

September 2, 2025

RE: Vote “NO” on H.R. 3486, the “Stop Illegal Entry Act of 2025”

The American Civil Liberties Union strongly urges you to vote NO on H.R. 3486, the “Stop Illegal Entry Act of 2025.” This extreme bill would increase mandatory minimum sentences, with a predictable and disproportionate impact on Black and Brown communities and would authorize *life imprisonment* for non-violent offenses. At a time when the administration’s reckless deportation drive is damaging our economy and destabilizing our communities, we urge you to vote “NO” and forcefully repudiate the Trump administration’s vicious and baseless myth that immigrants are criminals.

We all want to live in a country that is safe and where laws are respected by everyone. But this is a bill the demonizes immigrants while undermining public safety, diverting law enforcement resources away from investigating serious crimes like cybersecurity or human trafficking to focus instead prosecuting immigrants.

This is yet another bill that criminalizes immigrants in order to advance the administration’s anti-immigrant agenda above all else. Voting for this bill at this time would send a signal of support for mass detention and horrific tactics against immigrants, including those with lawful status. We have just seen this administration hunt down families far from the border to prosecute them for illegal entry or reentry, arresting parents with lawful status in front of their children.¹ These are the families whom this bill would subject to harsh, unnecessary mandatory minimum sentences.

This bill, if enacted, would hand another tool to the Trump administration to criminalize, vilify, and incarcerate our immigrant neighbors and loved ones. We strongly urge Members to oppose passage of this bill because bipartisan support would only feed—and appear to vindicate—the Trump administration’s increasingly violent and dangerous interior enforcement efforts and feed the false narrative that it is prioritizing resources on individuals with serious criminal records.

Meanwhile, at a time when the administration is already misusing federal agencies including troops to police our communities in an invented emergency, this bill undermines public safety by repurposing resources for the prosecution of



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¹ *The Washington Post*, “Border patrol grabs Venezuelan parents in D.C., despite protected status” March 15, 2025, <https://www.washingtonpost.com/immigration/2025/03/15/immigration-arrests-temporary-protected-status/>.

serious, violent crimes to focus on this nonviolent offense. The Trump administration is already cannibalizing other federal resources that are intended to address public safety — with real tradeoffs for communities. It is redirecting the Department of Justice to prioritize the prosecution of people for non-violent crimes related to immigration status, and redeploying law enforcement personnel from the FBI, DEA and other agencies to track down and arrest people for nonviolent, immigration-related offenses – agents who otherwise would be assigned to cybersecurity, national security, human trafficking, and crimes of violence.

This is harmful, wasteful legislation that, like the Trump administration’s deportation drive, is not about routine immigration enforcement; it is in fact a mass incarceration bill that will subject people of color, asylum seekers, and even children to extreme prison sentences in order to further target and demonize immigrant communities. It embraces the theatrics of cruelty at a moment when our criminal and immigration detention systems are about to explode in size.

H.R. 3486 Fuels Mass Incarceration

H.R. 3486 expands existing criminal penalties and creates new immigration offenses that will fuel the growth of the private prison industrial complex. This bill amends Section 275 of the Immigration and Nationality Act (codified as 8 U.S.C. 1325) entitled “improper entry by an alien”, increasing the maximum penalty for a repeated unauthorized entry offense from two years to five. The bill also increases the punishment for illegal re-entry under 8 U.S.C. 1326 from two years to 10 years in prison if they have a felony in several circumstances.

More alarming, the bill then adds a new felony offense with a mandatory minimum five-year sentence and a possible maximum sentence of *life imprisonment* if a person who entered without inspection or authorization is subsequently convicted of *any* crime punishable by more than 1 year in prison. Further, under this bill, a person convicted of illegal reentry would face a sentence of *10 years to life in prison* if they re-entered with any non-aggravated felony conviction, or a conviction of any offense punishable by more than one year of imprisonment. So, for example, under this legislation, a person who committed a non-violent offense, like illegal reentry, could now face life in prison.

There is no statute of limitations for this bill, nor does it exempt juveniles. As such, this extreme and punitive system will explode our prison system, overloading our court system, including U.S. attorney offices, federal defenders, and Bureau of Prisons staff. Adding more mandatory minimums to our criminal law system is the wrong direction for this country. As we have repeatedly seen,

mandatory minimums do not improve public safety, contribute to the festering crisis of mass incarceration, and lead to unjust racial disparities in sentencing.

Further, if passed, this legislation could drastically increase the size of the federal prison population and create an unbearable new cost to taxpayers over the next five years. The U.S. Sentencing Commission previously estimated that establishing mandatory minimums for unauthorized entry would have expanded the federal prison population by nearly 60,000 individuals over five years² a nearly 40% increase from the then-current population. The Stop Illegal Entry Act, however, has more broadly applicable and higher mandatory minimums *and* higher maximum penalties than previously-considered legislation; as such, it could have a catastrophic impact on the prison population with massive human and financial costs.

