

AUTHORS INCLUDE:

CORY **BOOKER**
SHERROD **BROWN**
JULIÁN **CASTRO**
TA-NEHISI **COATES**
ALICIA **GARZA**
KIRSTEN **GILLIBRAND**
KAMALA **HARRIS**
SHERRILYN **IFILL**
VAN **JONES**
AMY **KLOBUCHAR**
JARED **KUSHNER**
BETO **O'ROURKE**
RASHAD **ROBINSON**
TOPEKA K. **SAM**
BERNIE **SANDERS**
ELIZABETH **WARREN**

**BRENNAN
CENTER**

FOR JUSTICE

Ending Mass Incarceration:

Ideas from Today's Leaders

EDITED BY **Inimai Chettiar** AND **Priya Raghavan**

FOREWORD BY **NAACP President Derrick Johnson**

BRENNAN CENTER FOR JUSTICE
AT NEW YORK UNIVERSITY SCHOOL OF LAW

Ending Mass Incarceration: **Ideas from Today's Leaders**

Edited by
Inimai Chettiar and Priya Raghavan

Associate Editor
Adureh Onyekwere

© 2019. Other than the essay entitled "Start by Ending the Failed War on Drugs," this book is covered by the Creative Commons "Attribution-NoDerivs-NonCommercial" license (see <http://creativecommons.org>). It may be reproduced in its entirety as long as the Brennan Center for Justice at NYU School of Law is credited, a link to the Center's web pages is provided, and no charge is imposed. The book may not be reproduced in part or in altered form, or if a fee is charged, without the Center's permission. The essay "Start by Ending the Failed War on Drugs" is reprinted with permission from the *Houston Chronicle* and the author.

Table of Contents

FOREWORDS

Michael Waldman

President, Brennan Center for Justice
at New York University School of Law **vii**

Derrick Johnson

President and CEO, National Association
for the Advancement of Colored People **xi**

IDEAS FROM TODAY'S LEADERS

1. Pass the Next Step Act

Cory Booker, U.S. Senator from New Jersey **1**

2. Provide Fair Wages for All

Sherrod Brown, U.S. Senator from Ohio **5**

3. Provide Fair Housing to Advance Justice Reform

Julián Castro, former U.S. Secretary of Housing
and Urban Development **9**

4. Dramatically Reduce the Incarcerated Population

Inimai Chettiar, Director of the Justice Program,
and Priya Raghavan, Counsel, Brennan Center for Justice
at New York University School of Law **13**

5. The Power of Myth	
Ta-Nehisi Coates, Author, Journalist, and Distinguished Writer in Residence at New York University’s Arthur L. Carter Journalism Institute	17
6. Respect Black Lives and Restore Justice to Those Made into Criminals	
Alicia Garza, Cofounder of Black Lives Matter and Principal of Black Futures Lab	21
7. End the Over-Incarceration of Women	
Kirsten Gillibrand, U.S. Senator from New York	25
8. Stop the Over-Policing of Communities of Color	
Vanita Gupta, President and CEO of The Leadership Conference on Civil and Human Rights	29
9. Harness the Momentum for Bipartisan Reform	
Holly Harris, Executive Director of the Justice Action Network.	33
10. Strengthen Resources for Public Defenders and Hold Prosecutors Accountable	
Kamala Harris, U.S. Senator from California	37
11. The Conservative Case for Reform: Equal Rights, Public Safety, and Redemption	
Mark Holden, Senior Vice President, General Counsel and Corporate Secretary of Koch Industries	41
12. Recognize Black Humanity	
Sherrilyn Ifill, President and Director-Counsel, and Jin Hee Lee, Senior Deputy Director of Litigation, NAACP Legal Defense Fund	45
13. Cut 50 Percent of the Prison Population	
Van Jones, Cofounder of #cut50 and CEO of REFORM Alliance	49
14. Provide Treatment for Addiction	
Amy Klobuchar, U.S. Senator from Minnesota.	53

15. The Trump Administration's Commitment to Justice Reform	
Jared Kushner, Senior Adviser to U.S. President Donald J. Trump	57
16. Start by Ending the Failed War on Drugs	
Beto O'Rourke, former U.S. Representative from Texas	61
17. Reshape Public Perception of Our Justice System	
Rashad Robinson, President of Color Of Change.	65
18. Mass Incarceration Is a Women's Issue	
Topeka K. Sam, Founder and Executive Director of The Ladies of Hope Ministries	69
19. Abolish For-Profit Prisons	
Bernie Sanders, U.S. Senator from Vermont	73
20. End the Two-Tiered System of Justice	
Elizabeth Warren, U.S. Senator from Massachusetts	77
ENDNOTES	81
ACKNOWLEDGMENTS	93
ABOUT THE BRENNAN CENTER FOR JUSTICE	94

Foreword

Michael Waldman

*President, Brennan Center for Justice at
New York University School of Law*

How can we end mass incarceration in America? By now, the debate is over: our nation grossly over-incarcerates its people. The United States has less than five percent of the world's population and nearly one-quarter of its prisoners.¹ Astonishingly, if the 2.3 million incarcerated Americans were a state, it would be more populous than 16 other states.² All told, one in three people in the United States has some type of criminal record.³ No other industrialized country comes close. This system grew over decades in plain sight, and only a broad and bold national response will end it.

Mass incarceration has crushing consequences: racial, social, and economic. We spend around \$270 billion per year on our criminal justice system. In California it costs more than \$75,000 per year to house each prisoner — more than it would cost to send them to Harvard.⁴ Mass incarceration exacerbates poverty and inequality, serving as an economic ball and chain that holds back millions, making it harder to find a job, access public benefits, and reintegrate into the community.

Most disturbingly, the system profoundly discriminates against people of color at every juncture. African Americans are more likely to be stopped by police, arrested, detained before trial, and given harsher sentences than whites.⁵ As a result, they are imprisoned at more than five times the rate of whites. In some states, this disparity is more than ten to one.⁶ For too long, we have tolerated this civil rights crisis.

And mass incarceration simply is not necessary to keep our communities safe. Today, crime and murder rates remain near record lows nationwide. Our cities — many of which suffered under a wave of violent crime in the early 1990s — are largely safer than they have been in years. No one is entirely sure what caused the steady crime decline of the past two and a half decades. But it is clear that it owes little to harsh policies and the resulting increase in incarceration.⁷ In fact, 27 states have reduced both imprisonment and crime together from 2006 to 2014.⁸ It is increasingly clear that reform and safety go together.

For all these reasons, the politics of crime and punishment have changed fundamentally, in ways hard to imagine in an earlier era. Today, polls show widespread support for a less punitive approach.⁹ Once incendiary moves such as marijuana legalization or an end to the death penalty are finding political success and rising popularity. In red, blue, and purple states, lawmakers are beginning to respond and act.

At long last, a vibrant public conversation is underway. A 2015 Brennan Center publication, *Solutions: American Leaders Speak Out on Criminal Justice*, offered proposals from a bipartisan array of elected officials and advocates and helped move criminal justice reform to the center of the 2016 election. Since then, the nationwide consensus in favor of a new direction has only hardened. For the first time, the opportunity for truly transformative change is in view.

Last year, Congress took a step forward by overwhelmingly passing the bipartisan First Step Act. It shortened some of the most extreme federal drug sentences and expanded programming for incarcerated people. But in recent years, we've also seen the country's leadership take grave steps back, from expanding immigration detention to reinstating draconian federal charging policies. The First Step Act — which needs to be fully funded and implemented — will not fix our deeply broken system. But with both Democrats and Republicans committed to reform, it represents a new baseline. This breakthrough shows it is possible to make even bigger changes — and that the politics can align.

And federal policy matters. While the vast majority of the nation's prison population is held in state facilities, what happens at the federal level sets the stage for the rest of the nation. Federal reforms can spur national culture change to end mass incarceration, and federal incentive funding can help states to decarcerate and provide support for innovative new ideas.

So, now, what's the next step?

We need stronger, more comprehensive, and more far-reaching solutions from our nation's leaders to address mass incarceration. It would be a missed opportunity to aim for anything less than fundamental change.

That's why, in advance of the 2020 presidential election, we have again asked leaders representing communities most harmed by mass incarceration, as well as top policymakers, to offer their solutions. And we've urged them to think big. Each author has contributed an essay highlighting their own ideas for reform. Neither the Brennan Center nor I agree with all the content of the essays in this book, and each author would likely say the same. The Center sought to create a nonpartisan forum for sorely needed ideas to be publicly shared.

Over the past few years, the Brennan Center has outlined some key steps toward ending mass incarceration in the United States. To start, if the federal government and every state ended imprisonment for lower-level crimes and reduced overly long sentences for other crimes, we could safely cut the nation's prison population by 40 percent. Second, if Congress passed a "reverse" of the 1994 Crime Bill to incentivize states through federal grants to decarcerate rather than incarcerate, it could spur nationwide change. Finally, federal lawmakers could transform how prosecutors operate by rewarding U.S. Attorneys' offices that reduce incarceration and recidivism in their districts. These policies would bring down the federal prison population while encouraging states to do the same.

Reform, of course, goes beyond criminal law and the justice system itself. Unwinding the system of mass incarceration requires a new focus on spurring economic growth in low-income communities, addressing systemic racism, building a better system to address mental health, and more. In the essays that follow, authors lay out thoughtful paths for holistic reform.

Mass incarceration grew over decades. It may seem a permanent fact. But public awareness, public anger, and public commitment have begun to change that. All of us must ensure that we do not subject another generation of young people of color to a destructive cycle of incarceration and poverty. We need solutions as far-reaching as the problem they address. Only then can we build a more equal, more democratic, and more united America. Few tasks could be more urgent.

Foreword

Derrick Johnson

President and CEO, National Association for the Advancement of Colored People

Our American criminal justice system is broken. Eric Garner, Michael Brown, Sandra Bland, Freddie Gray, Philando Castile — these names just touch the surface of the multitude of Black lives lost at the hands of the police or while in police custody.

Our system is biased because the people administering the system are biased, and this is clearly reflected in the data. African Americans are incarcerated at more than five times the rate of whites and face disproportionately tough sentencing in relation to whites.¹⁰ This dynamic is exacerbated by the current political climate, which continues to devalue Black lives by reviving the same failed policies of the war on drugs that fueled mass incarceration.

Between 1980 and 2015, the number of people incarcerated in this country increased from roughly 500,000 to more than 2.2 million, making over-incarceration one of the greatest civil rights travesties facing our nation.¹¹

Rather than provide much-needed reform, our so-called justice system has often functioned as a purveyor of mass injustice by consistently perpetuating racial inequities and corroding the civil liberties of communities of color. This consistent perpetuation of racial inequalities within all aspects of our society, particularly in the criminal justice system, forces us to contemplate whether true justice is possible. It causes us to question whether law enforcement and our legal system can move beyond racism and implicit bias in ways that generate trust in our communities.

In the face of these daunting questions, the future seems bleak. However, the NAACP has, from its very inception more than 110 years ago, strived for fairness and equality in our criminal justice system by working to tackle seemingly intractable issues.

We have overutilized mass incarceration as a means of social control in lieu of true economic opportunity, educational equity, or justice. To end this overutilization, effective police and criminal justice reform is urgent and necessary. The United States has a duty to end its ignominious reign as a world leader in mass incarceration, and to do so, we must listen to the voices of those who have been most impacted by this crisis.

Comprehensive change is required to create the climate of trust that is needed for both the community and police officers to be safe. Our communities need law enforcement that is held accountable for misconduct, that has strong policies against over-policing, that offers relevant training and a system in which the community plays an active role.

Over the past 30 years, there has been growing awareness of the importance of community perceptions to effective policing. Law enforcement agencies have created police partnerships within communities to engage in dialogue with leaders. These efforts have shown us that police officers cannot do their jobs well without strong relationships within the communities they serve.

We need each other.

In December 2018, President Trump signed the bipartisan First Step Act into law. Although not perfect, it represents a much-needed beginning in efforts to reform our nation's sentencing laws and prison terms and to create effective rehabilitation programs.

From the expansion of the "safety valve," which will give judges more sentencing discretion, to the reformation of the two- and three-strikes laws, to the elimination of the "stacking" provisions that resulted in unreasonably long prison sentences for many, the act, including a prohibition on detaining youth in solitary confinement and a ban on shackling female inmates who are in labor, is a far cry from the dehumanizing and unjust police practices that were once the rules of the land.

However, the act excludes too many people from earning time credits, including those convicted of immigration-related offenses. It does not retroactively apply its sentencing reform provisions to people

convicted of anything other than crack offenses. It also continues to allow for-profit companies to benefit from incarceration, it expands electronic monitoring, and it fails to address parole for juveniles serving life sentences in federal prison.

In short, the First Step Act lives up to its name — it is just the first in a series of efforts needed to improve and reform the federal criminal justice system. Congress must do more to push for transformational change and create a system that is equitable, significantly reduces the number of people who are sent to prison unnecessarily, eliminates racial disparities, and creates opportunities for genuine second chances.

As the season to choose our next president approaches, we need to hear from our nation's leaders on this challenge. This book from the Brennan Center features essays from today's leading politicians sharing their plans to reform our broken justice system, as well as from civil rights allies urging lawmakers to create transformational change. We need true leadership to address mass incarceration: both a commitment to prioritizing the problem and the advancement of comprehensive reforms to begin to solve it.

The NAACP believes in fair, results-based criminal justice policies. We are hopeful that the Brennan Center, the authors of this book, and our allies will bring forth not only the necessary dialogue but the policies that will fix our justice system.

It would be a tragic mistake to treat criminal justice reform as an agenda limited to certain communities. All Americans have an interest in living in safe and vibrant neighborhoods, in raising their children in a country of equal treatment and second chances, and in entrusting their liberty to a justice system that remains true to our highest ideals. We simply cannot afford to spend \$80 billion annually on incarceration, to write off the seventy million Americans — that’s almost one in three adults — with some form of criminal record, to release 600,000 inmates each year without a better program to reintegrate them into society, or to ignore the humanity of 2.2 million men and women currently in U.S. jails and prisons and over 11 million men and women moving in and out of U.S. jails every year. In addition, we cannot deny the legacy of racism that continues to drive inequality in how the justice system is experienced by so many Americans.

How we treat citizens who make mistakes (even serious mistakes), pay their debt to society, and deserve a second chance reflects who we are as a people and reveals a lot about our character and commitment to our founding principles. And how we police our communities and the kinds of problems we ask our criminal justice system to solve can have a profound impact on the extent of trust in law enforcement and significant implications for public safety.”

— **Hon. Barack H. Obama**, 44th President of the United States¹²

1

Pass the Next Step Act

Hon. Cory Booker

United States Senator from New Jersey

On the morning of January 10, 2019, Edward Douglas woke up in a federal penitentiary in Pekin, Illinois, where he had spent the past 15 years, serving a lifetime sentence for selling 140 grams of crack cocaine. By dinnertime, he was home with his family in Chicago.

That morning, Edward received a call from his lawyer, MiAngel Cody of the Decarceration Collective, informing him that, thanks to a new law that had taken effect on December 21, 2018, he would be a free man in a matter of hours. The new law — the First Step Act — was the most sweeping overhaul of the criminal justice system in a decade and included a provision making retroactive a 2010 law that reduced the egregious discrepancies between sentences for crack cocaine and powder cocaine. This provision meant that Edward would be immediately released from prison.

Upon hearing the news over the phone, Edward broke down and wept. “I don’t know what to say. I’ll be glad to see my mom and my kids.”

Earlier this year, Edward was my guest at the State of the Union address in Washington, D.C., just weeks after his release, and his story captures both the deep unfairness that exists within our broken criminal justice system and the transformative impact legislation can have on people’s lives. Thanks to the First Step Act, thousands of Americans like Edward, who were sentenced under unfair and unjust guidelines, will be eligible for freedom.

But it's important to remember that this piece of legislation is just that — a first step.

Despite being home to only five percent of the world's population, the United States houses 25 percent of the world's prison population.¹³ Since 1980, our federal prison population has exploded by almost 800 percent, largely a direct result of the War on Drugs — a government policy that mandated longer, more punitive sentences, often for nonviolent crimes.¹⁴ These laws not only have wasted precious resources by locking people up for low-level crimes instead of focusing on rehabilitation, but have been overwhelmingly disproportionately applied to black, brown, and lower-income Americans.

The data is clear: even though there is no real difference in drug use or dealing between blacks and whites — in fact, whites are more likely to sell drugs — blacks are 3.6 times more likely to get arrested for selling drugs.¹⁵ And black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.¹⁶ Unaddressed, implicit racial bias in our justice system at all levels — from law enforcement encounters to sentencing — and the unequal application of our laws have created a justice system where inputs and outcomes are often more dependent on race and class than on guilt or innocence.

As a result, today, one in 13 black Americans is prevented by law from voting, and black citizens are four times more likely to have their voting rights revoked. Black Americans are more likely to have to endure the 40,000 or so collateral consequences that come with a criminal record, including barriers to public services, education, and employment.¹⁷

It is painfully clear that something needs to change, and while the First Step Act was a meaningful step forward, there is much more work to do.

That's why earlier this year, I introduced the Next Step Act. Building off the momentum behind criminal justice reform, the Next Step Act would make far-reaching reforms to police encounters, sentencing, prison conditions, and reentry efforts.

The bill's sentencing reforms include reducing the disparity between crack and powder cocaine sentences from 18:1 to 1:1, reducing harsh mandatory minimums for nonviolent drug offenses, ending the federal prohibition on marijuana, and reinvesting in the communities most impacted by the failed War on Drugs.

