

**THE DANGEROUS MYTHS
OF DRUG SENTENCING “REFORM”:
A Response to FAMM**



**NATIONAL ASSOCIATION OF
ASSISTANT UNITED STATES ATTORNEYS**

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**Steven H. Cook
President
National Association of Assistant United States Attorneys
5868 Mapledale Plaza, Suite 104
Woodbridge, VA 22193
Telephone: 800-455-5661
www.naausa.org**

Introduction

The fundamental point in the NAAUSA white paper titled “The Dangerous Myths of Drug Sentencing ‘Reform’” (Myths) is that the federal criminal justice system, including the use of mandatory minimum penalties for drug traffickers and violent offenders, is not broken. In fact, the opposite is true; the drug penalty structure is working as designed. A lobbying organization, FAMM, has responded claiming the NAAUSA position is based on “unfounded and patently false claims.” It is not.

Before addressing the FAMM arguments directly, some basic facts bear emphasis. Although FAMM believes sentencing judges should have unfettered discretion in sentencing, mandatory minimum penalties limiting judicial discretion have been an integral part of the criminal justice system since its inception.¹ The mandatory minimum penalties currently being attacked by FAMM were enacted in the mid-1980s to address a serious violent crime problem.² During the preceding approximately two and a half decades violent crime rates had more than tripled and Congress took action.³ The principle underlying the Congressional response was simple: putting criminals in prison will reduce crime. Many states followed suit enacting mandatory minimum and other tough-on-crime statutes. To the surprise of absolutely no one, by 1991 as drug traffickers and violent offenders were removed from the streets, violent crime, in fact every category of major crime, began a steady and steep decline. By 2013 violent crime had been cut in half and reached rates not seen since the mid-1960s.⁴ As a result of the lower crime rates, in 2013 there were 1.2 million fewer murders, rapes, robberies, and aggravated assaults. And although the final statistics for 2014 have not

¹ Mandatory minimum penalties were used by the founding fathers as they developed the federal criminal justice system in 1790 and since then have been used in the state and federal systems for a wide range of crimes from DWI to treason. http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_02.pdf.

² Among other statutes enacted were 18 U.S.C. § 924 (c) prohibiting use of a weapon during drug trafficking and federal crimes of violence; the 1986 Anti-Drug Abuse Act, 21 U.S.C. § 841(b) creating tiered penalties for significant drug trafficking; and the 1984 Armed Career Criminal Act, 18 U.S.C. § 924(e) setting minimum penalties for career offenders caught with firearms.

³ Statistics compiled by the FBI reflect that between 1961 and 1985 the violent crime rate jumped from 158.1 incidents to 558.1 incidents per 100,000. <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>.

⁴ Violent crime peaked in 1991 with a rate of 758.2 and steadily and consistently declined to a rate of 367.9 in 2013. https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/1tabledatadecoverviewpdf/table_1_crime_in_the_united_states_by_volume_and_rate_per_100000_inhabitants_1994-2013.xls.

been released, preliminary information suggests that the downward trend continued through 2014.⁵

Despite, or maybe because of, the successes resulting from these laws, the families of the drug traffickers in prison were not happy and created what has now grown into a well-funded lobbying organization using the deceptively wholesome name of Families Against Mandatory Minimums or FAMM. In response to lobbying efforts by FAMM, joined by the American Civil Liberties Union, and the National Association of Criminal Defense Lawyers, in recent years, according to FAMM, over 30 states reformed their laws and softened penalties for drug trafficking and other crimes.⁶ Perhaps equally important, also at the urging of FAMM,⁷ federal penalties for previously convicted drug traffickers were reduced by the sentencing commission in a series of three reductions all of which have been applied retroactively to federal drug traffickers convicted over the previous two decades. As a result, over 70,000 convicted drug traffickers became eligible for early release from federal prison without regard to the seriousness of their crimes, their criminal histories, their violent background, or their ties to gangs, drug cartels, or even terrorist organizations. Thousands have already been released and another approximately 8000 convicted drug traffickers will be released in November of 2015.⁸

The consequences of reducing penalties for drug trafficking and other crimes and releasing thousands of convicted drug traffickers from federal prison were predictable. Although FBI statistics for 2015 will likely not be out until late 2016, it is already abundantly clear that violent crime is dramatically increasing across the country. A recent article published in the Wall Street Journal, *The New Nationwide Crime Wave*, draws attention to the issue:

The nation's two-decades-long crime decline may be over. Gun violence in particular is spiraling upward in cities across America. In Baltimore, the most pressing question every morning is how many people were shot the previous night. Gun violence is up more than

⁵ FBI Releases Preliminary Semiannual Crime Statistics for 2014, <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-preliminary-semiannual-crime-statistics-for-2014>.

