

December 9, 2013

VIA ELECTRONIC MAIL

The Honorable Richard J. "Dick" Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510-1304

The Honorable Michael S. "Mike" Lee
United States Senate
316 Hart Senate Office Building
Washington, DC 20510-4404

RE: The Smarter Sentencing Act

Dear Senators Durbin and Lee:

As former judges, prosecutors and law enforcement officials, we write to express our support for the reforms to federal sentencing contained in the Smarter Sentencing Act (S.1410, H.R.3382). Your bill represents an important step in promoting public safety and addressing the consequences of federal mandatory minimum sentences on the explosive growth in incarceration costs and the fairness of sentences for nonviolent drug offenders.

Law enforcement has made great progress in curbing violent crime. At the federal level, we need to address the parts of our sentencing policies that are not working. Over the past three decades, what we spend on federal incarceration has increased by more than 1100 percent. Despite this massive investment, federal prisons are nearly 40 percent over capacity, with the ratio of prisoners to prison guards rising. As a nation, we are expending enormous amounts of money and still failing to keep pace with the growing prison population, with drug offenders comprising nearly half of this population.

In addition to being fiscally imprudent, maintaining the status quo in federal sentencing policy threatens public safety. Overcrowding threatens the safety of prison guards and inmates in federal prisons. Perhaps most important, spending on incarceration in this economy has started to jeopardize funding for some of our most important priorities, like crime prevention, law enforcement, and reducing recidivism. This includes possible reductions in the number of federal investigators and prosecutors. The Bureau of Prisons currently accounts for about 25 percent of the Department of Justice's budget and this is projected to increase. With more resources going to incarcerate nonviolent offenders, and fewer resources spent to investigate and prosecute violent crimes and support state and local law enforcement efforts, public safety will be at risk. Law enforcement will continue to maximize its resources to keep our communities safe. But Congress created our sentencing scheme and needs to act to help solve these problems.

The Smarter Sentencing Act reflects these concerns and embodies measured, bipartisan reforms. Its modest expansion of the current "safety valve," coupled with the reduction of some mandatory minimums for non-violent drug offenses—while maintaining statutory maximums—allows courts to make individualized assessments in nonviolent drug cases. This maintains consistency in sentencing for drug-related offenses, but allows for discretion to give less lengthy sentences, where appropriate. This approach is a step toward controlling the growth of incarceration costs, while maintaining public safety

and helping to ensure that prison sentences are appropriate for each offender. The bill does not repeal any mandatory minimums or affect the sentences for any violent offenses, but helps focus limited resources on the most serious offenders.

The bill also promotes fairness and consistency by acknowledging the numerous federal prisoners who are serving sentences imposed prior to the Fair Sentencing Act of 2010's reduction of the crack/powder cocaine sentencing disparity. The Smarter Sentencing Act would allow certain inmates sentenced under the old regime to petition courts and prosecutors for a review of their sentences and possible sentence reductions under current law. This not only addresses what is now widely recognized as an unjust disparity in sentences, but estimates also show that it could save more than \$1 billion in incarceration costs.

We appreciate your leadership in seeking bipartisan solutions to address the widely acknowledged problems with over-incarceration, to which mandatory minimum sentences have contributed. We are pleased to extend our help as you work with your colleagues in both the Senate and House to pursue reform in federal sentencing.

Signatories as of December 9, 2013:

Sergio Acosta

Former Assistant United States Attorney, Northern District of Illinois

Lee Altschuler

Former Chief Assistant United States Attorney, Silicon Valley Division, Northern District of California;
Former Assistant United States Attorney, Northern District of California

David Barasch

Former United States Attorney, Middle District of Pennsylvania

Sean Berkowitz

Former Assistant United States Attorney, Northern District of Illinois

Richard S. Berne

Former Assistant United States Attorney, Eastern District of New York; Former Assistant U.S. Attorney, Northern District of California

Joel D. Bertocchi

Former Solicitor General of Illinois; Former Assistant United States Attorney, Northern District of Illinois

Herbert Better

Former First Assistant United States Attorney and Court-appointed United States Attorney, District of Maryland

Jonathan Biran

Former Assistant United States Attorney, District of Maryland and District of Connecticut

Robert Bonsib

Former Assistant United States Attorney, District of Maryland

William G. Broaddus

Former Attorney General, Virginia

Jim Brosnahan

Former Assistant United States Attorney, District of Arizona; Former Assistant United States Attorney, District of Northern California

Arthur L. Burnett, Sr.

Former Magistrate Judge, United States District Court, District of Columbia; Former Assistant United States Attorney, District of Columbia; former Trial Attorney, United States Department of Justice, Criminal Division

A. Bates Butler III

Former United States Attorney, District of Arizona; Former First Assistant United States Attorney, District of Arizona

Zachary W. Carter

Former United States Attorney, Eastern District of New York

David H. Coar

Former Judge, United States District Court, Northern District of Illinois

Barry Coburn

Former Assistant United States Attorney, District of Columbia

Veronica F. Coleman-Davis

Former United States Attorney, Western District of Tennessee

Vincent J. Connelly

Former Assistant United States Attorney, Northern District of Illinois

Raymond J. Dearie

Senior Judge, United States District Court, Eastern District of New York; Former United States Attorney, Eastern District of New York

Robert J. Del Tufo

Former United States Attorney, District of New Jersey; Former New Jersey State Attorney General

Morton Denlow

Former Magistrate Judge, United States District Court, Northern District of Illinois

Richard A. Devine

Former State's Attorney, Cook County, Illinois

Joseph J. Duffy

Former First Assistant United States Attorney, Northern District of Illinois

Bruce J. Einhorn

Former Judge, Los Angeles Immigration Court; Former Chief of Litigation, Office of Special Investigations, Department of Justice

Tyrone C. Fahner

Former Assistant United States Attorney, Northern District of Illinois; Former Attorney General of Illinois

James P. Fieweger

Former Assistant United States Attorney, Northern District of Illinois

Mark A. Flessner

Former Assistant United States Attorney, Northern District of Illinois

Kobie Flowers

Former Trial Attorney, United States Department of Justice, Criminal Section

Stephen G. Frye

Former Assistant United States Attorney, District of Kentucky

Gabriel Fuentes

Former Assistant United States Attorney, Northern District of Illinois

John N. Gallo

Former Assistant United States Attorney, Northern District of Illinois

Cynthia Giacchetti

Former Assistant United States Attorney, Northern District of Illinois

Lawrence S. Goldman

Former Assistant District Attorney, New York County, NY

Daniel F. Goldstein

Former Assistant United States Attorney, District of Maryland

Steven Gordon

Former Assistant United States Attorney, District of Columbia

Donald H. Heller

Former Assistant United States Attorney, Eastern District of California

Martin Himeles

Former Assistant United States Attorney, District of Maryland

Patricia Brown Holmes

Former Associate Judge, Circuit Court of Cook County; Former Assistant United States Attorney, Northern District of Illinois; Former Assistant State's Attorney, Cook County, Illinois

George Jackson

Former Assistant United States Attorney, Northern District of Illinois

Erlinda O. Johnson

Former Assistant United States Attorney, District of New Mexico

Tonya Kelly

Former Trial Attorney, Fraud Section, Criminal Division, Department of Justice; Former Assistant United States Attorney, District of Maryland

Michael H. King

Former Assistant United States Attorney, Northern District of Illinois

Miriam A. Krinsky

Former Assistant United States Attorney, Central District of California

Fern M. Laethem

Former Assistant United States Attorney, Eastern District of California

Scott R. Lassar

Former United States Attorney, Northern District of Illinois

Laurie L. Levenson

Former Assistant United States Attorney, Central District of California

Steven Levin

Former Deputy Criminal Chief, United States Attorney's Office, District of Maryland; Former Assistant United States Attorney, District of Maryland

Lori Lightfoot

Former Assistant United States Attorney, Northern District of Illinois

Matthias A. Lydon

Former Assistant United States Attorney, Northern District of Illinois

Kwame Manley

Former Deputy Criminal Chief, United States Attorney's Office, District of Maryland; Former Assistant United States Attorney, District of Maryland

John Martin

Former United States District Judge, Southern District of New York; Former United States Attorney, Southern District of New York

John G. Martin

Former Assistant United States Attorney, Eastern District of New York; Former Assistant District Attorney, New York County

Robert Mathias

Former Assistant United States Attorney, District of Maryland

A. Melvin McDonald

Former United States Attorney, District of Arizona

Thomas K. McQueen

Former Assistant United States Attorney, Northern District of Illinois

Steven Molo

Former Assistant United States Attorney, Northern District of Illinois

James D. Montgomery, Sr.

Former Assistant United States Attorney, Northern District of Illinois

Nan R. Nolan

Former United States Magistrate Judge, Northern District of Illinois

Kirk Bowden Obear

Former Special Assistant United States Attorney, Southern District of Illinois; Former Chief, Military Justice, Scott Air Force Base, United States Air Force

Jerome F. O'Neill

Former United States Attorney, District of Vermont; Former First Assistant United States Attorney, District of Vermont

Stephen M. Orlofsky

Former Judge, United States District Court, District of New Jersey

Mark Osler

Former Assistant United States Attorney, Eastern District of Michigan

A. John Pappalardo

Former United States Attorney, District of Massachusetts; Former Assistant United States Attorney, District of Massachusetts

Elliot R. Peters

Former Assistant United States Attorney, Southern District of New York

Kate Pflaumer

Former United States Attorney, West District of Washington

Richard J. Pocker

Former United States Attorney, District of Nevada; Assistant United States Attorney, District of Nevada; Captain, United States Army Judge Advocate General's Corps

Theodore T. Poulos

Former Assistant United States Attorney, Northern District of Illinois

Sidney Powell

Former Assistant United States Attorney, Western District of Texas, Northern District of Texas and Eastern District of Virginia

Ernest D. Preate , Jr.

