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February 14, 2018

The Honorable Charles Grassley
Chairman
Committee on the Judiciary
United States Senate

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

Support the Sentencing Reform and Corrections Act of 2017 (S. 1917)

Dear Chairman Grassley and Ranking Member Feinstein,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States, we wish to express our support for the Sentencing Reform and Corrections Act of 2017 (S. 1917). Our country incarcerates more people than any other country in the world and has the second highest percentage of its population currently in prison.¹ This practice is not only unjust, but destroys lives and communities and costs taxpayers exorbitant amounts of money. This legislation is an important step toward restoring our nation's commitment to justice and fairness.

More than 30 years ago, the United States started the "war on drugs" and adopted "tough on crime" policies such as mandatory minimum sentencing laws. As a result, prison populations skyrocketed. In fact, over the last two decades alone, the federal prison population increased by almost 790 percent.² For each year between 1980 and 2013, federal prisons added almost 6,000 more inmates than the year prior.³ Currently, the Federal Bureau of Prisons (BOP) has custody of more than 185,000 people.⁴ The agency's facilities are operating at 13 percent over capacity.⁵ The president's FY 2019 budget request for BOP is \$7.1 billion, which would account for more than 25 percent of the Department of Justice's (DOJ) entire budget.⁶

Several research reports have suggested that mandatory minimum sentences are a major contributor to the growing federal prison population.⁷ Research by the Urban Institute found that increases in expected time served, specifically for drug offenses, contributed to half of the prison population growth between 1998 and 2010.⁸ A 2013 report by the Congressional Research Service (CRS) concluded that the increase in the amount of time people were expected to serve was the result of people receiving longer sentences and being required to serve approximately 85 percent of their sentences after Congress eliminated parole for federal prisoners.⁹ The increased time served by people convicted of drug offenses accounted for almost one-third of the total federal prison population growth between 1998 and 2010.¹⁰ Currently, people convicted of drug offenses make up 46.3 percent of the BOP population.¹¹ These statistics illustrate the need to move away from the "tough on crime" laws and focus more on "smart on crime" policies.



In addition, mandatory minimums prevent judges from taking into account an individual's background and the circumstances of his/her offenses when determining his/her sentence. Moreover, they have a disproportionate impact on African Americans and Latinos. Today, BOP reports that 37.9 percent of its current prison population is African-American and 33.1 percent is Latino even though both groups represent only about one third of the nation's population combined.¹² Much of this is a result of enhanced penalties for drug offenses.¹³ In its recent report, the U.S. Sentencing Commission conducted a review of mandatory minimum sentencing policies in which it found that Hispanic people accounted for 40.4 percent of those convicted with an offense carrying a drug mandatory minimum, Black people 29.7 percent, White people 27.2 percent, and people who identify as "other race" 2.7 percent.¹⁴ The study also showed that Black people received relief from mandatory minimum sentences *least* often, compared with Whites and Hispanic people, and people who identify as "other race."¹⁵ Finally, it found racial disparities in the percentage of all people convicted of a federal offense who were subject to a mandatory minimum penalty sentencing; 73.2 percent of Black people convicted of a federal offense received a mandatory minimum sentence, followed by 70 percent of Whites and 46.9 percent of Hispanics.¹⁶

Mandatory minimum sentencing reform is crucial to slowing the overwhelming growth of our prison population and addressing its disproportionate impact on minority communities. While the Sentencing Reform and Corrections Act does not reduce or eliminate mandatory minimums, the bill will make several positive reforms with regards to mandatory minimum sentences. It will reduce enhanced penalties that apply to people with prior drug convictions, and eliminate the "three-strikes" mandatory life provisions. It will expand exceptions to the application of mandatory minimums (called the "safety valve") to people with more extensive criminal histories. It will also create a second safety valve that gives judges discretion to sentence certain people with low-level offenses below the 10-year mandatory minimum. In all, these measures will ensure that strict mandatory minimums are not imposed on individuals who have little or no criminal history.

While the bill is an important step toward reforming mandatory minimums, we have some concerns because it includes several new mandatory minimums. For example, the bill creates new mandatory minimums for domestic violence and creates a new mandatory minimum for the export of controlled arms. These provisions are contrary to our longstanding opposition to mandatory minimum sentencing. Nevertheless, we acknowledge that the overall effect of passing this bill will be to protect individuals currently in or entering the criminal justice system from excessive sentences.