⁶ FAMM Response at 11.

⁷ FAMM's Accomplishments, available at <http://fammm.org/about/fammm-accomplishments/>.

⁸ United States Sentencing Commission, Office of Research and Data, *Summary of Key Data Regarding Retroactive Application of the 2014 Drug Guidelines Amendment*, July 25, 2014, available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140725-Drug-Retro-Analysis.pdf>.

60% compared with this time last year, according to Baltimore police, with 32 shootings over Memorial Day weekend. May has been the most violent month the city has seen in 15 years.

In Milwaukee, homicides were up 180% by May 17 over the same period the previous year. Through April, shootings in St. Louis were up 39%, robberies 43%, and homicides 25%. "Crime is the worst I've ever seen it," said St. Louis Alderman Joe Vacarro at a May 7 City Hall hearing.

Murders in Atlanta were up 32% as of mid-May. Shootings in Chicago had increased 24% and homicides 17%. Shootings and other violent felonies in Los Angeles had spiked by 25%; in New York, murder was up nearly 13%, and gun violence 7%.⁹

And the Wall Street Journal is far from the only publication to identify and call attention to the trend.¹⁰ So alarming and widespread is the spike in violent crime that the Major Cities [Police] Chiefs' Association called an urgent meeting to discuss the problem.¹¹

⁹ Heather Mac Donald, *The New Nationwide Crime Wave*, Wall St. J., May 29, 2015, available at <http://www.wsj.com/articles/the-new-nationwide-crime-wave-1432938425>.

¹⁰ See Tami Abdollah, *L.A. County Sheriff: New law plays 'significant' role in crime rise*, Los Angeles Daily News, July 23, 2015, available at <http://www.dailynews.com/government-and-politics/20150723/la-county-sheriff-new-law-plays-significant-role-in-crime-rise> ("We had 10 years of crime reductions, we were at 50-year lows in many areas on crime statistics, and all of a sudden, right after November when [proposition] 47 [California's sentencing reform legislation] kicked in that changed and fairly dramatically, very quickly," he said. "It would be naive to say that 47 didn't play a major role in that."); Heidi Kulicke, *As Crime Surges, Downtowners Worry*, LA Downtown News, July 28, 2015, available at http://www.ladowntownnews.com/news/as-crime-surges-downtowners-worry/article_57e4f716-3247-11e5-aa62-079b56f2b0c8.html ("The crime statistics released this month by the Los Angeles Police Department were sobering, particularly in Downtown Los Angeles, where all manner of law-breaking shot up."); Aamer Madhani, *Several big U.S. cities see homicide rates surge*, USA Today, July 10, 2015, available at <http://www.usatoday.com/story/news/2015/07/09/us-cities-homicide-surge-2015/29879091/> ("After years of declining violent crime, several major American cities experienced a dramatic surge in homicides during the first half of this year."); Vernon Odom, *Philadelphia violent crime rate on the rise*, Aug. 13, 2015, <http://6abc.com/news/philadelphia-violent-crime-rate-on-the-rise/927865/> ("Citywide the murder and violence rate is running significantly ahead of last year's. 692 people have been shot so far this year - 161 murdered. In 2014 at this point there were 621 wounded by gunfire - 149 shot dead." "This is something that's happening all over the country, and police agencies as well as social service agencies are now trying to work together to get an explanation as to why it's happening.")

¹¹ Will Greenberg, *Police chiefs from around the country meet in D.C. to discuss violent summer*, Wash. Post, Aug. 3, 2015, available at http://www.washingtonpost.com/local/crime/police-chiefs-from-around-the-country-meet-in-dc-to-discuss-violent-summer/2015/08/03/e2ec8a9c-3a06-11e5-8e98-115a3cf7d7ae_story.html.

Nevertheless, FAMM's response has been to turn a blind eye to the facts, attack NAAUSA as an organization, and claim that the concern over violent crime is fear mongering. In fact, despite these disturbing trends FAMM continues to push for even more "reform" and the release of even more convicted drug traffickers from federal prison.

