

United States Senate
WASHINGTON, DC 20510-1012

July 15, 2024

The Honorable Carlton W. Reeves, Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Washington, D.C. 20002-8002

Re: Proposed Priorities for 2024-2025 Amendment Cycle

Dear Chair Reeves:

As the United States Sentencing Commission (“Commission”) sets its priorities for the 2024-2025 amendment cycle, I urge the Commission to act on the urgent need to address the consequences of decades of mass incarceration and safely reduce the number of people behind bars. As the independent body charged with promulgating data-driven sentencing policies and practices for the federal courts, advising Congress and the Executive Branch, and conducting criminal justice research, the Commission has a unique opportunity and responsibility to advance the necessary work of ending mass incarceration.

The United States of America, the land of the free, is the mass incarceration capital of the world. We incarcerate more people and for longer periods of time than almost every other country on the planet. With approximately 1.8 million people in America’s jails and prisons,¹ we hold the dubious distinction of having both the largest number of people incarcerated and the highest incarceration rate among large countries.² The United States imposes long sentences with greater frequency and with longer lengths than most other countries in the world.³ Indeed, well over half of the people currently in American prisons are serving sentences of ten years or longer,⁴ with more people now serving life in prison than the entire prison population in 1970.⁵

¹ Emily D. Buehler and Rich Kluckow, *Correctional Populations in the United States, 2022 – Statistical Tables*, U.S. Department of Justice, Bureau of Justice Statistics (May 2024), <https://bjs.ojp.gov/document/cpus22st.pdf> at 5, tbl.1.

² Helen Fair and Roy Walmsley, *World Prison Population List*, Institute for Crime & Justice Policy Research (April 2024), https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_14th_edition.pdf at 2.

³ *New Analysis Shows U.S. Imposes Long Prison Sentences More Frequently than Other Nations*, Council on Criminal Justice (Dec. 20, 2022), <https://counciloncj.org/new-analysis-shows-u-s-imposes-long-prison-sentences-more-frequently-than-other-nations>.

⁴ *Long Sentences by the Numbers*, Council on Criminal Justice (Spring 2022), <https://counciloncj.foleon.com/tfls/long-sentences-by-the-numbers>.

⁵ Ashley Nellis, *No End In Sight: America’s Enduring Reliance on Life Sentences*, The Sentencing Project (Feb. 2021), <https://www.sentencingproject.org/app/uploads/2022/08/No-End-in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf> at 13.

The existence and persistence of mass incarceration is a scandal and a scar on the soul of America. Simply maintaining local, state, and federal correctional institutions costs at least \$182 billion every year.⁶ But even beyond the costs of physical infrastructure, our system of mass incarceration extracts severe social, economic, and political costs. Mass incarceration disrupts housing, health care, education, and employment on a massive scale, tearing at the social fabric that is necessary for families, communities, and democracy to thrive. The families and support networks of incarcerated people must bear countless invisible burdens and traumas in addition to the myriad everyday costs that come with caring for a loved one behind bars.⁷ When people are released from prison, they face stigma and scars that make it harder to find jobs, housing, and educational opportunities⁸—and can often prevent them from accessing our most fundamental right as citizens: the right to vote.⁹

But beyond these material consequences, the infrastructure of mass incarceration perpetuates a fear-based ideology that has a life of its own, one that warps Americans' interactions with the state and fellow citizens. And it is an ideology that is especially pernicious for Black and Brown bodies: Black people are more than four times more likely to be incarcerated than White people and Latino people are almost twice as likely.¹⁰ As author Michelle Alexander has argued so forcefully, mass incarceration is Jim Crow's most obvious descendent.

The United States is at a critical juncture. While the United States remains the leader in incarceration worldwide, the country has also seen important progress in reducing incarceration without compromising public safety. Over the past decade, the United States has reduced its prison population by nearly a quarter¹¹ and halved the Black imprisonment rate.¹² Where once Black men were more likely to go to prison than graduate from college, the reverse is now true.¹³ Over this period, 45 states have simultaneously reduced imprisonment rates and crime rates,¹⁴ demonstrating that safety and justice can go hand-in-hand.

⁶ Wendy Sawyer and Peter Wagner, *Mass Incarceration: The Whole Pie 2024*, Prison Policy Initiative (Mar. 14, 2024), <https://www.prisonpolicy.org/reports/pie2024.html>.

⁷ E.g., Bruce Western and Becky Pettit, *Incarceration & Social Inequality*, Dædalus (Summer 2010), <https://www.amacad.org/publication/incarceration-social-inequality>.

⁸ E.g., Cameron Kimble and Ames Grawert, *Collateral Consequences and the Enduring Nature of Punishment: For Some People, Punishment Can Continue Years After the Sentence Ends, Even Decades*, Brennan Center (Jun. 21, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/collateral-consequences-and-enduring-nature-punishment>.

⁹ See, e.g., Christopher Uggen, Ryan Larson, Sarah Shannon, and Robert Stewart, *Locked Out 2022: Estimates of People Denied Voting Rights*, The Sentencing Project (Oct. 25, 2022), <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights>.

¹⁰ See Buehler and Kluckow, *supra* note 1, at 12 (comparing the incarceration rate of Black people (1,900 per 100,000) and Latinos (800 per 100,000) to those of White people (420 per 100,000)).

¹¹ *Turn the Tide on Mass Incarceration*, fwd.us (May 15, 2024), <https://www.fwd.us/wp-content/uploads/2024/05/Long-Term-Trends-2024.pdf> at 2, fig.1.

¹² *Id.* at 3, fig.2.

¹³ *Id.* at 3.

¹⁴ *Advancing Public Safety and Moving Justice Forward*, fwd.us (Spring 2024), https://www.fwd.us/wp-content/uploads/2024/04/Advancing_Public_Safety_and_Moving_Justice-Forward-042324-1.pdf at 2; see also *CARES Act Shows Promise in Reducing Recidivism, Reinforcing the Benefits of Reduced Incarceration*, U.S. Department of Justice, Bureau of Prisons (Mar. 29, 2024), <https://www.bop.gov/resources/news/pdfs/20240329-press-release-cares-act.pdf>.

The federal government and, in particular, the Sentencing Commission are on the frontlines of addressing mass incarceration. With approximately 158,000 people in federal custody,¹⁵ the federal prison system is the largest prison system in the country.¹⁶ Indeed, 1 in 8 people in prison in the United States is in federal custody.¹⁷ This is neither preordained nor inevitable. In 1980, the Federal Bureau of Prisons had less than 25,000 people in custody.¹⁸ By 2013, that number had exploded to nearly 220,000,¹⁹ largely due to increasingly severe federal sentencing laws.²⁰ From 2013 to 2020, however, our country made a serious effort to reform sentencing, increase the use of clemency, and pass evidence-based legislation, reducing the federal prison population by nearly a third.²¹ Since 2020, though, the federal prison population has increased by nearly two percent, imperiling the recent downward trend.²² The Commission has a responsibility to continue to advance evidence-based policies that prevent unnecessary incarceration.

The perpetuation of mass incarceration in the land of the free represents a failure of moral courage and imagination. The Sentencing Commission has a unique and critical opportunity to correct this injustice, and I urge the Commission to adopt a broad and ambitious agenda to end mass incarceration by considering the following topics, at minimum:

- Whether any Sentencing Guidelines result in unnecessarily lengthy sentences, whether lowering base offense levels across the Sentencing Guidelines is an appropriate remedy,²³ and, in the Commission's advisory role to Congress, in what contexts mandatory minimums fail to meet the goals of sentencing;
- Whether the Sentencing Guidelines unduly or unnecessarily emphasize sentences of imprisonment over alternatives such as fine-only sentences, probation, or other forms of community supervision;²⁴
- Whether drug sentences that are linked to drug quantity and purity serve the goals of sentencing and whether a holistic reassessment of drug penalties, and particularly their relationship to mandatory minimums, is necessary;²⁵

¹⁵ *Population Statistics*, U.S. Department of Justice, Bureau of Prisons, https://www.bop.gov/mobile/about/population_statistics.jsp (accessed July 15, 2024, and displaying 158,479 total federal inmates).

¹⁶ E. Ann Carson and Rich Kluckow, *Prisoners in 2022 – Statistical Tables*, U.S. Department of Justice, Bureau of Justice Statistics (Nov. 2023), <https://bjs.ojp.gov/document/p22st.pdf> at 7, tbl.2.

¹⁷ *Id.* (showing federal inmates represent approximately 13% of total prisoners).

¹⁸ *Population Statistics*, supra note 15 (24,640 individuals).

¹⁹ *Id.* (219,298 individuals).

²⁰ See, e.g., Nathan James, *The Federal Prison Population Buildup: Options for Congress*, Congressional Research Service (May 20, 2016), <https://sgp.fas.org/crs/misc/R42937.pdf> at 1; Kamala Mallik-Kane, Barbara Parthasarathy, and William Adams, *Examining Growth in the Federal Prison Population, 1998 to 2010*, Urban Institute (Sept. 2012), <https://www.urban.org/sites/default/files/publication/26311/412720-Examining-Growth-in-the-Federal-Prison-Population--to--.PDF>; *Federal Drug Sentencing Laws Bring High Cost, Low Return*, Pew Charitable Trusts (Aug. 2015), https://www.pewtrusts.org/-/media/assets/2015/08/federal_drug_sentencing_laws_bring_high_cost_low_return.pdf.

²¹ *Population Statistics*, supra note 15 (showing a drop of approximately 63,736 inmates between 2013 and 2020).

²² *Id.*

²³ See, e.g., Lynn Adelman, *What the Sentencing Commission Ought to Be Doing Reducing Mass Incarceration*, 18 Mich. J. Race & L. 295 (2013).

²⁴ See, e.g., Melissa Hamilton, *Prison-by-Default: Challenging the Federal Sentencing Policy's Presumption of Incarceration*, 51 Hous. L. Rev. 1271 (2014).

²⁵ See, e.g., Kyle O'Dowd, *The Need to Re-Assess Quantity-Based Drug Sentences*, 12 Fed. Sent'g Rep. 116 (1999).

- Whether the Sentencing Guidelines exacerbate inequities at the state level by incorporating state-level convictions in federal sentencing calculations, despite significant variation in criminal procedure and sentencing policies;
- Whether orders under the federal system of supervised release should be shortened and whether the federal system adequately focuses on treatment and support; and
- In the case of any potential reforms that the Commission puts forward, estimating how many individuals per state would be affected by such reforms.

I appreciate the opportunity to offer comment on the Commissions' priorities for the 2024-2025 amendment cycle, and I urge the Commission to focus on the necessary work of ending mass incarceration.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Warnock" with a stylized flourish at the end.

Reverend Raphael Warnock
United States Senator