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May 20, 2025

Honorable Jim Jordan
Chairman, House Committee on the Judiciary
2056 Rayburn House Office Building
Washington, DC 20515

Honorable Jamie Raskin
Ranking Member, House Committee on the Judiciary
2242 Rayburn House Office Building
Washington, DC 20515

Re: The Stop Illegal Entry Act of 2025 (H.R. 3486)

Dear Chairman Jordan and Ranking Member Raskin:

On behalf of the Federal Public and Community Defenders, we write to express our opposition to H.R. 3486, the Stop Illegal Entry Act of 2025. At any given time, Federal Public and Community Defenders and other counsel appointed under the Criminal Justice Act represent about 90 percent of all individuals in the federal criminal system because they cannot afford counsel. We are uniquely situated to assess the potential impact of this legislation on the criminal legal system, as well as on our clients, their families, and their communities.

H.R. 3486 would impose new, unprecedented mandatory minimum sentences on individuals whose criminal conduct includes the mere act of coming to the United States to make a better life for their families. Among other changes to the statutes that cover this conduct, 8 U.S.C. §§ 1325 (illegal entry) and 1326 (illegal reentry), the Act would impose a *10-year* mandatory minimum penalty under § 1326 for re-entering the country after a removal that follows a felony conviction (an offense

punishable by more than one year in prison), regardless of whether the offense was serious or violent, and regardless of how long ago the conviction occurred.¹ The 10-year mandatory minimum would also apply to people who have two prior convictions under § 1326, even if they have no other criminal history. The Act also would amend § 1325 to impose a 5-year mandatory minimum sentence on people who enter the United States illegally if they are later convicted of any felony offense. As set forth below, we oppose the enactment of these mandatory minimum sentences, which will impose exorbitant sentences that fail to improve public safety, and which will instead wreak havoc on the criminal legal system and the Bureau of Prisons, at tremendous cost to the American taxpayer.

A. H.R. 3486 would impose draconian, disproportionate sentences that will do little to keep us safe or deter future immigration offenses.

This law would exacerbate the myriad harms that mandatory minimum sentences inflict on individuals, communities, and the criminal legal system, while failing to improve public safety or preventing future immigration crimes. The 10-year mandatory minimum sentence the Act would impose—the same mandatory minimum sentence that applies to the most serious drug trafficking offenses under the Controlled Substances Act—is an unjust penalty that simply does not fit the crime.² Many people charged with reentry offenses are longtime residents of the United States who have lived in this country for most of their lives, and who have family members here. Under H.R. 3486, they would be subject to a 10-year mandatory minimum penalty regardless of their ties to the United States; regardless of whether their prior felony conviction was for murder or for writing a bad check; and regardless of whether that conviction occurred last month or thirty years ago. The mandatory minimum would apply to people whose criminal history is limited to repeatedly reentering the United States to work and provide for their family, or to escape violence in their native country; indeed, the Act would prevent judges from considering a person's motivation for returning to the United States. Instead, the Act's mandatory minimum sentences would transfer sentencing discretion from

¹ Felony offenses can cover a wide range of conduct, including trespassing, or even reading someone's email without their consent. *See* 18 Pa. Consol. Stat. Ann. § 7613.

² *See* 21 U.S.C. § 841(b)(1)(A). Unlike sentences under the Controlled Substances Act, which are subject to a "safety valve" that permits courts to sentence certain low-level offenders below the otherwise applicable mandatory minimum, *see* 18 U.S.C. § 3553(f), H.R. 3486 contains no safety valve provision.

courts to prosecutors, who control the decision to charge an offense with a mandatory minimum penalty.³

Mandatory minimum sentences also entrench severe racial disparities in sentencing, contributing to a prison population whose racial makeup bears little resemblance to that of the country as a whole.⁴ H.R. 3486 would amplify this trend, as nearly 99% of individuals sentenced for § 1326 offenses in FY 2023 were Hispanic.⁵ It would be deeply disturbing for Congress to enact a mandatory minimum sentence that so directly targets one ethnic group. And as we have learned with the crack-powder disparity, which persists to this day, it is extremely difficult for Congress to change course once it has enacted a mandatory minimum sentencing law, even after it has recognized that its earlier decision was misguided.⁶

Perhaps the most widely shared criticism of mandatory minimum sentences, by researchers across the ideological spectrum, is that they simply do not deter crime or make the public safer. As the National Research Council concluded, upon surveying the empirical research on the deterrent effect of mandatory minimums, “the weight of the evidence . . . is strong that [mandatory minimums] have few, if any, deterrent effects.”⁷ Instead, the certainty of punishment is “a vastly more powerful deterrent” than increasing the severity of punishment, which “does little to deter crime.”⁸

The deterrent effect is likely to be even lower for illegal entry/reentry offenses

³ The Sentencing Project, [How Mandatory Minimums Perpetuate Mass Incarceration and What to Do About It](#) (Feb. 14, 2024).

