



**Statement of Julie Stewart  
President, Families Against Mandatory Minimums**

**On  
“Mandatory Minimums and Unintended Consequences”**

**Submitted to the  
Subcommittee on Crime, Terrorism, and Homeland Security  
Of the Committee on the Judiciary  
United States House of Representatives**

**July 14, 2009**

I am Julie Stewart, President of Families Against Mandatory Minimums. FAMM is a national nonprofit, nonpartisan organization whose mission is to promote fair and proportionate sentencing policies. FAMM does not oppose prison; we simply want the punishment to fit the crime.

I want to thank Chairman Scott, ranking member Gohmert and distinguished members of the Committee, for the opportunity to testify before the Subcommittee on Crime, Terrorism and Homeland Security and for your commitment to sentencing reform.

As some of you know, I started FAMM 18 years ago after watching my brother get sentenced to five years for growing marijuana in a garage. My brother, Jeff, deserved to be punished because he broke the law. And some time in prison might have even been appropriate. But five years seemed excessive then and still seems that way to me now. A lot can happen in five years – a lot of missed birthdays, holidays and family gatherings, and in Jeff’s case, the death of our Dad. That’s a blow that’s hard to bear from a prison cell.

But what motivated me to start an organization to repeal mandatory minimum sentences was not really the length of my brother’s sentence – it was witnessing the judge’s inability to give my brother the sentence he wanted to. At sentencing, the judge stated that his “hands were tied” by mandatory sentencing laws. It seemed counterintuitive to me that the person who knew all the facts of Jeff’s case could not deliver the sentence that was appropriate for Jeff and his role in the offense. I thought in this country we sentenced individuals - not crimes. I thought courts imposed sentence, not lawmakers miles away in Washington.

It seemed utterly un-American. It still does.

Sixteen years ago I made that same argument before this same subcommittee on this same subject: mandatory minimum sentencing. Sitting beside me at the witness table that day in 1993 was a young woman named Nicole Richardson. She was dressed in a prison jumpsuit and brought into the hearing room in shackles. Nicole had been convicted of drug trafficking for giving her boyfriend’s phone number to an informant who wanted to pay him for some LSD. Even though she cooperated with the DEA, she was charged with conspiracy to distribute LSD. Her boyfriend, the drug dealer, had incriminating information about others to give the prosecutors. He received a five-year sentence as a reward for his cooperation. Nicole had no one to finger, so she bore the brunt of the government’s case and at the age of 18 was sentenced to ten years in federal prison without parole. Nicole’s judge did not want to sentence her to such a long prison term, and when the jury foreman later found out the sentence Nicole received, he said, “If I had known she would receive a mandatory 10-year prison sentence, we would still be sitting in that jury room today.”

At that same 1993 subcommittee hearing, Judge Vincent Broderick, then chair of the Criminal Law Committee of the Judicial Conference of the United States, testified that Nicole’s case was not an isolated horror story. Rather, Judge Broderick said, “I respectfully submit that the mandatory minimum system in place is itself the ‘horror story’. ... [and] ...that mandatory minimums are the major obstacle to the development of a fair, rational, honest, and proportional federal criminal justice sentencing system.”

The upshot of that hearing was the passage the following year of the “safety-valve,” which allows the courts to sentence below the mandatory minimum for a narrow band of drug defendants. The safety valve was a great first step, but it did not go far enough. Since 1995, over 200,000 people have received mandatory prison sentences of five or ten years. That’s an enormous number of families devastated by one-size-fits-all sentences.

Now is the time to take the next step. This hearing sets us on that path.

We are here today in part, because of the mandatory minimum sentences imposed on border agents Ignacio Ramos and Jose Alonso Compean. Their sentences angered many Americans who saw the agents as heroes and who feared their convictions and long sentences might have a chilling effect on those who work on the border or other front lines of law enforcement.

Whatever your thoughts about the border agents’ case, those of us who have been fighting against mandatory sentencing for years would caution Members of this Committee and Congress against seeing it as an anomaly. In reality, it is just one more of the all-too-common failures of one-size-fits-all sentencing.

Consider the following facts: First, you had a prosecutor following the instructions of his superiors – in this case, Attorney General Ashcroft’s memo of 2003, ordering all federal prosecutors to bring “the most serious readily provable chargeable offense” and to oppose downward departures at sentencing. Second, a jury of peers delivered guilty verdicts. Finally, you had a sentencing judge whose discretion was extinguished by a mandatory sentencing law passed by Congress.

Mr. Chairman, this happens every day in federal court rooms all across this country.