The bill would aid reentry efforts by reinstating the right to vote in federal elections for formerly incarcerated individuals; “banning the box” — that is, prohibiting federal employers and contractors from asking job applicants about their criminal history until the final stages of the interview process; creating a federal pathway to sealing the records of nonviolent drug offenses for adults and automatically sealing (and in some cases expunging) juvenile records; removing the lifetime ban on federal TANF and SNAP benefits for former nonviolent drug offenders; removing barriers that prevent people with criminal convictions from receiving an occupational license for jobs, such as hairdressers and taxi drivers; and ensuring that anyone released from federal prison receives a photo ID, birth certificate, and Social Security card.

The Next Step Act would improve police encounters by prohibiting racial profiling by law enforcement agencies; improving the reporting of police use-of-force incidents; and providing better implicit racial bias, de-escalation, and use-of-force training for law enforcement officers. The bill would also improve the ability of those behind bars to stay in touch with their loved ones. Last, it would incentivize states through federal grants to decrease both their prison populations and crime, given 87 percent of those incarcerated are held in state facilities.

For too long our broken criminal justice system has been a cancer on the soul of this country, a cancer that has preyed on our most vulnerable citizens. The system as it currently stands is an affront to our most fundamental values of freedom, equality, and liberty. It’s time we take the next step toward a more equal, more fair, and more just nation.

2

Provide Fair Wages for All

Hon. Sherrod Brown

United States Senator from Ohio

Mass incarceration in the United States has destroyed families and limited opportunities for generations of African Americans and poor people. The “lock them up and throw away the key” ideology has left people spending far too much of their lives incarcerated for crimes that were far less serious than their sentences suggest.

Too often, the system imposes another sentence on top of whatever the law hands down — life with limited opportunity, not only for the person incarcerated but for entire families.¹⁸

For the better part of the past decade, Congress and states have worked to undo the effects of harsh, ineffective policies through solutions that improve the criminal justice system for people already trapped in it — modernizing sentencing laws, investing in reentry programming, and working to “ban the box” in hiring and academic admissions. These reforms are necessary, and overdue. But they aren’t enough.

By the time a person is in a position to benefit from criminal justice reform, society has already failed them.

We have to make our justice system fair and make it less likely that poor people and people of color will be disproportionately tangled up in it in the first place. We cannot end mass incarceration without addressing the systemic racism and economic inequities that lead to it.

Centuries of racism have robbed generations of African Americans of economic opportunity. We need significant, deliberate investment

in communities of color to help right these wrongs — in early childhood development, job training, public schools, local infrastructure, and much more.

We must address lending discrimination and reverse redlining that remain all too real. Decades of housing policy segregated communities of color and restricted their ability to build wealth through homeownership. Over the past two decades, predatory mortgage lending plagued these same communities and contributed to higher foreclosure rates. During the financial crisis, communities of color were robbed of the wealth they had finally been able to build in the last decades of the 20th century. Most still have not recovered. And we know continued financial and housing discrimination have a direct impact on families' abilities to choose where they live and on the tax revenue that is used to fund schools and other vital local community resources.

Meanwhile, the Trump administration has chipped away at the Fair Housing Act and undermined legal protections against discriminatory lending.

We must also make hard work pay off for everyone, no matter what kind of work they do.

The research is clear: the likelihood of Americans offending is lower when they are employed and not living in poverty.¹⁹ And, of course, parents' economic status impacts their children — children of parents in poverty are more likely to have interactions with juvenile justice systems, many of which are still designed to pull children into the system instead of diverting them away from it. This increases the chances of those children ending up in the adult system later in life.²⁰

These correlations aren't surprising — but they are a reminder of the generational factors that contribute to mass incarceration. Society tells families to pull themselves up by their bootstraps, but that's impossible when their hard work doesn't pay off.

That means we cannot accept a second class of “low-wage jobs.”

Dr. King taught us that all labor has dignity and that “no labor is really menial unless you're not getting adequate wages.”²¹ We need to raise the minimum wage, ensure workers are paid the overtime they earn, and make it easier for workers to join a union to collectively bargain for better pay and benefits. By increasing the federal minimum wage to \$15, more than 40 million Americans — many living below the poverty line — would get a raise.²² And by ensuring that workers are protected from retaliation if they discuss their salaries in the work-

place, we can help close the pay gap for women and for people of color.

We need to overhaul our tax code — it's one of the best tools we have to influence businesses and put money back into the pockets of people. We should dramatically expand the Earned Income and Child Tax Credits and make millions more people eligible.

These steps should be coupled with incentives for companies to pay workers more — we need a Corporate Freeloader Fee, requiring corporations to reimburse taxpayers if they pay employees so little that those workers are forced onto public assistance. This would encourage corporations to increase wages. And because it's based on corporations' wages, not workers' reliance on public assistance, it wouldn't stigmatize workers or discourage them from applying for the help they need.

We know families are struggling — the cost of housing, child care, and education have all gone up, while wages are largely flat. That's what these policies aim to combat.

When work has dignity, you can afford health care and child care and put food on the table without working two jobs. When work has dignity, you have power over your own schedule and can take time off to care for yourself and your family. When work has dignity, all families can build wealth through homeownership and join the middle class. When work has dignity, black women and white men are paid the same wages for the same work.

Of course, these ideas aren't comprehensive — no single policy proposal will right centuries of wrongs — and they must be coupled with more direct reforms to our justice system. Our country's refusal to adequately address economic issues that disproportionately affect poor people and people of color has resulted in people from these communities being disadvantaged at every stage in life. Taken together, these ideas would be an important step forward in investing in people and communities who have been left behind. We have to rethink how our society invests its resources to reflect the dignity of every citizen.

3

Provide Fair Housing to Advance Justice Reform

Hon. Julián Castro

Former United States Secretary of Housing and Urban Development

Addressing mass incarceration extends far beyond simply reforming our criminal laws. We must reimagine entirely our conception of justice. Even our common parlance — “the criminal justice system” — reveals the disconnect between how we currently approach it as a matter of public policy and how we should approach it. Criminal justice is not housed within a single institution. Rather, it is a constellation of overlapping policies, structures, and systems that intersect to form a web that impacts people and communities in ways far beyond what we typically associate with criminal justice.

When I was Secretary of Housing and Urban Development under President Obama, I challenged my team to identify ways to advance criminal justice reform through housing policy. Through that process, I learned that housing policy is criminal justice reform. Some of the most urgent issues facing people interacting with our criminal justice systems can be targeted and addressed through federal housing policy.

For example, racially segregated communities are much more likely to be over-policed. Predominantly black and brown communities experience a disproportionate police presence, and the result is a higher-than-average rate of arrest.²³ Where someone lives dictates the likelihood that they will have interactions with the criminal justice system. As such, policies like Affirmatively Furthering Fair Housing (AFFH), a long-awaited rule we accomplished during my tenure at

HUD aimed at encouraging local jurisdictions to take affirmative steps toward desegregating neighborhoods, can reduce inequalities in the criminal justice system. AFFH is good housing policy, good civil rights policy, and good criminal justice policy.

One of the most significant barriers for formerly incarcerated people reentering their communities is a lack of housing. Many people who leave correctional facilities are effectively homeless, though they are often not designated as such for official counts.²⁴ The formerly incarcerated are nearly ten times more likely to experience homelessness than the general public. And nearly twice as many formerly incarcerated people as are homeless are housing insecure. This means that they are living in temporary or unstable settings — a rooming house, hotel, or motel — and have no guaranteed place to live.²⁵ A number of limitations and restrictions — including affordability; the need to live close to employment opportunities, family, and parole officers; and restrictions around residing with others who have criminal histories — significantly limit housing options.

Within that incredibly limited universe, returning citizens often have to contend with another restriction: many landlords enact blanket bans against anyone with arrest or conviction records without regard to mitigating factors that should be considered. These bans fail to take into account, for example, the difference between a mere arrest and an actual conviction, and where there is a conviction, the seriousness of the crime and its relevance to residing at a particular place.

The problem is that people with a criminal background are not considered a protected class under the Fair Housing Act, so there are no explicit federal protections against this discrimination. While some jurisdictions have enacted their own state or local laws aimed at guarding against this discrimination, the result is a patchwork of protections that vary significantly depending on where one lives. For these protections to be meaningful, they must be reliable and consistent. We need federal protection for people with records.

While I led HUD, we worked to provide that protection. Thanks to a Supreme Court case we participated in called *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, the U.S. Supreme Court reaffirmed that the Fair Housing Act not only prohibited intentional housing discrimination, but also protected against housing practices that had an impact of discriminating against protected groups.²⁶

This theory, known as “disparate impact,” is a critical legal principle that lies at the core of our ability as a nation to enforce civil rights law and guarantee all people equal access and equal opportunity. It was this theory that allowed us to issue historic guidance in 2016 to provide greater protections to renters and buyers with criminal arrest records. That guidance clarified that blanket bans against renting or selling to anyone with a criminal arrest record are prohibited under the Fair Housing Act because of the disparate impact such policies have on folks of color.

That legal principle — and our ability to meaningfully ensure civil rights — is under grave threat from the Trump administration. Recently, Trump directed his senior officials to consider how to roll back civil rights enforcement efforts under the disparate impact theory. At HUD these efforts are already underway, and a proposed rule is being developed to undermine the disparate impact theory.

Such a critical tool shouldn’t be left to the whims of a single administration or an increasingly political Supreme Court. That is why it’s time to amend the Fair Housing Act and formalize this theory so that the Fair Housing Act will explicitly protect against practices with a discriminatory impact, including those that victimize people with criminal records.

This is bigger than a legal principle. It undergirds the way we talk about discrimination against marginalized communities in the 21st century. Discrimination doesn’t happen only when we mean for it to happen. Unconscious biases, deep-seated stereotypes, and assumptions that we don’t even know we hold play a part in all of our decision making — including the web of decisions that produced and perpetuate our unfair justice system and resulted in a crisis of mass incarceration that continues to plague our communities.²⁷

4

Dramatically Reduce the Incarcerated Population

Inimai Chettiar

Director of the Justice Program

Priya Raghavan

Counsel

*Brennan Center for Justice at New York University School of Law**

Locking up 2.3 million people, devastating communities, and costing \$270 billion annually, the American criminal justice system is wildly out of balance.

The sheer size of the prison population, larger than 16 states, is the single most dire fact of our failed national effort to address crime.²⁸ To truly transform the system, the next wave of reform must above all aim to shrink the tumor of incarceration. We must dramatically reduce the number of people behind bars in this country.

The burdens of mass incarceration fall disproportionately on people of color. African Americans are incarcerated at more than five times the rate of whites.²⁹ And while study after study shows that African Americans and whites use drugs at similar rates, African Americans are nearly four times as likely as whites to be arrested for drug offenses and six times as likely to be imprisoned.³⁰ Our justice system sets up children of color for prison: black children are five times more likely to be incarcerated than white children.³¹ This is a far cry from equal justice under the law.

* This essay was prepared with Ames Grawert, senior counsel and John L. Neu Justice Counsel in the Brennan Center's Justice Program.

Just as the 2016 election spurred a national awareness of mass incarceration, the 2020 election provides an opportunity to chart a course for transformative reform. Contenders for the presidency should be prepared to tackle this civil rights crisis, with solutions as sweeping as it demands.

Momentum has been slowly building for years. Since 2007, states from California to Texas have significantly overhauled their justice systems. And just last year, Congress passed the First Step Act, a bipartisan prison and sentencing reform bill.

But these modest reforms are not nearly enough. The next wave of change should focus on a key overarching goal: significantly reducing the incarcerated population.

Why this goal? Because of the sheer number of people — overwhelmingly people of color — whose lives are destroyed by incarceration. African Americans make up 40 percent of the incarcerated population — nearly one million people — while constituting only 13 percent of U.S. residents.³² And incarceration doesn't only affect those who are locked up; it rips apart families and communities, helping to perpetuate America's chronic racial inequality. Reducing the staggering number of people behind bars should be the lodestar for reform going forward. This means reducing the vast influx of people heading into prisons and releasing many of those who are there already.

The Brennan Center has outlined some key solutions focused on strategically reducing the incarcerated population, starting with leadership in Washington. Even though the overwhelming majority of prisoners are held in state systems, federal leadership can drive national change, with Congress leading by example or using the power of the purse to drive state action.

If the federal government and every state took two simple steps — ending imprisonment for lower-level crimes and reducing overly long sentences for other crimes — we could safely cut the nation's prison population by 40 percent.

We currently use prisons as warehouses for people who need help. Nearly 80 percent of those in prison suffer from mental health issues, substance abuse issues, or both.³³ Unsurprisingly, given that prisons isolate people from their support networks and generally provide insufficient programming and training, our prisons can be counterproductive when it comes to both rehabilitation and reducing recidivism.

There is a better way. One out of every four people currently in

prison is incarcerated for a lower-level crime. For these individuals, alternatives to prison like treatment, community service, or probation would work better to rehabilitate and reduce recidivism. An estimated additional 14 percent of the prison population has already served long enough behind bars and could be released with little risk to public safety. The federal government can implement these two steps, setting the stage for states to do the same.

Also, Congress can use federal funds to encourage states to reduce their prison populations. Federal policymakers helped contribute to the growth of mass incarceration, using funding to encourage states to increase arrests, prosecution, and imprisonment. The 1994 Crime Bill, for example, incentivized states to lengthen prison sentences and build prisons. Though that grant expired, Washington still allocates billions of dollars annually to state and local justice systems largely on autopilot, often cutting against rather than supporting reform efforts.

To unwind these incentives, Congress can pass a “reverse” of the 1994 Crime Bill — an act to reverse mass incarceration — which would provide funding to states that successfully reduce imprisonment and crime together. Most federal proposals only impact federal prisons, leaving nearly 90 percent of the national prison population untouched. But by using federal funds to drive nationwide changes, this proposal would reach further, underwriting a national reduction in incarceration. This federal support would help push states across the finish line, encouraging innovation and helping offset the cost of vital alternatives to incarceration, like substance abuse treatment.³⁴

Additionally, among other solutions, lawmakers can change how prosecutors operate, using budgetary incentives to reward prosecutors’ offices that reduce incarceration and recidivism.³⁵ Congress and the states can also abolish money bail, a practice that punishes poverty and turns what should be a public safety decision into a decision based on wealth.

But we can’t stop there. Decades of over-incarceration have impoverished communities of color, reinforcing the intergenerational wealth gap and creating a destructive cycle of incarceration and poverty. Reducing the prison population alone will not end this cycle, and it won’t eliminate the racial disparities that plague our justice system. We must address the structural inequities that result from and perpetuate mass incarceration. We need solutions to combat racism both within and beyond our justice system, stimulate economic growth in

neglected communities, provide adequate housing and education for all, and much more. These may seem daunting, but we can start by reducing the number of people put behind bars.

Americans overwhelmingly seek both a smarter approach to crime than we've seen in the past and sustained policy changes to promote racial equality.³⁶ It's up to our leaders to make this happen.

5

The Power of Myth

Ta-Nehisi Coates

Author, Journalist, and Distinguished Writer in Residence, New York University's Arthur L. Carter Journalism Institute[†]

This is 2019. This is the 400th year of the African American community in North America. We arrived in Virginia in 1619. We are one of the oldest ethnic groups in this country. Anti-African American and anti-black sentiment is foundational to the country. It literally would not exist without it. It's impossible to try to imagine the country without slavery.

Unfortunately, the same may be true of mass incarceration. If you look at the early 1970s, America is basically where the rest of the industrialized world is in terms of mass incarceration. Fast-forward to 2015, and we incarcerate more than 600 people out of every 100,000 adults. For blacks the rate is five times as high.³⁷ But to get the country back to where it was in 1970, and then to actually repair the damage that was done — is that going to happen?

And that is to say nothing of the whole Michelle Alexander question, which is, is this actually the system working as intended?³⁸ The black incarceration rate under Jim Crow was actually not that bad in the South, but it was really bad in the North. But immediately after integration, the South became even with the North.³⁹ What this showed was

[†] This essay is excerpted from oral remarks given at *A Conversation with Ta-Nehisi Coates and Melissa Murray* at NYU School of Law, January 31, 2019. The full conversation can be found here: <https://www.brennancenter.org/conversation-ta-nehisi-coates-and-melissa-murray>.

that Jim Crow was actually the system of social control in the South — they didn't have to have mass incarceration. It wasn't necessary. Prisons are now the system of social control, revealing a kind of psychology about how we should deal with black folks. We now see huge numbers of black males who have not graduated from high school bound to do some sort of time in prison — that's the way we've chosen to address that population of people. That's a choice that we've made.

I fear that what we are now seeing will become a permanent feature in America, that it is too much to disentangle. We have created a structure that is so large, so sprawling, with independent interests, unions, a private prison industry. How does this get un-spoiled? I'm not convinced that it will be. The incredible sociologist Devah Pager, in her book *Marked*, wrote that enough people are released from prison each year to fill every fast-food job opening in America five times over.⁴⁰ What are we going to do with these people?

I understand that there are reforms happening across the country, especially at the state level. Giving felons back the right to vote is really important. It's part of integrating people back into society. We also saw action in the last administration in terms of crack cocaine. All of that's good. But solutions have to go beyond decarceration. We have to figure out why we chose prison as a solution in the first place. We have to figure out why we look at certain populations of people, see mental health issues, chemical dependency issues, employment issues, or a lack of education, and decide that the endpoint for them should be prison. Even if we could decarcerate, how do we know that there wouldn't be some other punitive form of justice that we would choose after that?

Prison is now a social service provider, whether you like it or not. It's a punitive one, not the kind we would want. And there are embedded presumptions of black people, I would argue of poor people, in that approach — that I have to help you by pointing a gun at you. People who are weak, we tend to use the stick of the state in order to “help” them. But we don't do that with people who are strong. Punitive justice is so often directed toward black people, and punishment is often seen as a solution. If you believe somebody's less human, that becomes a lot easier to do.

