



July 23, 2024

Honorable Jim Jordan
Chairman, House Judiciary Committee
Washington, D.C. 20510

Honorable Jerrold Nadler
Ranking Member, House Judiciary Committee
Washington, D.C. 20510

Dear Chairman Jordan and Ranking Member Nadler:

The Founders of our great nation enshrined in the Sixth Amendment to the U.S. Constitution the right to a trial by jury. John Adams wrote that the jury trial is “the heart and lungs of liberty.”¹ Thomas Jefferson echoed a similar sentiment, penning “a trial by jury [is] the only anchor ever yet imagined by man, by which a government can be held to the principals of its constitution.”² However, despite being an enshrined and revered tenant of criminal law, the right to a jury trial has been largely abandoned.

Approximately 3% of criminal convictions in our country are the result of jury trials; 97% are plea bargains.³ To be sure, plea bargains are a helpful tool that prosecutors and defense attorneys alike use to expedite cases where a defendant chooses to admit and accept culpability. But this tool has completely overshadowed the jury trial and our criminal justice system. The Supreme Court has acknowledged as much, opining that our “criminal justice today is for the most part a system of pleas, not a system of trials.”⁴ For some, this may seem like the cost of doing business. But the heavy reliance on plea bargains has damaged the legitimacy of our criminal justice system and has led to overly long and disparate sentences for identical conduct, with sentences’ lengths being based solely on a case resolving through a trial or plea.

For instance, the accepted reliance of plea bargains places most of the power in the government’s hands, allowing prosecutors to use the threat of lengthy sentences to induce a defendant to waive other constitutional rights. Also, the prison sentences of defendants who are convicted at trial are frequently substantially longer than sentences received after accepting a plea offer,⁵ thereby imposing a coercive pressure for defendants to waive their right to trial. And, perhaps most

¹ John Adams, *The Revolutionary Writings of John Adams* 55 (C. Bradley Thompson ed., 2000).

² Thomas Jefferson, Letter to Thomas Paine (July 11, 1789), in *The Life and Selected Writings of Thomas Jefferson* (Adrienne Koch & William Peden, eds., 1998).

³ <https://www.nacdl.org/getattachment/95b7f0f5-90df-4f9f-9115-520b3f58036a/the-trial-penalty-the-sixth-amendment-right-to-trial-on-the-verge-of-extinction-and-how-to-save-it.pdf>

⁴ *Lafler v. Cooper*, 566 U.S. 156, 170 (2012).

⁵ *Brian D. Johnson*, *Trials and Tribulations: The Trial Tax and the Process of Punishment* (2019), <https://www.journals.uchicago.edu/doi/epdf/10.1086/701713>.

offensively, the coercive status quo of plea bargains has led innocent defendants to plead guilty because they fear the extreme sentence facing them if they are convicted at trial.⁶

The *Right to Trial Act* seeks to address some of these wrongs, giving federal judges more discretion to assess the plea bargain process and ensure that the most just outcome is achieved. Currently, federal judges are allowed to weigh certain aggravating and mitigating factors during sentencing. The *Right to Trial Act* adds two additional factors that a judge may consider when imposing a sentence: (1) the need to protect the constitutional right to trial, including if an increased sentence was threatened or imposed based on the defendant's decision to go to trial; and (2) if the imposition of the statutory mandatory minimum sentence would constitute a penalty for asserting the right to go to trial, a judge may consider a sentence below the statutory minimum.

This discrete solution enhances a judge's discretion to craft sentences that takes into account a defendant's choice to exercise his or her Sixth Amendment right. The narrow bill does not do away with mandatory minimum sentences or eliminate prosecutorial discretion. It does not require the judge to do anything, but merely expands the option for enhanced discretion. The *Right to Trial Act* is a scalpel, not a sledgehammer, in addressing the trial penalty issue.

The tremendous disparity in post-trial versus plea bargained sentences must be addressed. To allow for such a sentencing disparity is to remove legitimacy in our criminal system. And because Americans should not be punished for exercising their constitutional rights, Right On Crime is pleased to support the policies of the *Right to Trial Act*. I urge the immediate consideration of this important, bipartisan legislation.

Sincerely,

Brett Tolman
Executive Director
Right On Crime

⁶ Data from the National Registry of Exonerations shows that 18% of exonerees—people who have been found innocent and completely cleared of the crime they were once convicted of—pleaded guilty. See The National Registry of Exonerations, Browse Cases, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View=%7BF6AF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7%7D&FilterField1=Group&FilterValue1=P>.