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March 31, 2016

The Honorable Senator Loni Hancock
Chair, Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814

RE: Support for SB 1242 (Lara) – Misdemeanors

Dear Senator Hancock:

Human Rights Watch writes in strong support of SB 1242 (Lara), which will provide that all misdemeanor crimes retroactively shall have a maximum sentence of 364 days and will ensure that California does not inadvertently cause the deportation of immigrants, including lawful permanent residents, because of a technical difference between state and federal law.

Human Rights Watch is an independent organization dedicated to promoting and protecting human rights around the globe. Human Rights Watch has long criticized US deportation policy for its one-size-fits-all policy of deporting noncitizens with convictions, particularly when there is strong evidence of rehabilitation and longstanding ties to US families and communities.¹

Two years ago SB 1310 (Lara, 2014) aligned the definition of a misdemeanor between state and federal law. Federal law defines a misdemeanor as a crime punishable for up to 364 days and anything longer is considered a felony. Previously, California defined a misdemeanor as a crime punishable for up to 365 days. The federal government did not recognize California's definition and due to this minor and technical difference, thousands of immigrants, including lawful permanent residents, who have committed misdemeanors were subject to deportation unnecessarily.

1 Human Rights Watch, *A Price Too High: US Families Torn Apart by Deportations for Drug Offenses*, June 2015, <https://www.hrw.org/report/2015/06/16/price-too-high/us-families-torn-apart-deportations-drug-offenses>; *Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses*, April 2009, <http://www.hrw.org/reports/2009/04/15/forced-apart-numbers-0>; *Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy*, July 2007, <http://www.hrw.org/reports/2007/07/16/forced-apart-0>.

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Under the U.S. Immigration and Nationality Act, if the defendant receives a 365-day sentence, regardless of the actual time served in jail, they are subject to deportation because the federal government views a 365-day sentence as a felony. As a result, an immigrant convicted of a crime and sentenced to 365 days with 362 days suspended, who served only 3 days in jail, would have a one year sentence as defined under federal law and face deportation.

While SB 1310 aligned state and federal law on a prospective basis, it did not help those who were convicted of a misdemeanor prior to 2015. Thousands of immigrants, including lawful permanent residents, are currently living in California with the threat of deportation looming over them for misdemeanor crimes, due to a nominal difference between state and federal law. Many of those people have families and businesses in the state and few ties to their country of origin.

SB 1242 will retroactively provide no misdemeanor is punishable for more than 364 days and ensure families are not needlessly separated because of technical difference between state and federal law.

For all the foregoing reasons, Human Rights Watch strongly supports SB 1242 and urges your vote in favor of this bill. If you require additional information, please do not hesitate to contact Grace Meng, Senior Researcher in the US Program, at (310) 477-5540 or at grace.meng@hrw.org.

Respectfully,

Handwritten signatures of Alison Parker and Maria McFarland in cursive ink.

Alison Parker and Maria McFarland, Co-Directors
US Program
Human Rights Watch

cc: State Senator Ricardo Lara – Fax (916)-327-9113