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Written Statement for the National Association of Criminal Defense Lawyers
Task Force on Restoration of Rights and Status after Conviction Hearing

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Good morning. My name is Amy Solomon and I am a Senior Advisor to the Assistant Attorney General in the Office of Justice Programs at the Department of Justice (DOJ). In my current role I co-chair the Federal Interagency Reentry Council staff working group and represent the Department in other urban policy initiatives.

I am pleased to be here today and commend the work you are doing to shine a light on this important issue that impacts so many. One recent study, in fact, shows that one out of every three U.S. adults has an arrest record,¹ mostly for relatively minor, non-violent offenses, and sometimes decades in the past. This record will keep many people from obtaining employment, accessing housing, higher education, loans, credit – even if they are qualified, have paid their dues, and are unlikely to reoffend.

The long-term – sometime *lifetime* – impact of a criminal record is of particular concern in the employment arena.² Background checks are near-ubiquitous, and overly-broad “no-hire” policies are not uncommon.³ Importantly, research sponsored by our National Institute of Justice (NIJ) shows that people who stay out of trouble for just a few years are largely indistinguishable from the general population in terms of their odds of another arrest.⁴ At the DOJ, we believe there are substantial opportunities to simultaneously improve public safety, hold people accountable, and help motivated individuals - who have served their time and paid their debts – to compete for a job, attain stable housing, support their children and their families, and be productive, contributing members of our communities.

Against this backdrop, my statement provides an overview of the Federal Interagency Reentry Council, with a particular focus on our efforts to address collateral consequences for individuals with a criminal conviction.

Overview of the Federal Interagency Reentry Council

Attorney General Holder first convened the Reentry Council in January 2011. It now involves leadership from 20 federal agencies, who are working together to make communities safer, assist those returning from prison and jail in becoming productive citizens, and save taxpayer dollars. The Council organizes its work around:

- coordinating and leveraging resources that are already committed to reentry in jurisdictions around the country;

- removing federal barriers to reentry – barriers to housing, to employment and to federal benefits such as food assistance, Social Security, Veterans benefits that can help stabilize this population after release; and
- using the bully pulpit to advance the reentry agenda, clarify policies and dispel myths, and provide visibility to programs and policies that work.

Our collective efforts aim not only to reduce recidivism and high correctional costs, but also to improve public health, child welfare, employment, education, housing and other key reintegration outcomes.

A Focus on Collateral Consequences

As a part of this effort, Attorney General Holder has personally championed the need to reduce unnecessary collateral consequences, stating that while some may serve important public safety purposes, others may be antiquated and create unnecessary barriers to legitimate work and civic opportunities.

In the Spring of 2011, Attorney General Holder wrote to every state Attorney General, with a copy to each Governor, asking them to assess their state’s statutes and policies to determine if any should be eliminated “so that people who have paid their debt to society are able to live and work productively.” The Attorney General pointed to the (predecessor of the) *National Inventory on the Collateral Consequences of Criminal Convictions*, developed by the American Bar Association with support from NIJ, as a useful starting point for this important task.⁵

Federal Review of Collateral Consequences

In his letter to the states, Attorney General Holder also said that the federal agencies would undertake such a review. Accordingly, he asked the Cabinet-level Reentry Council members to nominate staff to review their agencies’ regulations with an eye to how and where they can eliminate or tailor certain bars without compromising public safety. This is a big undertaking and taking some time, but agencies are committed to the process, which is coordinated by the Department’s Civil Rights policy section.

For example, staff attorneys reviewing the regulations are looking for opportunities to shorten the “look back” period so that a bar might extend back for five or ten years rather than be a lifetime ban – or to limit the type of conviction considered to only felonies and not misdemeanors or to only felonies that have a nexus to the job, for example. They are also considering the use of guidance to help give context to this issue, clarify certain aspects of a given regulation, point out unintended consequences, or highlight areas where administrative discretion may exist.

Unfortunately, I am not in a position to report out on ‘findings’ or intended actions just yet. And it’s important to point out that any decisions resulting from this working group are being made by the agencies themselves and not the Department’s Civil Rights Division. But I can say that most agencies are expected to complete their review by the end of this month, and a

handful of agencies have meaningful regulation changes under some level of review. Of course any significant change requires an OMB review and approval process.

It is important to point out that more than 50% of collateral consequences have to do with barriers to employment – and the Reentry Council is taking action on many fronts here in addition to the collateral consequences review. Reentry Council agencies have published five MythBusters⁶ that tackle both employer obligations and incentives – and I’m sure you’ll hear more about this and related efforts from colleagues at EEOC and the Department of Labor. The Federal Trade Commission, Office of Personnel Management, and Small Business Administration are also very engaged in this aspect of our work. Taken together, we are making real inroads on this large-scale challenge.

