

November 25, 2018

The Honorable Mitch McConnell
Majority Leader
U.S. Senate

The Honorable Chuck Schumer
Democratic Leader
U.S. Senate

The Honorable Paul Ryan
Speaker of the House
U.S. House of Representatives

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives

Re: S. 3649, the Revised First Step Act of 2018

Dear Congressional Leaders,

We write as an informal group of former federal prosecutors and senior government officials to endorse S. 3649, the revised First Step Act of 2018, and urge you to swiftly pass this bill out of your respective chambers during this lame-duck session of Congress.

It is for the sake of public safety that this must be done as soon as possible.

While our experiences vary, we all served in one capacity or another on the front lines of the federal criminal justice system and we all agree that meaningful reforms are needed to increase its efficiency and effectiveness. We also agree that public safety and domestic security will be enhanced by these meaningful reforms.

There are many criminal justice reform bills that have been proposed in the last few years. We applaud all these efforts and the increased focus on improving the federal criminal justice system. However, only S. 3649 currently has sufficient consensus and the ability to impact public safety while empowering the Department of Justice to address one of its most significant management and fiscal challenges—the federal prison system.

S. 3649 is the only bill that was meaningfully informed by former federal prosecutors and drafted specifically to put a renewed focus on rehabilitation and correction, risk and recidivism reduction, and better community reentry. More than any of the other reforms, this is what will increase the safety of our communities and the law enforcement agents and officers who protect them.

The core of the First Step Act has always enjoyed strong bipartisan support—the House bill passed 360-59 on May 22, 2018, and earlier versions passed out of the Senate and House Judiciary Committees by wide bipartisan margins in 2014 and 2016—and we believe this is the only bill that has enough consensus to pass into law at this time.

These prison reforms must be implemented as soon as possible, for the federal prison system is inefficient and presents numerous challenges, including consuming an ever-increasing percentage of the Department of Justice's budget. According to the Statement of the Department of Justice Inspector General before Congress on March 21, 2017, "Examining Systemic Management and Fiscal Challenges within the Department of Justice," one of the top challenges facing the Department in 2017 is "managing an overcrowded federal prison system in an era of limited budgets and continuing security concerns." Specifically:

While the inmate population has dropped 3 years in a row, falling to 192,170 at the end of FY 2016, overcrowding remains a challenge. At the end of FY 2016, BOP's institutions remained 16 percent over rated capacity, and high security institutions were 31 percent over rated capacity. The BOP currently has the largest budget of any Department component other than the FBI, accounting for more than 25 percent of the Department's discretionary budget in FY 2016. Department spending on the federal prison system impacts its ability to fund other important Department operations, such as its critical law enforcement and national security missions. As such, it is imperative that the Department manage the prison system in the most cost-efficient manner possible.¹

The First Step Act will give the Department of Justice and Bureau of Prisons new tools to more effectively manage the prison population, make informed corrections and custody decisions and reduce risk and recidivism, which will increase public safety and security, including:

- Placing a new focus on rehabilitation and correction and establishing dynamic risk and needs assessment as the cornerstone of more effective recidivism reduction programming, and a more efficient federal prison system.
- The bill will incentivize prisoners to not only participate in programs and jobs, but to actually reduce their risk of recidivism. In fact, it will effectively transform the federal prison system from risk management to risk reduction.

Its dynamic risk reassessment provision is vital. We need to identify risk factors and indicators of real change in thinking and behavior, make prisoners demonstrate such change, and measure it over time with a standard, objective instrument as they complete their programs and hold prison jobs.

This will be a major advancement for the federal system. Every custody and eventual release decision will be informed by these risk reassessments. For the first time, we will know which prisoners have reduced their risk of recidivism, which have maintained a low risk of recidivism, and which have increased their risk. Higher-risk prisoners will have to demonstrate substantial risk reduction to progress down into lower risk categories and become eligible to utilize their earned time credits, and lower-risk prisoners will be eligible to serve the last quarter or so of their sentences in home confinement, which will produce significant savings. This is remarkable as the current cost of post-conviction supervision is \$4,392 per year, as opposed to \$34,770 per year for imprisonment, and \$29,280 for residential reentry centers. This is a much more cost-effective way to supervise lower-risk offenders.

Further, S. 3649, the revised First Step Act of 2018, will improve four sentencing policies that produce unintended consequences and create imbalance in the scales of justice. These sentencing reforms are the result of a very thoughtful analysis of these deficiencies that was informed by former Attorneys General and former U.S. Attorneys and Assistant U.S. Attorneys. It makes modest, reasonable additional changes, including:

- While preserving nearly all mandatory minimums including the most often used 5 and 10-year mandatory minimum sentences for drug offenders, it makes two modest changes to the 841/851 enhancement mandatory minimums from Life to 25 years and 20 years to 15 years.

¹

<https://judiciary.house.gov/wp-content/uploads/2017/03/Horowitz-Testimony-Updated.pdf>

- It preserves the stacking of firearms convictions and punishments under 924(c) but avoids the Weldon Angelos-type “outlier” problems that caused absurd results and unintended consequences.
- It slightly expands the ability to use the Safety Valve for defendants with little or no criminal history and requires cooperation in exchange for a modest two level reduction under the sentencing guidelines.

Finally, the Senate bill includes a handful of new provisions that were added specifically to address the concerns of law enforcement organizations, including:

- New exclusions from eligibility for time credits for:
 - Heroin and fentanyl traffickers;
 - Offenders who used or carried a gun during and in relation to any crime of violence or drug trafficking crime; and
 - Offenders convicted of crimes involving child pornography.
- A clarification that deportable aliens are ineligible to apply time credits for transfers into prerelease custody.

In conclusion, S. 3649 will free up resources for federal law enforcement efforts to identify, interdict, disrupt, and dismantle transnational criminal organizations, and to focus on the highest levels of violent crime.

Perhaps the most promising aspect of this legislation is that the underlying, evidence-based reform practices have already been proven successful in states such as Texas, Georgia, and South Carolina. Texas spent \$240 million on similar reforms in 2007 and has since closed eight prisons. This has resulted in savings of more than \$4 billion. At the same time, crime rates fell across the state through at least 2014, when crime was at its lowest level since 1968.

We urge Congress to pass this legislation during this lame-duck session because it is good for federal law enforcement and public safety, and we hope to continue to serve as resources in this process, so we can all—current and former servants of the law—do our part to ensure that justice is done.

Thank you for your consideration.

Respectfully yours,

Michael B. Mukasey
 Former Attorney General of the United States
 Former United States District Judge, Southern District of New York
 Former Assistant United States Attorney, Southern District of New York

Alberto R. Gonzales
 Former Attorney General of the United States
 Former White House Counsel
 Former Associate Justice of the Supreme Court of Texas

Michael Chertoff
Former Secretary of Homeland Security
Former United States Appellate Judge, Third Circuit Court of Appeals
Former Assistant Attorney General for the Criminal Division, U.S. Department of Justice

Samuel K. Skinner
Former Chief of Staff to the President of the United States
Former Secretary of Transportation
Former United States Attorney, Northern District of Illinois

Larry D. Thompson
Former Deputy Attorney General of the United States
Former Leader of the National Security Coordination Council, United States Department of Justice
Former Head the U.S. Government-wide Corporate Fraud Task Force
Former United States Attorney, Northern District of Georgia
Former Leader of Southeastern Organized Crime Drug Enforcement Task Force

Donald B. Ayer
Former Deputy Attorney General of the United States
Former Principal Deputy Solicitor General of the United States
Former United States Attorney, Eastern District of California
Former Assistant United States Attorney, Northern District of California

Carol Dinkins
Former Deputy Attorney General of the United States
Former Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice

Philip B. Heymann
Former Deputy Attorney General of the United States
Former Assistant Attorney General for the Criminal Division, United States Department of Justice

Charles B. Renfrew*
Former Deputy Attorney General of the United States
Former United States District Court Judge, Northern District of California

Louis J. Freeh
Former Director of the Federal Bureau of Investigation
Former United States District Judge, Southern District of New York
Former Assistant United States Attorney, Southern District of New York

B. Todd Jones
Former Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
Former United States Attorney, District of Minnesota
Former Chair of the Attorney General's Advisory Committee

Drew S. Days, III
Former Solicitor General of the United States
Former Assistant Attorney General for the Civil Rights Division, United States Department of Justice

Charles Fried
Former Solicitor General of the United States
Former Associate Justice of the Supreme Judicial Court of Massachusetts

Kenneth W. Starr
Former Solicitor General of the United States
Former United States Appellate Judge, District of Columbia Circuit
Former Counselor and Chief of Staff to the Attorney General of the United States

Francis Keating II
Former Associate Attorney General of the United States
Former United States Attorney, Northern District of Oklahoma

Stuart Gerson
Former Acting Attorney General of the United States
Former Assistant Attorney General for the Civil Division, United States Department of Justice
Former Assistant United States Attorney, District of Columbia

Peter Keisler
Former Acting Attorney General of the United States
Former Assistant Attorney General for the Civil Division, United States Department of Justice
Former Principal Deputy Associate Attorney General of the United States

Joe D. Whitley
Former Acting Associate Attorney General of the United States
Former United States Attorney, Northern District of Georgia
Former United States Attorney, Middle District of Georgia

Paul Cassell
Former United States District Judge, District of Utah
Former Associate Deputy Attorney General, United States Department of Justice
Former Assistant United States Attorney, District of Utah

Stanley F. Birch, Jr
Former United States Appellate Judge, Eleventh Circuit Court of Appeals

Nathaniel R. Jones
Former United States Appellate Judge, Sixth Circuit Court of Appeals
Former Assistant United States Attorney, Northern District of Ohio

Deanell Tacha ‘
Former United States Appellate Judge, Tenth Circuit Court of Appeals

James T. Giles
Former United States District Chief Judge, Eastern District of Pennsylvania

F.A. Little, Jr.
Former United States District Chief Judge, Western District of Louisiana

Joseph W. Morris
Former United States District Chief Judge, Eastern District of Oklahoma

Wayne Andersen
Former United States District Judge, Northern District of Illinois

Lourdes Baird
Former United States District Judge, Central District of California
Former United States Attorney, Central District of California

William G. Bassler
Former United States District Judge, District of New Jersey

Bruce D. Black
Former United States District Judge, District of New Mexico

Edward Cahn
Former United States District Judge, Eastern District of Pennsylvania

David H. Coar
Former United States District Judge, Northern District of Illinois

Richard Deane
Former United States District Judge, Northern District of Georgia
Former United States Attorney, Northern District of Georgia

William F. Downes
Former United States District Judge, District of Wyoming

Bruce W. Kauffman
Former United States District Judge, Eastern District of Pennsylvania
Former Associate Justice of the Supreme Court of Pennsylvania

Stephen G. Larson
Former United States District Judge, Central District of California
Former United States Magistrate Judge, Central District of California
Former Assistant United States Attorney, Central District of California

Frank H. McFadden
Former United States District Judge, Northern District of Alabama

Robert O'Connor, Jr.
Former United States District Judge, Southern District of Texas

Stephen M. Orlofsky
Former United States District Judge, District of New Jersey

Stephen C. Robinson

Former United States District Judge, Southern District of New York

Former United States Attorney, District of Connecticut

Former Principal Deputy General Counsel and Special Assistant to the Director of the Federal Bureau of Investigation

Former Assistant United States Attorney, Southern District of New York

Abraham Sofaer

Former United States District Judge, Southern District of New York

Herbert J. Stern

Former United States District Judge, District of New Jersey

Former United States Attorney, District of New Jersey

Alfred Wolin

Former United States District Judge, District of New Jersey

Donald Ziegler

Former United States District Judge, Western District of Pennsylvania

Brett L. Tolman

Former United States Attorney, District of Utah

Former Member, Attorney General's Advisory Committee

Former Assistant United States Attorney, District of Utah

Matthew D. Orwig

Former United States Attorney, Eastern District of Texas

Former Assistant United States Attorney, Eastern District of Texas

Bob Barr

Former Member of Congress (R-GA)

Former United States Attorney, Northern District of Georgia

Former Anti-Drug Coordinator for the United States Department of Justice, Southeastern United States

Mary Beth Buchanan

Former Director, Executive Office for United States Attorneys

Former United States Attorney, Western District of Pennsylvania

Former Chair, Attorney General's Advisory Committee

Former Assistant United States Attorney, Western District of Pennsylvania

Deborah Daniels

Former Assistant Attorney General for the Office of Justice Programs, United States Department of Justice

Former United States Attorney, Southern District of Indiana

Guy Lewis

Former Director, Executive Office of United States Attorneys
Former United States Attorney, Southern District of Florida
Former First Assistant United States Attorney, Southern District of Florida
Former Deputy Chief of Narcotics, Southern District of Florida
Former Assistant United States Attorney, Southern District of Florida

A. Brian Albritton

Former United States Attorney, Middle District of Florida

Kent B. Alexander

Former United States Attorney, Northern District of Georgia

Donald L. Beckner

Former United States Attorney, Middle District of Louisiana

James Brady

Former United States Attorney, Western District of Michigan

J.R. Brooks

Former United States Attorney, Northern District of Alabama

Kenyen Brown

Former United States Attorney, Southern District of Alabama

Wayne Budd

Former United States Attorney, District of Massachusetts

A. Bates Butler, III

Former United States Attorney, District of Arizona

J.A. "Tony" Canales

Former United States Attorney, Southern District of Texas

John E. Clark

Former United States Attorney, Western District of Texas

Robert J. Cleary

Former United States Attorney, District of New Jersey

Michael Cody

Former United States Attorney for the Western District of Tennessee
Former Attorney General of Tennessee

Kendall Coffey

Former United States Attorney, Southern District of Florida

Paul Coggins

Former United States Attorney for the Northern District of Texas

Mike Cotter
Former United States Attorney, District of Montana

D. Michael Crites
Former United States Attorney, Southern District of Ohio
Former Assistant United States Attorney, Southern District of Ohio

Richard Cullen
Former United States Attorney, Eastern District of Virginia
Former Member of the Attorney General's Advisory Committee
Former Attorney General of Virginia

William B. Cummings
Former United States Attorney, Eastern District of Virginia

Margaret Ellen Curran
Former United States Attorney, District of Rhode Island

Bart Daniel
Former United States Attorney, District of South Carolina

Donald J. DeGabielle, Jr.*
Former United States Attorney, Southern District of Texas
Former Assistant United States Attorney, Southern District of Texas
Former Special Agent, Federal Bureau of Investigation

Steven M. Dettelbach
Former United States Attorney, Northern District of Ohio

Michael H. Dettmer
Former United States Attorney, Western District of Michigan

W. Thomas Dillard
Former United States Attorney, Eastern District of Tennessee
Former United States Attorney, Northern District of Florida

Edward L. Dowd, Jr.
Former United States Attorney, Eastern District of Missouri

John S. Edwards
Former United States Attorney, Western District of Virginia

Troy A. Eid
Former United States Attorney, District of Colorado

Lawrence Finder
Former United States Attorney, Southern District of Texas

John P. Fishwick, Jr.
Former United States Attorney, Western District of Virginia

Robert B. Fiske, Jr.
Former United States Attorney, Southern District of New York

Terrance P. Flynn
Former United States Attorney, Western District of New York

Fred Foreman
Former United States Attorney, Northern District of Illinois

Barry R. Grissom
Former United States Attorney, District of Kansas

Rodger Heaton
Former United States Attorney, Central District of Illinois
Former Member of the Attorney General's Advisory Committee

Thomas B. Heffelfinger
Former United States Attorney, District of Minnesota

David Iglesias
Former United States Attorney, District of New Mexico

Scott Lassar
Former United States Attorney, Northern District of Illinois

William Leone
Former United States Attorney, District of Colorado

Steve Lewis
Former United States Attorney, Northern District of Oklahoma

Gregory G. Lockhart
Former United States Attorney, Southern District of Ohio

George H. Lowe
Former United States Attorney, Northern District of New York
Former Assistant United States Attorney, Northern District of New York

Salvatore R. Martoche
Former Associate Justice of the Supreme Court of New York Supreme Court
Former Assistant Secretary of the United States Department of the Treasury
Former Assistant Secretary of the United States Department of Labor
Former United States Attorney, Western District of New York

James McDevitt
Former United States Attorney, Eastern District of Washington

A. Melvin McDonald
Former United States Attorney, District of Arizona

John McKay
Former United States Attorney, Western District of Washington

Michael D. McKay
Former United States Attorney, Western District of Washington

Patrick McLaughlin
Former United States Attorney, Northern District of Ohio

Barbara L. McQuade
Former United States Attorney, Eastern District of Michigan
Former Vice Chair of the Attorney General's Advisory Committee
Former Assistant United States Attorney

Kenneth J. Mighell
Former United States Attorney, Northern District of Texas
Former Assistant United States Attorney, Northern District of Texas

Gregory Miller
Former United States Attorney, Northern District of Florida

Jan Paul Miller
Former United States Attorney, Central District of Illinois

Paul Murphy
Former United States Attorney, Southern District of Georgia

Patrick O'Toole
Former United States Attorney, Southern District of California

Richard J. Pocker
Former United States Attorney, District of Nevada
Former Assistant United States Attorney, District of Nevada

George W. Proctor
Former United States Attorney, Eastern District of Arkansas
Former Chair of the Attorney General's Advisory Committee
Former Federal Immigration Judge
Former Assistant United States Attorney, Territory of Guam and the Commonwealth of the Northern Mariana Islands

James Richmond
Former United States Attorney, Northern District of Indiana

Jose de Jesus Rivera
Former United States Attorney, District of Arizona

James A. Rolfe
Former United States Attorney, Northern District of Texas

Benito Romano
Former United States Attorney, Southern District of New York

Richard B. Roper
Former United States Attorney, Northern District of Texas
Former Assistant United States Attorney, Northern District of Texas

Richard Rossman
Former United States Attorney, Eastern District of Michigan

Joseph P. Russoniello
Former United States Attorney, Northern District of California
Former Member, Attorney General's Advisory Committee
Former Special Agent, Federal Bureau of Investigation

Kevin Ryan
Former United States Attorney, Northern District of California

Jack Selden
Former United States Attorney, Northern District of Alabama

William Shaheen
Former United States Attorney, District of New Hampshire

Ronald Sim
Former United States Attorney, Western District of Washington

Richard Stacy
Former United States Attorney, District of Wyoming
Former United States Administrative Law Judge

Donald K. Stern
Former United States Attorney, District of Massachusetts
Former Chair, Attorney General's Advisory Committee

Kevin W. Techau
Former United States Attorney, Northern District of Iowa

Lee Thompson
Former United States Attorney, District of Kansas

Stanley A. Twardy, Jr.
Former United States Attorney, District of Connecticut

Anton Valukas
Former United States Attorney, Northern District of Illinois
Former Assistant United States Attorney, Northern District of Illinois

Anna Wagoner
Former United States Attorney, Middle District of North Carolina

Atlee W. Wampler III
Former United States Attorney, Southern District of Florida

Dan K. Webb
Former United States Attorney, Northern District of Illinois

James J. West
Former United States Attorney, Middle District of Pennsylvania

Mary Jo White
Former United States Attorney, Southern District of New York

Joseph M. Whittle
Former United States Attorney, Western District of Kentucky
Former Chairman, Attorney General's Advisory Committee

William D. Wilmoth
Former United States Attorney, Northern District of West Virginia

Francis Wikstrom
Former United States Attorney, District of Utah
Former Assistant United States Attorney, District of Utah

Frank Maxwell Wood
Former United States Attorney, Middle District of Georgia

Edward M. Yarbrough
Former United States Attorney, Middle District of Tennessee

Michael R. Bromwich
Former Inspector General, United States Department of Justice
Former Associate Counsel, Office of Independent Counsel: Iran-Contra
Former Assistant United States Attorney, Southern District of New York

Viet D. Dinh
Former Assistant Attorney General for the Office of Legal Policy, United States Department of Justice

John Dunne
Former Assistant Attorney General for the Civil Rights Division, United States Department of Justice

William Bradford Reynolds
Former Assistant Attorney General for the Civil Rights Division, United States Department of Justice

John Shenefield
Former Assistant Attorney General for the Antitrust Division, United States Department of Justice

Evan Young
Former Counsel to the Attorney General of the United States

Irvin B. Nathan
Former Attorney General of the District of Columbia
Former General Counsel of the United States House of Representatives
Former Principal Associate Deputy Attorney General, United States Department of Justice
Former Deputy Assistant Attorney General for Enforcement in the Criminal Division, United States Department of Justice

Sam Alba
Former United States Magistrate Judge, District of Utah
Former First Assistant and Chief of the Criminal Division, United States Attorney's Office, District of Utah

Matthew R. Lewis
Former Senior Counsel to the Assistant Attorney General for the Criminal Division, United States Department of Justice

Cono R. Namorato
Former Deputy Assistant Attorney General for the Tax Division, United States Department of Justice

Steven P. Croley
Former General Counsel for the United States Department of Energy
Former Deputy White House Counsel
Former Special Assistant United States Attorney, Eastern District of Michigan

Andrew Bauer
Former Assistant United States Attorney, Southern District of New York

Eric Benson
Former Assistant United States Attorney, District of Utah

Matthew Biben
Former Assistant United States Attorney, Southern District of New York

Todd Blanche
Former Assistant United States Attorney, Southern District of New York

William Burck
Former Assistant United States Attorney, Southern District of New York

David Callaway
Former Assistant United States Attorney, Northern District of California

Kevin Andrew Chambers
Former Assistant United States Attorney, District of Columbia

Charles E. Clayman
Former Assistant United States Attorney, Eastern District of New York

Joel Cohen
Former Assistant United States Attorney, Eastern District of New York

Nathan Crane
Former Assistant United States Attorney, District of Nevada

Steven Froot
Former Assistant United States Attorney, Southern District of New York

Michael Hays
Former Assistant United States Attorney, District of Columbia

Jeffrey H. Knox
Former Assistant United States Attorney, Eastern District of New York
Former Chief, Department of Justice Criminal Fraud Section

Robert P. LaRusso
Former Assistant United States Attorney, Eastern District of New York

Josh Levine
Former Assistant United States Attorney, Southern District of New York

Lori Lightfoot
Former Assistant United States Attorney, Northern District of Illinois

James P. Loonam
Former Assistant United States Attorney, Eastern District of New York

Randy Luskey
Former Assistant United States Attorney, Northern District of California

Richard McKelvie
Former Assistant United States Attorney, District of Utah

Thomas J. Nolan
Former Assistant United States Attorney, Chief of Special Prosecutions, Central District of California

Brett Parkinson
Former Assistant United States Attorney, District of Utah

Jack W. Pirozzolo
Former First Assistant United States Attorney, District of Massachusetts

Mark Stein
Former Assistant United States Attorney, Southern District of New York

Robert W. Tarun
Former Assistant United States Attorney, Northern District of Illinois

Heather Dawn Thompson
Former Assistant United States Attorney, District of South Dakota

Mark Tuohy
Former Assistant United States Attorney, District of Columbia

F. Joseph Warin
Former Assistant United States Attorney, District of Columbia

Loren Washburn
Former Assistant United States Attorney, District of Utah

Catherine Amirfar
Former Counselor on International Law to the Legal Adviser, United States Department of State

Robert Steinbuch
Law Professor at University of Arkansas Law School
Former IRS Attorney

**Mr. Renfrew and Mr. DeGabrielle both agreed to sign this letter before they sadly passed away on December 14, 2017, and January 22, 2018.*