

July 6, 2016

The Honorable Mitch McConnell
U.S. Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Harry Reid
U.S. Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
U.S. Senate
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy
U.S. Senate
437 Russell Senate Office Building
Washington, DC 20510

RE: S. 2193, Kate's Law

Dear Leader McConnell, Minority Leader Reid, Chairman Grassley, and Ranking Member Leahy:

The undersigned organizations working to reform the criminal justice system respectfully write to express our opposition to S. 2193, known as "Kate's Law," which has been scheduled for a floor vote this week. We oppose Kate's Law because it will produce unjust results, waste billions of taxpayer dollars, fail to fix America's flawed immigration system, and endanger public safety.

This year in Congress and in states across the nation, there has been unprecedented bipartisan support for and action to repeal or reform mandatory minimum sentencing laws. States as varied as Oklahoma, Maryland, Florida, and Iowa have reduced or eliminated mandatory minimum sentences this year. Multiple bipartisan bills introduced in both Houses of Congress would scale back federal mandatory minimum sentences, increase fairness, reduce costs, and focus limited Justice Department dollars where they are needed most. We applaud your leadership on sentencing reform.

Given this historic and bipartisan consensus in support of reform, we believe passage of Kate's Law would be counterproductive and undermine the important progress you have made. While well-intentioned, Kate's Law is an ultimately shortsighted and ill-conceived response to the murder of Kate Steinle in San Francisco in July 2015. The bill would create a five-year mandatory minimum prison sentence for those who violate 8 U.S.C. § 1326 by illegally reentering the country after removal, if the person has a prior aggravated felony conviction or two prior convictions for illegal reentry. While passing such a law may sound or feel productive, it would not have saved Kate Steinle's life had it existed at the time of her death. A new mandatory minimum sentence will not stop illegal reentry any more than mandatory minimum drug sentences have stopped the opioid health crisis impacting our country now. We cannot incarcerate our way out of this country's drug problems, or its immigration problems.

The five-year mandatory minimum prison term in Kate's Law would apply to thousands of the 20,000 people convicted of illegal reentry offenses and sentenced in federal courts every year. Put bluntly, this would be catastrophic to America's public safety priorities. Estimated conservatively, Kate's Law would **cost taxpayers \$3.1 billion over the next 10 years** just for

people with a prior aggravated felony conviction – and require the **construction of 9 new federal prisons** at even additional costs.¹ These costs would far outweigh any savings achievable from enacting the Sentencing Reform and Corrections Act (S. 2123) or even broader alternatives introduced in this Congress. Prisons already consume a quarter of the Justice Department’s budget, depleting funding for law enforcement, victim services, and crime prevention. Kate’s Law would consume even more of these scarce resources – resources that would be better invested in state and local law enforcement, anti-terrorism efforts, or more sensible immigration enforcement and reform. Money to pay for Kate’s Law is nowhere to be found in our already stretched public safety budget, and the proposal promises little public safety return on such an enormous investment.

Most importantly, Kate’s Law will hurt the American economy, harm families and children, and produce unjust results – as all mandatory minimum sentences inevitably do. The five-year minimum prison term would apply to a person with a prior aggravated felony conviction, which includes everything from murder to theft or failing to appear in court. The mandatory minimum term would apply regardless of the nature or circumstances of the prior offense, or the person’s future dangerousness. The five-year mandatory minimum sentence would also apply to people with two prior illegal reentry convictions. These might be people who have no other conviction history, but have repeatedly come here to work in order to provide for a family and contribute to the economy. Kate’s Law would penalize people equally whether they entered the country to commit a terrorist attack, attend a loved one’s funeral, donate an organ to a dying child, or flee religious persecution, war, or natural disasters.

There are serious problems with our immigration system that must be addressed, but Kate’s Law will not fix them. Getting more people working here legally is good for business, the economy, and free markets. Indiscriminately imprisoning large portions of those who have illegally reentered the country for at least five years will negate the benefits of any other criminal justice reforms Congress may enact, do nothing to enhance border security or implement humane and sensible immigration reforms, and will increase the burden on taxpayers and law enforcement without increasing public safety.

We urge you to oppose Kate’s Law and adopt common sense reforms that move away from mandatory sentencing, as more than 30 states have done. Thank you for your leadership on criminal justice reform, and thank you for considering our views. If you have any questions, please contact Molly Gill at mgill@famm.org or (202) 822-6700.

Sincerely,

American Civil Liberties Union
Bread for the World
Capital Area Immigrants’ Rights Coalition
Church of Scientology National Affairs Office
Drug Policy Alliance
DC Reentry Task Force
Ella Baker Center for Human Rights
FAMM
Friends Committee on National Legislation

Grassroots Leadership
Human Rights Watch
Interfaith Action for Human Rights
Justice Strategies
Leadership Conference on Civil and Human Rights
National African American Drug Policy Coalition, Inc.
National Association of Criminal Defense Lawyers
National Council of Churches, USA
National Council of Jewish Women
National Religious Campaign Against Torture
StoptheDrugWar.org
The Constitution Project
T'ruah: The Rabbinic Call for Human Rights
United Methodist Church, General Board of Church and Society

cc: The Honorable Ted Cruz

¹ Calculations by the ACLU and the Center for American Progress, based on U.S. Sentencing Commission and Bureau of Prisons data, and assuming steady annual illegal reentry convictions at FY2015 levels. In FY15, just over 5,900 individuals with illegal reentry convictions had a prior “aggravated felony” conviction (i.e., all those individuals who received 8-level, 12-level, and 16-level enhancements under the sentencing guidelines). See U.S. Sentencing Commission, “Quick Facts, Illegal Reentry Offenses,” Fiscal Year 2015, available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Illegal_Reentry_FY15.pdf (last accessed July 2016). The impact of the proposed 5-year mandatory minimum for illegal reentry with a prior aggravated felony conviction was calculated by adopting the conservative assumption that the new sentence length for each of the 5,900 individuals above would increase to exactly 5 years. Assuming otherwise steady incarceration levels, and a cost per bed, per day of \$87.61, the increased annual expenditures within five years, and every year thereafter, would be \$448 million. The total increased cost for the first 5 years would be \$834 million, and the total increased cost for the second 5 years would be \$2.2 billion, for a total cost to taxpayers over 10 years of approximately \$3.1 billion. Additionally, within five years, the increased illegal reentry sentence lengths for people with prior aggravated felonies would require an increase of 14,000 prison beds, or about 9 new prisons at 1,500 beds per prison. See Bureau of Prisons, “Federal Prison System, Per Capita Costs, FY 2015”, available at https://www.bop.gov/foia/fy15_per_capita_costs.pdf.