Mandatory minimum drug sentences, for example, have a long and failed track record. As the Sentencing Commission has explained, there was a “general congressional desire to link the Act’s minimum penalties and specified drug quantities such that ‘kingpin’ traffickers would be subject to the ten-year minimum sentence and ‘middle-level’ traffickers would be subject to the five-year minimum sentence.”³ Unfortunately, the evidence has proven that the assumed close correlation between higher drug quantities and higher culpability was a mistake: in practice, drug mandatory minimums “often apply to offenders who perform relatively low-level functions.”⁴ Second, these mandatory minimums are bad policy; these long sentences have failed to reduce the harms associated with drug use.⁵ We should not reproduce these same failures by heightening the mandatory minimum sentences for illegal entry and reentry. There is no evidence this will have a deterrent effect; at best, it will be useless and costly political theatre and at worst, it will mean that people coming to the U.S. to save their lives will be incarcerated for the rest of their lives.

² “U.S. Sentencing Commission Estimated Effect of Creating a 5 Year Mandatory Minimum for Illegal Reentry Offenses,” last visited Sep 2, 2025, https://famm.org/wp-content/uploads/2018/04/summary_table_illegalreentry.pdf.

³ U.S. Sent’g Comm’n, Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System 11 (Oct. 2017), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/researchpublications/2017/20171025_Drug-Mand-Min.pdf.

⁴ *Id.* at 6.

⁵ For example, in 2020, “[o]verdose deaths soared to a record 93,000 . . . According to the CDC, there were fewer than 7,200 total U.S. overdose deaths reported in 1970, when a heroin epidemic was raging in U.S. cities. There were about 9,000 in 1988, around the height of the crack epidemic.” Mike Stobbe, US overdose deaths hit record 93,000 in pandemic last year, Associated Press (July 14, 2021, 8:45 PM), <https://apnews.com/article/overdose-deaths-record-covid-pandemicfd43b5d91a81179def5ac596253b0304>.

The only beneficiary of this bill will be the private prison industry, already expecting a profit windfall due to the new immigration detention budget. And again, just a few weeks ago, this Congress passed a devastating budget reconciliation law that dumps over \$170 billion into immigration enforcement, with enough money for around 750,000 new detention beds and the largest immigration police force our nation has ever had. This bill adds fuel to the fire, contributing to an increasingly and unnecessarily punitive border community landscape while expanding cruel, unnecessary mass detention.

H.R. 3486 Will Feed Racial Disparities in Our Prison System

This bill and its extreme sentences would disproportionately harm communities of color, particularly Black and Brown people who are immigrants and including longtime residents. Mandatory minimums disproportionately impact communities of color,⁶ and prosecutions for illegal entry and reentry have always impacted Brown and Black men the most: according to the U.S. Sentencing Commission, in 2023, 98.8 percent of those sentenced for illegal reentry under 1326 were Hispanic, 0.5 percent were White, 0.5 percent were Black, and 0.1 percent were other races.⁷

For many years, the federal government pushed people—primarily Latino men—through mass trials for illegal entry. This shotgun strategy also included prosecutions of children: an ACLU report documented that between 2008 and 2013, 383 children were prosecuted for illegal entry or reentry and had no more serious criminal history; 301 of those children were Mexican.⁸

We know that mandatory minimums in our prison system have only exacerbated racial disparities. Research has shown that “[t]he initial mandatory minimum charging decision alone is capable of explaining more than half of the black-white sentence disparities not otherwise explained by precharge characteristics.”⁹

⁶ The Sentencing Project, “How Mandatory Minimums Perpetuate Mass Incarceration and What to Do About It,” (Feb. 2024), <https://www.sentencingproject.org/fact-sheet/how-mandatory-minimums-perpetuate-mass-incarceration-and-what-to-do-about-it/>; Urban Institute, *Looking Beyond the Sentence Examining Policy Impacts on Racial Disparities in Federal Sentencing across Stages and Groups and over Time* (Jan. 2023), <https://www.urban.org/sites/default/files/2023-01/Looking%20Beyond%20the%20Sentence.pdf>.

⁷ U.S. Sentencing Commission, “Quick Facts: Illegal Reentry,” https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Illegal_Reentry_FY23.pdf

⁸ ACLU, *American Exile: Rapid Deportations the Bypass the Courtroom* (2014) (FY 2013 DHS data provided to The New York Times through a FOIA request, analyzed by the ACLU), https://www.aclu.org/wp-content/uploads/publications/120214-expeditedremoval_0.pdf.

⁹ M. Marit Rehavi & Sonja B. Starr, Racial Disparity in Federal Criminal Sentences, 122 J. Pol. Econ. 1320, 1323 (2014).

"Deterrence" Is Not A Solution to Border Management

Illegal entry and reentry charges have long been used by the Department of Homeland Security as a “deterrence” mechanism, but like other cruel policies designed to stop people from coming to the U.S. have not been sustainable or achieved that goal. They have, however, had an enormous human and fiscal cost. Over the years, those prosecuted under illegal entry and illegal reentry include people seeking asylum and protection in the United States as well as parents trying to reunite with their children and loved ones in the U.S. These are the people who would have life in prison if convicted under this bill.