How do we decide who's human? How do we reify those beliefs? Where does the dialogue happen? It happens in the world of narrative. It happens in the world of story. Those of us who are in the world

of policy deeply, often, underestimate the power of myth. When they were trying to get the statue of Lee taken down in Charlottesville, some said, “We’re not going to focus on these symbolic issues; we’re going to focus on policy.” But symbols define what your imagination is. Your imagination, therefore, bounds what possible policy you can have. It’s not a mistake that those statues went up during the early days of Jim Crow. It’s intentional. It was a statement on what they thought about the humanity of black people. If I don’t think you’re a human, there’s only a certain range of policy that I’m going to apply to you.

I would argue that myth is ultimately the source of the punitive justice that’s so often directed toward black people. People who are kids today will decide who’s going to be human 20, 30, 40, 50 years from now.

We have to fight the battle at the level of myth. It will bound what policies are possible. If there’s any sort of hope for unwinding mass incarceration, it begins there.

6

Respect Black Lives and Restore Justice to Those Made into Criminals

Alicia Garza

Cofounder, Black Lives Matter

Principal, Black Futures Lab

More than 2.3 million people are incarcerated in the United States.⁴¹ That's 2.3 million families that have been torn apart, and 2.3 million people who spend 24 hours a day in cages. These people are held involuntarily in state prisons, federal prisons, juvenile correctional facilities, local jails, Indian Country jails, military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and the prisons of U.S. territories.⁴²

For decades, reformers have led efforts to reverse the epidemic of mass incarceration. The Black Lives Matter movement helped give oxygen to these efforts, making visible the impacts of our country's system of mass punishment. But bolder solutions are necessary to ensure that we value the lives our criminal justice system upends. We need to transform the way we think about punishment and rehabilitation in America and end the racial inequities that have come to define the country's justice system. We are leading, and it's time for lawmakers to lead, too.

The current criminal system does not achieve justice. Instead, it exacerbates injustice.

Our criminal system punishes poverty. Of the more than two million people who are currently incarcerated, more than 450,000 are in jail awaiting trial.⁴³ They have not even been convicted of a crime; they have only been suspected of committing one. Many languish behind bars because they cannot afford to pay the bail that would buy their way to freedom. The criminal system also relies on funding from fines and fees collected from defendants. These fines and fees create a vicious cycle of debt and incarceration for those unable to pay them.

Our criminal system also deepens racial inequity. Racism permeates every aspect of the system. Forty percent of those incarcerated are Black, even though Black people make up only 13 percent of the U.S. population. Black people are five times more likely to be incarcerated at some time in their lives than their white counterparts.⁴⁴ Latinx people are twice as likely to be incarcerated as their white counterparts.⁴⁵ Black women are the fastest growing incarcerated population, and nearly half of all Black women have a family member or loved one behind bars.⁴⁶

It's time to acknowledge that punishment and incarceration have not solved problems. They have only exacerbated them. We deem poverty, intimate partner violence, drugs, gangs, immigration, and so much more as "criminal." But these issues cannot be solved by locking up more people. Incarceration leads only to more criminalization, more people behind bars, and more precious resources being spent on short-term solutions that do not solve long-term problems.

According to Narcotics Anonymous, the definition of insanity is "repeating the same mistakes and expecting different results."⁴⁷ Over the past few decades, billions of dollars have been invested in the carceral state. It costs up to \$75,000 per year to incarcerate one person.⁴⁸ Meanwhile, cities and states struggle to fund vital programs, from education and mental health services to childcare and housing.

It's time for a bold plan to decarcerate America.

Such a plan should first include robust sentencing reform, abolishing mandatory minimums and enhancements to sentences. Second, it should include a federal program to provide incentives to states to decarcerate, while imposing stiff penalties for states that continue to mass incarcerate.⁴⁹ Third, it should invest as much money as has been invested in incarceration into strengthening and expanding mental health services and critical safety net programs. Fourth, such a plan must eliminate bail and fines and fees charged to defendants. Finally, it

must completely rethink our systems of policing and prosecution, so that they work to uplift communities of color rather than tear them down.

To decarcerate America, we must advance new ways to address harm. Decarceration requires a shift from punishment to restoration and rehabilitation. Accountability for engaging in harmful practices can be accomplished without devastating families for generations. Instead, we should restore the bonds that are broken when harm is done and change the conditions that caused the harm to occur in the first place.

These ideas are far from utopian. Across the nation, cities and states are experimenting with new approaches to addressing harm, recognizing that punishment is not a deterrent. They are redirecting resources previously used to place people in cages to new approaches that serve needs and get to the root causes of what drives people to commit harm in the first place.

At a time of much political turmoil, the time is ripe for bold, scalable ideas that can, once and for all, resolve an epidemic that has for too long been a stain on American democracy. We can choose to keep repeating the same mistakes and expecting different results, or we can choose a new direction and a smarter approach. The epidemic of mass incarceration and the inequity inherent in the criminal system can only be addressed by attacking the root causes of the problem, not by tinkering with it. A re-investment in families and communities — and strengthening the bonds that make them whole — is the only way to dismantle the carceral state, once and for all.

7

End the Over-Incarceration of Women

Hon. Kirsten Gillibrand

United States Senator from New York

Our criminal justice system is broken. From arrests to sentencing to treatment in prison, the system is discriminatory, inconsistent, and ineffective. It has taken years for Congress to wake up to this fact, but millions of American families have already learned this the hard way from their own painful experiences.

While much of the criminal justice reform discussion in Washington has rightly centered on reducing the prison population as a whole, we can't ignore the unique challenges our criminal justice system creates for women. Over the past few decades, the number of incarcerated women has grown at almost twice the rate of incarcerated men, and today, more than 200,000 women are behind bars.⁵⁰ Most are mothers.⁵¹ About two-thirds are women of color.⁵² And study after study shows that our justice system is weighted in favor of wealthy, male, Caucasian offenders — which means many women are suffering unfairly.⁵³

That is not equal justice under the law. It is the opposite: unequal and unjust.

The good news is that Congress recently enacted major bipartisan reforms to our criminal justice system with the First Step Act. The law made many welcome improvements that will change people's lives for the better, but it is aptly named because it is only a first step — one that does not address many of the injustices women face in the system.

Here are the next steps we must take.

First, we must stop the abuse of pregnant women in prison. The First Step Act ended two indignities that have caused women in federal prisons to suffer: banning the shackling of pregnant women and ensuring that all incarcerated women have access to menstrual hygiene products. But this is not enough. In many states, incarcerated pregnant women can still be restrained or placed in solitary confinement without access to adequate medical and nutritional care.⁵⁴ This is cruel, and it does nothing to rehabilitate people.

As a mother with young children, I know firsthand that pregnancy takes an enormous physical and emotional toll on women's bodies. It requires consistent medical attention and unobstructed access to a doctor. Our country needs a national standard of care for pregnant women who are serving time in prison, and that's why I co-wrote a bipartisan bill called the Pregnant Women in Custody Act. My bill would create that national standard of care and protect pregnant women from the cruel and unusual punishment that so many of them are forced to suffer through now.

Second, we need to end the cash bail system. Cash bail keeps many low-income people in jail just because they can't afford to pay. Here's how it works: if you've been accused of a crime — just accused — the court sets an amount you need to pay to be released before your trial.

What happens if you and your family are living paycheck to paycheck? You have three options: You can take a plea deal, giving up your right to defend yourself at trial even if you're innocent. You can pay exorbitant fees to a bail bondsman. Or you can stay in jail until your court date, which can take weeks, months, or even years.⁵⁵

Americans all over our country who are struggling to get by, including many women who already are held back by the gender pay gap, face these terrible options. Four in ten Americans don't have enough savings to cover a \$400 emergency.⁵⁶ The median reported amount of savings for young African American and Hispanic women is between \$100 and \$120.⁵⁷ How are they supposed to pay \$1,000 in bail?⁵⁸ The cash bail system is a disaster, and that's why I'm fighting to end it altogether.

Third, we need to use alternatives to prison for lower-level, nonviolent crimes. Research has conclusively shown that sentences such as treatment and probation work better than incarceration to rehabilitate and reduce recidivism for nonviolent offenders.⁵⁹ According to a

Brennan Center study, nearly 25 percent of prisoners nationwide are incarcerated for lower-level, nonviolent offenses, and sentencing them to alternatives would not affect public safety.⁶⁰

If someone is suffering from drug addiction and charged with possession for the first time, they should go to a drug treatment program — not prison — for counseling and support. People suffering from mental health issues would be better served by mental health courts, where they can access healthcare providers, or probation that can link them to social services. Drug treatment programs and mental health courts as alternatives to prison can reduce rearrests by half and save taxpayers thousands of dollars — while helping to rehabilitate people too.⁶¹ Instituting alternatives to prison for lower-level, nonviolent offenses would result in thousands fewer federal prisoners without compromising public safety. And if the states adopt this policy too, we could safely reduce the national prison population by nearly 25 percent.

Alternatives to incarceration would especially help women in the criminal justice system. Studies have found that the majority of women currently in prisons and jails are there for nonviolent offenses.⁶² They are often primary caretakers of their children, and many have suffered through sexual violence or exploitation, addiction, or mental health issues.⁶³ These women don't need to be isolated from society; they need support, training, or rehab, so they can contribute to their communities and families in the best way possible. Congress must lead the charge on solving this problem, and I am proud to take on this fight in the Senate.

Our criminal justice system has been ripping apart families and destroying communities for years. We must fix this. We should protect incarcerated pregnant women, end our cash bail system, and find new and better alternatives to prison for nonviolent offenses. This is how we will make our communities safer. It's time to repair our broken criminal justice system once and for all.

8

Stop the Over-Policing of Communities of Color

Vanita Gupta

President and CEO, The Leadership Conference on Civil and Human Rights

After Michael Brown was shot and killed by a police officer in Ferguson, Missouri, the public demanded accountability. People marched in the streets and blocked traffic on highways. The Movement for Black Lives forced a national conversation about public safety, community trust, and racial justice.

I began my tenure as head of the Civil Rights Division at the Justice Department just two months after Michael's death. Tensions were high in St. Louis and across the country. Every week, it seemed, another video of police violence went viral.

The following year, in 2015, President Obama's Task Force on 21st Century Policing released a report with recommendations to ensure fair and effective policing. The Civil Rights Division was also deeply involved in a handful of jurisdictions to address discriminatory policing and systemic civil rights violations.

From Ferguson to Baltimore to Chicago, I met with impacted families, concerned residents, and law enforcement officers. Everywhere I traveled, I was struck by the wide gap in empathy and the absence of common language to discuss the profound pain and frustration.

The moment called for a moral reckoning. Solutions for fair policing required — and continue to require — confronting the sources of mistrust between communities and police.

The fraught relationship is partly a product of the historical role that law enforcement has played in enforcing and perpetuating injustice: slavery, the Black Codes, lynchings, Jim Crow segregation, and the war on drugs.

Mistrust is, of course, also based on lived experience and the interactions people have with law enforcement — something as traumatic as being racially profiled and mistreated during a traffic stop to the repeated tragedies of officer-involved shootings of unarmed Black men.

We also must take seriously our nation's dependence on criminalization and its corrosive impact on communities of color, people with disabilities, immigrants, the LGBTQ community, and people living in poverty. We have too often relied exclusively on the criminal justice system to address social and public health problems. Every day, children are arrested in schools simply for adolescent behavior. People are imprisoned for being poor or arrested for being homeless. Men and women experiencing mental health crises or substance use disorders are treated as threats, instead of people deserving of care and support. In too many communities, police officers are the first responders to social crises, which many officers agree they never envisioned being part of their job. As a society, we share a collective responsibility to ensure people in crisis receive care from medical professionals and community-based interventions.

The over-policing of some communities is a deliberate policy choice made by public officials over the past several decades. And it significantly contributes to our country's outsized and racially disparate arrested and incarcerated population. We bear the responsibility to confront the consequences and correct course.

But we also cannot just talk about the problems without charting the way forward. The Leadership Conference launched the New Era of Public Safety initiative in March of 2019 to build on a decade of policing reform and go a layer deeper with concrete recommendations for police and communities to achieve justice — together.

Under the Trump administration, the federal government has largely receded from — and even been antagonistic to — policing reform. But communities and people directly impacted have always led this work. That is why our initiative aims to equip communities with the tools to advocate for change from the ground up. These tools represent a shared vision and offer co-produced solutions for a new paradigm of public safety.

No two communities, police departments, or cities are the same. Nor is there one panacea for all harmful policing practices. Our New Era of Public Safety report contains innovative, data-driven strategies on issues from community policing to use of force to accountability that jurisdictions can fit to meet their needs. It recommends several key changes to police departments, including embracing procedural justice as a guiding principle that informs policies, practices, and trainings; and developing departmental policies and trainings, while including community members in the delivery of community policing, bias-free, and use of force trainings. It further recommends supporting the development of and investment in community-based support services to prevent and respond to crises; increasing community oversight of misconduct; and collecting, analyzing, and publicly reporting data to inform policy and address practices that have a disparate impact on marginalized communities.

By bringing people with diverse perspectives to the decision-making table, communities can disrupt the systems that drive criminalization and racial disparities in policing. Further, data empowers people with the tools to identify and address problems — as well as develop informed, creative solutions that support impacted communities.

Fair policing and community trust are intrinsically tied to public safety. That means police departments must develop policies, practices, and priorities that support fairness, equity, procedural justice, legitimacy, transparency, and accountability. These are shared values. And they will build trust, restore confidence, and, ultimately, heal wounds.

Federal, state, and local lawmakers, too, must commit to transformative change. Co-producing public safety will require investing real dollars to make a difference. Elected leaders must set the tone at the top by selecting law enforcement leaders, from police chiefs to the U.S. attorney general, who will create a culture that reflects the values of the communities most acutely impacted by criminalization, over-policing, and violence. To do this, leaders must require the collection and reporting of law enforcement activities in order to keep departments and officers accountable for misconduct. They must also prioritize diverting state and federal funding away from criminalization and toward strengthening our schools, job and housing opportunities, public health services, shelters, and health care. And the Department of Justice should use its available tools — funding, technical assistance, and civil rights enforcement — to promote change from within.

A new era of policing will not be achieved by tinkering at the edges. It will require a reimagining of public safety. It will require daring leadership, persistence, and partnership — a partnership committed to safe, fair, and effective policing. A partnership committed to data and transparency and racial justice. And a partnership committed to ending our nation’s overreliance on criminalization and incarceration. Our communities deserve nothing less.

9

Harness the Momentum for Bipartisan Reform

Holly Harris

Executive Director, Justice Action Network

In December 2018, Congress passed and President Trump signed into law a groundbreaking criminal justice reform bill, the First Step Act. Now, states all over the country are moving their own “first step” bills. Veterans’ groups, business and trade associations, faith voices, and key law enforcement leaders are working alongside conservative and progressive advocacy groups and impacted voices to change laws and change lives. The criminal justice reform movement is broad, and the future is bright.

In this era of entrenched partisan politics, how did we achieve a bipartisan win in Washington?

I remember sitting in Beltway strategy meetings in late fall as time was running short to pass the First Step Act. I was shocked at how little discussion was devoted to the one person who would determine whether this legislation would receive a vote on the floor of the United States Senate: Senate Majority Leader Mitch McConnell.

When our team at Justice Action Network (JAN) met with him, the Leader was very clear that he would not put his thumb on the scale. He was open to a vote but made no promises. To me, the glass was half full: “So you’re telling me there’s a chance?”

To get McConnell to commit to the floor vote we needed, we developed a strategy that would emphasize influential voices focused

on building support in McConnell's home state of Kentucky, and his Republican caucus on Capitol Hill.

We worked with State Senator Julie Raque Adams, a popular Kentucky lawmaker from Louisville, McConnell's backyard. Adams had sponsored and passed the country's first "dignity bill," common-sense legislation that eliminated the shackling of pregnant women and improved health and sanitary conditions for incarcerated women.⁶⁴ Adams was the only Republican to win reelection in her district — a victory that proved, we said, that justice reform makes for good policy and good politics.

Next, JAN commissioned a public opinion poll that found significant majorities of Republican and Democratic voters in Kentucky supported criminal justice reform. We held press calls to publicize these findings, joined by Senator Rand Paul, a pioneering supporter of criminal justice reform, and Jared Kushner.⁶⁵ We secured editorials in favor of the bill from local papers. But the story that mattered most to the Leader was published in his hometown paper, the *Courier Journal*, highlighting our Kentucky polling numbers.⁶⁶

JAN kept the pressure on in Louisville, hosting a panel with the conservative Federalist Society, the progressive American Constitution Society, and law enforcement, at McConnell's undergraduate alma mater, the University of Louisville.⁶⁷

And just as support for criminal justice reform reached a zenith in Kentucky, JAN and its valued partners were hard at work back in Washington, making the case for reform and urging the president to lean in.

Groups from across the ideological spectrum acted together toward this goal. The Brennan Center worked to ensure that sentencing reforms were included in the final package, through direct outreach to lawmakers and a flurry of news articles. FreedomWorks and the American Conservative Union fired up their grass roots and sent thousands of calls and emails to key Hill offices. The Faith and Freedom Coalition activated thousands of faith leaders, while #cut50 and Families Against Mandatory Minimums blanketed the Capitol with stories of unfair sentences and impacted families.

Finally, the president took to Twitter with uncharacteristic positivity, publicly urging Leader McConnell to put the First Step Act to a vote: "Go for it, Mitch!" With local support clear, and with cover from the Republican president, "go for it" he did. On December 11, 2018,

Leader McConnell announced the First Step Act would go to a vote in the Senate.⁶⁸

For the first time in decades, we've turned away from the lock-them-up-and-throw-away-the-key policies of the 1980s and 1990s, specifically the 1994 Crime Bill. But the First Step Act is just the beginning; there is much left to do.

