



Officers

Chair

Judith L. Lichtman
National Partnership for
Women & Families

Vice Chairs

Margaret Huang
Southern Poverty Law Center
Derrick Johnson
NAACP

Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund

Secretary

Fatima Goss Graves
National Women's Law Center

Treasurer

Lee A. Saunders
American Federation of State,
County and Municipal Employees

Board of Directors

Abed Ayoub
American-Arab
Anti-Discrimination Committee

Gloria L. Blackwell

AAUW

Shawn Fain
International Union, UAW

Jocelyn Frye
National Partnership for
Women & Families

Jonathan Greenblatt
Anti-Defamation League

Damon Hewitt
Lawyers' Committee for
Civil Rights Under Law

David H. Inoue
Japanese American Citizens League

Marc Morial
National Urban League

Janet Murguía

UnidosUS
Svante Myrick

People For the American Way

Janai Nelson
NAACP Legal Defense and
Educational Fund, Inc.

Christian F. Nunes
National Organization for Women

Rabbi Jonah Pesner
Religious Action Center
of Reform Judaism

Rebecca Pringle
National Education Association

Lisa Rice
National Fair Housing Alliance

Kelley Robinson
Human Rights Campaign

Anthony Romero
American Civil Liberties Union

Liz Shuler
AFL-CIO

Celina Stewart
League of Women Voters of
the United States

Maria Town
American Association of
People with Disabilities

April Verrett
Service Employees International Union

Randi Weingarten
American Federation of Teachers

Larry Wright, Jr.
National Congress of American Indians

John C. Yang
Asian Americans Advancing Justice |
AAJC

President and CEO
Maya Wiley

March 3, 2025

The Honorable Carlton Reeves, Chair
United States Sentencing Commission
One Columbus Circle NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

RE: Request for Public Comment on Proposed 2025 Amendments to Sentencing Guidelines (90 FR 8968)

Dear Judge Reeves,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the civil and human rights of all persons in the United States, we are pleased to submit the following comments and suggestions regarding the proposed amendments to the federal sentencing guidelines on supervision and drug offenses. We applaud the Sentencing Commission for promulgating these amendments, and we urge you to finalize them in a manner that reverses ineffective investments in overcriminalization, overincarceration, and excessive sentencing practices.¹

The criminal legal system is rife with racial disparities, and the commission should look to reducing these disparities in its work.

Currently, the United States leads the world in imprisoning or supervising nearly 5.5 million people, imprisoning people at a higher rate than any other nation. As of 2022, 700 of every 100,000 adults in the United States were behind bars. The racial inequities rooted in slavery and discrimination that permeate every aspect of our lives are likewise present in our criminal-legal system. People of color are disproportionately affected by policies in every aspect of the criminal-legal system. In state prisons, Black people are five times more likely to be incarcerated than White people.² Additionally, Black men receive sentences 13.4 percent longer, and Hispanic men receive sentences 11.2 percent longer, than White men. Similarly, Hispanic women receive sentences 27.8 percent longer than White women.

¹ For more information on our conceptualization of a more just and fair system, see "Vision for Justice." *The Leadership Conference on Civil and Human Rights*. <https://www.visionforjustice.org/>.

² Nellis, Ashley. "The Color of Justice: Racial and Ethnic Disparity in State Prisons *The Sentencing Project*, Oct. 13 2021. <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

March 3, 2025
Page 2 of 6

Overall, people of color make up 39 percent of the U.S. population,³ but are greatly overrepresented in prisons, making up nearly 70 percent of the prison population.⁴ It is clear that current sentencing practices perpetuate racial and ethnic disparities that take place at the front end of the criminal legal system. We urge the commission to make reducing these injustices one of their main goals in promulgating these amendments.

The primary purpose of supervised release should be to ensure a successful reentry into the community, without acting as a restrictive, coercive tool. The proposed amendments would greatly improve the federal system.

As of June 30, 2024, there were nearly 110,000 individuals on federal supervised release.⁵ Supervised release is served after the completion of a sentence of incarceration, in effect lengthening an individual's sentence. Per the Supreme Court, postrelease supervision is meant to be "for those, and only those, who [need] it."⁶ Yet, in practice, courts impose supervision for nearly all cases, even when not required by statute, and without a consideration of actual need.⁷ The conditions of supervised release can be severely restrictive due to their onerous requirements, including requirements for meeting with probation officers, detailing comings and goings and other life changes, paying steep fines and fees, and others.⁸ These restrictions can lead to revocations that reincarcerate individuals who had already completed their sentences of incarceration. In 2021, for example, the government revoked supervision in nearly a third of cases.⁹ These revocations can be due to new criminal conduct or to violations of terms of release. In effect, supervised release can be a funnel back into incarceration, preventing individuals from fully reintegrating into the community.

We appreciate the commission's proposed changes to the supervision guidelines, including the removal of the requirement to impose a term of supervised release when a sentence of imprisonment more than one year is imposed and the inclusion of individualized assessments for term and condition imposition. We urge the commission to go further in its proposed policy statement at §5D1.4 on "Modification, Early

³ Jones, Nicholas, et al., "2020 Census Illuminates Racial and Ethnic Composition of the Country." *United States Census Bureau*. Aug. 12, 2021. <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html>.

⁴ Nellis, Ashley. "Mass Incarceration Trends." *The Sentencing Project*. May 21, 2024. <https://www.sentencingproject.org/reports/mass-incarceration-trends/>.

⁵ Table E-2- Federal Probation System Statistical Tables for the Federal Judiciary. *Administrative Office of the United States Courts, Statistics and Reports*. <https://www.uscourts.gov/data-news/data-tables/2024/06/30/statistical-tables-federal-judiciary/e-2>.

⁶ *Johnson v U.S.*, 529 U.S. 694, 709 (2000).

⁷ U.S. Sentencing Guidelines Manual § 5D1.1 (2024) currently requires the imposition of a term of supervised release when a sentence of imprisonment of more than one year is imposed.

⁸ "Revoked: How Probation and Parole Feed Mass Incarceration in the United States." *American Civil Liberties Union & Human Rights Watch*. July 31, 2020. <https://www.aclu.org/publications/aclu-and-hrw-report-revoked-how-probation-and-parole-feed-mass-incarceration-united-states>.

⁹ "Just the Facts: Revocations for Failure to Comply with Supervision Conditions and Sentencing Outcomes." *Administrative Office of the United States Courts*. June 14, 2022. <https://www.uscourts.gov/data-news/judiciary-news/2022/06/14/just-facts-revocations-failure-comply-supervision-conditions-and-sentencing-outcomes>.

March 3, 2025
Page 3 of 6

Termination, and Extension of Supervised Release.”¹⁰ This statement should state explicitly that early termination is appropriate any time it is not serving the purposes for which it was imposed. As it quotes from *U.S. v. Johnson* within the proposed amendments, the commission, with its proposed changes, is clearly looking to ensure that its guidelines regarding supervised release “fulfill [] rehabilitative ends, distinct from those of incarceration.”¹¹ Yet any time spent on supervised release, after completion of a prison sentence, risks reincarceration, with fewer rights than afforded to defendants in traditional criminal prosecutions.¹² Individualized assessments of if and how to impose a term of supervised release, together with such assessments on length *and* a preference for or presumption of early termination once those rehabilitative ends have been met, will aid in lessening the revolving door nature of supervised release.

The Commission should not repeat the mistakes of the past in implementing the proposed drug offense amendments

The drug overdose crisis is a serious issue, and it is unfortunately one to which policymakers have responded not with a serious investment in public health and in communities, but with overpolicing and draconian punishments. Harsh federal drug laws and mandatory minimums enacted under the banner of the ‘war on drugs’ have caused the federal prison population, and attendant racial disparities, to explode.¹³ The Urban Institute has found that increases in expected time served for drug offenses was the largest contributor to growth in the federal prison population between 1998 and 2010.¹⁴ Currently, people convicted of drug offenses make up 43.9 percent of the Bureau of Prisons (BOP) population.¹⁵

These failed “tough on crime” policies have had a markedly disproportionate impact on communities of color. Today, BOP reports 38.9 percent of its current prison population is Black and 29.2 percent is Hispanic, an enormous disparity given that both groups combined represent only about one third of the nation’s population.¹⁶ The commission’s own research shows that Hispanic and Black people account for

¹⁰ “Proposed Amendments to the Sentencing Guidelines.” *U.S. Sentencing Commission*. Jan. 24, 2025. Pgs. 18-19. https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20250130_rf-proposed.pdf.

¹¹ *Ibid* at 4.

¹² Some have argued that the federal supervised release scheme is unconstitutional because those subject to revocation proceedings do not have access to the rights applicable in traditional criminal prosecutions. See Underhill, Stefan R., & Powell, Grace E. “Expedient Imprisonment: How Federal Supervised Release Sentences Violate the Constitution.” 108 Va. L. Rev. Online 297. <https://virginialawreview.org/articles/expedient-imprisonment-how-federal-supervised-release-sentences-violate-the-constitution/>.

¹³ See, e.g., “Drivers of Growth in the Federal Prison Population.” *Charles Colson Task Force on Federal Corrections*. March 2015. <https://www.urban.org/sites/default/files/publication/43681/2000141-Drivers-of-Growth-in-the-Federal-Prison-Population.pdf>.

¹⁴ 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>.

¹⁵ “Statistics: Inmate Offenses.” *Federal Bureau of Prisons*. Updated Feb. 22, 2025. https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp.

¹⁶ “Inmate Statistics.” *Federal Bureau of Prisons*. Updated Feb. 22, 2025. https://www.bop.gov/about/statistics/statistics_inmate_race.jsp. Hispanics make up 18.5% of the U.S. population,

March 3, 2025
Page 4 of 6

a majority of those convicted with an offense carrying a drug mandatory minimum,¹⁷ despite the fact that White and Black people use illicit substances at roughly the same rate, and Hispanic people use such substances at a lower rate.¹⁸

We are encouraged to see the commission acknowledging the realities of mass incarceration and harsh punishment for drug offenses in these amendments. We are, however, disappointed by how reactive the proposed amendments are when addressing fentanyl sentencing. By singling out fentanyl, the amendments risk making the same mistakes made during the height of the ‘war on drugs,’ as discussed *supra*. For example, Black people have been disproportionately incarcerated and sentenced to mandatory minimum sentences for small amounts of crack cocaine, despite the fact that White people are more likely than Black people to use crack cocaine in their lifetimes.¹⁹ Unfortunately, similar trends for fentanyl and its analogues are emerging: Since 2015, “the number of fentanyl offenders reported to the commission has doubled each fiscal year,” and between 2015 and 2019, prosecutions for fentanyl-analogue offenses increased by more than 5,000 percent, with no corresponding decrease in the use of fentanyl or in overdose deaths.²⁰ In 2019, 40.5 percent of those sentenced in fentanyl cases and 58.9 percent of those sentenced in fentanyl-analogue cases were Black, yet Black people continue to die of fentanyl overdoses at higher rates than White people.²¹ Clearly, there is no indication that overly punitive sentences or mass incarceration deter crime, protect public safety, or decrease drug use or trafficking. Studies of federal drug laws show no significant relationship between drug imprisonment rates and drug use or recidivism.²² In effect, we cannot punish our way out of this drug overdose crisis, and singling out fentanyl for harsher punishments will only repeat the missteps of the past.

while Black people make up 13.4%. “United States QuickFacts.” *U.S. Census Bureau*. Last updated July 1, 2019. <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

¹⁷ “Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System.” *United States Sentencing Commission*. Oct. 2017. Pg. 57. https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170711_Mand-Min.pdf. [hereinafter “Mandatory Minimum Penalties.”]

¹⁸ “Results from the 2018 Nat’l Survey on Drug Use and Health: Detailed Tables.” *Substance Abuse and Mental Health Service Administration*. 2018. Table 1.23B. <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHDetailedTabs2018R2/NSDUHDetailedTabs2018.pdf>.

¹⁹ 6.3 percent of people sentenced under these laws are White, while 77.1 percent are Black. “Quick Facts: Crack Cocaine Trafficking Offenses, FY2020.” *U.S. Sentencing Commission*. 2020. https://www.uscc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY20.pdf.