Consider the case of Michael Mahoney. In 1979, when he was 24 years old, Michael was living in Texas, using methamphetamine and selling small amounts to support his habit. Within a one-month period, he made three sales totaling less than \$300 dollars to an undercover officer and was arrested. He pled guilty and was convicted of three felonies and served almost two years in jail in Texas. When he got out, he moved home to Tennessee and turned his life around. He opened a successful local restaurant and pool hall, paid taxes, employed people, and was a productive member of society for more than a decade. One day, Michael decided to purchase a gun from a pawn shop to protect himself when he made deposits after closing. The pawn shop owner, who said he was also an attorney, told Michael it was okay to own a gun because his convictions were more than ten years old. Michael thought this made sense because he had been allowed to get a liquor license after a ten-year waiting period.

Sometime later, Michael’s gun was stolen. Concerned that it might be used to commit a crime, he reported the theft to authorities. He returned to the pawn shop and bought another gun. In a routine check of the pawnshop’s records, the Bureau of Alcohol, Tobacco, and Firearms, discovered the sale and arrested Michael as a felon in possession of a firearm. Michael was found guilty of the “crime” and federal prosecutors decided to count the three 14 year-old drug sales as separate convictions at Michael’s sentencing in 1994. This decision meant the difference between a five-year and 15-year mandatory minimum. Rather than receiving a sentence designed

for a simple felon in possession of a firearm, he received a sentence intended for hardened career criminals.

Michael's judge was a Reagan appointee with a reputation for being extremely tough on crime. But, at sentencing, he said, "...it seems to me this sentence is just completely out of proportion to the defendant's conduct in this case. ...[I]t just seems to me this is not what Congress had in mind." At the end of the day, however, he had no choice. He handed down the 15-year sentence required by law. Seven years into his 15-year sentence, Michael died in prison.

The judge who sentenced Jesus Esparza, expressed similar frustration when sentencing Jesus to 10 years in prison. Jesus, who had served his country honorably in the armed forces, accompanied a friend from Michigan to Seattle, where his friend picked up one kilogram of cocaine. On the return trip, they were stopped in Wyoming by state troopers. The troopers found the cocaine and a loaded handgun under the friend's seat. Jesus pled guilty and accepted responsibility for his role in the offense. The sentencing guidelines called for a sentence of 46-57 months. But the mandatory minimum statutes required the judge to sentence Jesus to five years for the cocaine and another five years for the gun.

The judge said, "When it comes to mandatory minimums, the powers of the Court...and the consideration of underlying facts ... pretty much flies out the window. [The Court] could have considered...your role in that offense as a person who essentially went along to help drive [your codefendant] as a favor to him...and measure the seriousness of your conduct as compared to that of [your codefendant], who brought the gun."

I believe as fervently as I did 15 years ago when I testified from this table that you should use your power to repeal mandatory minimum sentences. I do not want to be sitting at this same table 15 or 16 years from now asking for the same sentencing reforms I urged back then and again, today. After two decades of experimenting with mandatory minimum sentencing policies, the verdict is in: mandatory minimums are a failure. They are a failure today, just as they were in 1970 when a bipartisan Congress voted to repeal the Bogg's Act, which required mandatory minimum sentences for drug offenses. That repeal is the focus of a FAMM report, *Correcting Course*, which urges that we learn from history and repeal mandatory minimums once more.<sup>1</sup>

The reasons that led Congress to repeal mandatory minimums nearly 40 years ago are the same reasons Congress should abolish them today. By any standard, including their proponents' stated goals, the mandatory minimums enacted in the 1980s have failed. Specifically:

- They have not discouraged drug use or abuse. Drug use rates had already declined before Congress passed the 1986 and 1988 anti-drug laws. Between 1985 and 1988, drug use

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<sup>1</sup> FAMILIES AGAINST MANDATORY MINIMUMS, CORRECTING COURSE: LESSONS FROM THE 1970 REPEAL OF MANDATORY MINIMUMS, available at [http://www.famm.org/Repository/Files/8189\\_FAMM\\_BoggsAct\\_final.pdf](http://www.famm.org/Repository/Files/8189_FAMM_BoggsAct_final.pdf) (last visited July 13, 2009).

within the past 30 days declined from 12.1 percent to 7.7 percent<sup>2</sup>. As of 2007, drug use rates within the past 30 days had increased to 8.3 percent<sup>3</sup>.

