

April 2022

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### Recommended Citation

Wingfield, Emily (2022) "Racialized Mass Incarceration in the United States: Exposing the Facade of “Liberty and Justice for All”," *The Compass*: Vol. 1: Iss. 8, Article 5.

Available at: <https://scholarworks.arcadia.edu/thecompass/vol1/iss8/5>

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# Racialized Mass Incarceration in the United States: Exposing the Facade of “Liberty and Justice for All”

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## Introduction and Context

Millions of individuals throughout the United States (U.S.) have the Pledge of Allegiance memorized, and some even recite it daily. One line, however, is rather conflicting: “liberty and justice for all.” The United States prides itself on being a utopian world of freedom and equality for all people, but in reality, this is not the case. This country has systematically oppressed countless groups since its founding, one being Black Americans. America gained almost all of its initial prosperity through the institution of slavery. Later on, Black Americans were ostracized from society through Jim Crow laws, and this segregation was legally permitted. Increasingly oppressive treatment of Black Americans proves that the “all” in “liberty and justice for all” does not truly include all people. This country is putting up a facade of freedom and equality. Although institutions like slavery and Jim Crow have ended, a new breed of systematic racial oppression has emerged within the United States: mass incarceration. An analysis of mass incarceration and its consequences reveals the racialized nature of the criminal justice system, demonstrating the ever-present oppression that plagues the Black community and showing the nation and the world that there is immense progress to be made and action that must be taken.

A strong criminal justice system has long been at the forefront of the United States’ policy and mindset, but the most shocking event of incarceration in the U.S. is the prison boom beginning in the 1970s. U.S. state and federal prison populations rose from about 200,000 in 1972 to 600,000 in 1988<sup>1</sup>, much of those being incarcerated at this time as a result of drug charges. The U.S. criminal justice system began to double down heavily on drugs between the 1970s and 1990s, resulting in a major increase in the incarcerated population. The annual number of individuals incarcerated was roughly ten times higher in 1990 than in 1980.<sup>2</sup> The irony of the United States’ portrayal of itself as the most free nation in the world is exposed through observation of the immense system of incarceration that is ingrained within our justice and legal systems. Although the U.S. only comprises 4% of the world’s population, it is responsible for 22% of the world’s prison population.<sup>3</sup> Despite claiming to be free, this nation incarcerates more of its own people than any other nation in the world. As mentioned, the bulk of the growth in incarceration in the states occurred between the 1970s and 1990s, when law enforcement focused heavily on drug offenses, launching

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1 “Trends in U.S. Corrections,” The Sentencing Project, June 2019, [www.sentencingproject.org/publications/trends-in-u-s-corrections/](http://www.sentencingproject.org/publications/trends-in-u-s-corrections/).

2 Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* (Chicago: University of Chicago Press, 2009), 18.

3 German Lopez, “Mass Incarceration in America, Explained in 22 Maps and Charts,” Vox, October 11, 2016, [www.vox.com/2015/7/13/8913297/mass-incarceration-maps-charts](http://www.vox.com/2015/7/13/8913297/mass-incarceration-maps-charts).

### a. The War on Drugs, Racial Stereotyping, and the Development of Punishment-Focused Drug Policy

The term “War on Drugs” was coined by Richard Nixon in the early 1970s, but wasn’t largely carried out by policies and initiatives until under the Reagan administration in the 1980s. The War on Drugs was publicized as a response to the growing crack cocaine crisis that existed in inner-city neighborhoods.<sup>4</sup> A key feature of this war against drugs was an explosion of images of Black “crack whores,” “crack dealers,” and “crack babies” throughout the media. Massive publicity around the War on Drugs reinforced negative racial stereotypes and emphasized the targeting of Black Americans. Not only were Black Americans thrown into jail and prison, but the government also intensified stereotypes about Black Americans as drug-addict criminals, furthering the nation’s racial divide. These racial stereotypes have existed for many years in the United States. For example, early entertainment depicted Black men in particular as animalistic, savage, harmful beings. After the Civil Rights Movement of the 1960s, many hoped that these stereotypes would subside, but the reality is that incarceration and criminal justice simply created new ones. These stereotypes would further the flawed image of the Black American as a dangerous threat to White America. The War on Drugs has had sustained effects in more recent times. In 2017, 47.3% of the federal prison population were drug offenders.<sup>5</sup> Approximately half a million people are incarcerated today as a re-

sult of drug offenses, in comparison to roughly 41,000 in 1980, which shows a massive increase of 1,100%.<sup>6</sup> Back in the 1970s and 1980s, countless individuals entered the criminal justice system on drug charges, and those numbers are still increasing. It is without a doubt that the War on Drugs forced thousands of individuals into prisons. However, many often wonder how exactly that monumental prison population came to be. Much of this can be attributed to drug sentencing laws that disproportionately targeted communities of color, in particular Black communities.