²⁰ U.S. Sentencing Comm’n. “Fentanyl and Fentanyl Analogues: Federal Trends and Trafficking Patterns.” Jan. 2021. P. 4. https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210125_Fentanyl-Report.pdf.

²¹ *Ibid* at 24; Spencer, Merianne Rose, et al. “Estimates of Drug Overdose Deaths Involving Fentanyl, Methamphetamine, Cocaine, Heroin, and Oxycodone: United States, 2021.” *National Vital Statistics System, Centers for Disease Control and Prevention*. May 2023. <https://www.cdc.gov/nchs/data/vsrr/vsrr027.pdf>.

²² See, e.g., Luna, Erik. “Mandatory Minimums.” *The Academy for Justice*. 2017. Pgs. 127-130. https://law.asu.edu/sites/default/files/pdf/academy_for_justice/7_Criminal_Justice_Reform_Vol_4_Mandatory-Minimums.pdf; Nat’l Inst. of Justice. “Five Things about Deterrence.” May 2016. <https://www.ojp.gov/pdffiles1/nij/247350.pdf>; “Federal Drug Sentencing Laws Bring High Cost, Low Return.” *Pew Charitable Trusts*. Aug. 27, 2015. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return>.

March 3, 2025
Page 5 of 6

The amendment proposal asks for feedback on a number of different options, and we urge the commission, in all cases, to choose the options that would have the most consequential effects in reducing mass incarceration and addressing these stark racial disparities. We also want to briefly respond to a specific issue for comment three in Part A, Subpart 2, where the commission asks about mitigating circumstances regarding the distribution of retail or user-level quantities.²³ The commission should consider that many of those who sell drugs may themselves be users of those drugs and possibly have substance use disorder.²⁴ Fear of prosecution and of lengthy prison sentences may lead people who sell drugs and who suffer from substance use disorder to avoid accessing treatment and health care. Additionally, most of those who sell these lower quantities “do not make much money, have little knowledge of the distribution network as a whole, and are not involved in profit sharing,” yet are often the easiest targets for law enforcement.²⁵ The commission should look to these facts when considering mitigation for measures for those who sell retail or user-level quantities of illegal substances. Once again, it will take real investments in public health, not severe punishments, in order to prevent and treat substance use disorder.

Conclusion

Many of the proposed amendments would help to address the inequities within our criminal legal system. We thank the commission for its attention to these issues and for its clear dedication to making the system fairer and more just. We look forward to continuing to work with the commission to achieve these aims. Please direct any questions about these comments to Chloé White, senior counsel, justice, at white@civilrights.org.

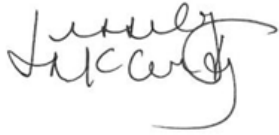
²³ “Proposed Amendments to the Sentencing Guidelines” *supra* note 10 at 77.

²⁴ According to an analysis of the 2012 National Survey on Drug Use and Health, 87.5 percent of people who reported selling drugs in the past year also reported using substances in that year, while around 43 percent of people who reported selling drugs also reported that they met the criteria for substance use disorder. Stanforth, Evan T., et al. “Correlates of engaging in drug distribution in a national sample.” *Psychology of Addictive Behaviors* 30(1). Feb. 2016. Cited in Drug Policy Alliance. “Rethinking the ‘Drug Dealer.’” Dec. 17, 2019. P. 36. https://drugpolicy.org/wp-content/uploads/2023/05/Rethinking_the_Drug_Dealer_Report.pdf.

²⁵ “Rethinking the ‘Drug Dealer’” at 40. Indeed, the commission’s own 2016 data notes that those convicted of a drug offense and categorized as “Employee/Workers,” a lower culpability function according to the commission, were convicted at a higher rate than those considered more culpable under the commission’s rubric. “Mandatory Minimum Penalties,” p. 46. The commission notes that this seems due to many of those in the category being those responsible for handling large quantities of prohibited substances but who had no actual control or authority over the drugs or their distribution. *Ibid* at 47.

March 3, 2025
Page 6 of 6

Sincerely,



Jesselyn McCurdy
Executive Vice President of Government Affairs