



Written statement of Human Rights Watch

to

The United States Senate
Committee on the Judiciary

**“Oversight of the Administration’s Misdirected
Immigration Enforcement Policies: Examining the Impact
on Public Safety and Honoring the Victims”**

July 21, 2015

Chairman Grassley, Ranking Member Leahy, members of the Committee, thank you for the opportunity to submit the following statement.

The tragic killing of Kathryn Steinle in San Francisco has led many to call for changes to immigration enforcement policies at federal, state, and local levels. Human Rights Watch wishes to reiterate our longstanding and strong support for local and state policies that limit local law enforcement involvement in federal immigration enforcement in the interest of promoting community trust in police and protecting public safety. We have repeatedly documented the harms to public safety that can result when local police are tasked with enforcing immigration laws. Our research in Nashville,¹ throughout the state of Alabama,² and on immigrant farmworkers across the nation,³ found that tasking local police with immigration enforcement only makes immigrants afraid of reporting the crimes they witness or of which they are victims. Mistrust of law enforcement only makes it harder for police to do their jobs, and makes entire communities less secure.

However, our statement today focuses specifically on reports⁴ of federal legislative proposals that would create a new five-year mandatory minimum sentence for illegal reentry. Such a law would be harmful, costly, and ineffective at preventing tragedies like Kathryn Steinle's death.

Human Rights Watch's 2013 report "Turning Migrants into Criminals: The Harmful Impact of US Border Prosecutions" documented the steep rise in recent years in the number of illegal entry and reentry prosecutions—now the most prosecuted federal crime in the US⁵—and corresponding changes in who is actually being prosecuted for these immigration offenses.

Illegal reentry is a felony that carries a maximum 20-year sentence. Under US Sentencing Guidelines, the sentence for illegal reentry is calculated based on the defendant's prior criminal record. Analyzing data from the US Sentencing Commission from 2002 to 2011,

¹ "US: Immigrants 'Afraid to Call 911'," Human Rights Watch news release, May 14, 2014, <https://www.hrw.org/news/2014/05/14/us-immigrants-afraid-call-911>.

² Human Rights Watch, *No Way to Live: Alabama's Immigrant Law*, December 2011, <https://www.hrw.org/report/2011/12/14/no-way-live/alabamas-immigrant-law>.

³ Human Rights Watch, *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, May 2012, <http://www.hrw.org/reports/2012/05/15/cultivating-fear>.

⁴ Chuck Ross, "Report: Lawmakers Working on Bill in Response to Kate Steinle's Murder by Illegal Alien," *Daily Caller*, July 8, 2015, <http://dailycaller.com/2015/07/08/report-lawmakers-working-on-bill-in-response-to-kate-steinles-murder-by-illegal-alien-video/> (accessed July 17, 2015).

⁵ US Department of Justice, United States Attorneys' Annual Statistical Report, Fiscal Year 2014, Table 3B, <http://www.justice.gov/sites/default/files/usao/pages/attachments/2015/03/23/14statrpt.pdf>, (accessed July 17, 2015).

we found both a steep increase in convictions for illegal reentry and a corresponding decrease in the seriousness of their prior records.

In other words, more people were being prosecuted for illegal reentry but they had less of a criminal history. In 2002, 42 percent of those prosecuted for illegal reentry had prior convictions for crimes considered the “most serious” by the US Sentencing Commission and only 17 percent had no felony convictions. But by 2011, the proportion of those previously convicted of the most serious offenses had dropped to 27 percent, and the proportion that had so minimal of a criminal history that they received no sentence enhancement had increased to 27 percent.

The most recent data from the Sentencing Commission indicates this trend continues. In 2014, 27 percent received no sentence enhancement, while 24 percent received the greatest sentence enhancements.⁶ Because many illegal reentry offenders do not have lengthy criminal records and thus receive shorter sentences, the average sentence for illegal reentry has decreased over the years and is now 17 months.⁷

Setting a mandatory minimum of five years for illegal reentry would therefore sweep up thousands⁸ of people every year who have little to no criminal history, condemning them to spending years in prison, and at great expense to US taxpayers, without a valid reason.

