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Janet Murguía, President

April 13, 2005

VIA FACSIMILE

The Honorable James Sensenbrenner
Chair, Judiciary Committee
House of Representatives
Washington, DC 20515

The Honorable John Conyers
Ranking Member, Judiciary Committee
House of Representatives
Washington, DC 20515

RE: Oppose provisions in H.R. 1279 that prosecute youth as adults and impose mandatory minimum sentences.

Dear Congressmen Coble and Scott:

On behalf of the National Council of La Raza (NCLR), the largest national Latino civil rights organization in the U.S., I urge you to oppose provisions contained in the "Gang Deterrence and Community Protection Act of 2005" (H.R. 1279) which is scheduled for markup today, April 13 in the full committee. Please be advised that NCLR will recommend that votes relevant to the Latino community and final passage of the bill be included in the National Hispanic Leadership Agenda Congressional Scorecard.

H.R. 1279, if enacted into law, would have a disparate impact on Latino youth and their families. This bill would undermine overall public safety, given that it imposes excessively severe measures aimed at only punishing and not reforming youth violent behavior. Specifically, NCLR strongly opposes two provisions – the prosecution and transfer of youth into the adult system and the inclusion of various mandatory minimum sentences for a broad category of offenses that are labeled "gang crimes" and numerous other offenses.

Section 115 of the bill allows for the prosecution and transfer of youth into the adult system. The latest research shows that transferring youth to adult status is a failed public policy approach, resulting in the opposite of what this bill is purporting to do. It will *increase* – not decrease – youth violence. The research shows that young people prosecuted as adults, compared to those prosecuted as juveniles, are more likely to: (a) commit a greater number of crimes upon release; (b) commit more violent crimes upon release; and (c) commit crimes sooner upon release. The research also shows that youth held in adult facilities, compared to youth held in juvenile facilities, are five times as likely to be sexually

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assaulted by other inmates, twice as likely to be beaten by staff, 50% more likely to be assaulted with a weapon, and eight times as likely to commit suicide.

With these kinds of risks, it does not make sense for the House to pursue legislation that includes the power to prosecute juveniles as adults in federal court for activities that the states are already well-equipped – indeed, better-equipped – to handle than the federal system. Also, putting the transfer decision at the sole discretion of a prosecutor, not a judge as the law currently requires, violates the most basic principles of due process and fairness.

Section 103 of the bill includes and expands mandatory minimum sentences for a broad category of offenses that are deemed “gang crime.” Under this bill, the mandatory minimum sentences for these crimes range from 5 to 30 years. Although the offenses are serious and individuals who are convicted should be properly held accountable, mandatory sentences often prevent judges from determining the appropriate punishment. When judges are restricted by mandatory sentences, they cannot assess an individual’s culpability during the crime or other factors that have bearing on recidivism, thus resulting in inappropriate sentences.

Although mandatory minimums were intended to reduce the racial disparities that were associated with indeterminate sentencing, in practice they exacerbate and mask such disparities by shifting discretion from the judge to the prosecutor. Prosecutors retain the power to plea bargain by offering defendants plea agreements that avoid the mandatory penalty. Studies have shown that this discretion results in a disparity in sentencing outcomes based largely on race and quality of defense attorney. According to testimony from the U.S. Sentencing Commission, in 1999, 39% of those receiving mandatory sentences were Hispanic, 38% were African American, and 23% were White. Hispanics comprised 44% of those subject to five-year mandatory sentences in 1999, 37% of the ten-year mandatory sentences, 20% of the 20-year mandatory sentences, and 8% of the mandatory life sentences. The reality for African American defendants is even bleaker.

NCLR respectfully asks you to oppose legislation that prosecutes and transfers youth into the adult system and that includes and expands mandatory minimum sentences. These provisions will only exacerbate youth violent behavior. Instead, NCLR calls for a comprehensive research – based approach that gets at the root causes of youth violence – which includes but is not limited to prevention, treatment, and effective alternatives to incarceration. If you have any questions please contact Angela Arboleda, NCLR Civil Rights Policy Analyst, at (202) 776-1789.

Sincerely,



Janet Murguia
President and CEO

cc: Members, House Subcommittee on Crime, Terrorism, and Homeland Security