

The Honorable Charles Grassley
Chairman
U.S. Senate
Committee on the Judiciary
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
U.S. Senate
Committee on the Judiciary
Washington, DC 20510

Re: Statement of Principles Necessary for Broad-Based Criminal Justice Reform

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of the xxxx undersigned organizations, representing faith leaders, criminal justice reform and civil and human rights advocates, we urge you to support and advance criminal justice legislative reforms aimed at meaningfully addressing the primary drivers of dangerous overcrowding, unsustainable costs, and unwarranted racial disparities in the federal prison system.

The U.S. Department of Justice continues to face unsustainable growth in the federal prison population and costs that consume an ever greater share of the Department's budget. The federal prison population has increased from approximately 25,000 in FY1980 to nearly 211,000 today.ⁱ The Bureau of Prisons' (BOP) budget has also doubled over the past decade, reaching its current level of \$7.2 billion in the President's FY16 budget request, approximately 25 percent of the Department of Justice's overall budget. Indeed, in 2014, the BOP's budget grew at almost twice the rate of the rest of the Department of Justice.ⁱⁱ Despite this growing budget, current BOP Director Charles Samuels has acknowledged that, under current conditions, the system is over-capacity and jeopardizing the safety of staff and prisoners.ⁱⁱⁱ

Several recent studies have concluded that mandatory minimum sentences, particularly for drug offenses, are the leading contributor to our burgeoning federal prison population. As a result, both the human and economic costs of mandatory minimum sentencing are great. In its 2011 report to Congress, the U.S. Sentencing Commission found that mandatory minimum sentences disproportionately impact communities of color^{iv} and that African Americans received relief from mandatory minimum sentences *least* often, compared with White, Hispanic, and Other Race offenders.^v

Last Congress, bipartisan legislation was introduced in both the House and Senate that aimed to achieve the goals of reducing excessive incarceration and racial disparities in the federal prison system. In the 114th Congress, we urge you to build on this bipartisan momentum by supporting criminal justice reforms that embrace the following principles:

- Restore proportionality to drug sentencing
- Promote and adequately fund recidivism reduction and reentry programming
- Make sentencing reductions retroactive

- Expand BOP's Compassionate Release Program
- Expand time credits for good behavior

We believe these principles will effectively address growing prison costs and populations while protecting public safety.

Restore proportionality to drug sentencing

Currently, almost half of the federal prison population is comprised of people convicted of drug offenses. The combination of large-scale drug prosecutions and mandatory sentencing result in excessive prison terms for far too many offenders that provide little public safety benefit, but come at great expense.

While drug trafficking is a serious problem, the lengthy mandatory minimum terms of five, 10, and 20 years or life in prison for these offenses often do not fit the crime. These mandatory sentences cost taxpayers billions of dollars, have filled federal prisons to at least 130 percent of their capacity, and put strain on funding for other DOJ priorities that protect the public. These problems cannot be adequately addressed without reforming excessive mandatory penalties, particularly for nonviolent drug offenses. Congress should also expand the federal safety valve in order for more people convicted of low-level drug offenses to qualify for sentences below the mandatory minimum.

Also under federal law if a person has two prior felony drug convictions, the 10-year mandatory minimum sentence can be converted to mandatory life.¹ Nearly two-thirds of prisoners serving LWOP for nonviolent offenses nationwide are in the federal system, and of these 96 percent are serving LWOP for drug crimes.² Congress should reduce the sentence for two prior drug convictions from the possibility of life without parole.

Promote and adequately fund recidivism reduction and re-entry programming

Similarly, we note the importance of supporting initiatives that aim to assist in effective recidivism reduction and re-entry programming as well as provide opportunities for early release for individuals in federal prison. Ninety-five percent of incarcerated individuals will return to our communities, and in the interest of public safety, we must ensure that they are on a path for successful reintegration back into society while in prison and upon their release. It is a smart investment to implement expanded vital programming, given that evidence-based programs, job-training, and education can reduce recidivism and lead to better outcomes for individuals returning to their families and neighborhoods.

A criminal record can prevent individuals from obtaining employment, housing, and education. Moreover, the felony drug ban imposes a lifetime restriction on welfare and food

¹ 21 U.S.C. § 841 (2014); 21 U.S.C. § 851 (2014) (outlining the procedural requirements to establish prior convictions).

² American Civil Liberties Union, *A Living Death Life without Parole for Nonviolent Offenses* (November 2013) <https://www.acLU.org/living-death-sentenced-die-behind-bars-what>

stamp benefits for anyone convicted of a state or federal drug felony, subjecting an estimated 180,000 women in the 12 most impacted states to a lifetime ban on welfare benefits. Such collateral consequences are not only vindictive but also counterproductive to building safe and healthy communities. In order to help people reentering our communities to be successful, there should be an opportunity to seal past criminal records and reinstate benefits for individuals excluded because of a criminal record.

Make sentencing reductions retroactive

If Congress decides to reduce sentencing schemes and a person is serving a sentence under the old law that would no longer be available under the new law, then the person should benefit from the reduction. Specifically, Congress should pass legislation to extend the application of the Fair Sentencing Act of 2010 to people whose conduct was committed prior to enactment of the new law.

Expand BOP's Compassionate Release Program

Under the Sentencing Reform Act of 1984, Congress authorized the Federal Bureau of Prisons (BOP) to request that a federal judge reduce an inmate's sentence for "extraordinary and compelling" circumstances - also known as compassionate release. The request can be based on either medical or non-medical conditions that the judge could not reasonably have foreseen at the time of sentencing. In 2013, the Bureau of Prisons (BOP) expanded the medical criteria that can be considered for inmates seeking compassionate release. In addition, the Attorney General announced revised criteria for other categories of inmates seeking reduced sentences including elderly prisoners and certain inmates who are the only possible caregiver for their dependents. Congress could reduce the BOP population and the cost associated with housing elderly and ill prisoners by amending federal law to include these administrative changes.

Expand time credits for good behavior

The federal prison system's method of calculating earned credit reduces a prisoner's sentence to a maximum credit of 47 days per year - below the 54 days intended. This decision results in unnecessary increases in prison sentences at significant cost. By clarifying the statutory language, Congress could save an estimated \$41 million in the first year alone. Congress should also implement a proposal creating a new time credit that can be earned for successful participation in recidivism-reduction programs, such as education or occupational programming.

We believe the principles outlined above will help improve the effectiveness and fairness of our federal justice system. Our continued progress toward meeting the economic and societal challenges posed by the current prison system and establishing a smarter, fairer criminal justice system depends on a broad-based approach to reform, grounded in these principles. If you have any questions or concerns, please feel free to contact Jesselyn McCurdy, Senior Legislative Counsel, The ACLU at jmccurdy@aclu.org or 202-544-1681 or Sakira Cook, Counsel, The Leadership Conference on Civil and Human Rights at cook@civilrights.org or 202-263-2894.

Sincerely,

ⁱ Federal Bureau of Prisons, Statistics: Total Federal Inmates, (Feb. 5, 2015), http://www.bop.gov/about/statistics/population_statistics.jsp.

ⁱⁱ Michael E. Horowitz (Inspector General, Bureau of Prisons), "Top Management and Performance Challenges Facing the Department of Justice 2014." (Nov. 2014).

ⁱⁱⁱ Charles E. Samuels, Jr. (Director, Federal Bureau of Prisons). "Testimony on Oversight of the Federal Prison System before the Judiciary Committee of the U.S. House of Representatives Subcommittee on Crime." (September 19, 2013).

^{iv} USSC. Report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*, October 2011. Retrieved September 17, 2013, available at

http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_PDF/Executive_Summary.pdf. The report determined that Hispanic offenders accounted for 38.3 percent of those convicted with a mandatory minimum, Black offenders 31.5 percent, White offenders 27.4 percent, and "other race" offenders 2.7 percent.

^v *Id.*