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FOR JUSTICE

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Via E-Mail

The Honorable Patti B. Saris, Chair  
United States Sentencing Commission  
One Columbus Circle NE.  
Suite 2-500, South Lobby  
Washington, DC 20002-8002

**Attention: Public Affairs—Priorities Comment**

Dear Judge Saris and Hon. Commissioners:

The Brennan Center for Justice at New York University School of Law writes to address several of the proposed policy priorities set forth by the Sentencing Commission (“the Commission”) on May 30, 2013 for the amendment cycle ending May 1, 2014. We appreciate the opportunity to provide comments on these proposed priorities.

The Brennan Center is a non-partisan public policy and law institute that focuses on improving the systems of democracy and justice.<sup>1</sup> The Brennan Center’s Justice Program seeks to ensure a rational, efficient, effective and fair criminal justice system. As part of that mission, we advocate for systemic reforms that will reduce the criminal justice system’s size and severity, its significant racial disparities and are socially beneficial to all Americans while achieving legitimate public safety goals. We have a special interest in the Commission’s policy priorities for the upcoming amendment cycle, as this agency directly affects the size of the federal prison population through the guidelines it creates and amends. Moreover, the Commission plays a pivotal role in working with Congress to create long term reforms affecting the size and scope of the federal criminal justice system.

**FEDERAL IMPACT ON STATE REFORMS**

With more than 2.2 million people behind bars, the United States incarcerates more people than any other nation and is suffering the consequences of mass incarceration. Today, the federal government is the largest incarcerator in the country. Even as several states have implemented innovative sentencing reforms to alleviate the pressures of incarceration, the federal prison

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<sup>1</sup> This letter does not represent the opinions of NYU School of Law.

population continues to grow.<sup>2</sup> Currently, the federal Bureau of Prisons (“BOP”) operates at thirty-seven percent over capacity.<sup>3</sup> Moreover, there is no sign that the federal prison population will decrease in coming years.<sup>4</sup> Indeed, pending federal legislation may increase the incoming federal prison population over the next ten years.<sup>5</sup> The Inspector General of the Department of Justice bluntly rates its outlook as “bleak: the BOP projects system-wide crowding to exceed 45 percent over rated capacity through 2018.”<sup>6</sup>

At the same time, mass incarceration has placed intense and untenable pressures on the criminal justice system. The rate of incarceration in the United States has increased exponentially. Since 1980, the federal prison population alone has increased by almost 790 percent.<sup>7</sup> As Attorney General Eric Holder recently stated, “too many people go to too many prisons for far too long for no good law enforcement reason.”<sup>8</sup> In addition, a criminal record has a significant impact on an individual and his or her community, making the fact of a conviction enduringly detrimental to an offender’s life course beyond the term of incarceration.<sup>9</sup>

In response to these pressures, several states have implemented meaningful and innovative reforms to reduce the size of their prison populations.<sup>10</sup> For example, New York reduced its prison population and increased public safety after scaling back its harsh Rockefeller drug

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<sup>2</sup> E. Ann Carson and William J. Sabol, Bureau of Justice Statistics, Prisoners in 2011 1 (Dec. 2012) (noting that the U.S. total prison population declined by 0.9% in 2011). However, this decrease is entirely on account of state reform efforts, particularly in California. *Id.* During this period, the federal prison population continued to grow. *Id.*

<sup>3</sup> *Federal Bureau of Prisons FY 2014 Budget Request: Hearing Before U.S. House of Representatives Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies*, Statement of Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons 2 (April 17, 2013) [hereinafter Samuels Statement], available at <http://appropriations.house.gov/uploadedfiles/hhrg-113-ap19-wstate-samuelsc-20130417.pdf> (describing a capacity of 129,000 and a prison population of 176,000, which results in a capacity at 136%, and describing how medium security prisons operate at 44% above capacity and high security prisons operate at 54% above capacity).

<sup>4</sup> *Id.* (estimating a net increase of 6,000 inmates annually through 2015).

<sup>5</sup> Patrick O’Connor, *Private Prisons Are Likely to Benefit from Rewrite of Immigration Laws*, WALL ST. J., (July 6, 2013), <http://online.wsj.com/article/SB10001424127887324260204578587850002860188.html> (immigration reform likely to increase federal prison population by estimated 14,000 prisoners per year).

