



March 28, 2019

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
226 of the Dirksen Senate Office Building
Washington, DC 20515

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
226 of the Dirksen Senate Office Building
Washington, DC 20515

Re: Amnesty International USA Statement on Red Flag Laws: Examining Guidelines for State Action

Dear Chairman Graham, Ranking Member Feinstein and Members of the Committee:

Amnesty International USA (“AIUSA”) respectfully submits this statement for the record in connection with the March 26th hearing before the Committee on the Judiciary.

On behalf of AIUSA’s more than one million members and supporters nationwide, we urge you to approve and pass the Extreme Risk Protection Order Act of 2019 (S. 506)¹ that would provide states with the opportunity to apply for federal grants to assist with the implementation of Extreme Risk laws that limit access to firearms, preventing threats to public safety and ensuring that guns do not fall into dangerous hands.

Safeguards intended to shield against potential harm or deadly force by private individuals are critical to protecting universally recognized human rights—including the right to live and the right to security of person—both of which fall within the United States’ obligations under international law.

I. Gun Violence in the U.S.: Facts and Figures

Gun violence in the United States is a human rights crisis. An average of 109 individuals die per day from firearm related deaths. The sheer volume of people killed or injured each year in the U.S. by gun violence is staggering. In 2017, 39,773 people died by gun violence. Over 134,000 additional people suffered non-fatal firearm injuries. For these reasons, the use of firearms by private individuals to inflict injury or death on others often dominates the discussion on gun violence. Yet, *more than two-thirds of the gun-related deaths in the U.S. are suicides*. In fact, in 2017, 23,854 people died from suicide by firearm – more than 65 a day. Therefore, access to firearms for individuals who may present a risk of harm to themselves or others and the lack of restrictions on personal possession of firearms by those at recognizable risk of self-harm also needs to be acknowledged and is critical to addressing the full spectrum of firearm-related deaths.



II. The Extreme Risk Protection Order Act of 2019 (S. 506) will provide necessary federal funding to support state implementation of Extreme Risk Laws that limit access to firearms for individuals at risk of harming themselves or others.

The Extreme Risk Protection Order Act of 2019 (S. 506) will provide federal support, through grants to states, for the implementation of Extreme Risk Laws that meet the standard set forth in S. 506 §4. As the framework for Extreme Risk Laws is a fairly recent model, federal funding is key for states implementing these policies, ensuring that family members and the public are aware of the processes and procedures through which they can most effectively access protections and that law enforcement, judges, and administrators have the necessary training to enforce the law. Moreover, providing funding to states to implement Extreme Risk Laws, enables states to address specific issues and nuances that may be particular to their area, while still requiring them to meet the minimum standard set forth in the bill.

Through S. 506 §3(a) and (b) grants will empower states to implement life-saving measures with federally-awarded funds that (i) enhance the capacity of law enforcement agencies and the courts of a state, unit of local government, or Indian tribe by providing personnel, training, technical assistance, data collection, and other resources to carry out Extreme Risk Laws (ii) train judges, court personnel, and law enforcement officers to more accurately identify individuals whose access to firearms poses a danger of causing harm to themselves or others by increasing the risk of firearms suicide or interpersonal violence; (iii) develop and implement law enforcement and court protocols, forms, and orders so that law enforcement agencies and the courts may carry out the provisions of Extreme Risk Laws in a safe and effective manner, including through the removal and storage of firearms pursuant to extreme risk protection orders under the legislation; and (iv) raise public awareness and understanding of Extreme Risk Laws so that extreme risk protection orders may be issued in appropriate situations to reduce the risk of firearms-related death and injury.

S. 506 §4 also provide standards and requirements for Extreme Risk Laws to ensure that any federal support for these state policies provides due process protections to named individuals and complies with relevant standards of review, including requirements for: applications, notice, issuance of orders, hearings, evidentiary standards, durations of orders, ex parte orders and duration, storage of removed firearms, etc. S. 506 §4, Subsection 6(B) of the legislation also includes notification requirements to ensure that any issuance of extreme risk protection orders are reported to the Department of Justice so that they may be updated and reflected in the National Instant Criminal Background Check System.



