



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

SEP 12 2019

Dear Mr. Chairman:

The Department of Justice (Department) writes to provide our views on S. 1328, the "Defending Elections against Trolls from Enemy Regimes (DETER) Act." The Department wishes to inform Congress of several provisions that raise constitutional concerns and suggest edits to address these concerns.

I. Constitutional Concerns

S. 1328 would amend the Immigration and Nationality Act to impose immigration-related restrictions on aliens who engage in improper interference in a United States election. Section 2 of the DETER Act defines "improper interference in a United States election" as "conduct by an alien" that "violates Federal criminal, voting rights, or campaign finance law," as well as "conduct by an alien" that "is under the direction of a foreign government" and "interferes with a general or primary Federal, State, or local election or caucus." Section 3(a) of the DETER Act provides that "[a]ny alien who a consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows, or has reasonable grounds to believe, is seeking admission to the United States to engage in improper interference in a United States election, or who has engaged in improper interference in a United States election, is inadmissible." Section 3(b) of the DETER Act provides that "[a]ny alien who has engaged, is engaged, or at any time after admission engages in improper interference in a United States election is deportable."

To the extent these provisions rendered inadmissible a foreign agent whom the President wished to receive as a diplomatic agent, they 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, the DETER Act could conflict with the President's exercise of his exclusive diplomatic powers. To address this

concern, we recommend revising section 3 to permit the President to waive application of subsection (a) and subsection (b) "as appropriate," or when he determines that doing so is "in the national interest." Absent such a change, we would treat section 3 in a manner consistent with the President's constitutional authority under the Receptions Clause.

II. Policy Concerns

The Department also notes that there is already existing authority under the International Emergency Economic Powers Act ("IEEPA"), and several current IEEPA Executive Orders that allow sanctioning individuals who have engaged in this conduct and restricting their visas. One example is attached.

Please do not hesitate to contact this office if we can be of additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,



Prim F. Escalona
Principal Deputy Assistant Attorney General

Cc: The Honorable Doug Collins
Ranking Member