Our jails and prisons remain overcrowded, and we are locking away too many people for too long without the public safety return we deserve. We should spend our resources more wisely, focusing on the most dangerous crimes instead of locking people up for minor drug or other nonviolent offenses. And currently, our criminal justice system forever punishes those with criminal histories. We need to break down barriers for the one in three American adults with a criminal record who are trying to find jobs and rebuild their lives. The list goes on, from reforming our bail system to slowing the staggering growth of the population of incarcerated women.

Safely reducing incarceration is supported across the ideological spectrum, but hailing from red state Kentucky, I was sold on the conservative arguments. Reforms have proven to make our system more efficient and effective, while lifting up opportunities for redemption and lowering crime and recidivism rates. I am proud to see fellow conservatives play a leading role at the federal, state, and local levels, working alongside progressive leaders. Every single American family is impacted by our broken justice system, and most believe that it needs significant transformational change. Americans no longer believe a prison cell is the only answer for people who make mistakes; nearly 90 percent of voters want the federal government and the states to shift money toward alternatives to incarceration.⁶⁹

It's time to put people over partisanship. We can build on the First Step Act's success to win future victories in states across the country. With ever-growing momentum for bipartisan reform, we urge leaders across the country to be on the right side of history, and join us as we offer second chances, and make our country safer.

10

Strengthen Resources for Public Defenders and Hold Prosecutors Accountable

Hon. Kamala Harris

United States Senator from California

The United States currently incarcerates more of its citizens than any other nation in the world. The U.S. has five percent of the world's population, but nearly 25 percent of its prisoners.⁷⁰ These astounding figures have required us to acknowledge mass incarceration and the events that lead to mass incarceration every day in courtrooms across America.

As a prosecutor for most of my career, I know our legal system can provide justice, particularly when we stand up for victims of murder, rape, and other serious crimes. However, I also have seen the flaws in the criminal justice system — especially in its ability to ensure that defendants receive a fair trial and due process, as guaranteed by our Constitution. I strongly believe we must institute transformative structural changes to uphold these guarantees.

Traditionally, prosecutors have been rewarded for securing more convictions and longer sentences, but we now understand this kind of focus is harmful. Prosecutors should shift success measures to more modern metrics, such as reducing unnecessary imprisonment, reducing racial disparities, and lowering recidivism rates — moving towards a culture of reducing mass incarceration. Lawmakers can encourage this shift by using budgetary incentives to help reorient

prosecutorial practices. And while there are other mechanisms in place to hold prosecutors accountable, much more can and should be done — from collecting data on charging decisions and outcomes, to ensuring that defense attorneys have greater access to a prosecutor’s case file.

However, prosecutors are only half of the adversarial equation. Another important way to safeguard our system is to equip public defenders with the resources they need to do their jobs well.

In 1963, the Supreme Court famously held in *Gideon v. Wainwright* that state courts are required to provide counsel to criminal defendants unable to pay for an attorney.⁷¹ But *Gideon* alone does not guarantee a fair process for defendants who cannot afford a lawyer. The daily work of upholding the rights of the accused falls on our public defenders. And a truly fair process requires that defendants have lawyers who have the funding and resources to challenge the prosecution.⁷²

When I was a prosecutor, I knew that the public defender’s office — led by my friend the late Jeff Adachi — fought hard for funding and resources. The same fight is being mounted by many other public defenders’ offices, and with good reason: only 21 percent of state-based public defender offices are able to handle their caseloads with attorneys working at recommended levels.⁷³ For example, in Florida, the annual felony caseload per attorney is 500.⁷⁴ The typical public defender in Colorado, Missouri, and Rhode Island carries two to three times the recommended workload.⁷⁵ In Louisiana, public defenders have almost five times the recommended workload, which led one federal judge to declare that “the state was failing miserably at upholding its obligations under *Gideon*.”⁷⁶

Time and resource constraints discourage public defenders from taking cases to trial. The vast majority of felony convictions are now the result of plea bargains — by some estimates, as much as 94 percent at the state level and 97 percent at the federal level.⁷⁷ These statistics must lead us to wonder whether a guilty plea is truly a result of evidence of guilt or the lack of resources to mount a meaningful defense.

Finally, between housing, child care, and student loan debt, young public defenders often have a hard time covering the cost of living and get pulled to more lucrative jobs. In Deschutes County, Oregon, the starting salary for a deputy district attorney is about 34 percent higher than the starting salary for a public defender.⁷⁸ Brooklyn Defender Services conducted interviews and a focus group, and found that public

defenders wondered whether their jobs were compatible with reaching financial stability and starting a family.⁷⁹ That is simply unacceptable. When the salaries of dedicated public defenders do not allow them to cover the cost of living, they cannot do the job that their clients deserve and our Constitution requires.

On the civil law side, we have made great strides in recognizing that access to justice depends on access to counsel. However, the constitutional right to counsel does not extend to civil cases related to housing, health care, and domestic violence. In 1974, Congress established the Legal Services Corporation (LSC) to provide legal assistance to low-income Americans who face serious civil matters.⁸⁰ Seventy percent of LSC clients are women. Almost one-third of all cases closed by LSC grantees are family law cases. Housing and foreclosure cases make up the second largest category of cases closed.⁸¹ In 2018, Congress appropriated \$410 million for LSC.⁸² We celebrate this progress on the civil side but must acknowledge that it makes the case for improvement on the criminal side even more compelling.

When I was a law clerk in the Alameda County District Attorney's Office, I saw the tremendous power of prosecutors and judges. With the swipe of a pen, these individuals could make decisions about someone's life and liberty.

But in our adversarial system, true justice requires balance. And we cannot secure justice with such an extreme imbalance of resources. It is not enough just to have a lawyer; defendants in criminal cases need lawyers who have enough time, money, and resources to unearth all of the facts and exculpatory evidence in their cases. They need lawyers who can stand up in court, fully prepared to challenge the prosecution. We can and must deliver on *Gideon's* promise.

11

The Conservative Case for Reform: Equal Rights, Public Safety, and Redemption

Mark Holden

Senior Vice President, General Counsel, and Corporate Secretary, Koch Industries

Ever since I was young, I've been interested in fixing the criminal justice system. I grew up in Worcester, Massachusetts, during the advent of the War on Drugs in the 1970s and '80s. While working as a guard in a local prison to pay for college, I oversaw many of my former classmates. I had my whole life ahead of me; their lives were already ruined. A lack of education and resources, little family support, substance use disorders, poor decision-making, and an absence of treatment programs all led them to deviance. Seeing how our paths had so sharply diverged was definitely a "there but for the grace of God go I" moment.

In 1995, I began my career at Koch Industries. I'm fortunate to still be at Koch for many reasons, primarily for the chance to implement our Chairman and CEO Charles Koch's vision of a free and more just society. That requires removing barriers, like outdated and ineffective criminal justice policies that prevent people from reaching their potential.

I strongly believe that criminal justice reform is a core conservative issue. While the cost savings are often what attracts conservatives, those who have come to the table have stayed for the salvation. I also view the issue as one that can transcend politics and unite everyone —

even those who share little else in common — toward a higher purpose.

At Koch, we view criminal justice reform from a moral, constitutional, and fiscal perspective, with an eye toward equal rights, public safety, and redemption.

The moral case is simple: we have a two-tiered justice system where people with resources often receive better outcomes than those who are less affluent. We criminalize poverty through an outdated pretrial justice system that incarcerates people who aren't a public safety threat but can't afford bail. Once saddled with a criminal record, these people then face more than 40,000 collateral consequences preventing them from ever obtaining jobs, housing, education, licenses, loans, employment, and voting rights.⁸³ To endlessly punish those who have paid their debt to society is simply immoral.

From a constitutional perspective, almost half of the Bill of Rights deals with criminal justice. The Founders witnessed abuses of justice in their home countries and were warning that such overreach would pose the greatest threat to life, liberty, and the pursuit of happiness.

Finally, the fiscal case. More than a decade ago, Texas wisely decided against spending billions of taxpayer dollars on a new prison. Instead, the state embarked on a plan to keep out of prison certain individuals who were not a threat to public safety, via specialty courts and probation. And for those sentenced to prison, Texas created access to rehabilitation programs that reduced recidivism by equipping incarcerated individuals with the therapy and skills needed to succeed after their eventual release.

To date, these reforms have saved the Lone Star State more than \$3 billion, led to the closing of several prisons, and reduced crime to levels Texas hasn't experienced since the 1960s.⁸⁴ This smart-on-crime, soft-on-taxpayers approach became a model for dozens of other states and for Washington, D.C., which passed the First Step Act late last year.

To build on last year's progress, here are four ideas that will help our country take the next step on criminal justice reform:

We should revamp the Federal Bureau of Prisons. Through no fault of its own, the Bureau of Prisons needs a makeover. First, it should be renamed the Bureau of Corrections and Rehabilitation (BCR), a name that reflects its objective. The goal of prison should be to correct illegal behavior and rehabilitate people to keep them from reoffending. Next, the bureau should be housed outside the Department of Justice. With all due respect, the Department of Justice's mission isn't to reha-

bilitate people who commit crimes; it's to prosecute and put them in prison, often for long periods of time. If we're serious about keeping federal inmates from returning to prison, we should place BCR under the supervision of the Department of Health and Human Services, which is better suited to rehabilitate those in need.

We should reform collateral consequences. While there can, at times, be reasons to block people with criminal records from certain opportunities, we should eliminate one-size-fits-all prohibitions on access to jobs, housing, loans, education, voting rights, and licenses. Washington and the states should enact "clean slate" legislation (like the law passed last year in Pennsylvania) that automatically provides record clearing for eligible individuals who remain crime-free over a specified period.⁸⁵

We should reform asset forfeiture laws. Civil forfeiture violates the Fourth and Fifth Amendments by allowing law enforcement to seize and retain assets from citizens who haven't been charged with a crime. It shifts the burden of proof from the government to individuals whose property was (illegally) seized and requires individuals to sue to get their property back. It's inconsistent with the proper role of police in our society, increases tensions in communities, and creates perverse incentives for law enforcement, who are often able to use the proceeds to fund their activities.

We should honor the Sixth Amendment by requiring access to effective counsel for anyone charged with a felony or misdemeanor. States routinely prosecute defendants while failing to provide them with effective counsel; where public defenders exist, they are overworked and underfunded. As 80 percent of those accused require a court-appointed lawyer, this is a serious constitutional crisis that must be addressed.⁸⁶ Until then, the government should not be allowed to prosecute defendants who lack an effective advocate.

As we enter the 2020 election season, I hope that leaders and lawmakers across the political spectrum embrace the cause of justice reform. Last year, we achieved an incredible victory with passage of the First Step Act, the biggest justice reform in a generation, spearheaded by both Republicans and Democrats. I look forward to the victories that lie ahead.

12

Recognize Black Humanity

Sherrilyn Ifill

President and Director-Counsel

Jin Hee Lee

Senior Deputy Director of Litigation

NAACP Legal Defense and Educational Fund, Inc.

“In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute.”⁸⁷ The late Supreme Court Justice Thurgood Marshall — the first African American member of the United States Supreme Court and the founder of our organization, the NAACP Legal Defense and Educational Fund, Inc. (LDF) — penned these words in his condemnation of the death penalty. But they apply equally to what is, at heart, the solution to mass incarceration: embracing and elevating the humanity of those subject to the criminal justice system.

There are approximately 2.2 million people in American prisons and jails — a nearly 500 percent increase in 40 years. More than 60 percent of the incarcerated population are people of color, with the Black community bearing the greatest burden. Black men are six times more likely than white men to be incarcerated, and among Black men in their thirties, one in 12 is in prison or jail at any given moment. One in three Black men born since 2001 will likely be incarcerated at some point in his life.⁸⁸

This mass incarceration of Black people is not a product of chance. Rather, it is the inevitable outcome of our national legacy of dehumanizing Black communities since the arrival of the first Africans in bondage. This dehumanization did not end with emancipation, however, but

continued with convict-leasing that substituted prison labor for slave labor, Black codes that criminalized the movement and presence of Black people as “vagrancy” or “loitering,” Jim Crow laws that delineated all aspects of social life along racial lines, the racial terror of lynchings that evolved into the modern-day death penalty, and now the mass incarceration of generations of Black families.⁸⁹

The dehumanization inherent in mass incarceration must be viewed in the context of other forms of dehumanization experienced by Black families. The number of racially segregated schools has doubled in the past 20 years, and Black children are disproportionately subject to excessive school discipline, thus feeding the school-to-prison pipeline.⁹⁰ Discriminatory barriers to employment opportunities, credit access, and affordable housing prevent Black families from achieving financial security or, in many instances, the ability to sustain a livelihood. After the Supreme Court’s decision invalidating a key provision of the Voting Rights Act, people of color face new obstacles — like extreme, racially targeted photo-ID laws — to exercise their hard-won right to vote.⁹¹ And the rise of the Black Lives Matter movement put a public spotlight on a reality known to Black communities for generations: that the police, sworn to protect and serve, can at times be a source of fear and violence.

In essence, the dehumanization of Black men, women, and children renders Black people unable to effectively exercise the rights of full citizens. Entrenched, structural racial discrimination persistently disadvantages Black families and communities. This is even more acute for formerly incarcerated people, who are often stripped of their right to vote and deemed ineligible for many educational, employment, and housing opportunities due solely to their conviction. With the cards so inequitably stacked, Black people who are formerly incarcerated are often set up for a life sentence of marginalization and subordination.

In the face of this reality, it is naive to believe that legislation like the First Step Act, which was signed by President Trump in late 2018, will solve the problem of mass incarceration. While LDF supported its enactment, we viewed it for what it was named: the first of many necessary steps to achieve reform. But to truly end mass incarceration, our government policies must affirm and protect all aspects of Black people’s humanity. In this regard, the Trump administration has failed miserably and shockingly. Indeed, the Trump administration has repeatedly taken actions that are at odds with recognizing the human-

ity of people — especially people of color — trapped within the injustices of the criminal justice system.

President Trump publicly supports the execution of drug traffickers, even praising similar comments by President Rodrigo Duterte of the Philippines, who is accused of serious human rights violations in his crusade against drug crimes. In just his second month in office, President Trump resumed reliance on private prisons despite evidence that they do not meet federal standards for safety and accountability. President Trump's Department of Justice also rescinded the "Smart on Crime" initiative, reverting to the now widely criticized practice of seeking the most severe sentence possible for even low-level, nonviolent offenses. The Department of Justice's Office of Community Oriented Policing Services no longer conducts investigations and public reporting of systemic problems within state and local police departments; in fact, upon his departure as attorney general, Jeff Sessions issued a memorandum curtailing the use of consent decrees to remedy systemic constitutional violations perpetrated by police. And the Departments of Justice and Education rescinded their joint guidance that had helped schools and school districts eliminate racial disparities in school discipline and ensure that no student is discriminated against on the basis of race.

Through both words and actions, the current administration not only has failed to affirm the humanity of Black people but in fact has actively worked against it. In promoting policies that criminalize adults and children of color, the administration continues the well-trodden path of funneling them into an unjust criminal justice system. In failing to protect people of color from the abuses of law enforcement agencies and prison systems, the administration signals an appalling disregard for their welfare.

Ending mass incarceration requires a full commitment to embracing the humanity of those most at risk within the criminal justice system. The Trump administration has utterly failed in that regard.

Any real attempt to substantially reform our criminal justice system requires an administration at the federal level that is committed to more than cosmetic changes and marginal investments. It requires an administration that stands ready to offer meaningful incentives to state and local law governments to adopt transformative policies and practices.

True reform also requires fundamental shifts in our national narratives about criminality and about the humanity of Black families and

communities. Words matter, and how we talk and think about the integrity and citizenship of Black people will continue to shape our approach to mass incarceration.

We cannot count on current leadership in Washington, D.C. to shift this narrative. Instead, it will require the ongoing and unrelenting demand of Black people in communities around this country, whose willingness to openly and aggressively challenge mass incarceration sparked the reform moment, and whose voices will continue to play a critical role in its progress.

13

Cut 50 Percent of the Prison Population

Van Jones

Cofounder, #cut50

CEO, REFORM Alliance

With the Iowa Caucuses on the horizon, reporters and candidates are already hard at work learning everything they can about the state. A tragic fact that they'll uncover is that African Americans represent just under four percent of the state's inhabitants but 25 percent of its prison population.⁹² Iowa's example is not unique: our justice system disproportionately arrests, prosecutes, and imprisons African Americans across the country, tearing families apart and perpetuating the ugly legacy of racism.

There is no easy solution to this crisis. But candidates vying for the presidency, and the current incumbent, must confront it head-on — not with platitudes, but with ambitious plans to attack the root causes of injustice in America. By offering a plan to turn solutions into reality, candidates can show that they won't shrink from big problems and that they understand the facts about race in America.

Those facts still stagger. More than 50 years after the end of legal segregation, massive disparities still separate whites from African Americans. The average white family holds roughly seven times more wealth than the average black family.⁹³ And African Americans are incarcerated at nearly six times the rate of whites.⁹⁴ These facts are almost certainly related: black unemployment has always been high compared to the rest of the country but after taking into account incar-

ceration, the unemployment rate for black men is triple the rate of white men.⁹⁵ The racial wealth gap — and the racial prison gap — are part of the legacy of slavery and Jim Crow and a testament to our long history of denying basic dignity to people with darker-colored skin.

Unsurprisingly, Republicans and Democrats divide sharply over how to address the entrenched racism in our policies and our culture. But this past year showed that criminal justice reform is a rare piece of common ground, making it a promising place to begin repairing the broken bonds between us.

That's one of the reasons I spent the past five years building #cut50, a bipartisan initiative to cut crime and the incarcerated population in half. When I started #cut50, I knew that liberals, conservatives, and everyone in between were disturbed by the crisis of over-incarceration. And I believed that this consensus could be turned into an alliance, and then a coalition, some legislation, and eventually new laws that would put us on a better path. Many doubted this course — and sometimes I doubted myself — but last year we succeeded, together. The First Step Act, which will reduce the federal prison population and help people return home to their families and communities job-ready, was passed on a massive, bipartisan vote through both chambers of the U.S. Congress and signed into law. But the act's title is no joke. Everyone involved knew we couldn't fix everything wrong about our criminal justice system in a single day.

That's why it's time to start talking about bigger, bolder second steps that get us closer to fulfilling the promise in #cut50's name — a 50 percent reduction in incarceration nationwide.

If the federal government and every state adopted two simple policies — ending the use of prison for lower-level crimes and shortening sentences for others — we could reduce the number of people in prison by more than 40 percent. That's more than 550,000 people who could be freed from prison safely, returning to their families and communities to live productive lives.⁹⁶ Some critics assume there's not a way to do this safely. But research from the Brennan Center and others shows that, if done right, this can be done without any risk to public safety.

These solutions mean connecting people who suffer from substance abuse disorders with treatment — rather than incarcerating them and separating them from their support networks. People of all colors know all too well the pain of addiction and the slippery slope from addiction to crime to imprisonment. Anyone who has experi-

enced the pain of watching a loved one suffer through this knows that prison does not help. We can truly save lives with a better approach.⁹⁷ That's a legacy worthy of any leader.

We should also add compassion and individual understanding back into the criminal justice system. That means getting rid of mandatory minimum sentences. The laws behind these sentences handcuff judges and require them to impose cookie-cutter punishments regardless of the circumstances of the crime or the individual. Mandatory minimums started as a way to reduce racial disparities in sentencing — but as we all know by now, they've done just the opposite. We should recognize this set of laws as the failed experiment it is.

Finally, we should build more exit ramps to help people leave the criminal justice system. Last year, President Trump commuted the sentence of Alice Marie Johnson, a great-grandmother serving decades in prison for a drug offense.⁹⁸ There are thousands of people like her still in prison, and they shouldn't have to wait for a pardon. To help them, we should restore federal parole — providing a way for people to leave prison when they're ready, not after some arbitrary period of time. We should also cap the amount of time someone has to spend in prison before their first parole hearing. Pairing these changes with sentencing reforms would dramatically shorten the time people spend behind bars unnecessarily. It would add humanity back into the justice system. The same caps should also be placed on probation, parole, and other forms of supervision. These supervisory sentences often become another shackle or a trapdoor to failure — instead, we should offer springboards to success.

Mass incarceration has devastated our communities, torn apart families, and ruined too many lives. Though this system is simply too interconnected and complex to fix in one fell swoop, if we continue working to change hearts and minds, we can build the next steps that accomplish even more for our communities. Here too, we'll find more friends than enemies willing to help along the way.

14

Provide Treatment for Addiction

Hon. Amy Klobuchar

United States Senator from Minnesota

It has become increasingly clear that there are two systems of justice in America — one built for crimes committed in the boardroom and another for crimes on the street corner. That has to change.

Just look at Paul Manafort, who was initially sentenced to just under four years in prison — well short of the sentencing guidelines for his numerous felonies — by a district court judge in Alexandria, Virginia. Many wonder whether offenders on the opposite end of the socioeconomic spectrum would have been given the same leniency. That's not justice.

I headed the largest prosecutor's office in Minnesota for eight years. My team adhered to one very important principle: we were ministers of justice. Our job was to convict the guilty and protect the innocent. Today the scales of justice are off-kilter. It's up to us, the policymakers and decision makers, to change that.

We need a criminal justice system that works for everyone and ensures the fair administration of justice while also keeping our communities safe.

We took an important first step with the passage of the aptly named First Step Act, bringing important reforms to federal prisons and making needed changes to our sentencing laws. The legislation is just a beginning, and we have more work to do.

The concept is this: for nonviolent, low-level drug offenders, there are more effective and innovative solutions than long prison sentences. Why? People are capable of change, and many deserve a second chance.

My family knows the power of second chances. I am the daughter of an alcoholic, and after a number of DWIs, my dad was finally required to take part in treatment and changed his life. In his own words, he was “pursued by grace.” As a country, we need a criminal justice system that allows more people to be pursued by grace.

One way to do that is to address one of the underlying causes of rearrest and recidivism: addiction. One of the most important lessons I learned as Hennepin County Attorney is that you can’t break the cycle of drug abuse and destructive behavior just by locking a person up.

We need smart solutions that drive people toward treatment and recovery rather than an endless cycle of arrest and incarceration. That’s why, as both a member of the Senate Judiciary Committee and a prosecutor, I have fought to expand funding for and access to drug courts.

Drug courts — which divert nonviolent, substance-abusing offenders from prison and jail into supervised treatment — offer one of the best opportunities to ensure that those struggling with addiction get the help they need while preserving public safety. We know there is racism in our criminal justice system, but these courts offer a lifeline for all low-level drug offenders regardless of race, socioeconomic class, gender, or politics. Studies have indicated that drug courts save money, reduce recidivism, and give low-level, nonviolent drug offenders a second chance at becoming productive members of society.

Minnesota took advantage of this model and established its first drug court in the state’s most populous county in 1996, shortly before I became the Hennepin County Attorney. When I took over, I used to say that my goal was to run our office like a business, with one significant exception: we didn’t want repeat customers.

During my tenure, we looked to alternatives to incarceration for the mentally ill and serious substance abusers. We found that these offenders did not typically meet the bar for court-ordered institutional treatment but were in desperate need of additional treatment options. As a result, the County Attorney’s office worked with the county to create programs that provide specialized supports for those with mental illness and chemical dependency. In urban, suburban, and rural areas, the state has now utilized specialty courts — including

drug, DWI, veterans, family dependency, juvenile, and hybrids — serving more than 30 counties.

These courts work. According to a study by the National Association of Drug Court Professionals, 75 percent of drug court graduates had not been arrested again, compared with 30 percent of those released from prison.⁹⁹ They save money, too. The most comprehensive study on drug courts to date concluded that they save an average of \$6,000 per person.¹⁰⁰ In fact, every \$1 invested in drug courts saves more than \$3 in criminal justice costs alone.¹⁰¹

Given the strong case for these courts, I have led a bipartisan group of senators for the past several years in urging the Senate Appropriations Committee to provide strong funding for drug courts and veterans' treatment courts as part of the appropriations process. These efforts have yielded results. Last year we funded drug courts at a record level of \$75 million, an increase of \$32 million over the previous year.¹⁰²

But to truly help close the revolving door of our nation's criminal justice system, we also need to curb substance abuse on the front end. The bipartisan Comprehensive Addiction and Recovery Act (CARA) was signed into law in 2016 and encourages states and local communities to pursue a full array of proven strategies in the fight against addiction — including expanded access to treatment programs. We now need to take a step further and pass CARA 2.0, which dedicates \$1 billion in resources to further support evidence-based prevention, enforcement, treatment, and recovery programs.¹⁰³

When I think about reforming our criminal justice system, I remember when I was in high school and my dad convinced me to spend a morning sitting in a courtroom watching a state court district judge handle a routine calendar of criminal cases. In an essay about that day, I wrote that “to be part of an imperfect system, to have a chance to better that system was and is a cause worth fighting for.”

We still have an imperfect system. But we must commit to bettering the system, to being ministers of justice. That is a cause worth fighting for.

15

The Trump Administration's Commitment to Justice Reform

Jared Kushner

Senior Adviser to United States President Donald J. Trump

The U.S. criminal justice system faces many challenges, including high recidivism rates, high financial and social costs to the American taxpayer, overpopulated prisons across the country, and overall reduced public safety. Additionally, the 1994 Crime Bill, signed into law by President Bill Clinton, disproportionately impacted communities of color and accelerated mass incarceration.¹⁰⁴

Addressing these challenges requires significant reform. Last year, President Trump and our administration determined we could no longer maintain the status quo and took action. Drawing from successful reforms in states across the nation, the administration worked closely with Republicans and Democrats in the U.S. House and Senate Judiciary Committees to pass the First Step Act, which revitalizes our criminal justice system to be tough on crime but also smart on crime.

The president's move shocked cynics, many of whom saw his election as the end of any hope for criminal justice reform. But President Trump believes our criminal justice system can be budget-smarter, fairer, and can better protect public safety.

Our current high recidivism rates alone underscore the need for change. Ultimately, 95 percent of state prisoners will one day be released from prison.¹⁰⁵ However, 77 percent of state inmates and 45 percent of federal inmates will be rearrested within five years.¹⁰⁶ Inmates are learning to become better criminals rather than better

citizens. In federal prisons, an astonishing 27 percent of inmates are first-time offenders.¹⁰⁷ The current system succeeds at detention but fails at rehabilitation and helping inmates become self-sufficient when they reenter society. The United States has five percent of the world's population, but its prison system holds nearly 25 percent of the world's prison population.¹⁰⁸ This is simply unsustainable.

The fiscal conservative case for reform is also strong. The country pays a very high and unnecessary cost to fund the current system. Additional damages associated with crime in the form of medical costs, property loss, and loss of life impose an even greater burden on American society. Maintaining a system that simply fills prisons across the country is not acceptable. The objective must shift to lowering the overall number of nonviolent inmates and, perhaps more important, efficiently applying recidivism reduction programs to place them on a pathway to success rather than a return trip to prison.

Recognizing the need for reform, states have worked to address these problems. For example, Texas, Georgia, Indiana, South Carolina, and Mississippi have implemented policies that drastically improved their prison systems, cut costs, and lowered crime rates significantly.¹⁰⁹ These state successes demonstrate that appropriate legislative action can indeed reform a broken system.

In designing the First Step Act, President Trump and congressional leaders sought to draw from these examples. The legislation incentivizes nonviolent and low-risk inmates to participate in evidence-based recidivism reduction programs and earn time credits toward prerelease custody. The First Step Act promotes programs to prepare inmates for a productive life outside prison, such as vocational training, education coursework, faith-based programs, mental health treatment, and drug rehabilitation.¹¹⁰

The act also reforms mandatory minimums, similar to those from the 1994 Crime Bill, which created racially discriminatory outcomes and contributed to mass incarceration. The First Step Act achieved sweeping bipartisan support and was endorsed by major law enforcement organizations, civil rights groups, and conservative and faith-based groups. It was the most substantial criminal justice reform legislation passed in decades.

Moving forward, the Trump administration will continue its commitment to criminal justice reform. We will work to fully implement the First Step Act, ensuring it delivers in practice the reforms it

promises.¹¹¹ Further, as indicated in the name of the legislation, this bill is only the “first step” to reform. The administration also plans to pursue additional reforms to better the system. Foremost, we will work to provide and expand opportunities for former inmates to successfully reenter society. One of the most important things we can do is to create a great economy and work environment for all Americans, including former prisoners. It is crucial that we help prisoners who are motivated to live law-abiding lives contribute to society after they are released. The administration will work fervently alongside business leaders to promote fair-chance hiring for former inmates, an essential element for successful reentry.

Few would have predicted that President Trump would be the difference maker to finally deliver the long-sought reforms embodied in the First Step Act. The fundamental values in this movement are forgiveness and looking for the best potential in every person. These values, along with our commitment to ensuring public safety, drive President Trump and our administration in our efforts to reform the criminal justice system. I am proud to work alongside the president, reformers, and the formerly incarcerated in the fight for this crucial cause. This historic success is a reminder to us all that fighting yields less than reaching across the aisle to build trust and find common ground. When the democratic process works the way it should, the country wins.

16

Start by Ending the Failed War on Drugs

Hon. Beto O'Rourke

Former United States Representative from Texas[‡]

Twenty-three years ago, I was arrested for jumping a fence at the University of Texas at El Paso. I spent a night in the El Paso County Jail, was able to make bail, and was released the next day. Three years later, I was arrested for drunk driving — a far more serious mistake for which there is no excuse.

My encounters with the criminal justice system did not ultimately define me or stop me from contributing to my family and community — as a father, small business owner, city council member, and congressman. But that isn't the case for far too many of our fellow Americans, particularly those who don't look like me or have the same privileges that I did. Instead, too many people are languishing behind bars for nonviolent crimes, often unconvicted and only there because they cannot afford bail.¹¹² This leaves them unable to work, pay taxes, raise their kids, or contribute to our society.

They are part of the world's largest prison population.¹¹³ One comprised disproportionately of people of color; built on prosecuting

[‡] This essay draws from Mr. O'Rourke's opinion editorial published on August 27, 2018 in the *Houston Chronicle*, and can be found at <https://www.houstonchronicle.com/opinion/outlook/article/Beto-O'Rourke-Texas-criminal-justice-reform-jail-13181472.php>. It is drawn upon here with the permission of the author and notification to the *Houston Chronicle*.

some communities for nonviolent drug offenses and not others, even though people of all races use illegal drugs at roughly the same rate.¹¹⁴ A prison population perpetuated by a school-to-prison pipeline that starts as early as kindergarten, where a black child is five times as likely to be suspended or expelled as a white child.¹¹⁵

Many have called this the New Jim Crow, and for good reason. Our criminal justice system is stained by the same prejudices embedded in our history — that some people are less human, less equal than others. If we are to end mass incarceration, we must squarely confront the fact that every arm of the system is shaped by this legacy — from the over-policing of black and brown neighborhoods, to a judicial process marked by unequal resources, to prisons that set people up for failure rather than productive reentry.¹¹⁶ What we're left with is a system that grossly overincarcerates. Even by conservative estimates, at least 40 percent of the prison population could be released without compromising public safety.¹¹⁷

Across the country, brave students, activists, and advocates are laying bare this history and pointing the way forward. They continue a proud American tradition, building on the struggles of abolitionists and Freedom Riders, those who sat at the lunch counters in Greensboro and those who crossed the Edmund Pettus Bridge in Selma. They remind us that our progress has been purchased not by politicians, but by those who have forced the conversation and galvanized the conscience of this country. Because of their efforts, I believe we have the chance to rebuild our criminal justice system. Here is how we make the most of this moment.

First, we must end a failed war on drugs that has long been a war on people, waged on some more than others.¹¹⁸ Who is going to be the last man — more likely than not a black man — to languish behind bars for possessing marijuana when it is legal in some form in more than half the states? We must end the federal prohibition on marijuana and expunge the records of those who were locked away for possessing it. As part of this effort, we must also stop using mandatory minimum sentencing for nonviolent drug offenses — a practice that costs us dearly in both shackled human potential and a federal prison budget that has nearly doubled in the past two decades.¹¹⁹ Instead, we should begin treating addiction like the public health concern it is.

Second, we should eliminate private, for-profit prisons. There is no place in our society for a multibillion-dollar industry that profits

off human suffering — one that, compared to its public counterpart, often costs more, pays employees less, provides less security, and fails to maintain basic standards of care.¹²⁰ We cannot outsource imprisonment to corporations that have a perverse profit incentive to put more people behind bars.

Third, we can disrupt the cycles of poverty that trap people in a criminal justice system where they do not belong. On any given day, nearly half a million people are in jail — many for misdemeanors — because they cannot afford to post bail as I did more than 20 years ago.¹²¹ Let's end the use of cash bail and provide states grants to replace these systems. I also support decriminalizing truancy. States like Texas have taken the first step by repealing laws that would allow children to be prosecuted for truancy,¹²² but the \$500 fines their parents face still loom large in a system that disproportionately targets black and brown students.

Fourth, we must ensure that all people are given an equal opportunity to have their rights respected by our legal system. This means reopening the federal Office of Access to Justice, launched to provide greater resources for indigent litigants in civil, criminal, and tribal courts.¹²³ It means taking on prosecutorial and police misconduct with a fully-staffed Department of Justice that can conduct investigations, provide de-escalation trainings across police agencies, and institute community-based review boards to ensure accountability and transparency. And it means being vigilant about new mediums of bias, such as facial recognition technology and algorithmic sentencing.

Finally, we should provide meaningful reentry reforms to help reduce recidivism. That starts with strong rehabilitation services, counseling, and access to preventative health care. It continues by banning the box on job applications so the formerly incarcerated can work and pay taxes, returning drivers licenses, allowing them to apply for loans that can unlock skills trainings, and ensuring their constitutional right to vote is protected.

At the end of the day, this is about ensuring that every single one of us — regardless of race, ethnicity, or class — can live to our full potential with equal rights and equal dignity. If we are willing to listen to our fellow Americans and reckon with our history, we can build a future that is more just, more fair, and more prosperous for every single person. The time to act is now.

Reshape Public Perception of Our Justice System

Rashad Robinson

President, Color Of Change

Most decarceration solutions presently considered bold by the public should not be considered bold at all. Abolishing prisons — that’s bold. Legislating that judges and prosecutors be held accountable for racial equity outcomes — that’s bold.

But the changes we most immediately want implemented should be perceived as common sense. It’s the policies that got us here that should be perceived as radically implausible and wildly unsustainable.

We need to do a much better job of popularizing an understanding of the criminal justice system as mostly harmful and ineffective if we’re going to expect people to get on board with making major changes.

In reality, most legal mechanisms that drive mass incarceration make as much sense as laws against gay people having sex or people of different races getting married, or laws allowing forced child labor or the beating of students by teachers. Yet too many people think of our criminal justice system as having eliminated practices that are senseless and unjust, rather than being defined by them.

It’s long past time for lawmakers and government officials to catch up to common sense and make our system just. Since most aren’t, we need to create the level of public demand that will compel them to.

End money bail. End prison labor. End the treatment of kids and people with mental illness as if they are not kids or people with mental illness. End prosecutions for no-harm offenses like standing on

a street corner, playing music loudly, or smoking marijuana — so-called offenses that “offend” the sensibilities of puritans and no one else and are selectively applied to people of color. End the use of senselessly severe sentences as the main criterion of prosecutor performance. End harsher sentencing for people of color, routinely practiced by prosecutors and judges. End the ability of any entity to profit from a role in the system that produces unjust and ineffective outcomes. Overall, don’t put people in situations that make them worse and not better.

The practices above serve no purpose whatsoever, certainly not public safety; science, budget analyses, history, and millions of people’s lives have proved that. Even lawmakers privately admit it. But most people do not believe it. We should be focusing our criminal justice system on the people who create unjust and unsustainable inequality, not those trapped in it. Yet most people do not believe that, either.

It is no surprise to Black people, or anyone else who studies or is targeted by it, that the criminal justice system we fund and promote today produces more harm than justice. Destroys more than it builds. Costs — in every sense — more than it yields. Makes communities more vulnerable than safe. Yet the truth about the system remains inconvenient to those who exploit it for gain. They work to keep misunderstandings in place, keeping public support for the system’s core principles intact.

Television is helping them do it. The reality of the criminal justice system is hidden from view in entertainment and local news television, even as they communicate about the justice system more than anything else in society, often speaking as the mouthpiece of law enforcement.

We cannot blame people for not caring about or not believing in problems they do not see.

Deep cultural interventions focused on reshaping popular understandings about the justice system en masse — in a way that makes the status quo intolerable — may get us farther than traditional policy advocacy, and get us there faster.

Specifically, radically changing the storytelling conventions of crime procedurals, local news, reality television, and daytime talk — the most far-reaching purveyors of misinformation (or any information) about our criminal justice system — might bring about changes we would not otherwise be able to achieve.

These shows are not analogous to Fox News denying climate change. They are analogous to The Weather Channel denying climate

change. Their propagation of bogus science, racist stereotypes, a post-racial world, misinformation about human motivations and punishment, lies about the manageability of experiencing the justice system, and so much more, is truly off the charts. And genuine debate, alternative practices, different perspectives, and models of accountability are nowhere to be seen.

Many people learn to think and feel about the law, crime, and the justice system — as well as all the people involved in it — by way of these shows. They set the standard for what we expect from judges, prosecutors, police, and others; what is right and necessary in terms of punishment; and so many other attitudes and understandings, most of which presently depress demand for reform.

The crime procedural genre, for example, represents a huge missed opportunity. Unlike other genres — such as hospital dramas that may help reorient public understandings of addiction — crime procedural shows are not leading. They are following orders rather than reason or justice.

There is actually a host of practice and policy changes that are focused on these major influencers of public perception. One example is tax incentives for diversifying the writers and directors who make these highly popular shows, offered by the states in which they are produced. We know that writers who are people of color and women, and who have direct experiences to draw from, write different storylines, different characters, and different assumptions into their shows when representing what is just and unjust about the system. They shape what we perceive as normal, and we need to make decarceration normal.

We must make it a serious priority to hold major cultural outlets accountable to standards of accuracy — eliminating dehumanizing stereotypes about Black people and others, eliminating flat-out lies about the system and its real-world effects, and incentivizing the promotion of healthy, up-to-date, and accurate ideas that normalize reform and help America become better and stronger. These shows should be helping to drive society forward, not serving as a roadblock by propagating the very kind of misinformation that stalls progress. Without popular culture on our side, it will take much longer for the major changes we need to feel intuitive and urgent among a winning majority of people. And certain aspects of our vision for transforming the justice system will remain a fiction.

18

Mass Incarceration Is a Women's Issue

Topeka K. Sam

Founder and Executive Director, The Ladies of Hope Ministries

Formerly incarcerated women are the experts on transforming the criminal legal system. We need to be. We are the ones who are breaking new ground, telling our stories and translating them into new policies and new laws. We believe that ending the incarceration of women and girls opens the door to ending mass incarceration.

Focusing on women and girls means looking at our homes and communities and the harm that sexual and physical violence creates and perpetuates — for both the people who have been harmed and those who have caused harm. It means looking at how we have come to rely on the police and, at the same time, how the police have become an occupying force in Black and Brown communities. Focusing on how women and girls are criminalized helps us understand how gender roles constrain and limit everyone. And looking at how the state dehumanizes incarcerated women, the majority of whom are Black and Brown, reveals how Black and Brown women are treated by the state in the “free world.”

Between 1980 and 2016, the number of incarcerated women increased by more than 700 percent. Incarcerated women cannot be treated as an afterthought by the criminal legal system.¹²⁴

The majority of women entrapped in the criminal legal system have experienced zero-tolerance policies in school, been funneled

through the school-to-prison pipeline, and faced racism, misogyny, domestic violence, sexual abuse, poverty, community violence, police violence, and extreme policing. For girls and women, drugs and alcohol are the limited and harmful alternatives available to manage the pain of daily life. Their incarceration often exacerbates past violence and trauma, both physical and emotional. Incarcerated women are shackled during labor and childbirth, face sexual assault and coercion by guards, undergo voyeuristic and invasive strip searches, and are given only limited access to sanitary products, appropriate gynecological care, and more.¹²⁵

Almost every formerly incarcerated person experiences huge challenges upon release from jail and prison, but formerly incarcerated women face additional challenges. We are more likely to be homeless than formerly incarcerated men. Add to this that the median wealth of a Black woman prior to incarceration is only \$200.¹²⁶

Women face the additional unique challenges of healing from separation from their children, often for many years; the bureaucratic and legal challenges of reunification with their children; lack of support from a former partner; fewer opportunities for work that pays a living wage, in part due to the lack of relevant job training while incarcerated; and the greater societal stigma criminalized women are burdened with.

While dealing with all these challenges, many formerly incarcerated women are working their way through the probation and parole systems. There are 113,200 women on parole and 947,400 women on probation, far more than the number of women incarcerated.¹²⁷ While decarceration through probation and parole can release women months or years earlier than their full sentence, it comes with serious burdens: at-will intrusions into home and work life by a parole or probation officer, privatized day reporting, enormous privatized “half-way houses,” and the huge increase of privatized electronic monitoring (“e-carceration”). Parole, probation, and e-carceration also come with high fees and the potential for even higher fines. Long parole and probation can lead to greater vulnerability to being caught in the revolving door of incarceration. They also lead to greater law enforcement intrusion and surveillance of poor communities and communities of color already caught in the wide net of policing.

To help with these challenges, I created Hope House, a safe housing space for women, based on my experience and the experiences of many other formerly incarcerated women. I know how crucial it is

to have a home that meets the basic needs of food and shelter and provides a safe and loving environment to become economically empowered and improve physical and mental health. Hope House is a place to heal from the trauma that landed women in prison and the trauma of prison.

My experience on federal “parole” — supervised release at the federal level — also led me to create the Parole and Probation Accountability Project. We work to challenge and change the parole and probation systems, which can deny basic human rights to the people they serve.[§] Through the Parole and Probation Accountability Project, lawmakers, thought leaders, entrepreneurs, probation and parole officers, and the public are learning how these seemingly positive systems control the lives of women and their families at every moment.

But there’s much more that needs to be done. In the immediate term, we must end money bail. Most women in jail are there only because they can’t afford their bail. Their unnecessary incarceration causes a tidal wave of negative consequences including loss of housing, jobs, and even custody of their children. Parole and probation must be drastically curtailed, and fees and fines must be eliminated. Electronic monitoring should be used only in the rarest of circumstances. Community-based, community-run alternatives to incarceration — especially for primary caretakers of dependent children — must be instituted in every court in the country.

Other steps to end mass incarceration will take longer, but we don’t have to wait to begin these reforms. They include using jail and prison only for people who commit the most serious crimes. Research shows that nearly 40 percent of our prison population could be safely released by providing alternatives and treatment for people convicted of lower-level crimes and by reducing extreme sentences.¹²⁸ We should invest the billions we will save in health and mental health care and treatment on demand for people with substance use disorders. And for those few people we incarcerate, prisons must be places of rehabilitation, not sources of more trauma and pain. We need to demilitarize and limit the police and invest some of the \$100 billion a year we

§ To help incarcerated individuals and those directly impacted by incarceration better understand the workings and consequences of probation and parole, Hope House published the first of five Know Your Rights Guides. It is available at <http://www.thelohm.org/the-parole-and-probation-accountability-pro>.

currently spend on policing in quality education, child care, job training for the 21st century, and affordable, quality housing.¹²⁹

We must end mass incarceration and end the mass criminalization of poverty and people of color. Investing in women and girls is the best next step. As the 2020 election approaches, I encourage our lawmakers and presidential candidates to take on this critical challenge.

Abolish For-Profit Prisons

Hon. Bernie Sanders

United States Senator from Vermont

The United States imprisons more people than any other country on earth. Year after year, we continue to exceed every nation — including authoritarian governments like China, Russia, North Korea, and Iran — for the highest incarceration rate in the world.¹³⁰ And we will never be able to end mass incarceration until we ban private prisons and make it clear that our justice system exists to rehabilitate people, not to make money for corporations.

It is no secret that racial disparities are deeply ingrained in our criminal justice system. In comparison to just one in 17 white men, as many as one in three black men and one in six Latino men are likely to be incarcerated at least once in their lives.¹³¹ Since we began the so-called War on Drugs, imprisonment rates in the United States have skyrocketed, exacerbated in part by sentencing laws aimed at locking up men of color. And we are just now starting to reckon with and undo the legacy of the “tough on crime” 1980s and 1990s. Imprisonment rates in the United States have increased by a dramatic 700 percent since 1970 due to draconian sentencing policies, causing unnecessarily overcrowded prisons across the nation.¹³² Rather than reduce overcrowding by amending sentencing laws, federal and state governments decided to contract with private prisons.

The two largest companies in the for-profit prison industry, CoreCivic and GEO Group, own the lion’s share of private prisons in America — and they are growing off the backs of the current administration’s appalling immigration policies. During fiscal year

2017, the vast majority of immigrant detainees were held in private facilities.¹³³

Any system that continues to keep human beings behind bars and in prison beds as a revenue stream is a system that must be drastically overhauled. Private prisons have a greater interest in filling the pockets of their shareholders by perpetuating imprisonment than they do in spending money to rehabilitate and educate.

Financial motives have corrupted our justice system. Perverse incentives fuel the unnecessary caging of our fellow human beings at every step. Along with the private prison industry, these incentives range from our money bail system exploiting and jailing the poor while it frees the rich, to police officers being rewarded based on number of arrests, to prosecutors getting promoted for securing convictions and harsh prison sentences, to billions in federal grants going to states and cities running on autopilot to drive more arrests, convictions, and prison sentences.

There are many ways we must go forward to fix our criminal justice system: abolishing cash bail and civil asset forfeiture, ending the school-to-prison pipeline, and making it easier for formerly incarcerated people to reintegrate into society, for starters. But we absolutely must end the existence of the private for-profit prison industry.

To keep costs down, for-profit prisons pick and choose prisoners who require fewer services. Despite their claims, they do not lower recidivism rates — in fact, it's in their interest to keep their beds full because they earn more money that way. Several years back, the inspector general for the Department of Justice found that private prisons allow a greater number of safety and security incidents.¹³⁴

These findings are no surprise given the private prison industry's racist roots in American chattel slavery. Prison privatization expanded rapidly when the 13th Amendment, which outlawed slavery but continued to permit unpaid penal labor, was ratified during the aftermath of the Civil War. Due to an extreme shortage of labor caused by the emancipation of slaves, former Confederate states exploited the legalization of penal labor by incarcerating newly freed black people.

States imprisoned black people mainly by enacting unjust vagrancy laws, essentially making it a crime to be unemployed and poor. In many regards, black people were suppressed into the same inhumane and backbreaking plantation work they had previously done while in chains and shackles.

In the decades after the Civil War, state-operated prisons reaped extreme profits from the free labor of black people, and as prison rates increased over decades, an incentive developed for private prisons to enter this barbaric market. Our criminal justice system must make amends with this grim and racist past.

In 2016, the Obama administration took a strong step in the right direction by announcing a plan for the federal government to wean itself from its reliance on private prisons. It should astonish nobody that President Trump's Department of Justice rescinded the 2016 plan by the Obama Administration to phase out private prisons. In just a single month after President Trump assumed office, the stock of GEO Group increased 98 percent, and CoreCivic increased 140 percent.¹³⁵ This reprehensible reversal comes as our incarceration system faces mounting problems like the aging of already outdated facilities and a maturing inmate population. We cannot rely on the industrial complex of the private prison system to address these challenges in good faith.

The federal government must take several immediate steps to abolish the for-profit prison industry. Initial actions should include barring federal, state, and local government contracts with private entities that operate prison and custody facilities, ending family detention by Immigration and Customs Enforcement (ICE), and ensuring the humane treatment of detainees by implementing third-party audits of detention centers. I have previously introduced legislation, called the Justice Is Not for Sale Act, which would accomplish all of these urgent steps.

But while we must take these steps to end the private for-profit prison industry, we must also address the harder, core problem of mass incarceration and greatly reducing the prison population. And that is why simultaneously reinstating the federal parole system while abolishing all mandatory minimums is also necessary. By doing this, we will provide a real incentive for prisoners to engage in good behavior and get out of prison sooner.

The bottom line here is that we need major reforms in our criminal justice system. Making sure that corporations are not profiteering from incarceration is an important step forward. Justice cannot be a board game for billionaires.

20

End the Two-Tiered System of Justice

Hon. Elizabeth Warren

United States Senator from Massachusetts

Four words are etched above the doors to the Supreme Court: “Equal Justice Under Law.” That simple principle should be the foundation of our criminal justice system. But the hard truth is that America has two separate and very unequal justice systems. The first is a justice system exclusively for the wealthy and the well connected. For decades, Washington has let powerful corporate executives escape accountability, even when they scam millions of Americans or crash the U.S. economy. If prosecutors go after these corporations at all, they recover puny fines and get pinkie promises not to break the law again — deterring no one and leaving American families at risk for the next hit.

Take the 2008 financial crisis, when brazen risk-taking and illegal behavior robbed millions of Americans of their homes, their jobs, and their savings. It cost the American economy \$23 trillion.¹³⁶ A decade later, not a single big bank CEO has gone to jail, and prosecutors have become even more lenient on corporate criminals. My office recently released a new report highlighting that white-collar crime enforcement activity has hit a 20-year low since President Trump took office.¹³⁷

The second criminal justice system — the system for everyone else — looks very different. In that system, “tough on crime” is the catchphrase of choice. Low-income individuals end up with criminal records or jail time because they can’t afford bail or hefty fines and fees. Young

people who commit low-level, nonviolent crimes spend too many years behind bars. Struggling parents, domestic violence survivors, opioid users, and individuals with mental illness are hauled off to jail without treatment or assistance. And after they return to their communities, too many former inmates are locked out of jobs, housing, and any chance to rebuild their lives and support their families.

That second criminal justice system disproportionately targets and punishes black and brown Americans. African Americans account for only 12 percent of adults in the United States, but they make up 33 percent of the incarcerated population.¹³⁸ And the data show that for exactly the same crimes, black people are more likely to be arrested, prosecuted, wrongfully convicted, and sentenced more harshly than their white counterparts.¹³⁹

Terri Minor Spencer experienced that second criminal justice system up close and personal. At age 29, Terri was arrested and charged with possession of and conspiracy to distribute crack cocaine. Due to mandatory minimums and discriminatory sentencing requirements that treated offenses involving crack cocaine more harshly than offenses involving powder cocaine, Terri was facing a life sentence if convicted. Instead, she accepted a plea deal that landed her a 13-year prison sentence.

Over the course of the next 13 years, Terri was placed in facilities hundreds of miles from her home and family. She says she got to see her family only once while she was incarcerated. She didn't get to see her daughter grow up, and she missed the births of her grandchildren.

Since her release, Terri says she has dedicated her life to saving others from what she went through. She founded a nonprofit group, got involved with her church, and began volunteering in her community. She even ran for local office — and won.

Terri survived our deeply rigged criminal justice system, but there are far too many people just like Terri sitting in state and federal prisons today. The dream of equal justice will become a reality only if we reform our criminal justice system, top to bottom.

Start by holding corporate criminals accountable. Last year, on the 10th anniversary of the collapse of Bear Stearns, which kicked off the financial crisis, I introduced the Ending Too Big to Jail Act, a bill that would make it easier to bring criminal charges against bank executives whose organizations defraud consumers. In April, I introduced the Corporate Executive Accountability Act, legislation that would

make executives of big corporations criminally liable if their companies commit crimes, harm large numbers of people through civil violations, or commit a new violation while under the supervision of the court or a regulator for a previous violation. We should pass these bills, and more like them.

Getting serious about corporate crime is only one part of the solution. It's also time to change the way our criminal justice system treats those without money and power. Last year Congress passed the First Step Act, a bipartisan prison and sentencing reform bill that includes many of the reforms I've championed, like banning the practice of shackling pregnant prisoners, requiring federal prisons to provide feminine hygiene products for free, and taking steps to keep moms like Terri closer to their families.

As important as these steps are, there's so much more to do. We can start by ending mandatory minimums for individuals — the cruel sentencing requirements that could have caused Terri to be sent to jail for life.

We also need to end the practice of jailing people because they can't afford bail or other fines and fees. We should legalize marijuana and wipe clean the records of those who have been unjustly jailed for minor marijuana crimes; end private prisons and the profit incentives that pervert the goal of our justice system; provide more help for people struggling with domestic abuse, substance use disorders, and mental illness; and end the practice of branding the formerly incarcerated with a scarlet letter that closes doors to education, employment, and opportunity.

Reforming our criminal justice system won't be easy. It will require fighting for a comprehensive group of proposals that will reorient our criminal justice system toward meaningful change. Yes, it will be a tough fight, but it is the moral obligation of every lawmaker to commit to building a justice system that lives up to those four simple words written above the door to the Supreme Court.

Endnotes

Waldman (Foreword)

- 1 Michelle Ye Hee Lee, "Does the United States Really Have 5 Percent of the World's Population and One Quarter of the World's Prisoners?," *Washington Post*, April 30, 2015, <https://www.washingtonpost.com/news/fact-checker/wp/2015/04/30/does-the-united-states-really-have-five-percent-of-worlds-population-and-one-quarter-of-the-worlds-prisoners/>.
- 2 "Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2018," U.S. Census Bureau, December 2018, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2018_PEPANNRES&prodType=table.
- 3 The Sentencing Project, "Americans with Criminal Records," 2015, <https://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.
- 4 Council of Economic Advisers, *Economic Perspectives on Incarceration and the Criminal Justice System*, Executive Office of the President of the United States, 2016, 43, https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160423_cea_incarceration_criminal_justice.pdf; "At \$75,560, Housing a Prisoner in California Now Costs More Than a Year at Harvard," *Los Angeles Times*, June 4, 2017, <http://www.latimes.com/local/lanow/la-me-prison-costs-20170604-htmlstory.html>.
- 5 Leah Sakala and Nicole D. Porter, "Criminal Justice Reform Doesn't End System's Racial Bias," *USA Today*, December 12, 2018, <https://www.usatoday.com/story/opinion/policing/politics-policing/2018/12/12/racial-injustice-criminal-justice-reform-racism-prison/2094674002/>. See also Jessica Eaglin and Danyelle Solomon, *Reducing Racial and Ethnic Disparities in Jail: Recommendations for Local Practice*, Brennan Center for Justice, 2015, 17, 20, <http://www.brennancenter.org/sites/default/files/publications/Racial%20Disparities%20Report%20062515.pdf>; United States Sentencing Commission, *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*, 2017, 2, https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

6 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, 2016, 3, <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>; John Gramlich, "The Gap Between the Number of Blacks and Whites in Prison Is Shrinking," Pew Research Center, January 12, 2018, <https://www.pewresearch.org/fact-tank/2018/01/12/shrinking-gap-between-number-of-blacks-and-whites-in-prison/>.

7 James Austin and Lauren-Brooke Eisen, *How Many Americans Are Unnecessarily Incarcerated?*, Brennan Center for Justice, 2016, 5, https://www.brennancenter.org/sites/default/files/publications/Unnecessarily_Incarcerated_0.pdf; Jeremy Travis, Bruce Western, and Steve Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council (Washington, D.C.: The National Academies Press, 2014), 138; Steven Raphael and Michael A. Stoll, *A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime*, The Hamilton Project (Brookings Institution), 2014, 9, http://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/v5_THP_RaphaelStoll_DiscPaper.pdf. See also Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling, *What Caused the Crime Decline?*, Brennan Center for Justice, 2015, 7-8, <https://www.brennancenter.org/publication/what-caused-crime-decline>.

8 Austin and Eisen, *How Many Americans Are Unnecessarily Incarcerated?*, 5.

9 Senate Committee on the Judiciary, "Poll Shows Americans Overwhelmingly Support Prison, Sentencing Reforms: Majority of Republicans, Democrats & Independents Approve of Reforms Before Congress," August 23, 2018, <https://www.judiciary.senate.gov/press/rep/releases/poll-shows-americans-overwhelmingly-support-prison-sentencing-reforms>. See also Lydia Wheeler, "Poll: 3/4 of Americans Support Criminal Justice Reform," *The Hill*, January 25, 2018, <https://thehill.com/regulation/370692-poll-3-4-of-americans-support-criminal-justice-reform>.

Johnson (Foreword)

10 NAACP, "Criminal Justice Fact Sheet," <https://www.naacp.org/criminal-justice-fact-sheet/>.

11 Ibid.

Obama (Quote)

12 Barack H. Obama, "The President's Role in Advancing Criminal Justice Reform," *Harvard Law Review* 130 (2017): 812, 815, <https://harvardlawreview.org/2017/01/the-presidents-role-in-advancing-criminal-justice-reform/>.

Booker: Pass the Next Step Act

13 Lee, "Does the United States Really Have 5 Percent of the World's Population and One Quarter of the World's Prisoners?" *Washington Post*.

14 Ibid.; Equal Justice Initiative, "Private Prison Population Skyrockets," August 8, 2018, <https://eji.org/news/private-prison-population-skyrockets>.

15 Jonathan Rothwell, "How the War on Drugs Damages Black Social Mobility," Brookings Institution, September 30, 2014, <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

16 Sonja B. Starr and M. Marit ReHAVI, "Racial Disparity in Federal Criminal Sentences," *Journal of Political Economy* 122 (2014): 1323, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2413&context=articles>.

17 Jean Chung, "Felony Disenfranchisement: A Primer," The Sentencing Project, July 17, 2018, <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>.

Brown: Provide Fair Wages for All

18 Devah Pager, "The Mark of a Criminal Record," *American Journal of Sociology* 108 (2003): 960, <https://scholar.harvard.edu/pager/publications/mark-criminal-record>.

19 Adam Looney and Nicholas Turner, *Work and opportunity before and after incarceration*, The Brookings Institution, 2018, https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf; U.S. Department of Housing and Urban Development, Office of Policy Development and Research, "Neighborhoods and Violent Crime," 2016, <https://www.huduser.gov/portal/periodicals/em/summer16/highlight2.html>.

20 Rudolph Alexander, Jr., "The Impact of Poverty on African American Children in the Child Welfare and Juvenile Justice Systems," *Forum on Public Policy* 2010 (2010): 14, <https://files.eric.ed.gov/fulltext/EJ913052.pdf>; Anna Aizer and Joseph J. Doyle, "Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges," *The Quarterly Journal of Economics* 130 (2015), abstract, <https://www.nber.org/papers/w19102.pdf>.

21 Dr. Martin Luther King, Jr., "The Other America" (speech, Local 1199 Salute to Freedom, New York, NY, March 10, 1968).

22 David Cooper, *Raising the federal minimum wage to \$15 by 2024 would lift pay for nearly 40 million workers*, Economic Policy Institute, 2019, 2, <https://www.epi.org/files/pdf/160909.pdf>.

Castro: Provide Fair Housing to Advance Justice Reform

23 Vera Institute of Justice, "Research Confirms that Entrenched Racism Manifests in Disparate Treatment of Black Americans in Criminal Justice System," news release, May 3, 2018, <https://www.vera.org/newsroom/press-releases/research-confirms-that-entrenched-racism-manifests-in-disparate-treatment-of-black-americans-in-criminal-justice-system>.

24 Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, Prison Policy Initiative, 2018, <https://www.prisonpolicy.org/reports/housing.html>.

25 Ibid.

26 *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. ___, 135 S. Ct. 2507, 2526, 192 L. Ed. 2d 514 (2015).

27 Lee, "Does the United States Really Have 5 Percent of the World's Population and One Quarter of the World's Prisoners?" *Washington Post*.

Chettiar and Raghavan: Dramatically Reduce the Incarcerated Population

28 U.S. Census Bureau, "Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2018," December 2018.

29 NAACP, "Criminal Justice Fact Sheet."

30 The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*; NAACP, "Criminal Justice Fact Sheet."

31 Equal Justice Initiative, "Black Children Five Times More Likely Than White Youth to Be Incarcerated," September 14, 2017, <https://eji.org/news/black-children-five-times-more-likely-than-whites-to-be-incarcerated>.

32 Wendy Sawyer and Peter Wagner, *Mass Incarceration: The Whole Pie 2019*, Prison Policy Initiative, March 19, 2019, <https://www.prisonpolicy.org/reports/pie2019.html>.

33 Austin and Eisen, *How Many Americans Are Unnecessarily Incarcerated?*

34 E. Ann Carson, *Prisoners in 2016*, United States Department of Justice, Bureau of Justice Statistics, January 2018, tbl. 2, <https://www.bjs.gov/content/pub/pdf/p16.pdf>; Lauren-Brooke Eisen and Inimai Chettiar, *The Reverse Mass Incarceration Act*, Brennan Center for Justice, 2015, 1, http://www.brennancenter.org/sites/default/files/publications/The_Reverse_Mass_Incarceration_Act%20.pdf.

35 See Ames Grawert, Bryan Furst, and Cameron Kimble, *Ending Mass Incarceration: A Presidential Agenda*, Brennan Center for Justice, February 21, 2019, <https://www.brennancenter.org/publication/ending-mass-incarceration-presidential-agenda>.

36 Pew Research Center, "The Partisan Divide on Political Values Grows Even Wider," October 5, 2017, 31, <https://www.people-press.org/2017/10/05/4-race-immigration-and-discrimination/>.

Coates: The Power of Myth

37 The Sentencing Project, "Fact Sheet: Trends in U.S. Corrections," June 2018, 1, 5, <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>; NAACP, "Criminal Justice Fact Sheet"; Lorna Collier, "Incarceration Nation," *Monitor on Psychology* 45 (2014): 56, <https://www.apa.org/monitor/2014/10/incarceration.aspx>.

38 Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010).

39 Christopher Muller, "Northward Migration and the Rise of Racial Disparity in American Incarceration, 1880–1950," *American Journal of Sociology* 118 (2012): 281-285, http://users.soc.umn.edu/~uggen/Muller_AJS_12.pdf.

40 Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* (Chicago and London: University of Chicago Press, 2007), 28.

Garza: *Respect Black Lives and Restore Justice to Those Made into Criminals*

41 Wendy Sawyer and Peter Wagner, *Mass Incarceration: The Whole Pie 2019*, Prison Policy Initiative, March 19, 2019.

42 Ibid.

43 Ibid.

44 Leah Shakala, *Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity*, Prison Policy Initiative, May 28, 2014, <https://www.prisonpolicy.org/reports/rates.html>.

45 Ibid.

46 Hedwig Lee, Tyler McCormick, Margaret Hicken, and Christopher Wildeman, "Racial Inequalities in Connectedness to Imprisoned Individuals in the United States," *Du Bois Review*, May 2015, 12(2): 269-282, <https://www.psc.isr.umich.edu/pubs/abs/9460>.

47 Joseph Coohill, "Albert Einstein: The Definition of Insanity," *Professor Buzzkill* podcast, May 29, 2017, <http://professorbuzzkill.com/einstein-insanity-qng/>.

48 Associated Press, "At \$75,560, housing a prisoner in California now costs more than a year at Harvard," *Los Angeles Times*, June 4, 2017, <https://www.latimes.com/local/lanow/la-me-prison-costs-20170604-htmstory.html>.

49 Hilary O. Shelton and Inimai Chettiar, "Want to shrink prisons? Stop subsidizing them," *Washington Post*, November 1, 2016, https://www.washingtonpost.com/news/in-theory/wp/2016/11/01/want-to-shrink-prisons-stop-subsidizing-them/?utm_term=.843231d7713a.

Gillibrand: *End the Over-Incarceration of Women*

50 Aleks Kajstura, *Women's Mass Incarceration: The Whole Pie 2018*, Prison Policy Initiative, 2018, <https://www.prisonpolicy.org/reports/pie2018women.html>.

51 Elizabeth Swavola, Kristine Riley, and Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform*, Vera Institute of Justice, 2016, 7, https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-and-jails-report-updated.pdf.

52 Ibid., 11.

53 Radley Balko, "There's Overwhelming Evidence That the Criminal-Justice System Is Racist. Here's the Proof," *Washington Post*, September 18, 2018, https://wapo.st/2QFXdvc?tid=ss_mail&utm_term=.51020f69b8a1.

- 54 American Civil Liberties Union, “ACLU Briefing Paper: The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers,” 2012, 1, https://www.aclu.org/sites/default/files/field_document/anti-shackling_briefing_paper_stand_alone.pdf; Ginette G. Ferszt, Michelle Palmer, and Christine McGrane, “Where Does Your State Stand on Shackling of Pregnant Women?,” *Nursing for Women’s Health*, February 2018, 18, [https://nwhjournal.org/article/S1751-4851\(17\)30335-5/pdf](https://nwhjournal.org/article/S1751-4851(17)30335-5/pdf).
- 55 Jennifer Gonnerman, “Before the Law,” *New Yorker*, October 6, 2014, <https://www.newyorker.com/magazine/2014/10/06/before-the-law>.
- 56 “Federal Reserve Board Issues Report on the Economic Well-Being of U.S. Households,” 2018, accessed April 10, 2019, <https://www.federalreserve.gov/newsevents/pressreleases/other20180522a.htm>.
- 57 Vera Institute of Justice, “Women Behind Bars,” <https://www.vera.org/the-human-toll-of-jail/inmate-turned-advocate/women-behind-bars>.
- 58 Insha Rahman, “Chipping Away at New York City’s Unjust and Misguided Bail System,” Vera Institute of Justice, Think Justice Blog, April 29, 2016, <https://www.vera.org/blog/chipping-away-at-new-york-citys-unjust-and-misguided-bail-system>.
- 59 Austin and Eisen, *How Many Americans Are Unnecessarily Incarcerated?*, 25.
- 60 Ibid.
- 61 Shelli B. Rossman et al., *The Multi-Site Adult Drug Court Evaluation: Executive Summary*, Urban Institute, 2011, 8, <https://www.ncjrs.gov/pdffiles1/nij/grants/237108.pdf>.
- 62 Swavola, Riley, and Subramanian, *Overlooked: Women and Jails in an Era of Reform*, 9.
- 63 Vera Institute of Justice, “Women Behind Bars”; Swavola, Riley, and Subramanian, *Overlooked: Women and Jails in an Era of Reform*, 11.

H. Harris: *Harness the Momentum for Bipartisan Reform*

- 64 S.B. 133, 2018 Gen. Assemb., Reg. Sess. (Ky. 2018), <https://apps.legislature.ky.gov/recorddocuments/bill/18RS/sb133/bill.pdf>.
- 65 “Jared Kushner Is Surprise Participant on Press Call with Sen. Rand Paul, Justice Action Network & FreedomWorks to Release New Kentucky Criminal Justice Poll Results,” Justice Action Network, August 30, 2018, <http://www.justiceactionnetwork.org/jared-kushner-surprise-participant-press-call-sen-rand-paul-justice-action-network-freedomworks-release-new-kentucky-criminal-justice-poll-results/>.
- 66 Phillip M. Bailey, “Rand Paul Was Talking Prison Reform When Jared Kushner Jumped on the Call,” *Courier Journal*, August 30, 2018, <https://www.courier-journal.com/story/news/politics/2018/08/30/kentucky-polling-prison-reform-catches-jared-kushners-attention/1142761002/>.
- 67 Shannon Marie Keene and David R. Woolums, “Broken Criminal Justice System Needs Help from All Political Parties,” *Courier Journal*, October 9, 2018, <https://www.courier-journal.com/story/opinion/contributors/2018/10/09/broken-judicial-system-needs-help-all-political-parties/1581483002/>.

68 Nicholas Fandos, "Criminal Justice Bill Will Go Up for a Vote, McConnell Says," *New York Times*, December 11, 2018, <https://www.nytimes.com/2018/12/11/us/politics/criminal-justice-reform-bill.html>.

69 Holly Harris, "The American people have spoken: Reform our criminal justice system," *The Hill*, February 11, 2018, <https://thehill.com/opinion/criminal-justice/373315-the-american-people-have-spoken-reform-our-criminal-justice-system>.

K. Harris: Strengthen Resources for Public Defenders and Hold Prosecutors Accountable

70 "Mass Incarceration," Equal Justice Institute, accessed April 12, 2019, <https://eji.org/mass-incarceration>.

71 *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963).

72 Thomas Giovanni and Roopal Patel, *Gideon at 50: Three Reforms to Revive the Right to Counsel*, Brennan Center for Justice, 2013, 1, https://www.brennancenter.org/sites/default/files/publications/Gideon_Report_040913.pdf.

73 Justice Policy Institute, *System Overload: The Costs of Under-Resourcing Public Defense*, 2011, 11, http://www.justicepolicy.org/uploads/justicepolicy/documents/system_overload_final.pdf.

74 Alexa Van Brunt, "Poor People Rely on Public Defenders Who Are Too Overworked to Defend Them," *The Guardian*, June 17, 2015, <https://www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked>.

75 Richard A. Oppel Jr. and Jugal K. Patel, "One Lawyer, 194 Felony Cases, and No Time," *New York Times*, January 31, 2019, <https://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html>.

76 Ibid.

77 Emily Yoffe, "Innocence Is Irrelevant," *The Atlantic*, September 2017, <https://www.theatlantic.com/magazine/archive/2017/09/innocence-is-irrelevant/534171/>.

78 Bulletin Editorial Board, "Editorial: Fix Pay Disparity for Public Defenders," *The Bulletin*, October 27, 2018, <https://www.bendbulletin.com/opinion/6628115-151/editorial-fix-pay-disparity-for-public-defenders>.

79 Danielle Regis, "BDS Testifies Before the NYC City Council Committee on Justice System Oversight," *Brooklyn Defender Services*, October 25, 2018, <http://bds.org/bds-testifies-before-the-nyc-council-committee-on-justice-system-oversight-hearing-on-pay-hearing-and-retention-rates-for-adas-and-public-defenders/>.

80 Alan W. Houseman and Linda E. Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*, Center for Law and Social Policy, 2007, 1, <https://www.clasp.org/sites/default/files/public/resources-and-publications/files/O158.pdf>; "Legal Services Corporation," accessed April 1, 2019, <https://www.lsc.gov/about-lsc>.

81 "What Is Legal Aid," Legal Services Corporation, accessed April 1, 2019, <https://www.lsc.gov/what-legal-aid>.

82 Consolidated Appropriations Act of 2018, Pub. L. No 115-141, Division B, Title IV, “Related Agencies” 87 (2018).

Holden: *The Conservative Case for Reform: Equal Rights, Public Safety, and Redemption*

83 United States Department of Justice, National Institute of Justice, “National Inventory of the Collateral Consequences of Conviction”, November 14, 2018, <https://www.nij.gov/topics/courts/pages/collateral-consequences-inventory.aspx>.

84 Jason Pye, “Savings from Prison Reforms in Texas Top \$3 Billion, Crimes Rates Hit Lowest Point Since 1968,” FreedomWorks, July 6, 2015, <https://www.freedomworks.org/content/savings-prison-reforms-texas-top-3-billion-crimes-rates-hit-lowest-point-1968>.

85 S.B. 529, 2017 Leg., Reg. Sess. (Pa. 2017), <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2017&sessInd=0&billBody=S&billTyp=B&billNbr=0529&pn=0854>.

86 Van Brunt, “Poor People Rely on Public Defenders Who Are Too Overworked to Defend Them,” *The Guardian*.

lfill and Lee: *Recognize Black Humanity*

87 *Furman v. Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972).

88 The Sentencing Project, “Fact Sheet: Trends in U.S. Corrections.”

89 An excellent overview of this history is the essay by Bryan Stevenson, “A Presumption of Guilt: The Legacy of America’s History of Racial Injustice,” in *Policing the Black Man: Arrest, Prosecution, and Imprisonment*, ed. Angela J. Davis (New York: Pantheon Books, 2018), 3-31.

90 Will Stancil, “School Segregation Is Not a Myth,” *The Atlantic*, March 14, 2018, <https://www.theatlantic.com/education/archive/2018/03/school-segregation-is-not-a-myth/555614/>; U.S. Government Accountability Office, *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, 2018, 13-15, <https://www.gao.gov/products/GAO-18-258>.

91 *Shelby County v. Holder*, 570 U.S. 529, 133 S. Ct. 2612, 186 L. Ed. 2d 651 (2013).

Jones: *Cut 50 Percent of the Prison Population*

92 Data through 2016 drawn from “National Prisoner Statistics, 1978–2016,” Bureau of Justice Statistics, 2018, <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/37003>; population demographic data drawn from “U.S. Census Bureau QuickFacts: Iowa,” United States Census Bureau, 2018, <https://www.census.gov/quickfacts/ia>.

93 Janelle Jones, “The Racial Wealth Gap: How African-Americans Have Been Shortchanged Out of the Materials to Build Wealth,” Economic Policy Institute, February 13, 2017, <https://www.epi.org/blog/the-racial-wealth-gap-how-african-americans-have-been-shortchanged-out-of-the-materials-to-build-wealth/>.

- 94 James Cullen, *Despite Progress, Prison Racial Disparities Persist*, Brennan Center for Justice, August 19, 2016, <https://www.brennancenter.org/blog/despite-progress-prison-racial-disparities-persist>.
- 95 Jeff Guo, "America Has Locked Up So Many Black People It Has Warped Our Sense of Reality," *Washington Post*, February 26, 2016, <https://www.washingtonpost.com/news/wonk/wp/2016/02/26/america-has-locked-up-so-many-black-people-it-has-warped-our-sense-of-reality/>.
- 96 Austin and Eisen, *How Many Americans Are Unnecessarily Incarcerated?*, 7.
- 97 Van Jones, *Beyond the Messy Truth* (New York: Ballantine Books, 2017), 148.
- 98 Peter Baker, "Alice Marie Johnson Is Granted Clemency by Trump After Push by Kim Kardashian West," *New York Times*, June 6, 2018, <https://www.nytimes.com/2018/06/06/us/politics/trump-alice-johnson-sentence-commuted-kim-kardashian-west.html>.

Klobuchar: *Provide Treatment for Addiction*

- 99 National Association of Drug Court Professionals, "Drug Courts in the U.S. Cutting Crime, Saving Money," 2018, <https://www.nadcp.org/wp-content/uploads/2018/11/US-Drug-Court-Fact-Sheet-2018.pdf>.
- 100 Rossman et al., *The Multi-Site Adult Drug Court Evaluation: Executive Summary*, 8.
- 101 National Association of Drug Court Professionals, "Drug Courts," 2018, 4, <https://www.nadcp.org/wp-content/uploads/2018/03/NADCP-Brief.pdf>.
- 102 Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, 132 Stat. 348, 422 (2018), <https://www.congress.gov/bill/115th-congress/house-bill/1625/text>.
- 103 CARA 2.0 Act of 2018, S. 2456, 115th Cong. (2018), <https://www.congress.gov/bill/115th-congress/senate-bill/2456/text>.

Kushner: *The Trump Administration's Commitment to Justice Reform*

- 104 Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322 (1994), <https://www.congress.gov/bill/103rd-congress/house-bill/3355/text>.
- 105 Timothy Hughes and Doris James Wilson, "Reentry Trends in the U.S.," U.S. Department of Justice, Bureau of Justice statistics, <https://www.bjs.gov/content/reentry/reentry.cfm>.
- 106 Mariel Alper and Matthew R. Durose, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)*, U.S. Department of Justice, Bureau of Justice Statistics, May 2018, tbl. 2, <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>; Kim Steven Hunt and Robert Dumville, *Recidivism Among Federal Offenders: A Comprehensive Overview*, United States Sentencing Commission, March 2016, 15, <https://www.ussc.gov/research/research-reports/recidivism-among-federal-offenders-comprehensive-overview>.
- 107 Tracey Kyckelhahn and Emily Herbst, *The Criminal History of Federal Offenders*, United States Sentencing Commission, May 2018, 3, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180517_criminal-history.pdf.

- 108** Lee, "Does the United States Really Have 5 Percent of the World's Population and One Quarter of the World's Prisoners?," *Washington Post*.
- 109** Adam Gelb and Jacob Denney, "National Prison Rate Continues to Decline Amid Sentencing, Re-Entry Reforms," *The Pew Charitable Trusts*, January 16, 2018, <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/16/national-prison-rate-continues-to-decline-amid-sentencing-re-entry-reforms>.
- 110** First Step Act of 2018, Pub. L. No. 115-391 (2018), <https://www.congress.gov/bill/115th-congress/senate-bill/756/text>.
- 111** President Donald Trump, "Remarks by President Trump at 2019 Prison Reform Summit and FIRST STEP Act Celebration" (Washington, D.C., April 1, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-2019-prison-reform-summit-first-step-act-celebration/>.

O'Rourke: Start by Ending the Failed War on Drugs

- 112** Austin and Eisen, *How Many Americans Are Unnecessarily Incarcerated?*
- 113** World Prison Brief, "Highest to Lowest – Prison Population Rate," accessed April 12, 2019, http://www.prisonstudies.org/highest-to-lowest/prison-population-rate?field_region_taxonomy_tid=All.
- 114** The Hamilton Project, "Rates of Drug Use and Sales, by Race; Rates of Drug Related Criminal Justice Measures, by Race," The Brookings Institution, October 21, 2016, http://www.hamiltonproject.org/charts/rates_of_drug_use_and_sales_by_race_rates_of_drug_related_criminal_justice.
- 115** The Sentencing Project, "Black Disparities in Youth Incarceration," September 2017, <https://www.sentencingproject.org/wp-content/uploads/2017/09/Black-Disparities-in-Youth-Incarceration.pdf>.
- 116** Elizabeth Kai Hinton, LeShae Henderson, and Cindy Reed, *An Unjust Burden*, Vera Institute of Justice, May 2018, <https://www.vera.org/publications/for-the-record-unjust-burden>.
- 117** Austin and Eisen, *How Many Americans Are Unnecessarily Incarcerated?*
- 118** Christopher J. Coyne and Abigail R. Hall, "Four Decades and Counting: The Continued Failure of the War on Drugs," CATO Institute, April 12, 2017, <https://www.cato.org/publications/policy-analysis/four-decades-counting-continued-failure-war-drugs>.
- 119** Pew Charitable Trusts, "Federal Prison System Shows Dramatic Long-Term Growth," February 2015, https://www.pewtrusts.org/~media/assets/2015/02/pew_federal_prison_growth.pdf.
- 120** Megan Mumford, Diane Whitmore Schanzenbach, and Ryan Nunn, *The Economics of Private Prisons*, The Hamilton Project, October 21, 2016, https://www.brookings.edu/wp-content/uploads/2016/10/es_20161021_private-prisons_economics.pdf.
- 121** Zhen Zeng, "Jail Inmates in 2016," U.S. Bureau of Justice Statistics, February 2018, <https://www.bjs.gov/content/pub/pdf/ji16.pdf>.
- 122** The Associated Press, "Texas Law Decriminalizes School Truancy," *New York Times*, June 20, 2015, <https://www.nytimes.com/2015/06/21/us/texas-law-decriminalizes-school-truancy.html>.

123 Katie Benner, "Justice Dept. Office to Make Legal Aid More Accessible Is Quietly Closed," *New York Times*, February 1, 2018, <https://www.nytimes.com/2018/02/01/us/politics/office-of-access-to-justice-department-closed.html>.

Sam: Mass Incarceration Is a Women's Issue

124 Natasha Camhi, *Women's Experience Behind Bars*, Brennan Center for Justice, August 24, 2018, <https://www.brennancenter.org/blog/womens-experience-behind-bars>.

125 While the First Step Act eliminated some of these practices in federal prisons, they persist in many state facilities.

126 Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*; Mariko Chang, *Women and Wealth: Insights for Grantmakers*, Asset Funders Network, 2015, 6, https://assetfunders.org/wp-content/uploads/Women_Wealth_-_Insights_Grantmakers_brief_15.pdf.

127 See "Read About the Data" in Aleks Kajstura, *Women's Mass Incarceration: The Whole Pie 2017*, Prison Policy Initiative, 2017, <https://www.prisonpolicy.org/reports/pie2017women.html>.

128 Austin and Eisen, *How Many Americans Are Unnecessarily Incarcerated?*, 7.

129 Niall McCarthy, "How Much Do U.S. Cities Spend Every Year on Policing?" *Forbes*, August 7, 2017, <https://www.forbes.com/sites/niallmccarthy/2017/08/07/how-much-do-u-s-cities-spend-every-year-on-policing-infographic/#11d1f819e7b7>.

Sanders: Abolish For-Profit Prisons

130 Matthew Cooke and Adrian Grenier, "3 Things You Can Do to End Police Killings and Fix the Criminal Justice System," *HuffPost*, December 10, 2014, https://www.huffingtonpost.com/matthew-cooke/3-things-you-can-do-to-en_b_6301470.html.

131 Saki Knafo, "1 in 3 Black Males Will Go to Prison in Their Lifetime, Report Warns," *HuffPost*, October 4, 2013, https://www.huffingtonpost.com/2013/10/04/racial-disparities-criminal-justice_n_4045144.html.

132 ACLU, "Mass Incarceration," accessed February 27, 2019, <https://www.aclu.org/issues/smart-justice/mass-incarceration>.

133 Tara Tidwell Cullen, "ICE Released Its Most Comprehensive Immigration Detention Data Yet. It's Alarming," National Immigrant Justice Center, March 13, 2018, <https://immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet>.

134 U.S. Department of Justice, Office of the Inspector General, *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons*, 2016, 14, <https://oig.justice.gov/reports/2016/e1606.pdf>.

135 Heather Long, "Private Prison Stocks Up 100% Since Trump's Win," *CNN*, February 24, 2017, <https://money.cnn.com/2017/02/24/investing/private-prison-stocks-soar-trump/index.html>.

Warren: End the Two-Tiered System of Justice

136 Regis Barnichon, Christian Matthews, and Alexander Ziegenbein, "The Financial Crisis at 10: Will We Ever Recover?," Federal Reserve Bank of San Francisco, August 13, 2018, <https://www.frbsf.org/economic-research/publications/economic-letter/2018/august/financial-crisis-at-10-years-will-we-ever-recover/>.

137 Office of Senator Elizabeth Warren, "Rigged Justice 2.0: Government of the Billionaires, by the Billionaires, and for the Billionaires," <https://www.warren.senate.gov/download/rigged-justice-20-government-of-the-billionaires-by-the-billionaires-and-for-the-billionaires>.

138 Pew Research Center, "Blacks and Hispanics Are Overrepresented in U.S. Prisons," January 12, 2018, http://www.pewresearch.org/fact-tank/2018/01/12/shrinking-gap-between-number-of-blacks-and-whites-in-prison/ft_18-01-10_prisonracegaps_2/.

139 U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 2016* (Washington, D.C., 2017), tbl. 21, <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-21>; Eric P. Baumer, *Reassessing and Redirecting Research on Race and Sentencing*, University at Albany School of Criminal Justice, 2010, https://www.albany.edu/scj/documents/Baumer_Race.pdf; Besiki Kutateladze, Vanessa Lynn, and Edward Liang, *Do Race and Ethnicity Matter in Prosecution? A Review of Empirical Studies*, Vera Institute of Justice, 2012, https://storage.googleapis.com/vera-web-assets/downloads/Publications/do-race-and-ethnicity-matter-in-prosecution-a-review-of-empirical-studies/legacy_downloads/race-and-ethnicity-in-prosecution-first-edition.pdf; Samuel R. Gross, Maurice Possley, and Klara Stephens, *Race and Wrongful Convictions in the United States*, Newkirk Center for Science and Society, 2017, https://www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf; U.S. Sentencing Commission, *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*, 2017, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf.

ACKNOWLEDGMENTS

The editors thank Michael Waldman for his strategic guidance, invaluable input, and editing for this book. The editors also thank the following Brennan Center colleagues: John Kowal and Vivien Watts for their input and support; Ames Grawert and Sunwoo Oh for their vital research, drafting, and editing; Jessica Flaherty, Bryan Furst, Cary Holley, Cameron Kimble, Taryn Merkl, Michael Quinn, Ruth Sangree, and Ruponthi Sheikh for their research and outreach; Zachary Roth and Brennan Center's Communications & Strategy team for their guidance and editing; and Spencer Boyer, Kirstin Dunham, Jaemin Kim, Mellen O'Keefe, Katherine Storch, Anthony Thomas-Davis, and Jennifer Weiss-Wolf for their outreach.

The editors are especially grateful for the assistance of Stephanie Akpa, Nathan Barankin, Michael Bosworth, Tenicka Boyd, Tona Boyd, Whitney Brennan, Marissa Brogger, Maura Carey, Terrel Champion, Caryn Compton, Sakira Cook, Jeff Cook-McCormac, Blake Deeley, Zachary Doenmez, Jonathan Donenberg, Cassidy Dumbauld, Aqueelah Dunaway, Veronica Duron, Dave Dziok, Sarah Edwards, Lisa Ellman, Elizabeth Farrar, Shomari Figures, Rob Friedlander, Jacob Fromer, Jeff Giertz, Alex Guidich, Hannah Hankins, Geoff Holtzman, Josh Hsu, Helena Huang, Lori Kearns, Matt Klapper, Daniel Loeb, Alexandra Lowe-Server, Kristin Lynch, Lauren Moore, Taris Mullins, Sheronda Patton, Octavia Ridout, Mai Rosner, Maya Rupert, Trisha Russell, Kevin Seifert, Jessica Jackson Sloane, Daniel Smith, Rae Steward, Kelly Stranz, Jessica Thompson, Corbin Trent, Nick Turner, Katie Quintela, Darren Walker, Rebecca Wexler, and Ashley Woolheater.

Finally, they extend their sincere gratitude to the authors of the forewords and essays for their contributions to this book and their dedication to ending mass incarceration.

DISCLAIMER

The ideas expressed in the essays in this book are those of each author alone. The Brennan Center for Justice does not endorse the views of any author in this book. The aim of publication of these essays is to provide a nonpartisan forum for today's leaders to share their approaches to ending mass incarceration.

ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. We work to hold our political institutions and laws accountable to the twin American ideals of democracy and equal justice for all. The Center's work ranges from voting rights to campaign finance reform, from ending mass incarceration to preserving constitutional protection in the fight against terrorism. Part think tank, part advocacy group, part cutting-edge communications hub, we start with rigorous research. We craft innovative policies. And we fight for them — in Congress and the states, in the courts, and in the court of public opinion.

ABOUT THE BRENNAN CENTER'S JUSTICE PROGRAM

The Brennan Center's Justice Program seeks to secure our nation's promise of equal justice for all by creating a rational, effective, and fair justice system. Its priority focus is to reduce mass incarceration while keeping down crime. The program melds law, policy, and economics to produce new empirical analyses and innovative policy solutions to advance this critical goal.

ABOUT THE EDITORS

Priya Raghavan is Counsel in the Justice Program at the Brennan Center.

Inimai Chettiar is Director of the Justice Program at the Brennan Center.

Adureh Onyekwere is a Research and Program Associate in the Justice Program at the Brennan Center.

The American public has decisively concluded that our approach to criminal justice isn't working.

Mass incarceration is the civil rights crisis of our time. The racial disparities pervasive in our justice system compound at every juncture: African Americans are more likely to be stopped by police, arrested, detained before trial, and given harsher sentences than whites. Worse, the disparities in our justice system perpetuate racial inequity in our society more broadly.

In this remarkable collaboration, the country's most prominent lawmakers and activists join together to propose ideas for transformative change. In these essays, they lay out their proposals to reduce the prison population and challenge our very conception of justice reform, paving the way for far-reaching political and cultural change. Marking a clear shift from the draconian rhetoric of the past, these essays take on the web of harmful policies that fuel mass incarceration and diminish opportunities for communities of color.

How do we achieve change? From eliminating prison for lower-level crimes to incentivizing states to decarcerate, from ending money bail to abolishing private prisons, from reforming housing and employment laws to changing the public perception of the justice system and cultivating respect for all lives, the ideas in this book offer a path forward: one rooted in fairness, equality, and humanity. The second volume in the series, *Ending Mass Incarceration: Ideas from Today's Leaders* aims to further the momentum needed to achieve that vision. It builds on the 2015 Brennan Center publication profiling the voices of national leaders, *Solutions: American Leaders Speak Out on Criminal Justice*.