The War on Drugs shifted drug policy from focusing on rehabilitation and treatment to emphasizing punishment. As a result, there were major increases in funding for drug law enforcement.<sup>7</sup> This highly punitive nature is seen through the development of harsher sentencing laws. For example, the Anti-Drug Abuse Act of 1986 and 1988 established mandatory minimum sentences which largely targeted communities of color.<sup>8</sup> Five-year mandatory minimums were placed for first-time possession of five grams of crack cocaine, compared to a five-year mandatory minimum for first-time possession of five hundred grams of powder cocaine. Crack cocaine was more common in low-income, inner-city neighborhoods, often communities of color, whereas powder cocaine was more expensive and associated with whites. As a result of these disparities in sentencing for crack versus powder cocaine, the criminal justice system was racialized. A link was made between the Black community, drugs,

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4 Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York: The New Press, 2012), 5.

5 The Sentencing Project, “Trends in U.S. Corrections.”

6 Alexander, *The New Jim Crow*, 60.

7 “Trends in U.S. Corrections.”

8 *Ibid.*

and crime that would be cemented in American rhetoric, policy, and systems of law enforcement for years to come. The nation found a new way to control the Black community, oppressing and forcing them into yet another box that viewed them as lesser than the remainder of society.

### **Racial Disparities in Incarceration**

An analysis of incarceration in America cannot be done without acknowledging the clear racial disparities that exist within the system. As mentioned, the War on Drugs has greatly contributed to the disparate treatment of Black Americans within the criminal justice system, and these disparities persist even today. Black Americans (Black men in particular) are more likely to face a prison sentence during their lifetime than other communities. In 2017, the rate of imprisonment per 100,000 individuals by race was 2,336 for Black men and 397 for White men, meaning Black men are six times as likely to be incarcerated as White men.<sup>9</sup> Black Americans are also disproportionately arrested for drugs. In 2013 the drug-related arrests per 100,000 individuals were 879 for Black Americans and 322 for Whites.<sup>10</sup> On top of being more likely to be arrested for drugs, Black individuals receive prison sentences that are 13.1% higher than those that White people receive.<sup>11</sup> The justice system in this nation oppresses Black Americans, specifically through incarceration and drug arrests that disparately impact Black people. Mass incarceration has been used to single out

Black Americans, much like with earlier systems like slavery and Jim Crow. Not only does incarceration disproportionately segregate Black Americans from society, but also it impacts the community and their rights.

### **Mass Incarceration's Impact: Felon Disenfranchisement**

Mass incarceration is tearing many of the fundamental rights and resources out of the hands of Black Americans. Voting rights are arguably the most fundamental rights of United States citizens and there is nothing that should take that right away from an individual. Due to mass incarceration, however, Black Americans have been denied this right through felony disenfranchisement, a prohibition on voting due to being a felon. Disenfranchisement is a monumentally oppressive action that the government has taken against Black Americans. For countless years, Black Americans were refused entry to the political sphere through the systems of slavery and Jim Crow. In more modern times, felony disenfranchisement continues this exclusion. The rate of disenfranchisement by race in 2016 was 7.44% Black American compared to 2.47% for non-Black Americans.<sup>12</sup> Every state in the U.S., except two, have laws that restrict voting rights based on a criminal record.<sup>13</sup> Felony disenfranchisement laws are being used to take away the rights of countless Black Americans. This is allowing for political censorship of the Black community. Due to this endangerment of

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9 Ibid.

10 Lopez, "Mass Incarceration."

11 Ibid.

12 "Trends in US Corrections."

13 Gwen Rubinstein and Sebbie Mukamal, "Welfare and Housing - Denial of Benefits to Drug Offenders" in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, ed. Marc Maeur and Meda Chesney-Lind (New York: New Press, 2003).

voting rights, Black Americans are watching their ability to participate in this democracy fade away. They are gradually becoming unable to use their voices for change, to support candidates and policies in which they believe. Because of this, Black people are experiencing a major lack of representation within politics, and they fail to see policies implemented or candidates elected that align with their needs. Voices are being suppressed in a nation that claims to lift up voices of all citizens. It is important to note, however, this is not the only collateral consequence the Black community faces due to mass incarceration.