It is with this important background that we turn to the FAMM responses to the Myths paper.

1. The federal prison population is declining without the need for the drastic reforms being promoted by FAMM.

Before continuing, one reference point is important. Protecting citizens from foreign and domestic dangers is the most fundamental and perhaps important responsibility a government has. A central part of this responsibility is protecting honest citizens from criminals. And while those calling for sentencing reform (that is, to reduce the prison population by letting more criminals out) often premise their position on budgetary grounds, the cost fulfilling this fundamental but critical responsibility by incarcerating criminals in the federal prison is far less than 1% of the federal budget. The entire Federal Bureau of Prisons budget is approximately \$2.4 billion.¹² By comparison, the little-known United States Agency for International Development budget was \$10.8 billion.¹³

In response to the FAMM position, we can all see that the federal prison population increased over the last two decades. That was the goal—put people committing serious crimes in prison, get them off the streets, and reduce crime. More importantly, as noted, the goal was achieved. By putting criminals in prison we have reduced violent and property crime and saved hundreds of thousands of good and honest Americans from being murdered, raped, robbed, assaulted and otherwise victimized.

The point of the first statement in the Myths paper—our federal prison population is not exploding—was not to argue that it had not increased in the past (we can all see that it has), but to point out that the trend has already reversed.

In addition to the changes noted earlier (including the early release of 70,000 drug traffickers), there have been many other changes to the federal criminal justice system that have resulted in a lower prison population and which have reduced the penalties

¹² *Agency Profile: Department of Justice*, USA Spending.Gov available at <https://www.usaspending.gov/Transparency/Pages/AgencySummary.aspx?AgencyCode=1500&FiscalYear=2015>

¹³ *Agency Profile: U.S. Agency for International Development*, USA Spending.Gov available at <https://www.usaspending.gov/Transparency/Pages/AgencySummary.aspx?AgencyCode=7200&FiscalYear=2015>

applicable to drug traffickers. One such change came by memorandum dated August 12, 2013 by then Attorney General Eric Holder.¹⁴ In that memorandum he directed all federal prosecutors to not seek mandatory minimum penalties (even where the drug quantities being trafficked met the congressionally established triggering thresholds) unless the defendant met one of four aggravating criteria including, for example, that the defendant was an organizer or possessed a weapon. This is reflective of this administration's reduced emphasis on drug trafficking prosecutions and the Sentencing Commission has reported a 9.6 percent reduction in drug trafficking offenders being sentenced.¹⁵

Another significant change resulting in lower sentences for individuals convicted of committing federal crimes, came from the U.S. Supreme Court several years earlier, but continues to have an impact on sentencing and thus the federal prison population, today. This change is also relevant to the need (or lack thereof) for further sentencing reform.

In *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court struck down the United States Sentencing Guidelines—a sentencing system designed to limit judicial discretion and reduce sentencing disparity across the country. In doing so the Court held that the sentencing guidelines were purely advisory, meaning sentencing judges had broad discretion in sentencing. As a result sentences imposed on drug traffickers and others convicted of federal offenses became less consistent and lower.¹⁶ Importantly, as a result, the only real remaining limit on judicial discretion in sentencing drug traffickers is the congressionally-imposed mandatory minimums.

Last, but far from least, in *Johnson v. United States*, 135 S. Ct. 2551 (2015), the Supreme Court recently held a key part—the so-called residual clause—of the Armed Career Criminal Act of 1984 (ACCA),¹⁷ to be unconstitutionally vague. The ACCA was designed to target a significant and usually dangerous class of criminals—those with

¹⁴ Attorney General Eric Holder, *Memorandum to the United States Attorneys and Assistant Attorney General for the Criminal Division*, Aug. 12, 2013, available at <http://big.assets.huffingtonpost.com/HolderMandatoryMinimumsMemo.pdf>

¹⁵ *United States Sentencing Commission, Quick Facts Drug Trafficking Offenses*, available at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Drug_Trafficking_2013.pdf

¹⁶ *United States Sentencing Commission Report on the Continuing Impact of United States v. Booker on Federal Sentencing* at 89-90, http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/booker-reports/2012-booker/Part_A.pdf. See also FAMM's webpage which lists among FAMM's accomplishments the fact that "[o]ver 82,000 federal prisoners have received sentences below the term called for by the federal sentencing guidelines" as a result of the *Booker* decision. <http://famm.org/about/famm-accomplishments/>.