<sup>6</sup> *Oversight of the Department of Justice: Hearing Before the U.S. House of Representatives Committee on Appropriations, Subcommittee on Commerce, Justice and Related Agencies*, Statement of Michael E. Horowitz, Inspector General, U.S. Dep’t of Justice 9 (March 14, 2013), available at <http://appropriations.house.gov/uploadedfiles/hhrg-113-ap19-wstate-horowitzm-20130314.pdf>.

<sup>7</sup> NATHAN JAMES, CONG. RESEARCH SERV., THE FEDERAL PRISON POPULATION BUILDUP: OVERVIEW, POLICY CHANGES, ISSUES AND OPTIONS 51 (Jan. 2013).

<sup>8</sup> Eric Holder, Att’y Gen., Address at the 15th Annual National Action Network Convention (Apr. 4, 2013) (transcript available at <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130404.html>).

<sup>9</sup> See Comments from Inimai Chettiar, Dir. Justice Program, Brennan Center for Justice, to the U.S. Civil Rights Commission (Jan. 17, 2013), available at <http://www.brennancenter.org/analysis/comments-us-civil-rights-commission-economic-impact-criminal-records> (discussing the economic impact of criminal records).

<sup>10</sup> See, e.g., JUDITH GREENE & MARC MAUER, THE SENTENCING PROJECT, DOWNSCALING PRISONS: LESSONS FROM FOUR STATES (2010), available at [http://www.sentencingproject.org/doc/publications/publications/inc\\_DownscalingPrisons2010.pdf](http://www.sentencingproject.org/doc/publications/publications/inc_DownscalingPrisons2010.pdf) (describing reforms that led to declines in incarceration rate in New York, New Jersey, Michigan and Kansas); ACLU, SMART REFORM IS POSSIBLE: STATES REDUCING INCARCERATION RATES AND COSTS WHILE PROTECTING COMMUNITIES (2011) [hereinafter ACLU REPORT], available at [http://www.aclu.org/files/assets/smartreformispossible\\_web.pdf](http://www.aclu.org/files/assets/smartreformispossible_web.pdf) (describing reforms that led to declines in incarceration in Texas, Kansas, Mississippi, South Carolina, Kentucky and Ohio).

laws.<sup>11</sup> Similarly, Michigan repealed extreme mandatory drug sentences as a measure to reduce its increasing prison population.<sup>12</sup> Texas and South Carolina amended their drug laws to prevent first time, nonviolent drug offenders from serving extended sentences in prison.<sup>13</sup> But not all states have been moving in the direction of reducing their incarceration rates. Indeed, the prison population in several states, like in the federal system, has continually increased over the past decade.<sup>14</sup> The combination of drastic reforms in some states and steady prison population increases in other resulted in an overall decrease in the total U.S. prison population by 0.9% in 2011.<sup>15</sup> Whether this occurrence signals a larger trend remains to be seen.

The Brennan Center believes that policy reforms aimed to reduce the severity of the federal sentencing system would trigger a systemic shift away from “business-as-usual” in the U.S. criminal justice system more broadly. Such high-level and visible changes could have a broad effect on offenders both within and outside the federal criminal justice system as the reforms would influence state and federal actors.<sup>16</sup> The Commission, by considering and implementing reforms already adopted in several states, would endorse a change in approach to punishment amongst all the states. Though the federal government typically follows the states’ lead in sentencing reform, it repeatedly sets the directional tone of reforms.<sup>17</sup> Accordingly, the Commission has the opportunity to affect broad change by implementing or recommending several meaningful reforms in the upcoming amendment cycle.

### **PROPOSED POLICY PRIORITIES FOR THE UPCOMING CYCLE**

The Brennan Center applauds the Commission’s call to the public for comments on its proposed priorities in light of the directive in 28 U.S.C. § 994(g).<sup>18</sup> Indeed, in light of the added financial constraints that sequestration has placed on the federal government, the time is now for smart policy changes that can have long-term effects on the size of the federal prison population. Below we discuss the ways that a few of the policy priorities identified by the Commission can result in reforms that will meaningfully alleviate the fiscal and social cost of our overreliance on incarceration in the United States.

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<sup>11</sup> GREENE & MAUER, *supra* note 10, at 16-18.

<sup>12</sup> *Id.* at 29-30.

<sup>13</sup> ACLU REPORT, *supra* note 10, at 17, 36.

<sup>14</sup> GREENE & MAUER, *supra* note 10, at 1 (between 2000 and 2008 the incarceration rate of six states increased by more than 40% -- West Virginia, Minnesota, Arizona, Kentucky, Florida, and Indiana). Between 2010 and 2011, the landscape changed slightly, as Iowa (7.3%), Illinois (7.2%), Oklahoma (5.8%) and West Virginia (4.9%) led the states with the largest increases to their prison population. Carson & Sabol, *supra* note 2, at tbl. 2. This demonstrates that there is much fluctuation in incarceration rates among the states, and an overall trend is not yet defined.

<sup>15</sup> *See supra* note 2.

<sup>16</sup> Indeed, “Congress uses its grant power chiefly to influence sentencing . . .” Rachel E. Barkow, *Federalism and Criminal Law: What the Feds Can Learn from the States*, 109 MICH. L. REV. 519, 574 (2011). Accordingly, changing the approach to punishment at the federal level would inevitably produce effects at the state level because Congress could create incentives to encourage states’ to follow suit. *See id.* (discussing Congressional incentives to adopt truth-in-sentencing policies and minimum sentencing terms).

<sup>17</sup> *See id.* (describing the ways that the federal government has influenced state sentencing reforms to be increasingly severe).

<sup>18</sup> Congress mandated that the Commission “take into account the nature and capacity of the penal, correctional, and other facilities and services available” when formulating the guidelines so as to “minimize the likelihood that the Federal prison population will exceed the capacity of the federal prisons.” 28 U.S.C. § 994(g).

### ***Reduce the Severe Effects of Mandatory Minimums Penalties***

The Brennan Center supports the Commission’s continued commitment to address the detrimental effects of statutory mandatory minimum penalties on the federal criminal justice system. Statutory mandatory minimums are over-inclusive, sweeping in lower-level offenders and extending their sentences beyond what is necessary to impose just punishment and ensure public safety. Moreover, mandatory minimums are disproportionately applied to minority offenders, particularly African American men.<sup>19</sup> This result is most readily seen in the unfair and unbalanced outcomes of the drug trafficking mandatory minimums: lower-level, frequently nonviolent and disproportionately minority offenders receive longer terms of incarceration than the relatively few high-level drug traffickers incarcerated in federal prisons.<sup>20</sup> This result undermines Congress’s intention to target offenders for their particular role in the offense when creating these statutory limitations.<sup>21</sup>

The Brennan Center supports two measures in particular to resolve the ineffective and unjust results created by mandatory minimums:

- *Expand the Safety Valve.* The Brennan Center supports the Commission’s efforts—through research and its work with Congress—to encourage Congress to expand the scope of offenders who qualify for the safety valve exception. The Commission, in 2011, recommended that Congress consider marginally expanding the safety valve provision at 18 U.S.C. § 3553(f).<sup>22</sup> We support the Commission’s determination to expand the safety valve as a means to reduce the severity and scope of the mandatory minimum penalties.
- *Eliminate Mandatory Minimums.* The Brennan Center supports the Commission’s research and publications to the extent that they demonstrate the inefficiencies of mandatory minimums in the federal criminal justice system. Mandatory minimums are imprecise measures that fail to adequately consider both the circumstances surrounding

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<sup>19</sup> Black and Hispanic offenders are disproportionately subject to mandatory minimum sentences. UNITED STATES SENTENCING COMM’N, MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 123 (2011) [hereinafter MANDATORY MINIMUMS REPORT]. However, “although Hispanic offenders comprise the largest proportion of offenders convicted of an offense carrying a mandatory minimum penalty, Black offenders are represented more heavily in both the populations of offenders convicted of an offense carrying a mandatory minimum penalty and offenders subject to a mandatory minimum penalty at sentencing compared to their proportion in the offender population.” *Id.*

<sup>20</sup> For example, while 74% of crack defendants faced mandatory minimum penalties in 2011, only 5.4% of them occupied an aggravating role of leader or manager of a drug business. U.S. SENTENCING COMM’N, 2011 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS tbl. 40, 44 (2011). *See also* U.S. v. Dossie, 851 F. Supp. 2d 478, 480 (E.D.N.Y. 2012). On average, only 10% of drug cases concern offenders with supervisory roles. *Dossie*, 851 F. Supp. 2d at 480.

<sup>21</sup> MANDATORY MINIMUMS REPORT, *supra* note 19, at 24 (“Congress intended to link the five-year mandatory minimum penalties to what some called ‘serious’ traffickers and the ten-year mandatory minimum penalties to ‘major’ traffickers.”).