### **Mass Incarceration's Impact: Denial of Public Benefits**

Public benefits are crucial to former felons' reinstatement back into society and their journey away from crime. As an ex-offender from Pennsylvania stated, "What do I need to stay off drugs and out of jail? I need...a home for me and my kids".<sup>14</sup> These supports allow for families and individuals to have access to resources such as food to support themselves. Without this assistance individuals are more inclined to find alternative ways to gain access to these resources. Convicted felons, however, have been legally denied these benefits, and without these supports, it is unrealistic to expect recovery without recidivism. Although these benefits are crucial, they have been denied to felons through various forms of legislation. A 2002 Supreme Court decision ruled that public housing authorities could evict an entire family if someone in the household, or even a guest, used drugs.<sup>15</sup> Other federal laws

such as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 perpetuated this denial of benefits. It removed individual entitlement to welfare and replaced it with Temporary Assistance to Needy Families (TANF). This act also instituted a lifetime ban on eligibility for TANF assistance and food stamps for those with drug convictions.<sup>16</sup> Following incarceration, individuals must re-adjust back to the social norms and livelihood of life beyond bars. Without access to quality welfare benefits, individuals are forced to find alternative ways to support themselves. They must do anything to survive, and in some cases this leads to recidivism, return to crime. Not only does this worsen the conditions for those involved, but it furthers negative perceptions of the Black community. These individuals are simply doing what they feel they need to do to survive; in reality, they should not have been that desperate for survival to begin with. Beyond this, a criminal record proves to be detrimental in finding employment, so these individuals are not able to attempt to better their lives without these public benefits.

### **Mass Incarceration's Impact: Barriers to Employment**

A criminal record leaves an ever-lasting mark on the individual and proves to have tragic consequences for job opportunities. Employment is crucial to the reentry process as steady work and income can help to reduce the incentives of crime.<sup>17</sup> Despite this, a criminal record carries a heavy stigma which greatly affects employment opportunities. Sociologist Devah

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14 Ibid.

15 Fatema Gunja, "Race & the War on Drugs," *American Civil Liberties Union*, May 2003, 4, <https://www.aclu.org/other/race-war-drugs>.

16 Rubinstein and Mukamal, "Welfare and Housing."

17 Pager, *Marked*, 25-26.

Pager conducted a study to help show the consequences of incarceration on employment opportunities. Her research question sought to discover if given two equally qualified applicants, a criminal record would affect the chance of being selected by that employer.<sup>18</sup> Pager answered this question by having four male testers, one team of two Black men and one team of two White men, apply to entry-level jobs. One member of each team had a fake criminal record which consisted of a felony drug conviction with eighteen months of served prison time.<sup>19</sup> Each individual had resumés with equal work and educational experience, but the results of the study clearly emphasize a negative impact on those with a criminal record.

Specifically focusing on the team of two Black men, Pager's study saw that 5% of the individuals with criminal records were called back, compared to 14% of those without criminal records.<sup>20</sup> Data for the team of White individuals saw 17% of those with a criminal record get called back and 34% for those without criminal records. Data shows that those with criminal records are much less likely to be considered for employment than their equally qualified non-offender counterparts.<sup>21</sup> Not only does this data show barriers to employment through offender status, but the vast racial disparities within incarceration, and a comparison of the results for the team of Black men to the team of White men demonstrate that there is a duality to the disadvantages of Blacks in employment.

They are more likely to be incarcerated and more strongly affected by the stigma of a criminal record when seeking employment.<sup>22</sup> A stable job is one of the most critical things that one must find to improve conditions of life. As Pager's study demonstrated, felons often find themselves ousted from employment opportunities as a result of their criminal records. Unemployment prevents those impacted from supporting themselves fully. To add to that, unemployment has larger consequences for the greater community, not just those unemployed. High unemployment and poverty go hand-in-hand. When unemployment levels rise, communities are losing crucial investments and the infrastructure and quality of goods and services within the community is likely to diminish. Children in schools are more likely to fall behind if one or more of their parents is unemployed. Rising unemployment rates are also coupled with higher rates of depression and anxiety within communities, furthering psychological distress. Clearly, the consequences of incarceration extend far beyond just the lives of the felons themselves but enter the communities within which they inhabit.

### **Mass Incarceration's Impact: Community Consequence**

Incarceration not only affects the actual incarcerated individuals, but it also has grave consequences on the communities and families of those imprisoned. For example, the gender ratio of the community and

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18 Ibid, 59.

19 Ibid, 59-61.

20 Ibid, 70.

21 Ibid, 71.

22 Ibid, 71.

within families is destabilized.<sup>23</sup> When gender ratios are skewed, communities often see a rise in stresses within familial relationships. These can include things such as children living in households with multiple partners and an increased risk of sexual and physical abuse. Furthermore, it can deepen socio-economic difficulties as families might be forced to support themselves on only one income. Children are less likely to receive adequate parental investment, which is critical to their development, as parents are more likely to be less present in the home as they attempt to find ways to support themselves and their families. As a result, children are more likely to involve themselves in crime in response to this lack of parental investment, or possibly even as a means to survive financially or otherwise. Mass incarceration is attacking not only those that it carts into prisons but also those communities and families to which they belong.

### **Advocating for Change**

As has been revealed, mass incarceration is a form of oppression that is targeting the Black community and has grave consequences in a multitude of different sectors ranging from employment, public benefits, voting, and more. Because of this, prison and criminal justice reform, as well as general advocacy, are crucial to remedy these issues and help prevent mass incarceration and its effects from growing even more. Many organizations and individuals have enacted initiatives driven to take action against mass incar-

ceration. This crucial issue has risen in focus among non-profit groups and even within the government.

### **Advocating for Change: The Ella Baker Center**

One particularly noteworthy initiative is The Ella Baker Center for Human Rights, which takes its name from Ella Baker, a leader of the Civil Rights Movement. This organization focuses on community improvement through its efforts to organize with individuals and communities to shift resources away from prisons and punishment and toward initiatives to improve communities from the inside out.<sup>24</sup> The Ella Baker Center refers to their process as “Truth and Reinvestment.” This process works to reveal the country’s history of racial oppression and use the power of those affected to reinvest resources to heal the communities involved.<sup>25</sup> Locally, this organization advocates for budgets that correlate with the values and address the issues on which the organization centers.<sup>26</sup> In terms of the state, the Ella Baker Center wins policies through bills that help to address issues such as reducing sentences, removing barriers to employment, and restoring opportunities such as employment and education.<sup>27</sup> At the national level, the organization mobilizes to alter the narrative of public safety from emphasizing punishment to ensuring access to vital resources such as employment, housing, healthcare, and more.<sup>28</sup>

One notable policy win of the Ella Baker Center was their role in passing the RISE Acts, which

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23 Robert D. Crutchfield and Gregory A. Weeks, “The Effects of Mass Incarceration on Communities of Color,” *Issues in Science and Technology* 32, no. 1 (Fall 2015), <https://issues.org/the-effects-of-mass-incarceration-on-communities-of-color/>.

24 “About Us,” Ella Baker Center, accessed December 22, 2020, <https://ellabakercenter.org/about-us/>.

25 Ibid.

26 “Our Work,” Ella Baker Center, accessed December 22, 2020, <https://ellabakercenter.org/our-work/>.

27 Ibid.

28 Ibid.

brought about major sentencing reforms in California. These acts repealed California's three-year sentence enhancement for prior drug convictions and narrowed the application of the one-year sentence enhancement.<sup>29</sup> This success helped to address extreme sentencing and battle the disparities in the criminal justice system. The Ella Baker Center also takes action at the local level, working directly with communities. Recently, they have been working closely with Alameda County in California to reduce incarceration rates of youth. In 2020 they released their newest report entitled "Reimagining Youth Justice: A Blueprint for Alameda County."<sup>30</sup> This report looks at the existing system of youth incarceration in Alameda County, specifically at how it has failed. The report then goes on to share alternative responses "centered in racial equity, healing and empowerment."<sup>31</sup> Not only does this report outline additional responses, but it examines existing youth-serving efforts to "highlight the robust network of community support already present and eager to serve our young people."<sup>32</sup> Although top-down action from the government is necessary, bottom-up efforts like this from the community are also critical. Grassroots organizations and movements like the Ella Baker Center are able to have first-person involvement in efforts for change. Not only are they able to accomplish these first-person efforts, but they have a better understanding of existing efforts and are

able to provide stronger reviews of such programs to determine what is working and what is not, and to provide alternative responses.

### **Advocating for Change: The Fair Sentencing Act**

Additionally, the United States government itself has taken steps to address the issues of mass incarceration. On August 3, 2010, the Fair Sentencing Act was passed, addressing the major disparities in crack cocaine and powder cocaine sentencing that were established under the Anti-Drug Abuse Acts of the 1980s. Penalties were reduced from a 100:1 weight ratio to an 18:1 weight ratio.<sup>33</sup> For example, under the 100:1 weight ratio, possession of 5 grams of crack cocaine was seen as equivalent to 500 grams of powder cocaine. Under the new ratio, 5 grams of crack cocaine would be seen as equivalent to 90 grams of powder cocaine. Furthermore, under this act, defendants convicted of crack cocaine offenses would need to possess at least 28 grams, compared to the previous five grams, to receive the five-year mandatory minimum. To receive the 10-year mandatory minimum, they would require a quantity of 280 grams.<sup>34</sup>

Before this, much more disparate mandatory minimums allowed for Black Americans to receive increasingly stricter sentences than White Americans. The type of drugs that were more commonly used within Black communities were considered "more dangerous" and therefore received harsher sentences.

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29 "Policy Wins," Ella Baker Center, accessed December 22, 2020, <https://ellabakercenter.org/policy/policy-wins/>.

30 "Reimagining Youth Justice: A Blueprint for Alameda County," Ella Baker Center, accessed December 22, 2020, <https://ellabakercenter.org/alameda-county/reimagining-youth-justice-a-blueprint-for-alameda-county/>.

