U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 0 7 2019

The Honorable Eliot L. Engel
Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on the substitute amendment to H.R. 1477, the "Russian-Venezuelan Threat Mitigation Act." As to the general desirability of this legislation, the Department defers to other agencies. However, as we explain below, the bill raises both constitutional and serious policy concerns.

Section 3 of the bill would require the Secretary of State to provide the Congress with a strategy to counter threats stemming from Russian-Venezuelan security cooperation. To the extent that this is intended to require the President to adopt a foreign policy consistent with such a strategy, it would interfere with the President's "authority to represent the United States" in foreign affairs "and to pursue its interests outside the borders of the country." *The President's Compliance with the "Timely Notification" Requirement of Section 501(b) of the National Security Act*, 10 Op. O.L.C. 159, 160 (1986); *see also Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 414–15 (2003). We, therefore, recommend striking this requirement or making it precatory.

Section 5 of the bill would make an alien ineligible for a United States visa or for admission or parole into the United States, if the Secretary of State or the Secretary of Homeland Security knew or had reason to believe that the alien acted or was acting on behalf of the Russian Government in direct support of the Venezuelan security forces. We strongly oppose section 5's broad limitation on the use of parole, absent a clear legislative exception that accommodates the needs of the law enforcement and intelligence communities to bring such persons into the United States.

Acting on behalf of prosecutors, the Department's Office of International Affairs routinely seeks parole under the Immigration and Nationality Act (8 U.S.C § 1182(d)(5)) in order to ensure that alien fugitives located abroad, including terrorists and transnational organized criminals, can face criminal charges in the United States or serve penal sentences here, if they already are convicted. Section 5(a)(3) would curtail the authority of the Secretary of Homeland Security, or the Secretary's designees, to issue paroles, and thereby eliminate the ability of the

Department of Justice to bring alien fugitives charged with criminal offenses into the United States so that they might face prosecution or serve their sentences.

Additionally, the provision would not permit parole for those aliens who must be brought into the United States to provide vital legal assistance in criminal cases, *e.g.*, testifying as a witness at a criminal trial pursuant to a request under a mutual legal assistance treaty. This assistance is critical to United States criminal investigations and prosecutions.

Without an explicit law enforcement exception, section 5(a)(3) inadvertently would prevent the United States from prosecuting the aliens described in section 5 if they were charged with offenses committed against the United States. In other words, it would impede the presence in the United States of those designated individuals who have been charged in the United States with very serious offenses (or whose presence in the United States was necessary to further law enforcement interests).

For these reasons, we believe it absolutely essential to add to the bill — perhaps to section 5(c)(1) — an explicit, unqualified, and absolute exception for law enforcement or intelligence purposes. Further, we recommend deleting the phrase "or other entry documentation" in section 5(b)(1), to the extent that that language might operate to revoke parole. Likewise, we recommend deleting the phrase "or entry documentation" in section 5(b)(2)(B).

Further, it is essential to insert in section 5(c)(1) "or paroling" after "admitting." This is critical because the alien fugitives and witnesses described above are "paroled" into the United States, as opposed to the legally different status of being "admitted" into this country.

To accommodate all of our concerns with this aspect of section 5, we recommend redrafting section 5(c)(1) along the following lines:

> (c) EXCEPTIONS—
>
> (1) This section shall not apply to an alien if admitting or paroling the alien into the United States is
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> (A) necessary to permit the United States to comply with the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations signed June 26, 1947 at Lake Success, and entered into force November 21, 1947;
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> (B) necessary to permit the United States to comply with other applicable international obligations; or

(C) in connection with any authorized law enforcement, national security, or intelligence activity of the United States.

Finally, section 5(c)(2) of the bill is entitled "National Security." However, the text of the provision relates to presidential waivers "in the national interest." We recommend changing the title of this provision to "Waiver."

Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Prim Escalona /for

Stephen E. Boyd
Assistant Attorney General

cc: The Honorable Michael McCaul
Ranking Member