

The Waste and Severe Harm of Immigration Prosecutions: Congress Should Reject Funding for Family Separations & Mass Incarceration¹ March 2025

The Trump administration has [ordered](#) the prioritization of federal prosecutions for immigration-related offenses, including for simply entering the United States or reentering after removal without permission. Prosecutions for [such offenses](#) are layered on top of the punitive civil immigration detention and deportation processes, add barriers to asylum access, and are rooted in [racist laws](#) plagued with due process and fairness concerns. Under the first Trump administration, these [prosecutions](#) were behind the family separation program and filled prisons to the enrichment of private prison contractors.

Now, Congress is considering [budget proposals](#) with hundreds of billions of dollars for border and immigration enforcement, including billions that would fund a dramatic increase in federal criminal prosecutions for immigration offenses. The short-term funding [proposal](#) in Congress also includes billions for mass detention and deportation, including additional funds for “federal prison detention” for people charged with immigration related offenses. At the same time, some in Congress are again [proposing legislation](#) that would fuel mass incarceration by increasing penalties for those charged criminally for unauthorized reentry into the United States (8 U.S.C. § 1326). That bill (improperly [called Kate’s Law](#), or “Stop Illegal Reentry Act”) has been introduced several times over the years as part of a cynical effort to exploit personal tragedies to demonize immigrant communities. These efforts are being pushed by some in Congress who want to bolster the Trump administration’s mass detention and deportation plan at the expense of public resources and basic human rights.

This explainer describes how the budget proposals currently in Congress would fund mass prosecutions that have already had a [deadly](#) and costly impact over the years. It also explains how the proposed legislation would line the pockets of the private prison industry with enormous cost to taxpayers. Congress should oppose any efforts that would bolster the Trump administration’s plans to increase [prosecutions](#) that overwhelm the courts, violate the rights of asylum seekers, and fuel rights abuses by U.S. Immigration and Customs Enforcement (ICE) agents.

¹ Publication of the National Immigrant Justice Center, National Immigration Project (NIPNLG), Immigrant Defense Project, Immigrant Legal Resource Center, American University Washington College of Law Immigrant Justice Clinic, and the Immigrant Justice Network, 2025. This community explainer is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). The explainer is intended for authorized legal counsel and is not a substitute for independent legal advice provided by legal counsel familiar with a client’s case. Counsel should independently confirm whether the law has changed since the date of this publication.

What Congress is proposing:

The Senate’s budget [resolution](#) that currently includes up to \$350 billion for immigration and border enforcement, and the House budget [proposal](#) includes up to \$200 billion. Both versions would [harm millions](#) of Americans — [cutting](#) school lunches, Head Start, Medicaid, and student loan programs — in order to fund the Trump administration’s mass deportation agenda, including the increase in immigration prosecutions.

At the same time, the “[Stop Illegal Reentry Act](#)” would impose draconian criminal penalties for people convicted of entering the United States (or attempting to enter) after a previous removal or denial of entry. This bill increases the possible punishment to five years in federal prison - or ten years if the person has been denied entry or removed three times. Additionally, a person who was previously convicted of an “aggravated felony” or convicted of unlawful reentry at least twice would be subject to a *mandatory minimum term of five years* and could be sentenced to up to twenty years. “Aggravated felony” is a term of art under immigration law that covers dozens of offenses and need not be “aggravated” nor a “felony” and for which the person already completed their sentence.

Immigration prosecutions overwhelm the courts and have huge public costs:

The renewed focus on immigration prosecutions will further waste taxpayer dollars and siphon government [resources](#) from other programs. Immigration violations are already over-prosecuted and harshly punished — in fiscal year 2024 alone, federal prosecutors [charged 29,773 persons](#) with entry-related crimes. Increasing the number of prosecutions and enhancing penalties would inundate federal courts and exacerbate mass incarceration with [huge costs](#).

Prosecutions for immigration-related offenses already are a drain on federal courts, making up around [38 percent](#) of all federal prosecutions in district court, more than any other category of federal crimes. The Trump administration has already ordered a major shift in Justice Department [resources](#) toward immigration-related prosecutions. A January 21st [memo](#) ordered U.S. Attorney’s Offices to pursue more charges for immigration-related offenses, diverting staff and resources dedicated to narcotics and violent crime prevention. Deputy Attorney General Todd Blanche also issued a [March 6th memo](#) surging resources to border districts and ordering AUSA’s to “continue to charge more” 8 U.S.C. §§ 1325 and 1326 cases. The same memo incentivizes federal prosecutors to target local law enforcement, states, and advocacy groups who support and protect immigrant rights (under the bracket of attacks on “sanctuary” jurisdictions), building on Attorney General Pam Bondi’s [Feb 5th memo](#).

