

Thomas M. Susman
Director
Governmental Affairs Office

AMERICAN BAR ASSOCIATION
1050 Connecticut Avenue, NW - Suite 400
Washington, DC 20036
(202) 662-1760
FAX: (202) 662-1762

July 6, 2016

The Honorable Mitch McConnell
United States Senate
Washington, DC 20510

The Honorable Harry Reid
United States Senate
Washington, DC 20510

Re: New Mandatory Minimum Sentences in S. 2193 (“Kate’s Law” or “Stop Illegal Reentry Act”)

Dear Majority Leader McConnell and Minority Leader Reid

On behalf of the American Bar Association (ABA), with almost 400,000 members, I write to express our strong opposition to S. 2193, which would create a new five-year mandatory minimum sentence for illegal reentry by individuals with prior aggravated felony conviction or at least two prior illegal reentry convictions. The ABA is concerned about unintended impacts of the proposed legislation on both immigrants and state and local law enforcement. We are also concerned with the impact of the proposed sentencing scheme on an already overburdened federal justice system.

Under the current law, persons convicted of illegal reentry are subject to a sentence of no more than two years, with the exception that the person can receive a sentence of up to twenty years if he or she has a criminal record. The U.S. Sentencing Commission guidelines also already provide for increased and severe sentences for illegal entry convictions of persons with serious prior criminal records.

S. 2193 would create a new five-year mandatory minimum sentence for illegal reentry following a conviction for an aggravated felony or two or more prior convictions for illegal reentry. This proposed legislation does not take into account any circumstances that may be particular to an individual’s case, such as U.S. family members, asylum-seeker status, or other vulnerabilities.

Implementation of the new sentencing regime for individuals with prior aggravated felony conviction would, according to estimates based on U.S. Sentencing Commission and Bureau of Prisons data, cost taxpayers as much as \$3.1 billion over the next ten years, in addition to the cost of constructing nine new federal prisons to accommodate the increase in incarceration that would result from this bill.

Moreover, the increased penalty could potentially interfere with state and local law enforcement efforts: the new minimum-sentence requirement might well lead members of immigrant communities to hesitate to report crimes, fearing that local law enforcement

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officials will turn over persons under suspicion to federal immigration officials. This would ultimately harm rather than improve public safety.

Mandatory minimum sentences are “one size fits all” justice and, by definition, will produce sentences that do not fit the particular facts and circumstances of both the offense and the person who committed it. American justice operates on a bedrock principle that the punishment should fit the crime and the person who committed it. By treating all offenders the same, mandatory minimum sentences frequently produce irrational and excessive punishment and contribute to unwarranted sentencing disparity. Finally, studies have shown no demonstrable link between federal mandatory minimums and any decline in crime.

For these reasons, the American Bar Association urges senators to vote against S. 2193.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman