

June 8, 2023

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20050

Dear President Biden:

As America grapples with the harms that the War on Drugs has caused for people, families, and communities across the country, we reflect on the opportunities for providing more second chances to people who are needlessly incarcerated or better served with treatment, housing, supportive services, and community investment. Mass incarceration is a moral failure and racial justice crisis, and Americans demand change.¹ We are encouraged by your pledge to end this crisis by cutting America's prison rates,² but truly fulfilling that promise will take bold action: providing clemency to those impacted by the federal crack and powder cocaine sentencing disparity. Federal law has treated crack and powder cocaine - two forms of the same drug - differently for more than 36 years, and this has fueled one of the most pronounced instances of racial disparity in federal sentencing law.³

The fact is, the United States incarcerates more people than any other nation in the world – approximately 2 million individuals are in jail or prison today.⁴ Meanwhile, our prison system costs taxpayers \$80 billion per year – money that we should invest into impacted communities instead.⁵ Decades of inhumane charging and sentencing policies championed at the federal level have fortified a system where we incarcerate too many people for too long. Misguided laws such as the Anti-Drug Abuse Act of 1986, which first established the 100:1 weight-based ratio for sentencing crack and powder cocaine, and the subsequent so-called Fair Sentencing Act of 2010, which reduced this ratio to 18:1 prove stubbornly difficult to revise or repeal, despite strong bipartisan support for reform.⁶ It is unacceptable that we know of glaring injustices in our criminal legal system, but see little action from those with the responsibility to change the law. However, by virtue of the authorities outlined in our Constitution, you have the power of executive clemency to grant pardons and commutations to thousands of people impacted by unjustly punitive crack cocaine sentencing guidelines.

¹ ACLU, [Smart Justice Campaign Polling On Americans' Attitudes On Criminal Justice](#), (2019).

² [The Biden Plan for Strengthening America's Commitment to Justice](#).

³ Equal Justice Initiative, [Racial Double Standard in Drug Laws Persists Today](#) (Dec. 2019).

⁴ Prison Policy Initiative, [Mass Incarceration: The Whole Pie 2023](#) (Mar. 2023)

⁵ National Institute of Corrections, [The Economic Burden of Incarceration in the U.S.](#) (2016) (original publication: [Institute for Justice Research and Development](#)).

⁶ Johnson, Carrie, NPR, [A bill that would have impacted racial disparity in cocaine crimes died in the Senate](#) (Jan. 2023).

The War on Drugs has failed us all. The [public knows this](#), [scientists know this](#), medical professionals know this, and [right](#) and [left](#)-leaning organizations agree. Nowhere is the absurdity of the War on Drugs more evident than in the federal sentencing practices for crack and powder cocaine offenses. We are encouraged to see the support your administration has extended for the bipartisan Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act, which would eliminate the sentencing disparity between crack and powder forms of cocaine, but the road to passage is long.⁷ The guidance Attorney General Merrick Garland issued last December to federal prosecutors noting they “should not automatically charge the quantity necessary to trigger the mandatory minimum,” for crack cocaine is another encouraging step towards justice, but it does nothing to help those who have already been sentenced to unnecessarily harsh incarceration terms.⁸

The racist architecture that underpins criminal justice in America is deeply entrenched in all of this: Black people are imprisoned at 5.9 times the rate of white people. For Latinx people, it's 3.1 times the rate of imprisonment.⁹ These disparities are exacerbated by the crack and powder cocaine sentencing disparity. It's been twenty years since the ACLU [published a factsheet](#) detailing the racialized harm of the War on Drugs, noting that “by 2001, over 80% of federal crack defendants were black.” Despite knowing for years the racialized harm this disparity creates, the law still lingers, and the disparity in prosecutions remains stubbornly high - a broken vestige of our failed criminalization approach to drug use.

We applaud your proclamation celebrating Second Chances Month - a time where we, as a nation, must reflect on the people and communities that are harmed by mass incarceration and in particular, the War on Drugs.¹⁰ The principles of that month remain true year-round. You have the power to effect change and begin to heal the harm the failed War on Drugs has caused to thousands of people, their families, their communities, and embrace a new path forward that is grounded in justice, equity, and redemption. Granting clemency to those impacted by the sentencing disparity between crack and powder cocaine is just, and it is necessary.

You pledged to end the mass incarceration crisis in our nation. We urge you to fulfill this promise by using your executive power now to grant commutations to people impacted by this unjust disparity.

Should you have any questions, please contact Cynthia W. Roseberry at croseberry@aclu.org.

⁷ Carrega, Christina, CNN, [Biden administration backs end to the disparity of cocaine sentences](#) (June 2021).

⁸ Office of the Attorney General, [Additional Department Policies Regarding Charging, Pleas, And Sentencing In Drug Cases](#) (Dec. 2022).

⁹ The Sentencing Project, [Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System](#) (Apr. 2018).

¹⁰ The White House, [A Proclamation on Second Chance Month](#) (Mar. 2023).

Sincerely,

American Civil Liberties Union (ACLU)
American Humanist Association
Brennan Center for Justice at NYU School of Law
Drug Policy Alliance
Jewish Council for Public Affairs
Justice Round Table
Leadership Conference on Civil and Human Rights
Multifaith Initiative to End Mass Incarceration
NAACP Legal Defense Fund, Inc. (LDF)
National Council of Churches
Sentencing Project
Taifa Group
Tzedek Association