

September 30, 2011

The Honorable John Boehner
Speaker of the House
US House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
US House of Representatives
H-204, The Capitol
Washington, DC 20515

Re: HR 1932

Dear Speaker Boehner and Leader Pelosi:

We, the undersigned organizations, write to express our deep concern about HR 1932, the “Keep Our Communities Safe Act.” Proponents of the bill state that it would enhance national security. Instead, HR 1932 would override longstanding protections afforded to all persons in the United States under the US Constitution and would undermine US obligations under international human rights law by creating an unlawful system of indefinite detention for certain non-citizens. While we believe that the current system of immigration detention in the US is already flawed and in need of improvement, HR 1932 goes far in the wrong direction. We urge the House to oppose passage of the bill.

HR 1932 would change existing federal law in two significant and troubling ways. First, it would deny the possibility of release to detained non-citizens who cannot be removed from the United States. These are typically persons to whom their government refuses to issue travel documents, stateless persons, and persons from countries without diplomatic relations with the United States. The only exception would be in the rare case that the Secretary of the Department of Homeland Security (DHS) agreed to the release and determined that the non-citizen had been fully “cooperative.” Second, for non-citizens ordered removed who have been convicted of a crime, the Secretary of DHS would be able to indefinitely extend their detention in six-month intervals, based solely on the Secretary’s written certification that the release of the non-citizen could threaten the safety of “the community or any person.” The bill would allow the non-citizen to request reconsideration of the certification, but the Secretary would not be required by the bill to even respond to that request.

Detention is the most fundamental deprivation of liberty. As a constitutional principle, the United States has long recognized that detention of non-citizens for civil violations of immigration law is only lawful if necessary to facilitate deportation and only with strong procedural protections. The Supreme Court, in the seminal 1896 case *Wing Wong v. United States*, held that under the Fifth and Sixth Amendments to the Constitution, the detention of non-citizens was valid only to facilitate the

“expulsion of aliens.”¹ This decision has been upheld many times, most recently in 2006 in *Sanchez-Llamas v. Oregon*.²

International human rights law also provides important limits on the detention of immigrants. The International Covenant on Civil and Political Rights (ICCPR), which the United States ratified in 1992, provides that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.”³ The Human Rights Committee, the international expert body that was created by the ICCPR with US support, issues authoritative interpretations and monitors state compliance with the ICCPR. It has concluded that immigration detention “could be considered arbitrary if it is not necessary in all the circumstances of the case.”⁴ Immigration detention should therefore not be used if removal is impossible. Should detention no longer serve to aid in deportation, there is no justifiable rationale for allowing the deprivation of liberty to continue. As the United Nations Special Rapporteur on Migrant Workers stated in 2003, “Detention should end when a deportation order cannot be executed for other reasons that are not the fault of the migrant.”⁵

Detention that lacks predictability can also violate the prohibition against arbitrary detention. In laying out principles to protect detained immigrants, the United Nations Working Group on Arbitrary Detention has stated that any detention term must have a “maximum period” set by law and not be of “unlimited or of excessive length.”⁶

HR 1932 would allow for the indefinite detention of non-citizens in contravention of the US Constitution and international human rights law. It would also give the President of the United States the unprecedented authority to use the immigration detention system to indefinitely detain certain non-citizens, with the power to unilaterally extend the detention period solely on the basis of a written certification.

The “Keep Our Communities Safe Act” would undermine a century of settled US Supreme Court case-law on immigration detention, create an unconstitutional system of indefinite detention, and violate international human rights obligations of the United States. We urge you to oppose this bill.

Sincerely,

Human Rights Watch
Amnesty International USA
Human Rights First
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¹ *Wong Wing v. United States*, 163 U.S. 228 (1896).

² *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 350 (2006). See also *Hudson v. United States*, 522 U.S. 93, 104 (1997) (“holding that quintessential criminal punishments may be imposed only ‘by a judicial trial.’”).

³ International Covenant on Civil and Political Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 9(1).

⁴ *A v. Australia*, Communication No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993, April 30, 1997, para. 9.2.

⁵ UN Commission on Human Rights, Report of the Special Rapporteur on the human rights of migrants, Gabriela Rodríguez Pizarro, Visit to Mexico, E/CN.4/2003/85, December 30, 2002, para. 75(g).

⁶ UN Commission on Human Rights Working Group on Arbitrary Detention, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment regarding the situation of immigrants and asylum seekers, U.N. Doc. E/CN.4/2000/4/Annex 2 (1999), principle 7.

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