ICE and Customs and Border Protection agents already [refer nearly all](#) immigration-related prosecutions, and [97 percent](#) of people charged with immigration related offenses plead guilty instead of taking their case to trial. Guilty pleas are largely agreed to out of necessity for people who seek to shorten their time in pre-trial custody, decrease the likelihood of a long prison term, and pursue their asylum claims or other protection.

The average sentence for all individuals sentenced for unauthorized reentry is around [12 months](#), and [98 percent](#) of people sentenced receive prison time. Introducing a 5-year mandatory minimum for noncitizens convicted of unlawful reentry who either have a prior aggravated felony conviction or who have been convicted of unlawful reentry at least twice before would result in defendants facing this charge having no incentive to take a plea deal. Non-citizens facing this charge would instead go to trial. The impact of such a result on federal court dockets would be hard to overstate, particularly in border districts where Section 1326 cases comprise over half their total [caseload](#). The [estimated](#) total cost of imprisonment of a person sentenced to the 20-year maximum for unlawful reentry is \$853,440. These costs are borne by U.S. taxpayers and stand to grow exponentially if the current Congressional proposals pass.

If enacted, this bill would also overwhelm the Federal Bureau of Prisons, which already fails to provide humane conditions amidst chronic shortages of staff and resources. The U.S. Sentencing Commission [estimated](#) in 2017 that the “Stopping Illegal Reentry Act” would expand the federal prison population by nearly 60,000 prisoners over five years, a nearly 40 percent increase from the current [population](#). The Justice Department [estimated](#) the annual [cost](#) of federal imprisonment in the United States was above \$42,000 in FY 2022. The costs of passage of this bill to U.S. taxpayers would be monumental, and would be a huge boost to the private prison industry, including to companies with ties to cabinet-level officials that spend [millions](#) lobbying Congress. Notably, [Attorney General Pam Bondi](#) is a former lobbyist for the private prison company [GEO Group](#), which donated [over a million dollars](#) alone to Trump’s reelection. The CEO of the other major private prison company CoreCivic has said publicly he expects to see the “[most significant growth](#)” in his company’s history over the next several years. With the Trump administration lifting the Biden-era ban on [private prison contracts](#), these companies are looking to cash in on both new privately operated prisons as well as new ICE detention contracts.

Increasing immigration prosecutions would harm asylum seekers and fuel ICE raids:

Immigration-related prosecutions have been used to [separate families](#) and violate the United States’ national and international legal obligations to provide [asylum protection](#) to migrants seeking refuge. When the government refers parents or guardians for criminal prosecution, it leaves the children they are traveling with alone in the civil immigration system — a process the first Trump administration used to [separate and traumatize thousands](#) of immigrant families. With a new prioritization for such prosecutions, bolstering funding for Section 1326 referrals and prosecutions would mean more criminalization and imprisonment of asylum seekers in violation of international legal obligations.

Increasing the prioritization of immigration-related prosecutions will also fuel ICE targeting of long time community members. In the first weeks following the Trump administration’s renewed prioritization of immigration prosecutions, for example, there were already [ICE arrests](#) of people referred for unlawful reentry prosecutions. This follows a pattern of ICE practice of carrying out

[surveillance](#) and targeting people across the country to refer them for unlawful reentry charges. While the numbers show that the majority of Section 1326 charges occur at the border, a significant number of cases impact people who have been in the U.S. for years well after they re-entered the country. From FY 2021 to 2025, the Justice Department [charged 8,094 out of the 60,939](#) total people with Section 1326 in non-border districts throughout the interior of the country. Such prosecutions take up significant resources — over 27 percent of Delaware’s [caseload](#), for example, consisted of Section 1326 prosecutions.

ICE also relies on Section 1326 cases to investigate workplaces and carry out raids. During the [2019 Mississippi raids](#), among the largest in U.S. history, for example, ICE arrested 680 poultry workers and referred dozens of them for Section 1326 prosecution. Workers targeted in that raid won a [lawsuit](#) over rampant sexual harassment and racial discrimination, but continued to be impacted by the Section 1326 charges long after the raids took place.

Congress should not give the Trump administration more ammunition for mass deportations:

Prosecutions for immigration offenses are layered on top of the punitive civil immigration detention and deportation processes, add barriers to asylum access, and are rooted in racist laws plagued with due process and fairness concerns. Increasing the scope and severity of Section 1326 prosecutions is bad policy in every sense, ballooning the U.S. prison population solely for corporate profit and political gain. Congress should reject any efforts to waste precious public dollars or enhance penalties for such prosecutions and ensure government resources are going towards communities in need and not mass incarceration.

For more information, contact: Jesse Franzblau, Senior Policy Analyst, National Immigrant Justice Center, at jfranzblau@immigrantjustice.org; Nithya Nathan-Pineau, Policy Attorney & Strategist, Immigrant Legal Resource Center, at nnathan-pineau@ilrc.org; Ann Garcia, Staff Attorney, National Immigration Project, at agarcia@nipnlg.org.