31 Ibid.

32 Ibid.

33 "Fair Sentencing Act," American Civil Liberties Union, June 21, 2012, <https://www.aclu.org/issues/criminal-law-reform/drug-law-reform/fair-sentencing-act>.

34 "Federal Crack Cocaine Sentencing," The Sentencing Project, 2.



The Fair Sentencing Act of 2010 attempted to reduce these harsh sentences, establishing more equity in regards to sentencing for drug offenses, and these changes have already begun. As of July 2010, about 16,000 people were granted sentence reduction.<sup>35</sup> The Fair Sentencing Act was a major accomplishment and a study on mass incarceration and drug-related incarcerations would be incomplete without observing the impact of this historical moment in drug sentencing reform.

For sentencing reformers who have been fighting for action like this for years and have seen minimal progress at the federal level, the Fair Sentencing Act was a major victory.<sup>36</sup> But for those individuals directly impacted by these drug sentencing laws, the victory was not as impactful. The Fair Sentencing Act does not allow for retroactive application. This means that individuals currently incarcerated or awaiting sentencing for crack cocaine offenses that were committed prior to enactment will not benefit from these reforms.<sup>37</sup> Furthermore, the triggers of 28 grams and 280 grams for mandatory minimums still largely impact individuals less influential than the drug kingpins the federal government claims are their first priority.<sup>38</sup>

The Fair Sentencing Act of 2010 was a large feat, but it was not a full victory. Many individuals are still in prison on crack cocaine-related offenses and find themselves trapped in the shackles of the criminal justice system. Crack and powder cocaine are two forms of the same drug. Equitable reform to sentencing would see a ratio of 1:1. Even further, to achieve true equity action would be taken to invest in com-

munities to prevent further entanglement with drugs. For example, community-wide support services such as psychological counseling should be made available as a resource for those who have fallen victim to drug abuse. Full integration of these services for substance abuse disorders with the rest of the healthcare system should become a priority to ensure it is being provided to all and at the best quality. Furthermore, investing in communities to create job opportunities, affordable housing options, and more are also important ways to prevent further entanglement with drugs. Lack of access to these things adds additional stresses to individuals, which can lead one to drugs. If national and local governments and the members of the communities themselves were investing in communities in these ways, perhaps these stresses would reduce and those who might feel inclined to enter the world of drugs would not have such an inclination. Action would be taken to grant relief to offenders incarcerated years ago. Whether that be allowing retroactive application of sentencing reform or the President granting clemency to federal prisoners, active effort must be taken to improve the lives of not only those who will be impacted in the future, but also those who were impacted in the past.

### **Advocating for Change: Smart on Crime Initiative**

In addition to the Fair Sentencing Act, the work of former Attorney General Eric Holder has also been influential. Holder launched what he called the “Smart on Crime” initiative, which was created to reform and strengthen America’s criminal justice system by focusing on ensuring equal, reasonable, and

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35 Ibid, 8.

36 Ibid, 9.

37 Ibid, “Federal Crack Cocaine Sentencing,” 1.

38 “Federal Crack Cocaine Sentencing,” 9.

just treatment for Black Americans. In the introduction of a publication of the United States' Attorney's Bulletin dedicated to discussing this initiative, Holder explained the reasons behind the initiative: "crime and well-intentioned policies...perpetuated a vicious cycle of criminality and incarceration...this cycle can trap individuals, break apart families, and devastate entire communities—particularly communities of color."<sup>39</sup> This initiative mandated that low-level non-violent drug crimes would receive sentences proportionate to the level of threat they imposed. Furthermore, the Justice Department under this initiative increased its emphasis on various reentry programs to help those convicted of crimes smoothly transition back into society. The Smart on Crime initiative attempted to take action again against harsher sentences and address the difficulty in adjustment back to life beyond bars following incarceration. Holder proposed solutions that he felt would successfully address and minimize the threat of mass incarceration, aiding in reducing the oppression against Black Americans within the criminal justice system.

According to Ed Chung, the Vice President of Criminal Justice Reform at the Center for American Progress, Holder's initiative worked. Chung shares that in 2016 the Justice Department announced that

"federal drug prosecutions were fewer in number overall."<sup>40</sup> Additionally, those prosecutions that did occur were "more focused on the most serious defendants."<sup>41</sup> Another clear positive impact of the initiative, along with other efforts for criminal justice reform, can be seen through the fact that the federal prison population decreased from nearly 220,000 in 2013 when Holder announced the initiative to 180,000 in 2018.<sup>42</sup>