<sup>22</sup> *See id.* at 355-56.

the offense and the history and characteristics of the offender when determining appropriate punishments.<sup>23</sup>

The Brennan Center also supports Commission research that discusses the ways that state reforms on mandatory minimums should influence or affect the federal penalties. For example, in relation to the 100-1 powder to crack cocaine disparity, the Commission collected data on whether states differentiated between crack and powder cocaine, and whether there were any changes in the sentencing practices to reduce the disparities in sentencing that resulted from mandatory minimum penalties for drug offenses.<sup>24</sup> The Brennan Center believes similar information demonstrating the states' responses to managing tight budgets, harsh sentences, and limited prison space would be similarly compelling for Congress as it weighs reforms around mandatory minimum penalties in the criminal system.

### ***Reduce the Severity of Drug Trafficking Offenses across Drug Types***

We also support the review and possible amendment of all guidelines applicable to drug trafficking offenses across drug types. Today, almost half of all federal prisoners are incarcerated for drug offenses.<sup>25</sup> As the BOP recently explained, “[d]rug offenders comprise the largest single offender group admitted to Federal prison and sentences for drug offenses are much longer than those for most other offense categories.”<sup>26</sup> Studies indicate that extended drug offense sentences contribute significantly to the increase in the federal prison population.<sup>27</sup>

The Brennan Center encourages the Commission to reconsider the drug weight metric in its upcoming term. To that end, we encourage the Commission to consider two alternative measures to “right size” the length of sentences for all drug offenders across drug type:

- *Choose a new metric.* The Commission can use its unique expertise and the empirical data collected before and after the implementation of the guidelines to formulate a sentencing metric that both meets the goals of sentencing and reduces the severity of current offense metrics. Ideally, the new metric would delink the guidelines from the

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<sup>23</sup> See *id.* at 346 (recognizing that mandatory minimum sentences do not consider “the possibility that mitigating circumstances surrounding the offense or the offender may justify a lower sentence”). See also, *Dossie*, 851 F. Supp. 2d at 480 (“So if an offense happens to involve a drug type and quantity that triggers an enhancement, every defendant involved in that crime, whatever his or her actual role, can be treated as a leader or manager at the option of the United States Attorney.”).

<sup>24</sup> U.S. SENTENCING COMM’N, REPORT TO CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY 98-114 (2007) (examining state cocaine sentencing policies and its possible effects on federal prosecutorial decisions). See also, U.S. SENTENCING COMM’N, 2002 REPORT TO CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY (May 2002); U.S. SENTENCING COMM’N, 1995 SPECIAL REPORT TO CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY (Feb. 1995).

<sup>25</sup> See Carson and Sabol, *supra* note 2, at tbl. 11.

<sup>26</sup> Samuels Statement, *supra* note 3, at 3.

<sup>27</sup> U.S. SENTENCING COMM’N, FIFTEEN YEARS OF GUIDELINES SENTENCING: AN ASSESSMENT OF HOW WELL THE FEDERAL CRIMINAL JUSTICE SYSTEM IS ACHIEVING THE GOALS OF SENTENCING REFORM 48 (Nov. 2004) [hereinafter FIFTEEN YEARS REPORT] (citing to drug trafficking sentences in particular as the driver of federal prison population growth); THE SENTENCING PROJECT, THE EXPANDING FEDERAL PRISON POPULATION 2 (2011), available at [http://sentencingproject.org/doc/publications/inc\\_FederalPrisonFactsheet\\_March2012.pdf](http://sentencingproject.org/doc/publications/inc_FederalPrisonFactsheet_March2012.pdf) (“The increased incarceration of drug offenders represents the most significant source of growth in the federal prison population.”).

mandatory minimums rolled out in the Anti-Drug Abuse Act of 1986. An alternative metric to consider for seriousness of the offense could be, for example, the offender's role in the offense.<sup>28</sup>

- *Implement a guideline amendment reducing base offense level across all drug types.* Even if the Commission does not select an alternative metric for guideline calculation, the Brennan Center encourages the Commission to amend the guidelines for all drug offenses across drug type in a way similar to Amendment 706. Amendment 706 lowered the base offense level for most drug offenses involving crack cocaine by two levels.<sup>29</sup> Moving the base offense level for all guideline calculations applicable to drug offenses such that it does not exceed the corresponding mandatory minimum penalties would prove a long-term reform with great effect on the size of the federal prison population.

The Commission itself has acknowledged in the past that the drug trafficking guideline had a profound impact on the federal prison population.<sup>30</sup> Taking steps to reform such policies is critical to gaining control of the federal prison population. Moreover, it has the potential to indicate to state reformers as well that the United States can approach drug crimes in a different way that still ensures public safety but reduces sentencing severity.