Former Attorney General of Pennsylvania; Former District Attorney, Lackawanna County, PA

Daniel E. Reidy

Former First Assistant United States Attorney, Northern District of Illinois

Dom J. Rizzi

Former Judge, Appellate Court of Illinois, First District; Former Judge, Circuit Court of Cook County

J. William Roberts

Former United States Attorney, Central District of Illinois; Former Assistant United States Attorney, Central District of Illinois

Richard A. Rossman

Former United States Attorney, Eastern District of Michigan

Mark L. Rotert

Former Assistant United States Attorney, Northern District of Illinois

Kenneth Roth

Former Assistant United States Attorney, Southern District of New York; Former Chief Appellate Attorney, Criminal Division, United States Attorney's Office, Southern District of New York

Stephen H. Sachs

Former United States Attorney, District of Maryland; Former Assistant United States Attorney, District of Maryland

Ronald S. Safer

Former Assistant United States Attorney, Northern District of Illinois

Stephen Saltzburg

Former Ex-Officio Member, United States Sentencing Commission; Former Deputy Assistant Attorney General, Criminal Division, United States Department of Justice; Former Associate Counsel, Office of Independent Counsel for Iran/Contra

Donald E. Santarelli

Former Administrator, Law Enforcement Assistance Administration, Department of Justice; Former Associate Deputy Attorney General, United States Department of Justice

Charles Scheeler

Former Assistant United States Attorney, District of Maryland

John Schmidt

Former Associate Attorney General, United States Department of Justice

William S. Sessions

Former Director, Federal Bureau of Investigation; Former Judge, United States District Court, Western District of Texas, Chief Judge; Former United States Attorney, Western District of Texas

Steven Shobat

Former Assistant United States Attorney, Northern District of Illinois

Alan Silber

Former Assistant Prosecutor, Essex County, NJ, Chief Economic Crimes Unit

Jeffrey B. Sklaroff

Assistant United States Attorney, Southern District of New York

Charles B. Sklarsky

Former Assistant United States Attorney, Northern District of Illinois; Former Assistant State's Attorney, Cook County, Illinois

Neal R. Sonnett

Former Assistant United States Attorney, Chief of Criminal Division, Southern District of Florida

Juliet S. Sorensen

Former Assistant United States Attorney, Northern District of Illinois

Brandon Spurlock

Former Assistant United States Attorney, Northern District of Illinois

David J. Stetler

Former Assistant United States Attorney, Northern District of Illinois

Thomas P. Sullivan

Former United States Attorney, Northern District of Illinois

Robert W. Tarun

Former Executive Assistant United States Attorney, Northern District of Illinois; Former Assistant United States Attorney, Northern District of Illinois

Paul Tiao,

Former Assistant United States Attorney, District of Maryland; Former Senior Counselor, Federal Bureau of Investigation

Ann C. Tighe

Former Assistant United States Attorney, Northern District of Illinois

Peter J. Tomao

Former Assistant United States Attorney, Eastern District of New York

Scott Turow

Former Assistant United States Attorney, Northern District of Illinois

Stanley A. Twardy, Jr.

Former United States Attorney, District of Connecticut

Keith Uhl

Former United States Special Prosecutor, District of Iowa

Alan Vinegrad

Former United States Attorney, Eastern District of New York; Former Chief of the Criminal Division, Eastern District of New York

Atlee W. Wampler, III

Former United States Attorney, Southern District of Florida; Former Attorney-in-Charge, Miami Strike Force, Organized Crime and Racketeering Section, Department of Justice

Morris "Sandy" Weinberg, Jr.

Former Assistant United States Attorney, Southern District of New York

M. David Weisman

Former Assistant United States Attorney, Northern District of Illinois

Jim West

Former United States Attorney, Middle District of Pennsylvania

Kira Anne West

Former Assistant United States Attorney, Southern District of Texas

Andrew C. White

Former Assistant United States Attorney, District of Maryland

Warren D. Wolfson

Former Judge, Illinois Appellate Court, 1st District; Former Judge, Circuit Court of Cook County

Sharon Zealey

Former United States Attorney, Southern District of Ohio

Sheldon T. Zenner

Former Assistant United States Attorney, Northern District of Illinois

David M. Zlotnick

Former Assistant United States Attorney, District of Columbia