Such harsh measures also have profound effects for the families, including thousands of US citizen children and relatives, of those locked up for reentry. In our research—based on more than 190 interviews with judges, law enforcement officials, attorneys, as well as individuals prosecuted for illegal entry and reentry and their families—we found that many of those who are charged with illegal reentry are immigrants who have resided in the US for many years, who are desperate to return to the United States and to their family in the US.

Based on data we obtained from US Customs and Border Protection (CBP), we estimate that in 2011 and 2012, more than 101,900 people apprehended by CBP were parents to a

⁶ US Sentencing Commission, “Quick Facts: Illegal Reentry Offenses,” http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick-Facts_Illegal-Reentry_FY14.pdf.

⁷ Ibid.

⁸ Illegal reentry charges were the lead charge in 37,346 prosecutions in FY 2013. “At Nearly 100,000, Immigration Prosecutions Reach All-time High in FY 2013,” Transactional Records Access Clearinghouse, <http://trac.syr.edu/immigration/reports/336/>, (accessed July 17, 2015).

US citizen child.⁹ A recent US Sentencing Commission report similarly found that almost 50 percent of people convicted of reentry have children living in the US.¹⁰

For example, Gabriela Cordova-Soto, a former green card holder who had lived in the US from the age of 9 months, lost her green card and was deported after a drug possession conviction. Desperate to be with her US citizen husband and their four children, she returned to the US illegally. Although she had completely rehabilitated from her drug dependency, she had no way of regaining her legal resident status. After being deported and trying to reenter again, she was charged and ultimately convicted of illegal reentry.

Federal public defender Heather Williams recounted a case in which her client, convicted of illegal reentry, had returned because his permanent resident wife was dying of cancer. He had been denied permission to reenter temporarily, and he wanted to arrange for his daughter to take custody of her younger siblings. In another case, a judge in New Mexico in his sentencing decision noted that there was strong evidence the defendant had returned to the United States because of reports his children were being sexually abused.

Judge Robert Brack in Las Cruces, New Mexico, who has sentenced more people than any other judge in the US because of the high volume of illegal reentry cases before him, has spoken publicly about the heartbreaking cases over which he presides. He told Human Rights Watch, “For 10 years now, I’ve been presiding over a process that destroys families every day and several times each day.”

Some who are charged and convicted of illegal reentry are asylum seekers who are denied the opportunity to apply for asylum the first time they are apprehended by CBP agents, and who then return because they fear persecution in their home countries. A recent report by the Department of Homeland Security Office of Inspector General specifically noted that Border Patrol agents regularly refer asylum seekers for criminal prosecution. Such prosecutions violate US obligations under the Convention relating to the Status of Refugees and its 1967 Protocol,¹¹ which prohibit criminal penalties for people seeking asylum.¹²

⁹ Human Rights Watch, “Border Enforcement Policies Ensnare Parents of US Citizen Children,” January 8, 2015, <https://www.hrw.org/news/2015/01/08/border-enforcement-policies-ensnare-parents-us-citizen-children>.

¹⁰ US Sentencing Commission, “Illegal Reentry Offenses,” April 2015, http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/immigration/2015_Illegal-Reentry-Report.pdf (accessed July 17, 2015).

¹¹ Convention relating to the Status of Refugees (1951 Refugee Convention) , 189 U.N.T.S. 150, entered into force April 22, 1954 and Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967, ratified by US on November 1, 1968.

¹² 1951 Refugee Convention, article 31.

The rapid increase in the number of non-citizens serving prison sentences for illegal reentry has also contributed to the overcrowded federal prison system. According to a 2013 Congressional Research Service report, immigration offenders in 2010 accounted for approximately 30 percent of all inmates entering the federal prison system, compared to 18 percent in 1998.

A mandatory minimum sentence for illegal reentry would not deter individuals like Juan Francisco Lopez-Sanchez, who had already served three lengthy sentences for illegal reentry totaling well over 10 years. Instead, it would deprive judges of the ability to recognize that among the tens of thousands of people convicted of illegal reentry each year, there are many who should not be in prison at all. And it would senselessly and cruelly condemn thousands of parents of US citizens who pose no danger to society to years in prison, solely for wanting what any good parent would: to be reunited with their children.

Thank you.