¹⁷ 18 U.S.C. § 924(e)(2)(B)(ii).

three prior convictions for violent or drug trafficking crimes who despite being prohibited from doing so, possessed firearms. Defendants whose criminal histories included convictions as defined under the residual clause were often considered the worst of the worst and subject to a mandatory fifteen year term of imprisonment. The Supreme Court's holding striking this key part of the statute will have a substantial immediate and long term impact on the federal prison population.

On an immediate level, all cases which are pending in the system and which are premised on this provision will be reduced to the substantially lower penalty provisions for the lesser crime of being a prohibited person (a convicted felon) in possession of a firearm. Instead of a mandatory minimum penalty of fifteen years, this provision carries a maximum of ten years and defendants are routinely sentenced to much lower terms.

Likewise, on August 7, 2015, the United States Sentencing Commission announced a parallel amendment to the Sentencing Guidelines that would change the guideline definition of crime of violence.¹⁸ This definition is implicated in a number of guideline applications. Most importantly, this change will alter application of the Career Offender provision which enhances sentences for offenders who are convicted of a wide range of federal crimes of violence (including, for example, kidnapping or bank robbery) or violate federal drug trafficking statutes, and who have multiple qualifying prior convictions for crimes of violence or drug trafficking.¹⁹ In short, this proposed amendment will narrow the class of defendants subject to enhanced sentences as career offenders and will have an immediate impact on sentencing some of the worst offenders.

Also, it appears as though the Supreme Court's decision will be held to be retroactive.²⁰ This, in turn, will reopen thousands of prior armed career criminal convictions for reconsideration and early release.

Finally, but importantly, if the Sentencing Commission passes the proposed amendment referenced above *and also* makes it retroactive, thousands more convicted violent offenders (again, for example offenders convicted of kidnapping and bank robbery) and drug traffickers sentenced as career offenders will be eligible for early release.

¹⁸ United States Sentencing Commission, *Proposed Amendment to the Sentencing Guidelines (Preliminary)*, Aug. 7, 2015, available at, <http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20150807-RFP-Amendments.pdf>.

¹⁹ United States Sentencing Commission, Guidelines Manual, § 4B1.1 (Nov. 2014).

²⁰ Price v. United States, 2015 U.S. App. LEXIS 13562, at *2 (7th Cir. Aug. 4, 2015).

With (1) the Supreme Court decision making the sentencing guidelines advisory (resulting in lower sentences for drug traffickers), (2) a nearly ten percent reduction in the prosecution of drug traffickers (and thus a significant cut in intake to the federal prisons), (3) the early release of 70,000 convicted drug traffickers, and (4) the Supreme Court's decision striking a key provision of the Armed Career Criminal Act, there is no need to enact the further drastic reforms advocated by FAMM—one of which would make all drug traffickers eligible for probationary sentences with no mandatory minimum penalties.²¹

2. The federal prison population is not “due to mandatory minimum drug sentences.”

The central facts are simple and uncontested: The United States Sentencing Commission reports that only 14.5 percent of prisoners are serving sentences based on mandatory minimum penalties of any type (not just drug traffickers) including, among others, armed career criminals, serial bank robbers, and terrorists. Although FAMM acknowledges this, they contend that mandatory minimums for drug traffickers have made all federal sentences longer because the “USSC has incorporated many mandatory minimum penalties into the sentencing guidelines, which means that penalties for other offense categories under the guidelines had to increase in order to keep a sense of proportionality.” While this statement is historically accurate and explains the current prison population, it is irrelevant to sentences being imposed now or, more to the point, the need for sentencing reform. As noted previously, the sentencing guidelines are now advisory and have been since 2005.

The bottom line is that only a small percentage of the federal prison population is serving sentences based on mandatory minimum drug penalties. If reducing the prison population is the goal, reducing mandatory minimum penalties for significant drug traffickers will accomplish little, if anything.

As a collateral issue, FAMM also complains that many drug offenders are relieved of application of the mandatory minimums by cooperating with law enforcement authorities. FAMM (which ostensibly is in favor of unlimited judicial discretion) suggests that prosecutors file motions removing application of mandatory minimums in too many cases involving high level offenders (“Prosecutors are authorized to exempt any offender – drug kingpins, major drug importers, and offenders with several prior felony convictions – from receiving a mandatory minimum In fact, the people most likely to

²¹ According to the Projects section of their webpage, FAMM supports the SAFE Justice Act, H.R. 2944, pending legislation that would remove all mandatory minimum penalties for federal drug trafficking. <http://famm.org/projects/federal/>.

provide “substantial assistance” to prosecutors – and escape a mandatory minimum term – are the very drug offenders Congress intended these long sentences.”²²).

