



April 17, 2020

Dear Member of Congress:

As Congress considers further legislation to address the impact of the COVID-19 global pandemic, Amnesty International USA writes to express its concern with some of the [proposed legislative language put forth by the U.S. Department of Justice \(DOJ\)](#) for inclusion in the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act”<sup>1</sup>, signed into law on March 27.

On March 21 [Politico](#) reported that the DOJ submitted language to enhance the powers of judges under the declared national emergency.<sup>2</sup> While much of DOJ’s proposal was not included in the first CARES Act, Congress must prevent the enactment of language that could delay due process, by allowing for prolonged and indefinite detention of those held in federal prisons and immigration detention, make ineligible for asylum and withholding of removal broad categories of asylum-seekers, including individuals who are infected with “communicable diseases of public health significance” or who are otherwise subject to a presidential proclamation suspending entry of noncitizens. If adopted, DOJ’s proposal would rewrite fundamental guarantees of due process, liberty, and the right to seek asylum.

Amnesty International is a global movement of more than 7 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. We have hundreds of thousands of supporters, members and activists in the United States. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

COVID-19 should not be an excuse to suspend human rights obligations. Allowing judges to authorize indefinite detention without charge or trial would be unlawful and disastrous. It happened after 9/11, and we’re still seeing and suffering the consequences 18 years later at the Guantanamo Bay detention center, where 40 men remain locked up, the majority of whom without any charges, and all without fair trials. This crisis is a time for government to provide protection, not violate critically important human and civil rights.

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<sup>1</sup> Public Law No: 116-136, signed into law on March 27, 2020

<sup>2</sup> Proclamation No. 9994, 85 FR 15337 (March 13, 2020), <https://www.federalregister.gov/documents/2020/03/18/2020-05794/declaring-a-national-emergency-concerning-the-novel-coronavirus-disease-covid-19-outbreak>

- **Indefinite detention**

Under the DOJ's proposal, chief judges could delay or toll judicial proceedings as well as "any statutes or rules of procedure otherwise affecting pre-arrest, post-arrest, pre-trial, trial, and post-trial procedures in criminal and juvenile proceedings and all civil process and proceedings" which could allow for the indefinite detention of people during a public health crisis. It is particularly heinous that these conditions could allow for the indefinite detention of people before ever having a trial. This policy could enable law enforcement to detain people indefinitely for minor criminal offenses or simply for disobeying "shelter-in-place" orders, curfews, or other government-issued orders to stay inside. Instead, law enforcement should avoid further expansion of the incarcerated and detained population by broadly employing alternatives to detention.

Under normal circumstances, the U.S. carceral system utterly fails to provide access to hygiene and healthcare. The added threat of transmission of a deadly pathogen imposes additional challenges to inadequately resourced prisons, jails and immigration detention facilities. In the midst of a public health crisis that has already claimed the lives of more than 30,000 people in the United States, keeping people in crowded federal prisons and detention facilities puts their health at great risk.<sup>3</sup> U.S. obligations under the International Covenant on Civil and Political Rights<sup>4</sup> require any derogation from a state's commitment to these rights be strictly tailored to the exigencies of the situation: they must be temporary, necessary, proportionate and limited to counter specific threats justifying the given measure of derogation. Giving judges authority to detain people indefinitely is an alarming request that far exceeds DOJ's stated objective of holding timely criminal proceedings.

- **Suspension of asylum obligations**

Furthermore, DOJ's request to Congress explicitly prevents people with COVID-19, or who are subject to a new unlawful presidential proclamation suspending the entry of certain immigrants and asylum-seekers, from asylum eligibility. DOJ seeks to amend the asylum statute to render ineligible for asylum any asylum-seekers who (1) are infected with "a communicable disease of public health significance," including COVID-19 or (2) are subject to a presidential proclamation suspending and limiting entry of noncitizens to the US. This could theoretically include previous bans on asylum as well as the March 20 Centers for Disease Control and Prevention (CDC) order,<sup>5</sup> meaning that anyone without documentation could potentially be rendered ineligible for asylum.

Additionally, DOJ seeks to except from withholding of removal these same subcategories of individuals. This is particularly significant because this provision is interpreted to incorporate the U.S.'s international legal obligation against *refoulement*. If implemented, this request would create a massive, unprecedented, and unlawful carveout to this non-derogable obligation. This proposal is nothing more than another step in this administration's three-year-long campaign to cut off

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<sup>3</sup> Wendy Sawyer and Peter Wagner, *Mass Incarceration: the Whole Pie 2020*, Prison Policy Initiative, March 24, 2020, <https://www.prisonpolicy.org/reports/pie2020.html>

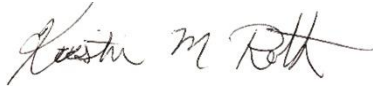
<sup>4</sup> *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976; Art. 2(1)

<sup>5</sup> 42 CFR 71, [https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons\\_Final\\_3-20-20\\_3-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf)

access to asylum for those seeking protection. Just as the right to be free from torture and other cruel, inhuman and degrading treatment or punishment is non-derogable under international law, so too is the obligation not to send refugees or others back to harm.

For the reasons stated above we urge Congress to prevent the inclusion of these dangerous proposals from DOJ that favor expediency over human rights from becoming law, related to COVID-19 or otherwise. Should you have any questions about the due process provisions of DOJ's proposal, please email Senior Program Officer, Criminal Justice Program, Kristina Roth at [kroth@aiusa.org](mailto:kroth@aiusa.org) or (202) 509-8182. For questions or concerns related to the asylum provisions of DOJ's proposal, please contact Charanya Krishnaswami, Americas Advocacy Director, at [ckrishna@aiusa.org](mailto:ckrishna@aiusa.org) or (202) 675-8766.

Sincerely,



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