

He Was the Lone GOP Vote Against the House Immigration Bills

U.S. Rep. Justin Amash, R-Mich., has been a thorn in President Donald Trump's side since before the 2016 presidential election.

He is one of two Republicans in Congress who continue to push the Russia Narrative, signing onto a Democrat measure to force an independent investigation prior to the appointment of Special Counsel Robert Mueller. He refused to support the American Health Care Act. And now, he was the only Republican who refused to support last week's vote on strengthening immigration enforcement.

Prior to Friday's vote, the congressman tweeted:

No person shall be ... deprived of life, liberty, or property, without due process of law.

The [powers] not delegated to the U.S. by the Constitution, nor prohibited by it to the States, are [reserved] to the States [respectively], or to the [people].

After the votes, he then tweeted:

I voted no today on two bills that together violate the 1st, 4th, 5th, 10th, and 11th Amendments. I will always defend our Constitution.

The bills in question were House Resolution 3003, the "No Sanctuary for Criminals Act," and HR 3004, also known as "Kate's Law." The bills were adopted, 228-195 and 257-167, respectively. Amash explained in greater detail on Saturday his opposition to both bills.

Regarding HR 3003:

This bill increases the Department of Homeland Security's (DHS's) detention of suspected illegal aliens, defunds sanctuary cities and limits the ability of state and local governments to direct their law enforcement resources. In doing so, the bill violates at least five constitutional amendments.

The bill violates the Tenth Amendment by prohibiting any state or locality from doing anything that would restrict the ability of their law enforcement officers to "assist" federal immigration enforcement, giving state and local governments legal immunity for providing such assistance and limiting transfers of aliens to sanctuary cities for criminal prosecution.

I have voted in the past to defund law enforcement grants to sanctuary cities that prohibit information sharing between their law enforcement and federal immigration officials (including HR3009 in the 114th Congress), but this bill also prohibits any actions or policies that may restrict local law enforcement's cooperation with, or assistance to, federal immigration enforcement. This goes far beyond just facilitating the exchange of information that local law enforcement may already come across in the course of their own activities; this bill unconstitutionally enables the federal government to coerce states into helping with actual enforcement of immigration laws. Plus, it gives immunity to states for assisting with immigration enforcement, and it affirmatively punishes states for noncompliance.

Congress has no authority to direct state and local officials in this way. Our Constitution establishes a system of dual federalism. In Congress, the laws we make are to be executed by federal officials; we may not commandeer nonfederal officials.

The bill violates the Fourth Amendment's prohibition on unreasonable seizures and the Fifth Amendment's due process requirements by increasing DHS's use of, and authority for, warrantless arrests and detentions of suspected illegal aliens. As their texts make clear, the Fourth and Fifth Amendments apply explicitly to all "people" and "person[s]" within the United States. [More precisely, these amendments secure the rights of individuals under U.S. jurisdiction by identifying limits on the government's power.] The Constitution uses the word "citizen" in other provisions whenever that word is intended. This interpretation of the Constitution's applicability is shared by the Supreme Court, including among the conservative justices.

The bill violates the Eleventh Amendment—which largely prohibits Congress from unilaterally permitting lawsuits against states—by allowing the victims of crimes committed by an illegal alien to sue a state that declines to fulfill a request from the federal government to detain the alien.

Lastly, the bill violates the First Amendment by likely interfering with the ability of state and local officials and other individuals to make statements regarding immigration enforcement policies and priorities.

I support securing the borders, and I have voted to defund sanctuary cities, but I swore an oath to support and defend the Constitution, even when it means I must oppose bills aimed at policy goals that I support.

And, on HR 3004:

This bill is narrower than other recent bills that also have been called "Kate's Law."

This version of Kate's Law changes the maximum possible punishments for some individuals convicted of re-entering the United States illegally and changes the procedures for prosecuting illegal re-entry. My concern with this bill

stems from a provision that denies Fifth Amendment due process to certain criminal defendants.

As its text makes clear, the Fifth Amendment applies explicitly to all “person[s]” within the United States, including suspected illegal aliens who are arrested, charged and tried within the United States. [More precisely, this amendment secures the rights of individuals under U.S. jurisdiction by identifying limits on the government’s power.] The Constitution uses the word “citizen” in other provisions whenever that word is intended. This interpretation of the Constitution’s applicability is shared by the Supreme Court, including among the conservative justices.

Under current law, it is illegal to reenter the United States if you have an outstanding order of removal. The removal order is an element of the crime, and a defendant may challenge the validity of the order, but only in limited circumstances. To challenge the validity of a removal order under current law, the defendant must show that she has used up all other opportunities to challenge the order, she has been denied her right to have a judge review her case, and the removal order was “fundamentally unfair.”

This bill unconstitutionally eliminates the opportunity for those charged with illegal re-entry to challenge the validity of a removal order. As noted above, the removal order is an element of the crime. In our criminal justice system, a person cannot be convicted of a crime unless the prosecution proves every element beyond a reasonable doubt.

If a defendant never has a meaningful opportunity to have a judge review her removal order and, under this bill, she is prohibited from challenging her removal order during the criminal proceedings for illegal re-entry, then she could be convicted of a felony without ever having had the chance

to challenge whether the order to remove her—which is an element of the crime!—was legally valid. As the Supreme Court held in *United States v. Mendoza-Lopez*, 481 U.S. 828 (1987), this would be a violation of the defendant's due process rights.

Under current removal procedures, this circumstance may be rare, but that is irrelevant to the fact that the Constitution secures the defendant's rights when this circumstance does arise. {eoa}