

STATEMENT OF

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NORTHERN DISTRICT OF NEW YORK

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BEFORE THE

CHARLES COLSON TASK FORCE

ON FEDERAL CORRECTIONS

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Chairman Watts, Vice-Chairman Mollohan, and Members of the Task Force – thank you for the opportunity to appear before you today. My name is Rick Hartunian, and I'm the United States Attorney for the Northern District of New York. I have served as U.S. Attorney for five years and I am the Vice-Chair of Attorney General Holder's Advisory Committee of U.S. Attorneys. Prior to joining the U.S. Attorney's Office, I was a local narcotics prosecutor in the District Attorney's office. I've been a federal prosecutor for 18 years, during which time I prosecuted a variety of gang, narcotics, and organized and violent crimes case and was the Chief of the Organized Crime and Drug Enforcement Task Force.

We at the Department of Justice are very pleased that Congress has established the Colson Task Force to help address critical sentencing and corrections issues facing the federal criminal justice system. We are especially grateful that such a distinguished group of national leaders and criminal justice professionals have been brought together to form the Task Force. We look forward to working with you, and with your colleagues at The Urban Institute and the Center for Effective Public Policy, over the next 12 months to identify answers to the problems facing federal sentencing and corrections and to help build a bipartisan consensus to put those solutions into action.

The Attorney General and the Administration have been clear and consistent over the last six years: our core mission is to protect the safety and security of the American public, and the federal sentencing and corrections system has an important role to play in enhancing and reinforcing that goal. But our system must also be fair to victims and defendants, minimize unwarranted sentencing disparities, and cut the rate of recidivism by promoting effective reentry. And we have to do all that within increasingly tight budgets and still leave sufficient resources for other critical public safety spending. With these principles as our guide, we agree that it is time to address the serious challenges of an overcrowded, overextended and overused prison system.

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Since 1980, the federal prison population has grown nearly 800 percent. In the last 20 years, it has more than doubled, from 95,000 in 1994 to over 217,000 at the beginning of last year. Less well known, the population of defendants being detained pending trial has also grown extensively. What's the result? Even with constrained budgets, we are now spending over \$8 billion each year on our federal prison and detention systems, and our prisons are still dangerously crowded. Spending on prisons and detention now amounts to almost a third of the Department's budget, compared to 27% in 2000. That large share of spending on

prisons has already drained money from other law enforcement and public safety priorities. Grants to our state and local partners – including grants to state and local law enforcement – have declined steadily from what was 26% of the Department’s budget in 2000 to about 8% today. More prison spending also means less support for treatment, prevention and intervention programs. And, unless we address it, the situation will only get worse and will have a real, negative effect on public safety. Every dollar we spend at the Department of Justice on prisons or detention is a dollar we cannot spend providing our law enforcement partners with the tools and resources they need to do their jobs safely; or a dollar we cannot spend providing assistance to victims of crime; or a dollar we cannot spend supporting our prosecutors and law enforcement agents in their fight against violent crime, drug cartels, public corruption, financial and healthcare fraud, human trafficking, and child exploitation.

Not only is this model unsustainable, but there is some substantial evidence that it just doesn’t work either. Numerous studies have shown that high incarceration rates and prison sentences that are longer than necessary not only impose tremendous costs, but they don’t significantly contribute to reduced crime rates.

So shortly after my boss, Eric Holder, was sworn in as Attorney General, the Department – under his leadership – began to evaluate whether and how we could

do better. We recognized that certain factors, among others, had contributed to the rapid growth in the prison population. There had, for years, been substantial pressure to increase the length of sentences in order to fight and mitigate the proliferation of certain kinds of crimes. Stiffer maximum penalties, coupled with mandatory minimums, ratcheted up potential and actual sentences. The Sentencing Guidelines, established by the Sentencing Commission at Congress' direction, imposed mandatory sentencing ranges in order to achieve some level of uniformity across the country. And the Department itself had promulgated a policy requiring prosecutors to charge defendants with the most serious, readily provable offense, without regard to the particular circumstances of the offense or the character of the defendant.