- They have stripped courts of cost-effective, recidivism-reducing sentencing options like drug courts. According to the Bureau of Justice Statistics, one-third of all federal drug offenders said they were using drugs at the time of arrest<sup>4</sup> and almost 80 percent of federal offenders admit to having used drugs at some time.<sup>5</sup> Unfortunately, according to BJS, less than 15 percent of federal offenders with drug problems receive treatment while in prison.<sup>6</sup>
- They have failed to reduce drug trafficking. Despite 50 years of experimenting with mandatory minimums, supporters cannot point to a single study that conclusively demonstrates any positive impact of mandatory minimum sentences on drug trafficking rates.
- They are responsible for a prison population explosion. The federal prison population has increased nearly five-fold since mandatory minimums were enacted in the mid-80s and mandatory guidelines became law.<sup>7</sup> The major cause is the increase in sentence length for drug trafficking from 23 months<sup>8</sup> before mandatory minimums to 83.2 months in 2008.<sup>9</sup> About 75 percent of the increase was due to mandatory minimums and 25 percent due to guideline increases above mandatory minimums.<sup>10</sup>
- Their failure comes with billion-dollar direct costs. Expanded use of prison sentences for drug crimes and longer sentences required by mandatory minimums have caused a dramatic increase in state and federal corrections costs. State corrections spending jumped from \$6 billion in 1982 to over \$50 billion in 2008.<sup>11</sup>
- They impose substantial indirect costs. Not only do longer prison sentences make it more difficult for prisoners to re-enter society successfully, but they also put a heavy burden on

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<sup>2</sup> OFFICE OF NATIONAL DRUG POLICY, DRUG USE TRENDS (October 2002).

<sup>3</sup> SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, OFFICE OF APPLIED STUDIES (2008). RESULTS FROM THE 2007 NATIONAL SURVEY ON DRUG USE AND HEALTH: NATIONAL FINDINGS (NSDUH Series H-34, DHHS Publication No. SMA 08-4343). Rockville, MD.

<sup>4</sup> BUREAU OF JUSTICE STATISTICS, DRUG USE AND DEPENDENCE, STATE AND FEDERAL PRISONERS, 2004, at 5, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/dudsfp04.pdf> (last visited July 13, 2009).

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> U.S. BUREAU OF PRISONS, A BRIEF HISTORY OF THE BUREAU OF PRISONS, available at <http://www.bop.gov/about/history.jsp> (last visited July 10, 2009).

<sup>8</sup> UNITED STATES SENTENCING COMMISSION, FIFTEEN YEARS OF GUIDELINES SENTENCING (Nov. 2004), at 48, available at [http://www.ussc.gov/15\\_year/15year.htm](http://www.ussc.gov/15_year/15year.htm) (last visited July 13, 2009) [hereinafter FIFTEEN YEAR REVIEW]; UNITED STATES SENTENCING COMMISSION, SUPPLEMENTARY REPORT ON THE INITIAL GUIDELINES AND POLICY STATEMENTS (June 18, 1987), at 69-70.

<sup>9</sup> UNITED STATES SENTENCING COMMISSION, 2008 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (2008), at Table 14, available at <http://www.ussc.gov/ANNRPT/2008/SBTOC08.htm> (last visited July 13, 2009)..

<sup>10</sup> FIFTEEN YEAR REVIEW, at 54

<sup>11</sup> PEW CENTER ON THE STATES, ONE IN 31: THE LONG REACH OF THE AMERICAN CORRECTIONS 11 (Mar. 2009), available at [http://www.pewcenteronthestates.org/uploadedFiles/PSPP\\_1in31\\_report\\_FINAL\\_WEB\\_3-26-09.pdf](http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf) (last visited June 10, 2009).

families and children who must live without a spouse or parent while that person is incarcerated.

- They are not applied evenly. In practice, mandatory minimum sentences have not been applied equally when viewed by race of the defendant. Further, two equally culpable defendants can receive vastly different sentences based on the value of the information they have to share with prosecutors.

In all of these ways, mandatory minimums have failed to perform as advertised. And, yet, I can't help but think that even if they were effective to some degree they would still be objectionable. Mandatory sentences offend a bedrock principle of justice best articulated in the federal sentencing statute. The core congressional command in the Sentencing Reform Act of 1984 directs courts to impose a sentence "sufficient, but not greater than necessary to comply" with the purposes of punishment.<sup>12</sup> This principle of parsimony has deep roots in American soil and in our sense of fundamental fairness. The law directs judges to exercise reasoned discretion, taking into account considerations such as the need to avoid unwarranted disparity, the history and characteristics of the defendant, and the seriousness of the offense, and then fashion a sentence for the particular individual who stands convicted.<sup>13</sup> Mandatory minimums prohibit courts from complying with that mandate.

Moreover, mandatory minimums challenge basic structures on which our government is founded. Federal mandatory minimum laws upset federalism by turning many heretofore state drug offenses into federal crimes. In addition, state and federal mandatory sentencing laws distort traditional roles by transferring judicial discretion to legislatures as well as prosecutors, who, by choice of charge, exercise undue and unreviewable influence over sentencing.