### ***Focus Recidivism Study on Alternatives to Incarceration***

The Brennan Center supports the continuation of the multi-year study of recidivism. We believe this study will be an important contribution to stabilizing and potentially reducing the size of the federal prison population by breaking the cycle of offenders entering and reentering the prison system.

Mass incarceration in part derives from the overreliance on incarceration to address problems that are not resolved in prisons. When offenders' underlying issues are not addressed before reentering society, ex-prisoners are likely to find themselves amongst the large number of offenders who return to prison within the first three years of release.<sup>31</sup> Creative alternatives to incarceration may provide meaningful interventions into the detrimental cycle by allowing individuals to address their underlying issues while maintaining community ties. Generally the states have been very aggressive in developing sentencing alternatives; the federal government has not. At the same time, the federal government continually chooses to prosecute offenders who may otherwise have been offered the opportunity for services if left to state supervision and discretion.

The Brennan Center encourages the Commission to explore expanding the types of sentencing alternatives to incarceration available at the federal level. The states have created innovative alternatives which maintain public safety, allow individual offenders to remain in their

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<sup>28</sup> See *United States v. Diaz*, No. 11-CR-00821-2 (JG), 2013 WL 322243, at \*12-14 (E.D.N.Y. Jan. 28, 2013).

<sup>29</sup> U.S. Sentencing Guidelines Manual app. C (2013). The Commission implemented Amendment 706 to alleviate disparities in sentencing between crack and powder cocaine. *Id.*

<sup>30</sup> FIFTEEN YEARS REPORT, *supra* note 27, at 48 ("Increases in sentence lengths for drug trafficking offenders are the major cause of federal prison population growth over the past fifteen years").

<sup>31</sup> PEW CENTER ON THE STATES, THE HIGH COST OF INCARCERATION IN THE AMERICA 1 (2012) (finding that one in 2.3 inmates returns to prison within three years).

communities and reduce recidivism. The Brennan Center encourages the Commission to particularly consider two alternatives to incarceration as part of their study of recidivism:

- *Explore Specialized Courts.* The states have led the way in implementing innovative reforms to manage their exploding prisoner populations through diversionary alternatives to long terms of incarceration. For example, by 2005, drug courts were established in forty-nine states to provide treatment and divert low-level offenders from incarceration.<sup>32</sup> Several other “problem-oriented” courts, including mental health courts and veteran courts, soon followed.<sup>33</sup> Moreover, the U.S. Congress has endorsed the specialized courts approach by authorizing federal funding for specialized criminal courts.<sup>34</sup> The Brennan Center encourages the Commission to explore the success and feasibility of expanding the nascent federal drug courts and creating other federal specialized courts to divert certain offenders from incarceration while addressing some of the underlying problems driving entry and reentering into the criminal justice system each year.
- *Expand Community-Based Supervision.* The Brennan Center suggests that the Commission explore the extent to which expanding the range of offenders who qualify for split sentences may both alleviate the pressures of over capacity in prison and reduce recidivism.

### ***Do Not Change the Structure of the Sentencing Guidelines post-United States v. Booker***

The Brennan Center opposes the Commission’s work to encourage Congress to enact the recommendations set forth in the December 2012 report to Congress, titled *The Continuing Impact of United States v. Booker on Federal Sentencing*.

We believe the advisory sentencing guidelines are working sufficiently well to meet the goals of the Sentencing Reform Act of 1984, particularly the effort to avoid unwarranted disparities among similar offenders who committed similar offenses in different jurisdictions. As the Commission itself recognized, “[t]he overwhelming majority of offenders – 80.4 percent in fiscal year 2010 – still receive a sentence either within the guideline sentencing range or below the guideline sentencing range for a reason sponsored by the government.”<sup>35</sup> Moreover, Commission research illustrates that much of the disparities in sentencing can be attributed to prosecutorial practices in differing jurisdictions.<sup>36</sup> Given the numerous factors that contribute to

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<sup>32</sup> Peggy Fulton Hora & Theodore Stalcup, *Drug Treatment Courts in the Twenty-First Century: The Evolution of the Revolution in Problem-Solving Courts*, 42 GA. L. REV. 717, 776 (2008).

<sup>33</sup> Allegra McLeod, *Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law*, 100 GEO. L. J. 1587, 1607 (2012) (“Shortly after the advent of the drug court movement, mental health courts, community courts, domestic violence courts, and later, veterans courts, sex offense courts, and reentry courts emerged in jurisdictions around the United States.”).

