



Office of the Assistant Attorney General

Washington, D. C. 20530

FEB 12 2018

The Honorable Robert W. Goodlatte  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 3542, the " Hamas Human Shields Prevention Act."

### I. Constitutional Concerns

In certain circumstances, section 5 of the bill would intrude on the President's diplomatic powers, and we accordingly recommend revising the provision to include a diplomatic exception. Section 5 states that "[t]he President shall impose sanctions," including inadmissibility to the United States, on all Hamas members that the President determines have directed the use of human shields. More broadly, section 5 also would require that the President impose these sanctions on "[e]ach foreign person and each agency or instrumentality of a foreign state" that the President determines has "significantly facilitated" Hamas's use of human shields.

The President has 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 H.R. 3542 rendered statutorily inadmissible any foreign officials whom the President wished to receive as diplomatic agents, it would conflict with the President's exercise of his exclusive diplomatic powers.

We recognize that section 5(c) of H.R. 3542 would allow the President to temporarily waive sanctions on a case-by-case basis if he certified to the Congress that a waiver "is vital to the national security interest of the United States." But section 5 would not allow the President

to waive sanctions for purely diplomatic reasons, and would thus still encroach on the President's plenary authority over the reception of ambassadors and other foreign officials.

To address this concern, we recommend revising section 5(f)(1) so that it states the following: "Nothing in this section may be construed . . . to limit the authorities of the President pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), or his discretion to receive foreign officials of his choosing under the Constitution's Reception Clause, or any other relevant provision of law."

## II. Policy Concerns

Proposed section 5(b)(2)(A)(iii) of the bill would make those aliens the Secretary of State or the Secretary of Homeland Security (or their designee) knew or had reason to believe, met any of the criteria set forth in section 5(a) "otherwise 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 and their law enforcement partners, our Criminal Division's Office of International Affairs routinely seeks parole under the Immigration and Nationality Act ("INA") (8 U.S.C § 1182(d)(5)) in order to ensure that alien fugitives located abroad, including terrorists, can face criminal charges in the United States or serve penal sentences here, if they already are convicted. Section 5(b)(2)(A)(iii) would eliminate our ability to bring into the United States alien fugitives charged with criminal offenses relating to being a member of, or acting on behalf of Hamas, as well as those aliens charged with being responsible for, complicit in, facilitating or providing material support to the use of human shields by Hamas. Paroling these individuals into the United States is necessary so that they can face prosecution or serve their sentences.

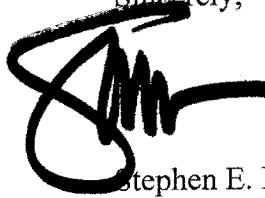
Additionally, this provision would not permit parole for those aliens who must be brought into the United States to provide vital legal assistance in criminal cases, *e.g.*, testifying as a witness at a criminal trial pursuant to a request under a mutual legal assistance treaty. This assistance is critical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

We also oppose, for the reasons articulated above, proposed section 5(b)(2)(B) of the bill to the extent that its revocation of any "other entry documentation issued to an alien who meets the criteria described in subsection (a)" could adversely affect the ability of an alien to be paroled into the United States.

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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,

A handwritten signature in black ink, appearing to be "S.E. Boyd", written over the word "Sincerely,".

Stephen E. Boyd  
Assistant Attorney General

cc: The Honorable Jerry Nadler  
Ranking Member