All of these problems have caused many former prosecutors, judges, and legal commentators to speak out against mandatory minimums. A report by the non-partisan Federal Judicial Center concluded with this statement about mandatory sentencing laws: "As instruments of public policy [mandatory minimums] do little good and much harm."<sup>14</sup> Today, mandatory minimum repeal enjoys widespread support from leaders in the criminal justice community. The Judicial Conference of the United States,<sup>15</sup> the American Bar Association,<sup>16</sup> the United States

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<sup>12</sup> 18 U.S.C. § 3553(a) (2008).

<sup>13</sup> The list of sentencing considerations and the parsimony mandate are found in the sentencing statute at 18 U.S.C. § 3553(a)(1)-(7) (2008).

<sup>14</sup> Barbara S. Vincent & Paul Hofer, *The Consequences of Mandatory Minimum Prison Terms*, Federal Judicial Center (1994), at 32 (quoting Michael Tonry, ed., *Mandatory Penalties*, in 16 CRIME & JUSTICE: A REVIEW OF RESEARCH 243-44 (1990))

<sup>15</sup> See, e.g., JUDICIAL CONFERENCE OF THE UNITED STATES, REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 16 (Mar. 13, 1990) (voting in favor of urging Congress to reconsider the wisdom of mandatory minimum sentences), available at <http://www.uscourts.gov/judconf/90-Mar.pdf> (last visited Nov. 5, 2008); see also Testimony of Honorable Paul Cassell before the House Judiciary Committee Subcommittee on Crime, Terrorism and Homeland Security (June 26, 2007), available at <http://judiciary.house.gov/hearings/June2007/Cassell070626.pdf> (last visited Nov. 5, 2008).

<sup>16</sup> See AMERICAN BAR ASSOCIATION, REPORT # 121-A (Aug. 9-10, 2004), available at <http://www.abanet.org/leadership/2004/annual/dailyjournal/121A.doc> (last visited Nov. 5, 2008).

Sentencing Commission,<sup>17</sup> and the United States Conference of Mayors<sup>18</sup> are among those who oppose mandatory minimum sentencing.

President Obama also has spoken of the need for reform. Noting that his predecessor, former President George W. Bush, expressed skepticism about imposing long sentences for first-time drug offenders, then-candidate Obama said, “I agree with the President. The difference is, he hasn’t done anything about it. When I’m President, I will. We will review these sentences to see where we can be smarter on crime and reduce the blind and counterproductive warehousing of non-violent offenders.”

Attorney General Eric Holder seems to be making good on President Obama’s commitment to sentencing policy review. At a recent sentencing symposium, Mr. Holder said that “[t]he desire to have an almost mechanical system of sentencing has led us away from individualized, fact-based determinations that I believe, within reason, should be our goal.”

Last, but certainly not least, the American people support mandatory minimum reform. A 2008 poll found that fully 78 percent of Americans agree that courts, not Congress, should determine an individual’s sentence, and 59 percent oppose mandatory minimums for nonviolent offenders.<sup>19</sup>

It’s past time to put an end to mandatory minimums.

We are grateful to Chairman Scott for introducing legislation to enable courts to exercise discretion when the mandatory minimum is greater than necessary to comply with the purposes of punishment. We thank Congresswoman Waters for her bill that would eliminate all drug mandatory minimums and Mr. Poe for his that would eliminate mandatory minimums in certain cases. We look forward to working with all of you to eliminate one-size-fits-all sentencing laws.

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<sup>17</sup> See U.S. SENTENCING COMMISSION, SPECIAL REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 25-33 (Aug. 1991) (describing how mandatory minimums undermine the purpose and goals of the federal sentencing guidelines, and concluding that “the intended purposes of mandatory minimums can be equally or better served by guidelines, without compromising the crime control goals to which Congress has evidenced its commitment.”), *available at* [http://www.ussc.gov/r\\_congress/MANMIN.PDF](http://www.ussc.gov/r_congress/MANMIN.PDF) (last visited Nov. 5 2008).

<sup>18</sup> U.S. CONFERENCE OF MAYORS, 74TH ANNUAL MEETING ADOPTED RESOLUTIONS 47-48 (June 2-6, 2006), *available at* [http://usmayors.org/resolutions/74th\\_conference/resolutions\\_adopted\\_2006.pdf](http://usmayors.org/resolutions/74th_conference/resolutions_adopted_2006.pdf) (last visited Nov. 5, 2008).

<sup>19</sup> Families Against Mandatory Minimums/Strategy One poll on mandatory minimums (Aug. 2008), *available at* <http://www.famm.org/Repository/Files/FAMM%20poll%20no%20embargo.pdf> (last visited July 13, 2009).