<sup>34</sup> *Id.* at 1608.

<sup>35</sup> MANDATORY MINIMUMS REPORT, *supra* note 19, at 348.

<sup>36</sup> See MANDATORY MINIMUMS REPORT, *supra* note 19, at 345-46 (recognizing that “different charging and plea practices have developed in various districts that result in the disparate application of certain mandatory minimum penalties, particularly those provisions that require substantial increases in sentence length.”); see also *U.S. Sentencing Commission Hearing on Federal Sentencing Options After Booker*, Statement of Douglas A. Berman 4 (Feb. 16, 2012) [hereinafter Berman Statement]; *U.S. Sentencing Commission Hearing on Federal Sentencing*

the varying sentences between jurisdictions, the advisory guidelines provide judges with the appropriate guidance in sentencing while also letting them consider the character of the offender and circumstances of the offense properly.

Accordingly, the Brennan Center discourages the Commission from seeking amendments which restrict judicial discretion further, expand appellate review, or expressly place more weight on the guidelines. Rather, we encourage the Commission to continue its work on reducing the unwarranted *severity* of the federal criminal justice system.<sup>37</sup> Reducing the harshness of sentences at the federal level may, in turn, reduce the sentencing disparities driving concern for guideline amendments.

### ***Examine the Effects of Sequestration on the Federal System***

In addition to the policy priorities identified by the Commission, The Brennan Center encourages the Commission to address the effects of sequestration on the federal criminal justice system. Specifically, the Brennan Center hopes that the Commission will apply its expertise to develop policy recommendations on sentencing reforms that may alleviate some of the undue pressures created by sequestration on the federal criminal justice system.

Sequestration has wreaked havoc on the federal criminal justice system. The \$85 billion spending cut included a \$1.6 billion cut in funding to the Department of Justice.<sup>38</sup> Some results from these cuts are highly visible, such as BOP operational challenges and impending furloughs in the Department of Justice.<sup>39</sup> Other effects are less visible, such as the fluctuation in types of offenders, plea agreements and the length or type of sentences imposed by judges in light of the extreme pressures to the federal justice system.

A Commission report on the effects of sequestration would prove useful to the branches of government. It should report on the long-term effects of sequestration and propose policy recommendations that allow the federal system to adjust to the new budgetary constraints.

### **CONCLUSION**

In summary, the Brennan Center appreciates the opportunity to comment on the proposed policy priorities issued by the Commission. We support much of the work that the Commission intends to address in the coming year and we are particularly encouraged that the Commission is taking the size and scope of the federal prison population into consideration as it considers policy priorities for the upcoming amendment cycle.

Below please find a succinct list of the recommendations detailed in this letter:

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*Options After Booker*, Statement of Mary Price, Families Against Mandatory Minimums 4 (Feb. 16, 2012) (describing the ways federal prosecutors and federal districts vary regardless of the guidelines).

<sup>37</sup> See Berman Statement, *supra* note 36, at 4.

<sup>38</sup> Inimai Chettiar and Ethan Nadelmann, *Justice Department Can Be Smarter About Sequester*, THE HILL (Feb. 26, 2013), <http://thehill.com/blogs/congress-blog/economy-a-budget/284953-justice-department-can-be-smarter-about-sequester>.

<sup>39</sup> Samuels Statement, *supra* note 3, at 1.



- The Commission should seek opportunities to reduce the overall size and severity of the federal criminal justice system through sentencing reforms. The Commission should build upon the innovative sentencing reforms implemented in some states in an effort to create a systemic shift away from overreliance on incarceration in the United States more broadly.
- The Commission should continue to advocate for legislation to expand the safety valve exception to mandatory minimum penalties in the federal system. Additionally, the Commission should continue collecting information and produce reports on reducing the breadth and severity of these penalties.
- The Commission should reconsider using drug weight as a metric for all drug trafficking offenses across drug types. At the very least, we encourage the Commission to implement an amendment to the drug offense guidelines across drug types similar to Amendment 706 as a measure to alleviate the severity of current drug trafficking sentences in the federal system.
- The Commission should continue the multi-year study of recidivism and consider the effects of expanding the array of alternatives to incarceration available in the federal system, including specialized courts and split sentences.
- The Commission should not implement changes to the federal sentencing system pursuant to its 2012 report, titled *The Continuing Impact of United States v. Booker on Federal Sentencing*.
- The Commission should issue a report on the effects of sequestration on the federal criminal justice system.

Respectfully submitted,

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