Unfortunately, however, the progress seen under the Obama Administration drastically backpedaled under the Trump Administration. Former Attorney General Jeff Sessions believes that Holder's initiative and the overall action of the Obama Administration demoralized police officers and softened the dangers of drugs.<sup>43</sup> Sessions made sure to take action against the progress of Holder and the Obama Administration. He canceled the "Smart on Crime" initiative, replacing it "with a directive to pursue maximal charging and sentencing."<sup>44</sup> Following Sessions leaving office, William Barr was appointed as the Attorney General. As a response to the growing opioid epidemic, former Attorney General Barr expressed immense support for expanding mandatory minimum sentences for federal drug crimes involving fentanyl analogs.<sup>45</sup> Barr has been a long supporter of incarceration as the solution to the American drug crisis. Barr's propositions

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39 Eric H. Holder, et al., "Smart on Crime I," *Offices of the United States Attorneys*, U.S. Department of Justice, January 2015, <https://www.justice.gov/usao/resources/journal-of-federal-law-and-practice>.

40 Ed Chung, "Smart on Crime: An Alternative to the Tough vs. Soft Debate," *Center for American Progress*, May 12, 2017, <https://www.americanprogress.org/issues/criminal-justice/news/2017/05/12/432238/smart-crime-alternative-tough-vs-soft-debate/>.

41 Ibid.

42 Molly Ball, "Jeff Sessions Is Winning for Donald Trump. If Only He Can Keep His Job," *Time Magazine*, March 29, 2018, <https://time.com/magazine/us/5220076/april-9th-2018-vol-191-no-13-u-s/>.

43 Ibid.

44 Ibid.

45 Nancy Gertner, "William Barr's New War on Drugs," *Washington Post*, January 26, 2020, <https://www.washingtonpost.com/opinions/2020/01/26/william-barrs-new-war-drugs/>.

ring eerily similar to the policies of the 1980s war on drugs, which many attribute today's phenomenon of mass incarceration and its racial disparities to. As Nancy Gertner, a senior lecturer at Harvard Law School and former U.S. district judge, writes, "[Barr] seeks to extend mandatory minimums without regard to their impact on people of color, let alone whether they will make our communities safer."<sup>46</sup>

### **Pervasive Nature of Racial Injustice: The Example of Brandon Bernard**

Today, this nation is still facing this reckoning of racial injustice. On Thursday, December 10th, 2020, Brandon Bernard was executed.<sup>47</sup> Bernard was one of five gang members that were convicted in the Texas state killing of two youth ministers in 1999.<sup>48</sup> Although Bernard was not the gunman, he was still convicted and sentenced for the crime. At age 40, Bernard was the youngest person in the United States to receive a death sentence in almost 70 years for a crime that he committed when he was barely an adult.<sup>49</sup> As Bernard's attorney Robert Owen stated, "Brandon's execution is a stain on America's criminal justice system."<sup>50</sup> Brandon Bernard made a mistake as an adolescent. Currently, Brandon did not pose a threat to society. Despite this, our criminal justice system still took Brandon's life. But this is not a new phenom-

enon. Capital punishment in the United States has a long history of being racially discriminatory. According to data from the Equal Justice Initiative published in 2018, 42% of those on death row and 34% of those executed are African Americans, despite making up only 13% of the population.<sup>51</sup> Furthermore, 75% of executions for murder were for cases in which the victims were white. According to the Associated Press, killers of white people are more likely to face the death penalty than killers of Black people.<sup>52</sup> "Since the death penalty resumed in 1977, 295 Black defendants were executed for killing a White victim, but only 21 White Defendants were executed for the killing of a Black victim."<sup>53</sup> There are clear racial implications of the death penalty, further demonstrating the deeply racialized nature of the criminal justice system. The United States and the criminal justice system within it seem to hold the authority over whether or not an individual gets to live free or in shackles, whether or not they live or die.

### **Reforming our Racialized Systems: Concrete Action Steps**

Black Americans continue to find themselves buried beneath the oppression of White America and the systems of our nation. While many individuals and organizations are taking action, these solutions are

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46 Ibid.

47 Christina Carrega, "Brandon Bernard Executed after Supreme Court Denies Request for a Delay," CNN, December 11, 2020, <https://www.cnn.com/2020/12/10/politics/brandon-bernard-executed/index.html>.

48 Ibid.

49 Ibid.

50 Ibid.

51 "Death Penalty," Equal Justice Initiative, [https://eji.org/issues/death-penalty/?gclid=CjwKCAiAouD\\_BRBI EiwALhJH6NFwJe2Qn0QVruEfCKvTSaOpVq1tuY6zkmkyyTKh-GHuZXy4grL0\\_hoC-GoQAvD\\_BwE](https://eji.org/issues/death-penalty/?gclid=CjwKCAiAouD_BRBI EiwALhJH6NFwJe2Qn0QVruEfCKvTSaOpVq1tuY6zkmkyyTKh-GHuZXy4grL0_hoC-GoQAvD_BwE).