The bill will make other changes in the justice system. It will make the Fair Sentencing Act of 2010 retroactive and apply many of the sentencing provisions in the bill retroactively. As a result, individuals currently serving excessively long sentences will be able to petition a judge for a reduction in their sentence. Finally, the bill attempts to assist incarcerated persons as they prepare for life after release by expanding prerelease and re-entry programs and creating an earned time credit system for early release. While we support the spirit of these reforms, we have several concerns with provisions in the bill that prohibit individuals with certain convictions from accessing earned time credits. Additionally, we note that the expansion of pre-release and re-entry programs will require considerable investment from Congress through appropriations and that without such investment, we fear these reforms will not be successful in reducing recidivism and helping incarcerated individuals successfully reintegrate into



society. We therefore encourage the bill sponsors to consider proposals to expand good time and compassionate release as the bill moves through the legislative process.

Carefully negotiated over many months with the input of community stakeholders, the Sentencing Reform and Corrections Act has enjoyed wide bipartisan support in Congress, as well as the support of civil rights advocates, fiscal conservatives, and religious groups. This broad coalition recognizes that, even though S. 1917 involves a great deal of compromise, to fully address the problems facing the criminal justice system today we need to both reduce recidivism through back end reforms *and* dismantle the front-end drivers of incarceration. Indeed, passage of meaningful sentencing reform would reduce unnecessarily lengthy prison stays, enabling people to more smoothly and easily rebuild their lives by returning them to their homes, their careers, and their families as soon as possible. Only front-end reforms have the power to significantly stem the tide of incarceration, reduce the exorbitant cost of the prison system, and give redress to those inside who are serving unreasonably long sentences for nonviolent offenses. As such, any approach that does not include sentencing reform will be insufficient to meet the challenges we face. The nation can no longer afford to ignore the societal and budgetary costs of our growing federal prison population. Passage of the Sentencing Reform and Corrections Act would be one important step in the right direction.

We commend the chairman, ranking member, and the other co-sponsors for their leadership in addressing mass incarceration. We urge the other members of the Senate Judiciary Committee to support this bill and join its sponsors in making the first step towards improving our justice system. If you have any questions, please feel free to contact Sakira Cook, Senior Counsel, at cook@civilrights.org or (202) 263-2894. Thank you for your consideration of this important legislation.

Sincerely,

Vanita Gupta
President & CEO

¹ See Walmsley, Roy. "World Prison Population List." *World Prison Brief*. Feb. 2, 2016. Pg. 2. http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf.

² See James, Nathan. "The Federal Prison Population Buildup: Options for Congress." *Congressional Research Service*. April 15, 2014. Pg. 50. https://digital.library.unt.edu/ark:/67531/metadc287931/m1/1/high_res_d/R42937_2014Apr15.pdf.

³ See James, Nathan. "The Federal Prison Population Buildup: Options for Congress." *Congressional Research Service*. May 20, 2016. Pg. 1. <http://www.fas.org/sgp/crs/misc/R42937.pdf>.

⁴ See "Statistics." *Federal Bureau of Prisons*. Accessed October 25, 2017. https://web.archive.org/web/20171025151628/https://www.bop.gov/about/statistics/population_statistics.jsp.

⁵ See "Program Fact Sheet." *Federal Bureau of Prisons*. September 2017. https://www.bop.gov/about/statistics/docs/program_fact_sheet_20170920.pdf.

⁶ See “An American Budget – President’s Budget FY 2019.” *Office of Management and Budget*. 2018. P. 73.
<https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf>.

⁷ See LaVigne, Nancy & Samuels, Julie. “The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions” *Urban Institute*. December 11, 2012. Pgs. 1-2.
<https://www.urban.org/research/publication/growth-increasing-cost-federal-prison-system-drivers-and-potential-solutions>.

⁸ *Id.*

⁹ See James, Nathan. “The Federal Prison Population Buildup: Options for Congress.” *Congressional Research Service*. May 20, 2016. Pg. 13. <https://fas.org/sgp/crs/misc/R42937.pdf>.

¹⁰ See Mallik-Kane, Kamala & Parthasarathy, Barbara & Adams, William. “Examining Growth in the Federal Prison Population, 1998 to 2010.” *Urban Institute*. 2012. Pg. 3.
<https://www.urban.org/sites/default/files/publication/26311/412720-Examining-Growth-in-the-Federal-Prison-Population--to--.PDF>.

¹¹ See “Offenses.” *Federal Bureau of Prisons*. Last Updated September 23, 2017.
https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp.

¹² See “Inmate Statistics.” *Federal Bureau of Prisons*. Last Updated September 23, 2017.
https://www.bop.gov/about/statistics/statistics_inmate_race.jsp.

¹³ See “Offenses.” *Federal Bureau of Prisons*. Last Updated September 23, 2017.
https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp.

¹⁴ See “An Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System.” *United States Sentencing Commission*. Pg. 36. July 2017.
https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170711_Mand-Min.pdf.

¹⁵ *Id* at 7.

¹⁶ *Id* at 40.