

---

## S. 2193, Stop Illegal Reentry Act (Kate's Law)

### A Brief Background

---

#### **Background**

- One year ago, an illegal alien shot and killed 32-year-old Kate Steinle on a San Francisco pier. He had previously been deported five times. This horrific incident has focused public attention on the need to address the persistent problem of aliens who illegally reenter the country after deportation. Kate's Law is a response to that problem.
- Illegal reentry is a widespread phenomenon. In 2012, for instance, just over a quarter (27%) of the illegal aliens apprehended by the Border Patrol had prior removal orders—in other words, they had already been deported once before.<sup>i</sup> That same year, over a third (35%) of all removals involved illegal aliens with prior removal orders.<sup>ii</sup> That number increased to 39% in 2013.<sup>iii</sup> Many illegal reentry offenders have criminal records.<sup>iv</sup> Yet the average sentence for these offenders has decreased from 20 months in fiscal year 2010 to just 17 months in fiscal year 2014.<sup>v</sup>
- These numbers demonstrate that, for too many illegal aliens, the perceived rewards of reentering the United States after deportation outweigh both the likelihood and the consequences of being apprehended, prosecuted, imprisoned, and then deported again. Current statutory penalties for illegal reentry are an inadequate deterrent given the poor state of immigration enforcement. Indeed, according to DHS's enforcement priorities, illegal reentry is not even considered a first-tier priority.<sup>vi</sup>
- Therefore, to increase the risks for aliens contemplating illegal reentry, and thereby enhance the deterrent effect of the law, Kate's Law strengthens the penalties for illegal reentry.

#### **The Need for Federal Action**

- Under existing law—8 U.S.C. § 1326—there is no mandatory minimum sentence for most illegal reentry convictions, even those involving aliens with criminal records. The only exception is reentry of an alien removed on national security grounds. The mandatory sentence for that offense is 10 years. But for illegal reentry of an alien without any criminal history, the maximum sentence is just two years. For illegal reentry of an alien with three or more of certain misdemeanor offenses or with one non-aggravated felony, the maximum sentence is 10 years. For illegal reentry of an alien with an aggravated felony, the maximum sentence

is 20 years. And for illegal reentry of an alien with a prior conviction but who was removed before serving the entire sentence, the maximum is 10 years.

- Kate's Law would amend section 1326 to strengthen criminal penalties for illegal reentry as follows:
  - Increase the maximum criminal penalty for illegal reentry from two to five years.
  - Create a new penalty of up to 10 years for any person who has been denied admission or deported three or more times and then illegally reenters the country.
  - Create a five year mandatory minimum for anyone convicted of illegal reentry, who (1) had an aggravated felony prior to removal, or (2) has been convicted of illegal reentry twice before.

---

<sup>i</sup> See Jessica Vaughan, Center for Immigration Studies, *Deportation Numbers Unwrapped* (October 2013) (citing Border Patrol statistics), <http://cis.org/ICE-Illegal-Immigrant-Deportations>.

<sup>ii</sup> See John F. Simanski, *Immigration Enforcement Actions: 2013*, at 5 (Sept. 2014), [https://www.dhs.gov/sites/default/files/publications/ois\\_enforcement\\_ar\\_2013.pdf](https://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf).

<sup>iii</sup> *Id.*

<sup>iv</sup> See U.S. Sentencing Commission, *Quick Facts, Illegal Reentry Offenses FY2014*, [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick-Facts\\_Illegal-Reentry\\_FY14.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick-Facts_Illegal-Reentry_FY14.pdf).

<sup>v</sup> *Id.*

<sup>vi</sup> See Secretary Jeh Johnson, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* (Nov. 20, 2014), [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_prosecutorial\\_discretion.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf)