

May 14, 2014

RE: *Smarter Sentencing Act of 2014 (S. 1410)*

Dear Senator:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), I write to urge you to support the Smarter Sentencing Act of 2014 (S. 1410) (“SSA”). Since 1980, the United States’s federal prison population has grown by a staggering 790%.<sup>1</sup> Meanwhile, mandatory minimum sentences – especially for drug offenses – have produced stark racial disparities, devastated communities, and incurred enormous financial costs, without any measurable corresponding public safety benefit. Given this enormously troubling reality, the SSA takes a desperately needed – albeit incremental – first step toward reversing these disturbing trends.

LDF is a non-profit civil rights law firm founded in 1940 by the late United States Supreme Court Justice, Thurgood Marshall. Since its inception, LDF has fought to make this country’s constitutional and statutory guarantees of equal treatment and civil rights a reality for all Americans. Recognized as the country’s first and foremost civil and human rights law firm, LDF has been a pioneer in advocacy for racial justice in the criminal justice system. In keeping with this tradition, LDF has long advocated for the elimination of the 100:1 federal crack cocaine/powder cocaine sentencing disparity and argued in favor of the retroactive application of the Fair Sentencing Act of 2010 (“FSA”)<sup>2</sup> – which reduced the federal crack/powder sentencing disparity to 18:1 – to prisoners who are currently serving sentences based on the 100:1 ratio.<sup>3</sup>

Federal sentencing policy, including the mandatory minimums connected to drug sentencing, has created a social, political, and economic crisis that demands significant, meaningful, and immediate attention. A cursory examination of the data is instructive. According to the bipartisan United States Sentencing Commission, almost two-thirds

---

<sup>1</sup> Nathan James, *The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options*, Cong. Res. Service, Apr. 15, 2014, at 51, available at <http://www.fas.org/sgp/crs/misc/R42937.pdf>.

<sup>2</sup> The reduction of the disparity to 18:1 in the FSA was a welcome reform, but because it leaves in place a wholly unjustifiable disparity, LDF opposed the FSA.

<sup>3</sup> LDF submitted an amicus brief and offered oral argument in *United States v. Blewett*, No. 12-5226 and 12-5582, 2013 WL 6231727 (6th Cir. 2014), which addressed the retroactivity of the FSA.

(66.1%) of the nearly 24,000 drug offenders arrested in 2010 were convicted of an offense that carried a mandatory minimum sentence. Almost half faced ten-year mandatory minimum penalties.<sup>4</sup> Some 75% of the defendants convicted of a drug offense associated with a mandatory minimum were African-American or Hispanic,<sup>5</sup> despite the fact that these groups comprise approximately 13.1% and 16.7% of the United States population respectively. Notably, rates of illicit drug use are roughly similar across racial lines.<sup>6</sup> Yet, as Judge Patti B. Saris, Chair of the United States Sentencing Commission, testified before the Senate Judiciary Committee in September 2013, African Americans and Hispanics “constitut[e] the large majority of offenders subject to mandatory minimum penalties.”<sup>7</sup>

Beyond the data, the unfair application of mandatory minimums is especially pernicious given the divergent charging practices employed by the nation’s federal prosecutors. For example, if requested by a prosecutor, a prior drug conviction can be used to double the applicable mandatory minimum sentence. The Sentencing Commission has found that federal prosecutors’ offices have dramatically different policies with respect to seeking such exponentially increased sentences, leading to irrationally different outcomes for similarly situated offenders nationwide.<sup>8</sup> Moreover, because mandatory minimum sentences are triggered by the quantity of drugs involved in an offense rather than the actual role played by the offender, low level street dealers can – and do – receive the same, if not greater, mandatory penalties as high-level drug traffickers.<sup>9</sup>

The SSA is a necessary legislative response to the inconsistent and unfair application of mandatory minimum and drug sentences. This legislation would:

- *Give full effect to the FSA:* The bipartisan FSA was enacted in 2010 to reduce the unjust, racially discriminatory, and penologically indefensible 100:1 sentencing disparity between crack and powder cocaine offenses. The SSA allows defendants sentenced under the prior discriminatory regime to petition courts for sentencing reductions that are consistent with current law. Retroactive application of the FSA would help remedy the racial disparities produced by the 100:1 regime. Retroactivity would make

---

<sup>4</sup> *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, U.S. Sentencing Comm’n, 153 (Oct. 2011), [http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter\\_08.pdf](http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_08.pdf).