⁴ See, e.g., M. Marit Rehavi and Sonja B. Starr, [Racial Disparity in Federal Criminal Sentences](#), 122 J. Pol. Econ. 1320, 1350 (Dec. 2014) (finding that federal prosecutors are 65% more likely to charge Black defendants, rather than white defendants, with offenses carrying mandatory minimum sentences); see also U.S. Sent. Comm’n., [Individuals in the Federal Bureau of Prisons Quick Facts](#) (Jan. 2024) (noting that Black and Hispanic people make up 34.8% and 31.1% of BOP population, respectively).

⁵ [Quick Facts: Illegal Reentry Offenses](#).

⁶ See Office of Sen. Cory Booker, [Booker, Durbin, Armstrong, Jeffries Announce Re-Introduction of Bipartisan Legislation to Eliminate Federal Crack and Powder Cocaine Sentencing Disparity](#) (Feb. 17, 2023) (highlighting the widespread recognition among lawmakers that the crack-powder sentencing disparity has driven racially disparate outcomes in the justice system and calling for the elimination of the disparity as a critical step toward addressing racial injustice in sentencing).

⁷ Nat’l. Research Council, [The Growth of Incarceration in the United States: Exploring Causes and Consequences](#), The National Academies Press, at 347 (2014).

⁸ U.S. Dept. of Justice, Nat’l. Inst. Of Justice, [Five Things About Deterrence](#) (2016) (citing Daniel S. Nagin, *Deterrence in the Twenty-First Century*, Crime and Justice: A Review of Research, 42: Crime and Justice in America 1975-2025 at 199 (August 2013)).

than it is for other crimes. The U.S.-Mexico border is the world's deadliest land migration route.⁹ Immigration officials have recorded 10,000 deaths along the border since 1994, when U.S. Border Patrol adopted a strategy of "prevention through deterrence"—a policy designed to funnel migrants towards highly dangerous border crossing points in order to discourage them from attempting to cross.¹⁰ Migrants, including those who have been previously removed from the United States, knowingly risk death when they attempt to cross the border illegally. The thousands of people who are willing to risk their lives to reunite with their families, or to escape more deadly conditions in their native countries, are unlikely to be deterred by the penalties contained in H.R. 3486, any more so than they are by the statute's current penalties—if they are even aware of the penalties.

B. H.R. 3486 Would Create Chaos in the Federal Courts, Further Destabilize the Bureau of Prisons, and Impose Enormous Costs on American Taxpayers.

This legislation would also throw the federal criminal legal system into chaos, given the sheer number of individuals who would be subject to the 10-year mandatory minimum—a number that neither the court system nor the BOP is capable of absorbing. Illegal entry and reentry offenses are already heavily prosecuted, with 18,883 reentry cases and 5873 entry cases in FY 2024.¹¹ In FY 2023, the most recent year for which sentencing data is available, the average sentence for § 1326 offenses in FY 2023 was 12 months, and nearly one quarter of people sentenced under § 1326—approximately 3000 sentenced individuals—were convicted of felonies before their removal.¹² Under H.R. 3486, every one of those individuals would now be facing a 10-year mandatory minimum sentence.

Previous years' data only tell us so much, however, because the number of people facing this draconian sentence will be significantly higher under the current

⁹ Int'l. Org. of Migration, [US-Mexico Border World's Deadliest Migration Land Route](#) (Sept. 12, 2023).

¹⁰ Human Rights Watch, *US: Border Deterrence Leads to Death, Disappearances* (June 26, 2024); Donald Kerwin and Daniel E. Martinez, *Forced Migration, Deterrence, and Solutions to the Non-Natural Disaster of Migrant Deaths Along the US-Mexico Border and Beyond*, 12 J. on Migration and Human Security 127 (2024). Border Patrol's estimates do not include undiscovered remains or deaths in Mexico.

¹¹ Offs. of the U.S. Att'ys, U.S. Dept. of Justice, Prosecuting Immigr. Crimes Report for FY 2024: 8 U.S.C. [§ 1326](#); [§ 1325](#).

