



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

JAN 09 2018

The Honorable Ed Royce
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 (“the Department”) on S. 1595, the “Hizballah International Financing Prevention Amendments Act of 2017,” as passed by the Senate. As we explain below, the bill raises both constitutional and policy concerns.

I. Constitutional Concerns

Section 101 of the bill would intrude on the President’s diplomatic powers, and, accordingly, we recommend revising the provision to include a diplomatic exception.

Section 101(a) would amend section 101 of the Hizballah International Financing Prevention Act of 2015, Pub. L. No. 114-102, to state that “[t]he President shall impose” sanctions on certain persons associated with Hizballah. S. 1595, sec. 101(a), § 101(a). Those sanctions would include limits on admissibility to the United States. *Id.* § 101(b)(1)(B). Section 302(a) would exempt “authorized intelligence, law enforcement, or national security activities of the United States,” as well as transactions “necessary to comply with” certain international agreements. The President could waive application of sanctions under the bill if he certified to appropriate congressional committees that the waiver is “in the national security interests of the United States.” S. 1595, sec. 101(a), § 101(e)(1). The bill would not, however, include an exception or waiver for aliens whom the President wishes to receive for diplomatic purposes, and thus would appear to render members of Hizballah’s political leadership inadmissible unless the President certified that their admission served a national security interest.

That restriction would interfere with the President’s plenary authority to “receive Ambassadors and other public Ministers.” U.S. Const. art. II, § 3. This “right of reception extends to ‘all possible diplomatic agents which any foreign power may accredit to the United States.’” *Presidential Power Concerning Diplomatic Agents and Staff of the Iranian Mission*,

4A Op. O.L.C. 174, 180 (1980) (quoting *Ambassadors and Other Public Ministers of the United States*, 7 Op. Atty. Gen. 186, 209 (1855)). Thus, if S. 1595 rendered statutorily inadmissible any foreign officials or representatives whom the President wished to receive, it would conflict with the President's exercise of his exclusive diplomatic powers.

We do not believe that the waiver provided in the bill is broad enough to cover the full ranges of diplomatic activities. We therefore recommend adding the following text to amended section 101(b)(1)(B)(i) of the Hizballah International Financing Prevention Act: "An alien who the President determines is subject to subsection (a) is, *to the extent compatible with the President's discretion to receive foreign officials or representatives of his choosing . . .*"

II. Policy Concerns

Section 101(a): Mandatory Sanctions

Section 101(a) of the bill would amend section 101 of the of the Hizballah International Financing Prevention Act of 2015 ("HIFPA"), so that the new section 101(b)(1)(B)(i)(III) would make those aliens designated under subsection (a) of the bill "ineligible to be . . . paroled into the United States . . . under the Immigration and Nationality Act." We strongly oppose this broad limitation on the use of parole. This provision should be deleted.

Acting on behalf of prosecutors, the Department's Office of International Affairs ("OIA") routinely seeks parole under the INA (8 U.S.C § 1182(d)(5)) in order to ensure that alien fugitives located abroad, including terrorists, can face the charges in the United States or serve penal sentences here, if they already are convicted. Proposed section 101(b)(1)(B)(i)(III) essentially would eliminate the ability of the Department of Justice to bring alien fugitives charged with providing material support to Hizballah and with related 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.

We also oppose proposed section 101(b)(1)(B)(ii)(I) of the HIFPA to the extent that its revocation of any "entry documentation issued to an alien" could adversely affect the ability of an alien to be paroled into the United States.

We believe that a new section 101(b)(1)(B)(iii) containing language along the following lines would accommodate the interests of law enforcement as well as address our constitutional concern:

(iii) Exception. — The President may exempt any person defined in subsection (a) from the sanctions described in subsection (b) in order to further a law enforcement interest or to protect the national security of the United States, or when necessary for the fulfillment of his constitutional duties.

Section 101(a): Definitions

Section 101(a) of the bill would amend section 101 of the HIFPA to create a new section 101(g). Proposed new section 101(g) would establish definitions applicable in section 101 of the HIFPA. Proposed section 101(g)(6) would define a “United States person” unnecessarily in an area where the Executive Branch has previously retained interpretive flexibility. Because adopting a definition legislatively could present challenges and additional litigation risk, we recommend that the definition of “United States person” be omitted, or, alternatively that the legislation define “United States person” to be “as defined in 31 CFR Part 594.”

Section 202: Report on Hizballah Racketeering Activities.

Section 202 of the bill would require the President to submit a series of five annual reports to the Congress on racketeering activity in which Hizballah has engaged. We oppose this provision.

Section 202 would require the reporting of “racketeering activities,” as the term is defined in 18 U.S.C. § 1961(1). Section 1961(1) defines the term to include includes dozens of Federal and State law offenses. The Department of Justice does not have statistics on State investigations or prosecutions, and therefore would not be in a position to report this information. It is unclear to us as to how such information would be obtained from the States.

Additionally, it is unclear whether the reporting requirement is intended to apply to instances in which members, agents, or affiliates of Hizballah have been convicted of such crimes, instances in which they have been charged with such crimes, or instances in which they are under investigation for committing such crimes. Further, it is unclear if this reporting requirement is intended to encompass

(a) only instances in which an indictment, information, or criminal complaint actually alleges Hizballah to be the racketeering enterprise;

(b) instances in which the investigation or prosecution targets Hizballah as the enterprise or motivating force behind the illegal activity; or

(c) instances in which an individual with any kind of alleged connection to Hizballah is alleged to have committed any one of the many Federal and State offenses defined as “racketeering activity,” without regard to or proof of the role that Hizballah or the

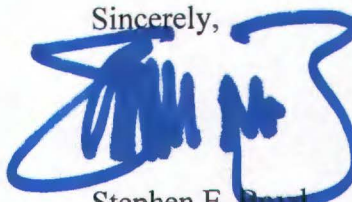
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individual's alleged connection to Hizballah might have played in the commission of the offense.

We note that, as a matter of policy, the Department of Justice does not comment on pending investigations. We further note that the Federal Rules of Criminal Procedure may limit what information any component of the Department may disclose about any RICO cases. *See* Fed. R. Crim. P. 6(e). Finally, we note that the section makes no provision for dissemination controls on the unclassified report.

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,



Stephen E. Boyd
Assistant Attorney General

cc: The Honorable Eliot L. Engel
Ranking Member