This complaint misses the mark for two reasons. First, obtaining cooperation from “kingpins” or individuals at or near the highest levels of the drug trafficking organization in the United States is exactly what law enforcement officials need to disrupt and dismantle international drug cartels. Second, ironically, FARM suggests that by filing the motion removing application of mandatory minimum penalties, an inappropriate sentence follows. This argument suggests a fundamental misunderstanding of how the federal sentencing system works.

If someone at any level of a criminal organization provides substantial assistance to law enforcement officials investigating criminal activity, a motion is filed with the sentencing judge accompanied by a full description of the nature of the cooperation. The government’s motion does not reduce the sentence that is imposed. Instead, such a motion simply removes application of the mandatory penalties and allows the sentencing judge to consider the cooperation in determining an appropriate sentence. If a reduction for cooperation is inappropriate (because the individual is a kingpin, major importer, or for any other reason), the sentencing judge is free to disregard it. Although FARM suggests this increased discretion is somehow bad—that is, that there is no limit to the court’s discretion in dealing with kingpins because the mandatory penalties are removed—it is exactly what FARM has advocated for all drug offenders, regardless of the seriousness of the crimes they have committed.

3. Drug trafficking is inherently violent and otherwise serious criminal activity destroying lives.

Although conceding to “some extent that all drug dealing is dangerous, [FARM argues that] it is also true that not all drug dealing is equally dangerous.”²³ From this FARM argues that “sentencing laws should be flexible enough to allow distinctions between drug offenders.”²⁴ The glaring flaw in this is that the sentencing laws do provide discretion, just not unfettered discretion.

This argument—that the sentencing laws do not now allow sentencing judges the discretion to distinguish more serious and violent activity—suggests another fundamental misunderstanding about federal drug sentencing statutes. These statutes set mandatory minimums—but they are only minimums—and sentencing judges retain discretion to impose higher sentences for crimes that constitute more serious offenses.

²² FARM Response at 6-7.

²³ FARM Response at 8 (emphasis removed).

²⁴ FARM Response at 8-9.

Again, the sentencing structure sets a floor for serious drug trafficking quantities but it is only a floor. Sentencing judges retain a great deal of discretion to distinguish between offenders and punish more culpable offenders to a greater degree.

Throughout its response, FAMM repeatedly states that mandatory minimum drug penalties are intended to apply “only to kingpins.”²⁵ This argument demonstrates another misunderstanding of federal drug crimes and penalties and how they were designed to be used. The most frequently applied mandatory minimum drug penalties are set out in 21 U.S.C. § 841(b)(1)(B). That section establishes incremental penalties that hinge on the seriousness of the criminal activity. Sections with mandatory minimum penalties are triggered by substantial drug quantities reflecting significant drug trafficking. Those sentencing provisions, however, were never reserved for “kingpins,” but instead were designed to appropriately punish all participants in the trafficking organization and to provide an incentive to cooperate with law enforcement officials working to infiltrate and dismantle the entire organization. In fact, Congress enacted an entirely different statutory provision to address so-called kingpins.²⁶

FAMM also argues that the rising opioid epidemic demonstrates that the federal drug penalties are ineffective and should be abandoned. This is akin to arguing that with every incident of terrorism—a serious crime that statistically is on the rise—there is no need for harsh punishment of the terrorists. The simple truth that is accepted by virtually everyone is that drug trafficking is serious criminal behavior harmful to our nation and significant drug traffickers should receive substantial sentences.

4. Slashing federal mandatory minimum sentences will undermine the ability of law enforcement officials to dismantle drug trafficking organizations.

Mandatory minimum penalties were designed with a dual goal: appropriately punish individuals engaged in trafficking in substantial quantities of illegal controlled substances and reward individuals who, once caught, sever their ties to the trafficking organization and cooperate with law enforcement authorities. As any Assistant United States Attorney handling a significant drug caseload or Drug Enforcement Administration agent can tell you, the system has proved to be very effective.

Without ever addressing this important fact directly, and without citing any part of the Myths paper, FAMM incorrectly says that “NAAUSA complains that without mandatory minimums prosecutors will not be able to coerce guilty defendants into pleading

²⁵ See, e.g., FAMM Response at 8.