I can also say that Department of Justice leaders continue to draw attention to the importance of these issues. Our Attorney General, Deputy Attorney General, Associate Attorney General, Assistant Attorney General – they frequently talk about reentry and collateral consequences in public speeches and private meetings, to prosecutors and defenders alike. They encourage state, local, and federal partners to do more in this area, and will continue to do so.

Use of Grant Funds for Legal Services

Another concrete action we have taken on this front relates to legal services. The White House Domestic Policy Council and Justice Department recently launched a high-level Legal Aid Interagency Roundtable.⁷ “LAIR” – as it’s fondly called – involves 18 participating agencies and is staffed by the Department’s Access to Justice Initiative. It is working to raise awareness about the profound impact legal aid programs can have in advancing federal efforts to promote access to health and housing, education and employment, family stability and community well-being.

As a result of this work, many reentry-related grants – such as the DOJ’s Second Chance grants⁸ and DOL’s REXo grants -- now allow for the use of federal funds to pay for legal assistance to secure driver’s licenses, expunge criminal records, litigate inappropriate denials of housing or employment and violations of the FAIR Credit Reporting Act, and modify child support orders. This is a significant step forward.

I’d like to offer one more example from a Reentry Council agency that is not represented here today: the Department of Veterans Affairs (VA). Each year, the VA surveys homeless and formerly homeless Veterans, as well as homeless service providers, asking about how well locally-available resources address various needs. In 2012, of the 10 unmet needs most often identified, three were for legal services (specifically regarding child support matters, eviction/foreclosure, and restoration of a driver’s license). Based on this data, they’ve taken steps to encourage all grantees of their Supportive Services for Veterans Families program to provide these legal services.

In addition, the VA (which cannot provide legal services directly) issued a directive encouraging VA medical centers to make space for non-VA legal service providers to work with Veterans on-

site. As a result, legal service providers are currently seeing Veterans in 30 VA medical centers around the country, with more such arrangements in development. Providers include law school clinics, local bar associations, firm-sponsored pro bono projects, and Legal Aid offices. The VA's goal is to reach each of its 152 medical centers with access to legal services.

Closing

In closing, I am proud of our collective accomplishments and I am confident we will make even more progress moving forward. There are so many people who have broken the law, paid their dues, and are now committed to rejoin society in full. I am optimistic that we can both improve public safety and extend that second chance, to strengthen and restore some of our hardest-hit communities.

I commend the NACDL Task Force for holding this hearing and am happy to answer any questions.

¹ New research indicates that nearly one-third of American adults have been arrested by age 23. Barnes, Robert, Michael G. Turner, Raymond Paternoster, and Shawn D. Bushway, "Cumulative Prevalence of Arrest from Ages 8 to 23 in a National Sample," *Pediatrics* (January 2012): 21-27, <http://pediatrics.aappublications.org/content/129/1/21.abstract>

² For a detailed discussion about employment barriers for people with a criminal records – and the Reentry Council response to it – see "In Search of a Job: Criminal Records as Barriers to Employment," published in the NIJ Journal in June 2012. <http://www.nij.gov/journals/270/criminal-records.htm>

³ According to a report by the National Employment Law Project, a 2010 survey by the Society for Human Resources Management found that 92 percent of employers conduct criminal background checks. Michelle N. Rodriguez and Maurice Emsellem, *65 Million "Need Not Apply": The Case for Reforming Criminal Background Checks for Employment* (New York: National Employment Law Project, March 2011). [http://www.nelp.org/page/-/65 Million Need Not Apply.pdf?nocdn=1](http://www.nelp.org/page/-/65%20Million%20Need%20Not%20Apply.pdf?nocdn=1)

⁴ See "'Redemption' in an Era of Widespread Criminal Background Checks," by Alfred Blumstein and Kiminori Nakamura, <http://www.nij.gov/journals/263/redemption.htm>

⁵ The "National Inventory of the Collateral Consequences of Conviction" website is available at <http://www.abacollateralconsequences.org>

⁶ Reentry MythBusters are one-pagers designed to clarify existing federal policies and point people to resources that can be helpful. http://www.nationalreentryresourcecenter.org/documents/0000/1090/REENTRY_MYTHBUSTERS.pdf

⁷ The Legal Aid Interagency Roundtable is co-convened by Tonya Robinson, Special Assistant to the President for Justice & Regulatory Policy, and Tony West, DOJ's Acting Associate Attorney General.

⁸ Since FY 2009, the Office of Justice Programs (through the Bureau of Justice Assistance and the Office of Juvenile Justice and Delinquency Prevention) has awarded more than \$300 million in competitive grants under the Administration-supported Second Chance Act to support over 400 state, local, and tribal prisoner reentry programs. These programs provide a wide range of services aimed at reducing recidivism, including employment assistance, substance abuse treatment, housing, and mentoring for adults and juveniles. Second Chance funding also established the National Reentry Resource Center, a "one stop shop" for state-of-the-art information and assistance, as well as research and evaluation.