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## FACT SHEET: H.R. 3004, Kate's Law

H.R. 3004 is another anti-immigrant, enforcement-only proposal that represents yet another step in President Trump's Mass Deportation plan. The bill significantly expands the federal government's ability to prosecute individuals for illegal re-entry and attempted re-entry, creating a draconian enforcement scheme with no exceptions. For example, the bill would change the law to allow the prosecution of asylum seekers or victims of human trafficking (even those without criminal records) who voluntarily present themselves at the border to request protection. Indeed, the bill's changes would absurdly even allow the prosecution of individuals who seek to reenter the country with legal authorization to do so.

### WHAT THE BILL DOES

- ***Expands the Federal Government's Ability to Prosecute Individuals for Illegal Re-entry.*** Under current law, immigrants who enter the country illegally (or attempt to do so) after removal can be prosecuted and convicted for multiple years. This bill expands the current statute in multiple ways:
  - The bill authorizes, for the first time, the prosecution of individuals who voluntarily present themselves at the border to seek asylum, to seek protection as a victim of human trafficking, or to seek other forms of relief under our laws.
    - Under current law, an individual cannot be prosecuted for illegal reentry unless he or she tries to evade detection and capture.
    - This bill would change that, allowing for the felony prosecution of any previously removed individual who approaches the border to apply for admission or other form of relief, even if he or she has no criminal record and no history of multiple re-entries.
  - The bill absurdly authorizes the prosecution of individuals despite their having permission to re-enter the United States (although it makes such permission an affirmative defense at trial).
  - The bill expands current sentencing enhancements for individuals with previous felony convictions or three or more misdemeanor convictions. Misdemeanors that could subject a defendant to a ten- year prison sentence include driving without a license or loitering.
  - The bill also creates a new sentencing enhancement for individuals who have no criminal history but have been previously removed at least 3 times.
- ***Creates a draconian enforcement scheme with no procedural protections.***
  - The bill changes current law to prohibit any collateral challenge to previous removal orders, even in cases where due process was violated and the individuals were wrongly ordered removed.
    - Under this bill, such individuals could be prosecuted and possibly serve decades in jail, even if they were simply trying to reunite with U.S. citizen children, and even if they voluntarily presented themselves at the border to seek admission.

- This provision also violates the Supreme Court’s holding in U.S. v. Mendoza-Lopez, 481 U.S. 828 (1987), which requires the availability of collateral challenges to removal orders where the proceedings “effectively eliminate[d] the right of the alien to obtain judicial review.”
- Rather than exempt from prosecution those who have permission to reapply for admission (or do not need such permission), the bill instead makes that an affirmative defense. This appears to make even people who have tried to comply with all laws subject to prosecution. For example, an H-1B visa holder who was denied admission at the airport based on a technicality, and subsequently sought legal re-entry, could be prosecuted under this statute.
- ***H.R. 3004 Would Ensnare Non-Criminals:*** This bill does more than just enhance penalties for individuals with criminal records. It enhances criminal sentences for individuals with multiple prior removal orders, and it allows for the first time the prosecution of any previously removed individual who voluntarily presents herself at the border to seek asylum or other form of admission. This is true whether or not the individual has any criminal record.
- ***H.R. 3004 Attacks Families:*** Immigrants with multiple re-entries often seek to re-enter because they have family ties in the United States and there is no way for them to enter legally.
  - A recent U.S. Sentencing Commission report on illegal re-entry states that 49.5% of those convicted of illegal re-entry have a child in the United States.
  - A federal defender in Texas explained: “In a majority of . . . cases, the defendants have families on this side of the border. The cost to them is beyond measure. They have U.S. citizen children and want them to have access to education and health benefits but also want to be with them. They can’t stand to be apart. In addition, it is a huge responsibility on the spouse to be the sole caregiver. It is also hard to keep up two households. So they end up coming across.”
- ***H.R. 3004 Will Not Deter Illegal Re-entries:*** In 2005, the Border Patrol implemented Operation Streamline, which increased criminal prosecutions for illegal entry and re-entry. Operation Streamline was designed to reduce recidivism, but there is no evidence that it has been effective. A recent report by DHS’s Office of Inspector General found that there was no clear evidence that criminal prosecutions lead to reduced recidivism, and instead found that Operation Streamline has increased the workload of ICE Enforcement and Removal Operations and strained their resources.
- ***H.R. 3004 Could Result in Mass Arrests in the Interior of the U.S.:*** Nothing in this bill limits prosecutions to the border region. Anyone with an applicable history of re-entries could be prosecuted in the interior of the country. An expansion of this illegal re-entry statute could have drastic consequences if it is applied widely within the interior of the country. Thousands of immigrants, many of them non-criminals, could be apprehended and jailed for decades.
- ***H.R. 3004 Would Expand the Private Prison Industry:*** The expanded prison sentences under the bill will cost the American taxpayers millions of dollars with little benefit. The only constituencies that will benefit from this detention expansion are private prison companies. The ways in which such companies are incentivized to cut corners and put lives at risk has been well documented. For example, a prison housing immigrants with illegal re-entry sentences was so plagued by reports of substandard medical care that the Bureau of Prisons terminated its contract under the Obama Administration.
- ***H.R. 3004 is Part of a Larger Mass Deportation Plan:*** This bill is a portion of the mass deportation bill known as the “Davis Oliver Act” (H.R. 2431) which has been cited as a priority for the Trump Administration. Anti-immigrant groups such as Numbers USA and the Center for Immigration Studies support the Davis Oliver Act because it would lead to mass incarceration and deportation of millions of immigrants.