²⁶ See 21 U.S.C. § 848.

guilty.”²⁷ It is unclear whether this distortion of the NAAUSA position is intentional or reflects a misunderstanding of an important distinction, but every administration since the enactment of the mandatory minimum drug penalties (including the Obama administration) has prohibited prosecutors from using the threat of applying mandatory minimum penalties to “coerce ... defendants into pleading guilty.”²⁸

Again, mandatory minimums are designed to appropriately punish substantial drug traffickers and at the same time allow sentencing judges to reward defendants who cooperate with law enforcement officials by providing information about their coconspirators. When a defendant facing mandatory minimum penalties assists the government, the statutory structure allows the government to file a motion under 18 U.S.C. § 3553(e) detailing the assistance to the sentencing judge. That motion, in turn, allows the sentencing judge to consider the significance of the cooperation and sentence below a statutory minimum if that judge deems it appropriate. Nowhere in the statutory scheme is there any authority for the government to file a motion to sentence below the mandatory minimum because a defendant agreed to plead guilty. Equally important, and as noted, every administration, including the current administration, since the enactment of the mandatory minimum drug penalties has prohibited AUSAs from threatening to charge mandatory minimums to coerce a guilty plea.

5. It's easier to quantify the costs of incarceration than the value of public safety.

FAMM boldly says, “NAAUSA’s claim that less incarceration will mean more crime is not supported by science, experts, or real world experience.”²⁹ If only that were true. Sadly, it is not. Since the beginning of civilization we have recognized that putting criminals in prison reduces crime. And the reverse is equally true.

FAMM suggests that there is little or no correlation between the imprisonment levels going up over the last two decades and the crime rate dropping saying: “More than 30 states have reduced, eliminated, or reformed their mandatory minimum and drug sentencing laws over the past decade, and crime has gone down, not up.”³⁰ The

²⁷ FAMM Response at 10.

²⁸ *Id.*

²⁹ FAAM Response at 13.

³⁰ FAAM response at 11.

problem with this representation is that it relies on data that is over 30 months old.³¹ The crime reductions created by the mandatory penalties passed in the mid-1980s were not recognized until 1992, when crime began its steady decline. That said, we have already begun to feel the consequences of the recent “reforms”—violent crime is surging across the country. FAAM, however, completely ignores these facts and pushes ahead for more “reform” and the release of more federally convicted drug traffickers.

Conclusion

While there are numerous theories suggesting the drop in crime over the last 25 years has been the result of other events ranging from an increase in abortion rates to removing lead from paint and gas,³² none of those theories explains the recent spike in violent crime. Abortion rates and the amount of lead in gas and paint have remained constant. What has changed is the incarceration rate and reforms advocated by FMM. More criminals on the street means more crime.

Over the last ten years we have made substantial changes to the federal criminal justice system, including (1) the Supreme Court’s decision in *Booker* striking down the mandatory sentencing guidelines and giving judges virtually unlimited discretion in sentencing for federal crimes (which in turn has resulted in lower sentences for 82,000 federal offenders), (2) implementing three retroactive reductions in sentencing guidelines making over 70,000 drug traffickers eligible for early release and reducing the penalties newly convicted drug traffickers face, (3) reducing application of minimum mandatory drug penalties by order of former Attorney General Holder and the related reduced emphasis on prosecution of drug traffickers nationwide (resulting in a nine percent reduction of defendants being incarcerated for drug trafficking), and (4) the Supreme Court’s *Johnson* decision striking a key part of the Armed Career Criminal Act and the related action by the Sentencing Commission. Rather than forge ahead blindly, Congress should put current proposals on hold and carefully consider whether further reforms are prudent.

³¹ As of this writing, 2012 is the most recent year for which the FBI has published state UCR crime rate statistics. See *FBI Uniform Crime Reporting Statistics: Crime - National or State Level*, <http://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm?NoVariables=Y&CFID=76284084&CFTOKEN=7df84c894076370-EE11D84C-D9AF-2C88-9B7E32FB8ACEA1F4>.

³² Dana Goldstein, *10 (Not Entirely Crazy) Theories Explaining the Great Crime Decline*, The Marshall Project, Nov. 24, 2014, available at <https://www.themarshallproject.org/2014/11/24/10-not-entirely-crazy-theories-explaining-the-great-crime-decline>.