For years, illegal entry and re-entry were the most prosecuted federal crimes, often absorbing considerable federal resources for both prosecution and imprisonment and outpacing prosecutions for weapons-related and other charges. As documented in an ACLU report, many of those prosecuted for illegal entry and reentry were asylum seekers who were prosecuted and served sentences for illegal entry or reentry *before* successfully winning asylum. Criminalizing and prosecuting asylum seekers for illegal entry violates international law, including U.S. obligations under the Refugee Convention.¹⁰

Many others prosecuted for illegal entry and reentry are longtime residents with U.S. citizen family members. Individuals interviewed by the ACLU—including those who had previously served prison sentences for illegal entry or reentry—said they would rather be in prison in the U.S. close to their children and other family, than in danger or dead in the country they fled.¹¹ A 2020 report by National Immigrant Justice Center, based on cases of individuals prosecuted for illegal entry and reentry, found that 80 percent of those interviewed had family members in the United States who they were trying to rejoin, and 33 percent said they had children in the United States with whom they were hoping to reunite.¹²

Prosecution for illegal entry or reentry has also never been a meaningful deterrent. Over the years and even at the height of these prosecutions, studies showed that prosecution of illegal entry or reentry did not deter people from returning to the

¹⁰ Article 31(1) of the 1951 Refugee Convention states, “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.” The Refugee Convention, art. 31(1). These protections apply also to individuals seeking asylum whose refugee status has not yet been confirmed.

¹¹ ACLU, *American Exile: Rapid Deportations The Bypass the Courtroom* (2014), pp. 89-93, https://www.aclu.org/wp-content/uploads/publications/120214-expeditedremoval_0.pdf

¹² National Immigrant Justice Center, *A Legacy of Injustice: The U.S. Criminalization of Migration* (2020).

U.S. An NPR survey of individuals deported through Operation Streamline found that 85 percent of those interviewed said they would cross again.¹³

Finally, the federal government's accelerated use of illegal entry and reentry prosecutions was last seen during Trump's first administration, when it became inextricably linked to the tragedy of family separation. In 2018, the previous Trump administration started to accelerate its prosecutions for illegal entry and reentry for families seeking protection in the U.S. As part of this practice, and the administration's "Zero Tolerance" policy, the government engaged in one of the most appalling chapters in our history—separating toddlers and infants from their parents, who were prosecuted and imprisoned for illegal entry or reentry. Even today, hundreds of families remain separated, and those reunited are still experiencing the devastating and traumatic effects of this policy. The alleged "solution" to this in the recent budget reconciliation law is family detention—at a time when families detained at the Dilley facility in Texas lack potable drinking water, adequate medical care, access to counsel, and other basic services.¹⁴

Over the last few months, the Trump administration has invented new immigration crimes, like failure to register with the new national registry, and has hunted down families far from the border to prosecute them for illegal entry or reentry.¹⁵ It is prosecuting people for trespass on newly manufactured "military installations" on public land when they arrive in the U.S. in order to expand existing penalties. The administration is effectively manufacturing crimes in order to vilify people who are immigrants and to maintain a narrative that the administration is prioritizing resources on "criminal aliens" and others with no right to be in U.S.

¹³ National Public Radio, Claims of Border Program Success are Unproved, Sept. 13, 2010. Similarly, a study by the University of Arizona tracking 1,200 individuals deported following the fast-track mass illegal entry proceedings known as Operation Streamline found no statistically significant difference between those who went through Operation Streamline and those who did not in terms of reentry. NPR, "Is Operation Streamline Worth Its Budget Being Tripled?" September 5, 2013, available at <https://www.npr.org/2013/09/05/219177459/is-operation-streamline-worth-its-budget-being-tripled>.

¹⁴ *Texas Standard*, "Report: Alarming conditions at two Texas detention centers where immigrant families are being held," June 25, 2025, <https://www.texasstandard.org/stories/texas-migrant-detention-centers-conditions-karnes-dilley-flores-agreement/>.

¹⁵ *The Washington Post*, "Border patrol grabs Venezuelan parents in D.C., despite protected status," March 16, 2025, <https://www.washingtonpost.com/immigration/2025/03/15/immigration-arrests-temporary-protected-status/>.

In fact, this bill will harm asylum seekers, children, long-time residents and many others, overwhelming our criminal court system when our government is already funneling tens of thousands of people into immigration detention. It is cruelty for the sake of cruelty. And like previous “tough on crime” legislation that imposed extreme, harmful and unnecessary prison sentences as a deterrent, this bill would feed mass incarceration, creating a new and extreme range of sentences that will primarily impact people of color, without improving public safety.

We strongly urge offices to vote NO on HR. 3486. Please contact Sarah Mehta (smehta1@aclu.org) or Nina Patel (npatel@aclu.org) should you have any questions.

Sincerely,



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