

Statement of Opposition to H.R. 3697, the “Criminal Alien Gang Member Removal Act”

115th Congress (2017-2018)

Human Rights First urges Members of the House of Representatives to reject H.R. 3697, the “Criminal Alien Gang Member Removal Act,” introduced by Representative Comstock last week, as well as any similar legislation that would have severely negative consequences for asylum seekers and refugees fleeing persecution.

As an organization that regularly represents victims of gang violence, Human Rights First is concerned that this bill will only further the stigmatization of Central American youth and their families, will lead to unjust detention and deportation, and will bring the United States into conflict with its treaty obligations under the 1951 Refugee Convention and its 1967 Protocol. As outlined below, Human Rights First is concerned that provisions in the bill would be applied to people who were victims of these groups or who were merely in the vicinity of, or living with, or who had some other non-criminal connection to, persons involved in criminal activity.

Despite what its title might suggest, this piece of legislation would target people who are neither “criminal aliens”—in the sense of being non-citizens who are actually shown to have committed any crime—nor gang members. The bill would make inadmissible, and would bar from all forms of refugee protection, anyone whom the Department of Homeland Security (DHS) or an Immigration Judge “has reason to believe” is *or has been* a member of a criminal gang (defined by the bill to include any ongoing group of five or more people that has as one of its primary purposes the commission of one or more of a list of criminal offenses and which has engaged within the past 5 years in a “continuing series” of such offenses), *or who has participated in the group’s activities*—including its non-criminal activities—“knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the gang.” As minimally altered by the Goodlatte amendment, the bill would also make deportable anyone deemed to fall within these same sweeping definitions, but without applying the low “reason to believe” standard to the deportability ground. Even as amended, the bill would subject those deemed to be inadmissible *or* deportable on these grounds to mandatory detention under section 236(c) of the Immigration & Nationality Act (INA). The greatly expanded bars to refugee protection, likewise, references both the inadmissibility and deportability grounds, a problem not cured by the Goodlatte amendment.

“Reason to believe” is an inappropriately low standard of proof, particularly with respect to alleged activities or associations that in many cases may have arisen in the United States. The criminal justice system exists to establish responsibility for violations of American law. This bill is an attempt to sidestep that system and subject non-citizens to draconian penalties, including return to countries where their lives and freedom may be threatened, on mere suspicion. Combined with the lack of any requirement for the government to assert even a belief that the person targeted for banishment under these provisions has actually committed any crime, this bill sets the stage for the arrest, detention, and deportation with no realistic possibility of relief of non-citizens who had only tangential connections to actual criminal activity. Human Rights First is concerned that this bill would be applied, for example, to people who were merely in the vicinity of, or living with, or who had some other non-criminal connection to, persons involved in criminal activity. While there is reason to fear that these provisions

would initially be used to target Central American youth, its sweeping language would lend itself to application to a wide range of other groups of all nationalities.

The minimum conduct targeted by this bill simply does not rise to the level of a serious non-political crime—which already exists as a ground for exclusion from refugee protection based on acts committed prior to arrival in the United States, under both U.S. and international law—much less a “particularly serious crime” actual conviction of which in the United States would also justify such exclusion. For this reason, the bill places the U.S. in conflict with its treaty obligations not to return refugees to countries where they would face persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion.

Moreover, in view of Department of Homeland Security’s long history of applying legislation meant to redress wrongdoing to people who were victims of that same wrongdoing, Human Rights First is deeply concerned that DHS would interpret this legislation to bar from protection persons whose “participation in the activities of a criminal gang,” prior to their escape to safety in the United States, was coerced. A bus driver forced at gunpoint to transport members of gang in his home country, for example, who reported them to the police, and was forced to flee to the United States to avoid being killed for standing up to the gang when the police in his country could not protect him, would find himself barred as a “criminal alien gang member” under this bill.

U.S. immigration law already provides ample grounds for barring people from entry and deporting them based on a very wide range of criminal misconduct. In addition, the existing bars to refugee protection more than cover the classes of criminal wrongdoing contemplated under the 1951 Convention, a treaty which the United States took a leading role in drafting.