52 Colleen Long, "Report: Death Penalty Cases Show History of Racial Disparity," Associated Press News, September 15, 2020, <https://apnews.com/article/discrimination-racial-injustice-united-states-archive-race-and-ethnicity-ded1f517a0fd64b1d55c448a06acccc>.

53 Ibid.

not working well enough. To truly solve this problem, comprehensive action needs to be taken. The systems within our nation that continue to oppress individuals and communities must be completely disrupted. This nation cannot just have “hope” or “faith” that our country will move beyond this. But this shift will not be easy. It requires a multitude of concrete action steps.

One way to address this issue at its head can be to combat drug sentencing and the concept of mandatory minimums must be rethought. True equity is not a minimized ratio for crimes using the same drug, but a ratio of 1:1. Addressing these mandatory minimums would improve these conditions of equity in the criminal justice system, ensuring sentences are proportionate to the crimes committed. This would diminish the length of incarceration for many, providing more opportunities rather than less. As mentioned, incarceration greatly minimizes opportunity and the longer a sentence, the larger the impact. It is important that the justice system is not unfairly punishing individuals for the crimes they committed. Moreover, the justice system cannot continue to enact these punishments using policies that clearly impact BIPOC, specifically Black Americans, more than White Americans.

### **Conclusion and Further Implications**

Mass incarceration is an integral part of the discourse surrounding systemic racism. And to prevent further crime, the nation needs to invest more resources in supporting communities of color. Individuals cannot and should not be expected to completely avoid a life of crime if they do not have basic resources in their communities. Due to policies such as redlining, many communities of color lack adequate funding for critical things like schools, businesses, housing development, and wealth accumulation. Some communities

even lack clean water. Monetary resources must be placed in those communities to improve conditions, advancements that will all help increase quality of life and in turn minimize the appeal of a life of crime.

Additionally, one of the primary problems with incarceration in the United States is the emphasis on excessive punishment within prisons. To address this issue, prisons must shift to a system of rehabilitation. People with drug addictions should not be carted into prisons; they should be given access to rehabilitation programs to help them grow and face their addictions. By not providing them with the resources to fight their addictions, they should not be expected to not go back to a life of drugs when they are released. These individuals are not even given a chance to improve their lives. This nation owes it to those it imprisons for drug use to help them overcome these addictions that landed them in prison to begin with. By creating these rehabilitation systems, the criminal justice system could play a major role in addressing the drug problem within the United States. Furthermore, addressing drug crimes from this direction will aid in diminishing future drug crime as individuals will receive the help they need to move beyond their addictions and into new lives.

Finally, another issue related to mass incarceration is the concept of capital punishment, or the death penalty. As discussed, this punishment has deep racial implications and is used as another way that this nation exercises control over Black lives. To address this, the criminal justice system must abolish the death penalty. Capital punishment has long been an aspect of the U.S. criminal justice system, but it is fundamentally flawed. Innocent people are too often sentenced to death. There is no humane method of execution. Race greatly impacts your chances of receiving the death

penalty. But the real question is, “Do we deserve to kill?” What makes the federal government worthy of deciding whether or not someone deserves to live? It is hard to find any sort of justification for one person to kill another. It is even more difficult to find justification for a government to kill a person. So many of the world’s countries have abolished capital punishment and it is time for the U.S. to do the same.

Mass incarceration is incomplete without the discussion of civil rights. Individuals, organizations, and the government must continue to take action to address this monumental issue plaguing this nation. To truly achieve real equity and justice within the United States, this nation must fight mass incarceration and systemic racism every single day. Strong racial oppression has existed for hundreds of years through institutions like slavery and Jim Crow, and unfortunately, it still exists today. The criminal justice system has been used in the United States to establish new ways of creating an underclass of Black Americans. Mass incarceration exposes this fallacy of freedom and inequality through its continuation of discrimination against Black Americans. If Americans desire a nation of “liberty and justice for all,” action must be taken to create that nation. Mass incarceration does not only affect those who are incarcerated or those in the communities which incarcerated individuals come from, it affects the entire nation. This nation is not free, and no American can claim to be free unless every American is free. The systems that do more harm than good to those they claim to protect must be disrupted.