Turning this around has resulted from a series of events. First, the Supreme Court declared that the sentencing guidelines were constitutional only if they were advisory. Then in 2010, Attorney General Holder gave new guidance to federal prosecutors. He rescinded the policy requiring prosecutors to charge the most serious, readily provable offense in every case and instead directed us to use greater discretion, and to pay more attention to the nature of the offense and the personal characteristics of the accused – both in deciding what to charge and what plea agreements to strike. Unlike the old policy, prosecutors are now asked to bring charges that are best suited to a defendant's individual conduct, responsibility

and circumstances. In other words, the Attorney General asked prosecutors to use their discretion to take a closer look and determine what is a fair charge and a fair result.

In August 2013, the Attorney General went even further when he announced the “Smart on Crime” initiative. Low-level, non-violent drug defendants – those who have no significant ties to large-scale organizations, gangs, or cartels – are no longer presumptively charged with offenses that impose stringent mandatory minimum sentences. We also now are taking a much closer look at the use of optional sentencing enhancements for repeat offenders. Under our new policy, those enhancements are to be invoked only in those cases warranting the most severe sanctions.

Let me be clear – tough law enforcement plays an indispensable part in protecting communities from crime and violence. There are very dangerous people committing very serious crimes in our neighborhoods and our markets, including criminals running drug organizations whose business model includes and precipitates violence. We need to take those individuals off the streets and put them in prison for a long time, both to incapacitate them and to send a message that we won’t tolerate others’ taking their place.

But low-level, non-violent offenders, many of whom suffer from their own drug abuse issues, often fall into a vicious cycle of drug use, criminal behavior,

incarceration, and release. Too often, this cycle repeats. These offenders present different public safety issues from the more dangerous criminals. Because of this, our approach to dealing with the problems posed by crime and drugs cannot be one-size-fits-all.

So, at its core, Smart on Crime reflects the Department of Justice's continued commitment to a corrections system and a sentencing policy that holds offenders accountable and deters those contemplating serious criminal conduct. In other words, public safety is still the touchstone.

But Smart on Crime also directs us to take into account what sanction is the most appropriate in every case. When incarceration is the right answer – as it often is for crimes that are worthy of federal prosecution – we must now think through the extent to which such punishment is warranted. And we also must now more thoughtfully consider the fairest and most effective approach for those for whom incarceration is not the best answer.

Our reexamination of other practices and policies at the Justice Department will also have an impact on sentencing and corrections. The push by the President and the Attorney General and many members of Congress at the beginning of the Administration to pass the Fair Sentencing Act and reduce the crack/powder cocaine ratio was rooted in the knowledge that the preexisting sentencing structure had turned out to be fundamentally unfair. And when the Sentencing Commission

was considering whether to reduce the sentencing ranges for various drug offenses, the Department not only supported the proposal, but ultimately supported the Commission's decision to apply those changes retroactively. Most recently, the Department has embarked on the substantial undertaking of reviewing the sentences of thousands of federal prisoners who we have encouraged to apply for executive clemency. All of this confirms that Smart on Crime is, at its most fundamental level, about making sure that the federal justice system is fair.

But Smart on Crime is not just about charging and sentencing, as important as they are. As the Attorney General has said so many times, we won't arrest or incarcerate our way out of the violence and drug epidemics that plague so many of our neighborhoods and communities. In order to be truly effective, we have to seek and implement solutions at each stage of the criminal justice process.

So, on the front end, we are very focused across the country on crime prevention, which has not always typically been in the playbook of federal prosecutors. Over the last six years, we have implemented, established, and enhanced programs to stop the seeds of crime before they are sown. We have hosted and participated in hundreds of meetings and summits to talk about youth and gang violence and to support community based programs that can help turn young lives around before they stray down the wrong path. United States Attorneys across the country are working with their state and local partners, with

community and faith-based organizations, with schools and advocacy groups, to figure out ways in which we can work better together and leverage our resources.