<sup>5</sup> *Id.* at 153-54 tbl.8-1.

<sup>6</sup> Substance Abuse and Mental Health Services Administration, Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings, NSDUH Series H-46, HHS Publication No. (SMA) 13-4795. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013 at Figure 2.12

<sup>7</sup> *Hearing on Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences Before the S. Comm. on the Judiciary* 113th Cong. 3 (2013) (statement of Patti B. Saris, J., Chair, U.S. Sentencing Comm’n), [http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/submissions/20130918\\_SJC\\_Mandatory\\_Minimums.pdf](http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/submissions/20130918_SJC_Mandatory_Minimums.pdf).

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 5.

8,829 offenders, nearly 90% of whom are African-American, eligible for a sentence reduction.

- *Expand the existing federal “safety valve”:* The “safety valve” is one of the only mechanisms available to federal judges to sentence below the mandatory minimum in a narrow range of cases. The SSA would modestly broaden the criteria for “safety valve” eligibility, providing judges with appropriate discretion when sentencing non-violent drug offenders with limited criminal history. This change is supported by nearly 70% of federal district court judges.<sup>10</sup>
- *Reduce mandatory minimum sentences for drug offenses:* The SSA lowers mandatory minimum sentences for certain drug offenses by one-half. These reductions would help alleviate the imposition of unduly harsh sentences and check the exponential growth of federal prison populations.

Another critical benefit of enacting the SSA is the significant fiscal cost savings. The Urban Institute’s conservative estimate is that, over 10 years, the reduction in mandatory minimums alone would account for \$2.5 billion in savings. Meanwhile, FSA retroactivity and the expanded safety valve would produce \$229 million and \$544 million in savings, respectively.<sup>11</sup> The SSA would achieve such fiscal gains without compromising public safety. The Sentencing Commission’s 2011 study of recent reductions in sentences for drug offenders showed that there was no statistically significant difference in recidivism rates between those offenders released pursuant to a reduction in sentence and those who served their full sentence.<sup>12</sup>

Full, retroactive effect of the FSA will ameliorate the stark racial disparities that were the impetus for the passage of the FSA in 2010. And limited expansion of the “safety valve” will afford federal judges the ability to craft appropriate sentences for those low level drug offenders who are least deserving of the most severe punishment. Finally, while LDF is firmly opposed to any mandatory minimum sentence,<sup>13</sup> the SSA’s reductions in existing mandatory minimum sentences would help to reduce the severe disparities resulting from excessive, one-size-fits-all, sentencing practices.

---

<sup>10</sup> *Results of Survey of United States District Judges January 2010 through March 2010*, U.S. Sentencing Comm’n, 8 Table 2 (June 2010), [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608\\_Judge\\_Survey.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608_Judge_Survey.pdf).

<sup>11</sup> Julie Samuels et al., *Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System*, Urban Inst., 2-3 (Nov. 2013), <http://www.urban.org/UploadedPDF/412932-stemming-the-tide.pdf>.

<sup>12</sup> See *supra* note 6, at 6-7.

<sup>13</sup> LDF’s opposition to all mandatory minimum sentences requires us to voice our objections to the SSA’s newly proposed mandatory minimum sentences for sexual assault offenses, domestic violence offenses, and offenses related to the provision of arms to terrorists. The current range of punishment for each of these offenses is sufficiently severe, such that a new mandatory minimum sentence would be superfluous.

In light of the foregoing, we urge you to support the Smarter Sentencing Act. Reducing our prison population, ending racial disparities in sentencing, and eliminating excessive and harsh sentencing practices are critical steps on the path toward fairness in the administration of justice for all Americans, and in keeping with the ideals underlying our nation's criminal justice system.

Sincerely,

A handwritten signature in black ink, reading "Sherrilyn A. Ifill". The signature is fluid and cursive, with the first name "Sherrilyn" being more prominent and the last name "Ifill" following in a similar style.

Sherrilyn A. Ifill  
*President and Director-Counsel*