# Bibliography

- American Civil Liberties Union. "Fair Sentencing Act." June 21, 2012, <https://www.aclu.org/issues/criminal-law-reform/drug-law-reform/fair-sentencing-act>.
- Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press, 2012.
- Ball, Molly. "Jeff Sessions Is Winning for Donald Trump. If Only He Can Keep His Job." *Time Magazine*, March 29, 2018. <https://time.com/magazine/us/5220076/april-9th-2018-vol-191-no-13-u-s/>.
- Carrega, Christina. "Brandon Bernard executed after Supreme Court denies request for a delay." CNN, December 11, 2020. <https://www.cnn.com/2020/12/10/politics/brandon-bernard-executed/index.html>.
- Chung, Ed. "Smart on Crime: An Alternative to the Tough vs. Soft Debate." *Center for American Progress*, May 12, 2017. <https://www.americanprogress.org/issues/criminal-justice/news/2017/05/12/432238/smart-crime-alternative-tough-vs-soft-debate/>.
- Crutchfield Robert D. and Gregory A. Weeks. "The Effects of Mass Incarceration on Communities of Color." *Issues in Science and Technology* 32, no. 1 (Fall 2015). <https://issues.org/the-effects-of-mass-incarceration-on-communities-of-color/>.
- EJI. "Death Penalty." Equal Justice Initiative. [https://eji.org/issues/death-penalty/?gclid=CjwKCAiAouD\\_BRBIEiwALhJH6NFwJe2Qn0QVruEfCKvTSaOpVq1tuY6zkmkyyTKh-GHuZXy4grL0\\_hoC-GoQAvD\\_BwE](https://eji.org/issues/death-penalty/?gclid=CjwKCAiAouD_BRBIEiwALhJH6NFwJe2Qn0QVruEfCKvTSaOpVq1tuY6zkmkyyTKh-GHuZXy4grL0_hoC-GoQAvD_BwE).
- Ella Baker Center. "About Us." Accessed December 22, 2020. <https://ellabakercenter.org/about-us/>.
- . "Our Work." Accessed December 22, 2020. <https://ellabakercenter.org/our-work/>.
- . "Policy Wins." Accessed December 22, 2020. <https://ellabakercenter.org/policy/policy-wins/>.
- . "Reimagining Youth Justice: A Blueprint for Alameda County." Accessed December 22, 2020. <https://ellabakercenter.org/alameda-county/reimagining-youth-justice-a-blueprint-for-alameda-county/>.
- Gertner, Nancy. "William Barr's New War on Drugs." *Washington Post*, January 26, 2020. <https://www.washingtonpost.com/opinions/2020/01/26/william-barrs-new-war-drugs/>.
- Gunja, Fatema. "Race & the War on Drugs." *American Civil Liberties Union*, May 2003. [www.aclu.org/other/race-war-drugs](http://www.aclu.org/other/race-war-drugs).
- Holder, Eric H., Robert A Zauzmer, Jonathan J. Wroblewski, Aaron A. Hoffman, S. Dave Vatti, Daniel L. Bella, G. Scott Hulsey, Christopher Hotaling, K. Tate Chambers, James P. Kennedy, Jr. "Smart on Crime I." *Journal of Federal Law and Practice* 63, no. 1 (January 2015). <https://www.justice.gov/usao/resources/journal-of-federal-law-and-practice>.

- Long, Colleen. "Death Penalty Cases Show History of Racial Disparity" *Associated Press News*, September 15, 2020. <https://apnews.com/article/discrimination-racial-injustice-united-states-archive-race-and-ethnicity-ded1f517a0fd64bf1d55c448a06acccc>.
- Lopez, German. "Mass Incarceration in America, Explained in 22 Maps and Charts." *Vox*, October 11, 2016. [www.vox.com/2015/7/13/8913297/mass-incarceration-maps-charts](http://www.vox.com/2015/7/13/8913297/mass-incarceration-maps-charts).
- Mauer, Marc, and Ryan S. King. "A 25-Year Quagmire: The War On Drugs and Its Impact on American Society." *The Sentencing Project*, September 2007. [www.sentencingproject.org/publications/a-25-year-quagmire-the-war-on-drugs-and-its-impact-on-american-society/](http://www.sentencingproject.org/publications/a-25-year-quagmire-the-war-on-drugs-and-its-impact-on-american-society/).
- Pager, Devah. *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*. Chicago: University of Chicago Press, 2009.
- Rubinstein, Gwen and Sebbie Mukamal. "Welfare and Housing - Denial of Benefits to Drug Offenders." in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, edited by Marc Mauer and Meda Chesney-Lind. New York: New Press, 2003.
- The Sentencing Project. "Federal Crack Cocaine Sentencing." *The Sentencing Project*, October 2010. <https://www.sentencingproject.org/wp-content/uploads/2016/01/Federal-Crack-Cocaine-Sentencing.pdf>.
- The Sentencing Project. "Trends in U.S. Corrections." *The Sentencing Project*, June 2019. [www.sentencingproject.org/publications/trends-in-u-s-corrections/](http://www.sentencingproject.org/publications/trends-in-u-s-corrections/).
- Western, Bruce, and Christopher Wildeman. "The Black Family and Mass Incarceration." *The Annals of the American Academy of Political and Social Science* 621 (2009): 221-42. <https://www.jstor.org/stable/40375840?seq=1>.