating asylum-seeking families at the border or immigrant families of mixed legal status within the country. Aside from family unity being a fundamental human right, separating families is inhumane due to the

⁶ <https://www.grassley.senate.gov/news/news-releases/grassley-secure-and-succeed-act-provides-permanent-daca-fix-protects-country>

⁷ <https://www.amnestyusa.org/wp-content/uploads/2017/06/USA-Mexico-Facing-Walls-REPORT-ENG.pdf>

⁸ These ports of entry are in San Diego, California; Nogales, Arizona; El Paso, Texas; Laredo, Texas; McCallen, Texas; and Brownsville, Texas.

⁹ <https://www.amnestyusa.org/wp-content/uploads/2017/06/USA-Mexico-Facing-Walls-REPORT-ENG.pdf>

¹⁰ Amnesty International Report Facing Walls, page 19 Available at:

<https://www.amnestyusa.org/wpcontent/uploads/2017/06/USA-Mexico-Facing-Walls-REPORT-ENG.pdf>

¹¹ More information can be found on page 19 of <https://www.amnestyusa.org/wp-content/uploads/2017/06/USA-Mexico-Facing-Walls-REPORT-ENG.pdf>

¹² <http://www.unhcr.org/3b66c2aa10>

¹³ Universal Declaration of Human Rights (UDHR), Article 16(1); International Covenant on Civil and Political Rights (ICCPR), Articles 17(1), 23(2).

increased emotional and physical stress on children.¹⁴ In 2016, the U.S. Immigration and Customs Enforcement (“ICE”) Advisory Committee on Family Residential Centers (“ACFRC”) stated that separating families is never in the best interest of children and recommended ending family detention.¹⁵

Current immigration law already criminalizes illegal reentry, violating international law and standards. 8 U.S.C. § 1326 imposes a sentence of up to 20 years on anyone convicted of illegal reentry after committing an aggravated felony. The criminal prosecution of illegal reentry has grown exponentially over the past decade from 8,000 prosecutions in 2002 for illegal reentry to 37,000 in 2012.¹⁶ 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. 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.

Denying entry to asylum seekers will not stem the flow of migrants. Deterrence policies have failed under court scrutiny and are shown to have little effect on those fleeing threats of death or severe human rights abuses to seek life-saving protection.¹⁷ Evidence shows that as U.S. border authorities deny more asylum seekers the ability to claim asylum at U.S. ports of entry, the flow of asylum seekers across the US-Mexico border has increased.¹⁸ The Grassley amendment seeks to decrease the number of immigrants, but its deterrence policies and increased detentions will not halt those fleeing for their lives. The Grassley Amendment violates numerous human rights standards. It eliminates the right to seek asylum, increasing the risk of facing human rights abuses. Increased deportations violate the right to family unity. It further criminalizes immigrants and increases the detention of immigrants and asylum seekers, violating international law.

Proposed Wall Trust-fund Would Increase the National Debt and Could Violate U.S. Human Rights Obligations

Beyond increasing the national debt, the construction of a border wall could prevent asylum seekers from entering the U.S., including Central American children and families who have survived torture or other persecution. To provide a fair asylum process, the U.S. government must ensure the existence of sufficiently located, secure, regulated border crossing points for asylum seekers. This is essential to ensure that the U.S. government does not violate the principle of *non-refoulement*, which is enshrined in the 1951 [UN Convention Relating to the Status of Refugees and binding on States Party to the 1967 Protocol](#). Under U.S. and international law, the U.S. government must provide a fair and accessible asylum process to ensure that people are not returned to situations where they would be persecuted, tortured or killed. These protections must be upheld and cannot be sacrificed, compromised or negotiated away.

Furthermore, the proposed border wall risks violating Native American Nations' rights. As prescribed by Article 19 of the United Nations (“U.N.”) [Declaration on the Rights of Indigenous Peoples](#), the U.S. government must obtain

¹⁴ See “AAP Statement Opposing Separation of Mothers and Children at the Border.” March 4, 2017. Available at: <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/immigrantmotherschildrenseparation.aspx>. For further discussion and recommendations on the treatment of immigrant children, see also: Linton JM, Griffin M, Shapiro AJ, AAP COUNCIL ON COMMUNITY PEDIATRICS. Detention of Immigrant Children. *Pediatrics*. March 2017. Available at: <http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>

¹⁵ On October 7, 2016, ACFRC unanimously recommended that ICE “operationalize the presumption that detention is generally neither appropriate nor necessary for families – and that detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children.” www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf.

¹⁶ <https://www.hrw.org/report/2013/05/22/turning-migrants-criminals/harmful-impact-us-border-prosecutions>

¹⁷ *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164 (D.D.C. 2015). www.aclu.org/cases/rilr-v-johnson.

¹⁸ https://www.amnestyusa.org/files/ai_inhostileterrain_final031412.pdf

the free, prior, and informed consent of affected Nations and consult in good faith with Native American Nations impacted by the construction of any wall. [The National Congress of American Indians](#) and the [Tohono O'odham Legislative Council](#), the second-largest tribe in the U.S. by land holdings, have both passed resolutions opposing the construction of the wall without tribal consent. Congress has not yet obtained the consent of affected Native American Nations. Absent free, prior, and informed consent of affected Native American Nations, Congress may not approve border wall funding without violating the U.N. Declaration on the Rights of Indigenous Peoples to which the U.S. is a signatory.

A fair and humane immigration policy that upholds human rights would requires at a minimum to:

- Provide residency and pathway to legal status for all DREAMers, and Temporary Protective Status holders.
- No border wall, and
- No purported "border" security measures that would endanger people seeking protection in the United States and would violate the human rights of residents living in U.S. border communities.

The Secure and Succeed Act is neither compassionate nor complies with U.S. human rights obligations. We call you to **vote NO to S.A.1948 and to S.A. 1959, [the Grassley Amendment to H.R.2579](#)**. If you have any further inquiries, do not hesitate to contact Marselha Gonçalves Margerin by phone at: (202)-675-8766 or email at: marselha@aiusa.org.

Sincerely,



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