We also are actively promoting community-oriented policing – policing that focuses on problem-solving, not just arrests and incarceration – and that joins with members of the community to address all aspects of threats to public safety. And we encourage the use of drug courts as an alternative to incarceration for people who can benefit from being given a chance to escape the grip of drug addiction. By treating drug addiction as a disease instead of a crime, we provide a better outcome for the defendant, the criminal justice system, and society.

Another key component of Smart on Crime – and one which we think can have a real impact on the prison population – is our focus on prisoner reentry. For almost all federal prisoners, incarceration won't and shouldn't last forever, and more than 95 percent of them will go home – or to somewhere near where they once called home. For these men and women, who have paid their debt to society, the obstacles are huge. Housing is not easy to find, and employment is even tougher. Many return to a broken family structure. Without a job and a decent place to live – the foundations that the rest of us work so hard to build and sometimes take for granted – the recently released are often surrounded by those trying to tempt them back into bad habits and old relationships.

As a result, huge numbers of them fail. Nationally, two-third of state prisoners will be arrested again within three years of their release. Federal prisoners do a little better: in the first three years out, they have a forty percent chance of being re-arrested or having their supervision revoked.

That recidivism has terrible consequences for the lives of the offenders and their families; it has very serious implications for public safety; and it costs an awful lot of money. But it's also something we can do something about.

All across the country, my colleagues in the U.S. Attorney community have made a huge commitment to reentry programs. Building off the programs in federal prisons that you will hear about from Director Samuels, some of the highest risk federal prisoners are actively – and I mean actively – supported in obtaining housing, jobs, education, counseling and other treatment, and legal assistance. And what we are seeing confirms what we already knew: we cannot simply release large numbers of people back into society — some of whom have limited skills and inadequate education — and expect that, on their own, they will be able to put their lives together, obtain jobs paying a livable wage, find housing, and become supportive and productive members of their community.

As with crime prevention, we know that we can't possibly go it alone and that our reentry efforts must embrace others outside the law enforcement community. Both government agencies and non-governmental organizations have

so much to offer and play key roles in addressing this challenge. That's why the Attorney General launched the Interagency Reentry Council, which brought together over 20 federal agencies to develop and integrate policies and programs to assist reentering inmates by dealing with issues of housing, employment, health care services, mental health and drug treatment, and parenting skills.

Importantly for this Task Force, in developing the Smart on Crime initiatives, we looked to how state leaders across the country have wrestled with problems caused by overburdened prisons. We found that at least 25 states – led by governors, legislators, judges and law enforcement of both parties – have successfully directed funding away from prison construction and toward evidence-based programs and services, like treatment and supervision, that are designed to reduce recidivism and improve public safety at the same time.

As you know well, these reinvestment strategies can work. They've attracted overwhelming, bipartisan support in "red states" as well as "blue states." And, at the federal level, we are seeing declines in the federal prison population for the first time since 1980. Until now, every year for the past three decades the federal prison population has increased – to its peak in 2013 of more than 219,000 inmates. But last year, after the Attorney General launched the "Smart on Crime" initiative, the Federal Bureau of Prison had 4,800 fewer inmates than the year before, and analysts are projecting a similar decrease over the next

three years. Moreover, since President Obama took office, both overall crime *and* overall incarceration have decreased by approximately 10 percent. This is the first time these two critical markers have declined together in more than 40 years.

But this must just be the beginning. We must continue and expand our efforts to rectify the ongoing corrections crisis in our criminal justice system. And that's why we are so grateful for your participation in this project. As we at the Department of Justice move forward with our work, and you on the Task Force with yours, we look forward to substantive conversations, a real exchange of views, and a shared dedication to finding solutions that will make us safer and stronger, as well as smarter and more efficient. Your collective expertise, analysis, and ultimately, your recommendations, will be an invaluable part of that process.

I again thank all the members of the Task Force for your interest in and dedication to the development of effective and fair sentencing and corrections policy, as well as for this opportunity to share the views of the Department of Justice.