¹² *Id.*

Administration, which has prioritized the prosecution of immigration crimes.¹³ In February and March 2025, the Department of Justice filed 4662 immigration cases—nearly 25% of the amount of cases filed over the entirety of FY 2024.¹⁴ Some districts are seeing an avalanche of case filings. In the District of New Mexico, for example, 91 people were charged under § 1326 in the first week of May alone, while 209 people were charged under § 1325.¹⁵ In one week in the Central District of California, DOJ charged 45 people with violating § 1326—a 3,755% increase from the previous year.¹⁶ Every single one of those charged individuals had a prior felony conviction and thus would be eligible for the 10-year mandatory minimum sentence that H.R. 3486 would create.¹⁷

The cascading effects of subjecting thousands of individuals to a 10-year mandatory minimum sentence cannot be overstated. A person facing a 10-year sentence for illegal reentry will have no incentive to plead guilty, as they will face that sentence regardless of whether they plead or go to trial, particularly since current DOJ policy instructs prosecutors to charge “the most serious, readily provable offense.”¹⁸ As the attorneys who represent the vast majority of individuals charged under § 1326, we anticipate that our clients will choose to exercise their Sixth Amendment right to a speedy and public jury trial, rather than agree to a 10-year minimum sentence. The courts, however, are not equipped to handle thousands of § 1326 trials. The strain on the system will affect judges, prosecutors, court staff, the U.S. Marshals, as well as defense counsel and our clients. It will also put an increased strain on the general public, who will be summoned much more frequently to serve as jurors in each of these cases.

The entire system will be driven by the demands of § 1326 cases, at the expense of violent crimes and other offenses that pose a far greater threat to public safety. And given the prospect that most § 1326 cases will proceed to trial, at least some of those cases are likely to be dismissed, as congestion of the court’s calendar is

¹³ U.S. Dept. of Justice, [General Policy Regarding Charging, Plea Negotiations, and Sentencing](#) (Feb. 5, 2025).

¹⁴ Offs. of the U.S. Att’ys, U.S. Dept. of Justice, Prosecuting Immigr. Crimes Report for FY 2025: 8 U.S.C. [§ 1326](#).

¹⁵ U.S. Att’y’s Office, Dist. of New Mex., [U.S. Attorney’s Office for the Dist. of New Mexico Weekly Immigr. and Border Crimes Report](#) (May 9, 2025).

¹⁶ U.S. Att’y’s Office, Centr. Dist. Of Calif., [Prosecutors in CDCA Charge 45 Defendants with being Illegal Aliens in U.S. Following Removal—a 3,755% Increase from Previous Year](#) (May 1, 2025).

¹⁷ See *id.*

¹⁸ [DOJ Memo re General Charging Policy](#).

not a valid reason for delay under the Speedy Trial Act.¹⁹

In addition to overwhelming the federal courts, the Act would be disastrous for the Bureau of Prisons, which is facing a crisis of overcrowding, understaffing, underfunding, and crumbling infrastructure.²⁰ DOJ's Office of the Inspector General recently found that "the long-standing crisis" at BOP is "[a]mong the most important challenges facing the U.S. Department of Justice"²¹ These problems are not new; OIG has issued over 100 reports in the past 20 years that "have identified recurring issues that impede the BOP's efforts to consistently ensure the health, safety, and security of all staff and inmates within its custody."²² Those challenges will prove insurmountable if BOP is suddenly flooded with thousands of people sentenced to 10 years in prison.

The Act also would impose staggering burdens on American taxpayers. In 2024, the annual cost of incarcerating one person at a BOP facility was \$44,090—resulting in a total cost of \$440,000 per person sentenced to the 10-year mandatory minimum that the Act would impose.²³ The Act is likely to cost American taxpayers billions of dollars for the decade-long incarceration of individuals who are ultimately going to be deported, diverting resources that are sorely needed for crime prevention and other essential law enforcement initiatives.

We understand that our immigration system is in need of reform, but H.R. 3486 is not the answer. By imposing exceptionally long mandatory sentences on people who enter/reenter the United States, regardless of the individual facts of their case, the Act would compound the harms that result from the criminalization of migration. It would devastate families and communities across the United States, while fueling the crisis of mass incarceration that has decimated the Bureau of Prisons. It would impose enormous costs on the American people and quickly overwhelm our criminal legal system. And it will do all of this without improving public safety or enhancing border security. We encourage Congress to move away from the expansion of mandatory minimum sentences, and to instead consider more

¹⁹ See 18 U.S.C. § 3161(h)(7)(C).

²⁰ See, e.g., DOJ Office of the Inspector General, [Top Management and Performance Challenges Facing the Department of Justice—2024](#), at 1 (Oct. 10, 2024) ("Among the most important challenges facing [DOJ] is the long-standing crisis facing [BOP].")

²¹ *Id.* at 1.

²² *Id.*

²³ See 88 Fed. Reg. 97072 (Dec. 6, 2024).

targeted immigration and criminal justice policies that will be far more effective, and far more humane.

Very truly yours,



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