A. Extreme Risk Laws Temporarily Remove Access to Firearms for Individuals at Risk of Harming Themselves or Others

Through Extreme Risk Protection Orders (ERPO) and Gun Violence Restraining Orders (GVRO), Extreme Risk Laws provide one avenue, at the state level, that enables law enforcement and/or in some states, family members, and health care practitioners, to petition to temporarily restrict access to firearms by at-risk individuals demonstrating behavioral risk factors for harming themselves or others, with clearly defined due process protections. If a petitioner is able to provide evidence that the individual is at risk of harming themselves or others, a judge may issue a civil court order temporarily prohibiting the individual from owning, possessing, purchasing, or receiving firearms and/or ammunition, including by having a firearm removed or requiring the surrender of firearms from the named individual.

When an ERPO expires, the person may regain access to their firearms, so long as they are able to pass a background check and are not otherwise prohibited from purchasing or possessing firearms. Research indicates that Extreme Risk laws have been effective in reducing firearm-related deaths. A study evaluating Connecticut's ERPO law estimated that over a period of 14 years between 38 and 76 suicides were prevented by these orders.² Fourteen states have adopted Extreme Risk laws, with many more currently considering the policies.

B. Extreme Risk Laws Should Focus on At-Risk Behaviors Rather Than Mental Illness

It is important to note that problematic correlations are often drawn between gun violence and mental health in public debates, wrongly implying that persons with psychosocial disabilities and those with mental health conditions are automatically prone to violence. These correlations and assertions ignore the range of possible mental health diagnoses and how mental health conditions might manifest differently for different individuals, depending on their particular circumstances. Furthermore, such assertions are unsupported by facts. In an article published in 2015, researchers analyzed statistics from the National Center for Health Statistics, which tracks gun homicides, and found that less than 5% of the 120,000 firearm-related killings in the U.S. between 2001 and 2010 were carried out by people who had been diagnosed with mental illness.³ A better framework for evaluating access to firearms is to take into account the broad range of factors that might contribute to an individual being at recognizable risk of self-harm or harming others. These include, behavioral risk factors, for example, emotional issues, patterns of substance abuse, and other circumstances which may be temporary or prolonged, but which impact an individual's likelihood of misusing a firearm. According to data from the CDC, in 2017, 59.9% of firearm-related deaths were suicides and 36.5% were homicides.⁴ Approximately half of all reported suicides in the USA are carried out with a firearm.⁵

The regulatory framework governing the sale and use of firearms should account for particular circumstances where factors may increase the likelihood that an individual is at risk of harming themselves or others, in a manner consistent with international human rights law. Extreme Risk Laws can save lives and reduce the likelihood of gun violence in the U.S. Federal funding to



support training, technical assistance, education and implementation of these laws is a vital step in protecting human rights impacted by gun violence in the U.S.

In sum, Congress should pass S. 506 in order to support states implementing Extreme Risk Laws that close dangerous loopholes in policy governing the acquisition, possession and use of firearms by private individuals.

For more information, including all references and sources, please see Amnesty International USA's 2018 report *In the Line of Fire: Human Rights and the U.S. Gun Violence Crisis*⁶ or contact Adotei Akwei, Advocacy Director aakwei@aiusa.org or (202) 509-8148.

Sincerely,

A handwritten signature in black ink, appearing to read "Adotei Akwei".

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¹ H.R. 1236, The Extreme Risk Protection Order Act of 2019, <https://www.congress.gov/116/bills/hr1236/BILLS-116hr1236ih.pdf>; S. 506, The Extreme Risk Protection Order Act of 2019, <https://www.congress.gov/116/bills/s506/BILLS-116s506is.pdf>.

² J.W. Swanson, et al, *Implementation and Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does it Prevent Suicides?*, *Law and Contemporary Problems*, 2017, 179, www.scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4830&context=lcp

³ J.M. Metzler, and K.T. MacLeish, *Mental Illness, Mass Shootings, and the Politics of American Firearms*, *American Journal of Public Health*, February 2015, www.ncbi.nlm.nih.gov/pmc/articles/PMC4318286/

⁴ S.L. Murphy, et al, *Deaths: Final Data for 2015*, *National Vital Statistics Reports*, Vol. 66, No. 6, 27 November 2017, www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66_06.pdf

⁵ Web-based Injury Statistics Query and Reporting System (WISQARS), *Fatal Injury Data*, <https://www.cdc.gov/injury/wisqars>. (Maryland and Nevada were the only two states that did not experience an increase in rate).

⁶ Amnesty International, *In the Line of Fire: Human Rights and the U.S. Gun Violence Crisis* (September 2018), available at https://www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_16.pdf.