



Testimony on
Drug Sentencing and its Effects on the
Latino Community

Presented by:

Charles Kamasaki
Senior Vice President

National Council of La Raza
1111 19th Street, NW, Suite 1000
Washington, DC 20036

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I. INTRODUCTION

Chairwoman Murphy, Vice Chairs Castillo, Sessions, and Steer, and the other commissioners, on behalf of the National Council of La Raza (NCLR), I thank you for holding this hearing on an issue that is very important to the Latino¹ community in the United States. NCLR is the largest national Latino civil rights institution, serving as an “umbrella organization” for more than 270 local affiliate community-based organizations (CBOs) and 30,000 individual associate members. In addition to providing capacity-building assistance to our affiliates and essential information to our individual associates, NCLR serves as a voice in public policy debates on behalf of all Hispanic subgroups in all regions of the country.

I appreciate the opportunity to testify in support of a thorough revision of the guidelines regarding drug sentencing practices in the United States. First, this statement begins with a brief overview of NCLR’s work on criminal justice issues. Second, I will highlight the disparate impact of existing drug laws on the Latino community. Finally, my testimony concludes with recommendations to promote drug sentencing policies and practices that are fair and equitable to all Americans.

II. BACKGROUND

Traditionally, NCLR activity on criminal justice issues has been relatively modest, focused principally on addressing egregious individual incidents and broader patterns of law enforcement abuse, particularly by the Immigration and Naturalization Service (INS). This has not been attributable to any serious doubt that Latinos are adversely and disproportionately affected by the criminal justice system; rather, this limited focus in large part simply reflected resource constraints, especially in light of other competing priorities, e.g., education, immigration, and economic mobility issues. Moreover, the virtual absence of Hispanic data in this area meant that an enormous effort, and substantial resources, would have been required to conduct rigorous policy analysis and build a case for criminal justice reform.

In recent years, however, numerous reports from credible sources have documented severe racial and ethnic disparities in the criminal justice system. Many of those reports now include at least some Latino data, which almost uniformly substantiate patterns of discrimination against Hispanics at every stage of the system. As more evidence of such disparities is published, and as more Hispanic families are affected by growing incarceration rates, there appears to be greater Latino grassroots support for sentencing reform proposals to address such disparities. In part as a result, over the last several years NCLR has begun to “ratchet up” its work on criminal justice and related issues; activity to-date has included:

- Publishing, in 1999, *The Mainstreaming of Hate*, a major report on hate crimes, racial profiling, and law enforcement abuse.

¹ The terms “Latino” and “Hispanic” are used interchangeably to refer collectively to Mexicans, Puerto Ricans, Cubans, Central and South Americans, and others of Spanish and Latin American descent. Hispanics can be of any race.

- Investing substantial staff resources in the issue of “racial profiling,” which among other things resulted in the inclusion of federal agencies such as the INS, the Drug Enforcement Administration, and the Customs Service in an Executive Order issued in November 1999, and in proposed legislation introduced last year to address the issue. NCLR has also testified on this issue before Congress.
- Serving in a coalition of civil rights organizations that conceived and developed the Law Enforcement Trust and Integrity Act – major legislation, introduced in March 2000, designed to reduce law enforcement abuse and improve police-community relations.
- Contributing to the production of *Justice on Trial*, an important Leadership Conference on Civil Rights (LCCR) report on racial and ethnic disparities in the criminal justice system, released in May 2000.
- Participating in a series of planning activities over the last year pursuant to the formation of The Criminal Justice Alliance, a new, broad-based coalition whose aim is to reduce over-incarceration and promote other criminal justice system reforms.

In August 2000, the Executive Committee of the Board of Directors of the National Council of La Raza authorized the establishment of a new criminal justice policy project, charged with the task of working to reduce disparities in the criminal justice system. It is in this context that I appear before you today.

III. DISPARATE IMPACT OF DRUG LAWS ON LATINOS

The 2000 Census shows that Latinos constitute 12.5% of the population in the United States, yet according to the Sentencing Commission’s own data, Hispanics accounted for 43.4% of the total drug offenders in 2000; of those, 50.8% were convicted for possession or trafficking of powder cocaine, and 9% for crack cocaine. This is a significant increase from the 1992 figures that show that 39.8% of Hispanic drug offenders were convicted for possession or trafficking of powder cocaine, and 5.3% for crack cocaine (Figure 27).^{*} Contrary to popular belief, the fact that Latinos and other racial and ethnic minorities are disproportionately disadvantaged by sentencing policies is not because minorities commit more drug crimes, or use drugs at a higher rate, than Whites. According to federal health statistics, drug use rates per capita among minorities and White Americans are remarkably similar.

Instead, the disproportionate number of Latino drug offenders appears to be the result of a combination of factors, beginning with the phenomenon now widely known as “racial profiling.” NCLR’s 1999 report, and a series of other studies, demonstrates that the Hispanic community is often targeted by law enforcement based on ethnicity alone.

^{*} *Drug Briefing*, January 2002, United States Sentencing Commission.

Furthermore, the evidence strongly suggests that, from the moment of arrest, to the pretrial detention phase, to the charging and plea bargain decisions of prosecutors, through the adjudication process, the determination of a sentence, and the availability of drug treatment, Latinos encounter a criminal justice system plagued with prejudice and discrimination. For example, a forthcoming NCLR analysis of federal data shows that:*

- **Hispanic and Black federal defendants were more likely than White defendants to be charged for drug offenses.** In 1996, 46.3% of Hispanic defendants and 47.9% of Black defendants were charged with drug offenses in U.S. district courts, compared to 29.4% of White defendants (FPR&D).
- **Hispanic defendants are about one-third as likely as non-Hispanic² defendants to be released before trial.** In 1999, 22.7% of Hispanic defendants were released before trial, compared to 63.1% of non-Hispanic defendants (CFJS), suggesting disparate treatment at this stage of the system.
- **Of prisoners released by standard methods for drug offenses, Hispanics served similar sentences as Whites imprisoned for the same offenses.** In 1999, ethnic data show that Hispanics served an average of 34.7 months for drug offenses versus 35.9 months for Whites (CFJS). However, this apparent equality is undermined after taking into account the individual characteristics of these groups as the following points indicate.
- **Hispanic defendants had less extensive criminal histories than White defendants.** In 1996, 56.6% of Hispanic defendants, compared to 60.5% of White defendants, had been arrested on at least one prior occasion (FPR&D).
- **In 1997 half of Hispanic federal prison inmates had no previous criminal history record.** In 1997, 52.5% of Hispanics had no previous sentence imposed, while 28.8% of Blacks and 37.8% of Whites had not been sentenced previously (CP).
- **Approximately three out of 100 Hispanic men in the 25- to 29-year-old age range were sentenced to prison, three times as many Hispanic men as White men.** There were 2,701 per 100,000 male Hispanics sentenced to prison under state or federal jurisdiction in 1997 who were between the ages of 25 and 29 years old. By contrast, 867 per 100,000 White males in that age range were sentenced to prison that year (CP).
- **Hispanics accounted for approximately one in four of the federal inmate population in 1997.** Racial/ethnic data show that Hispanics accounted for 27.3% of federal inmates in 1997, a rate that is twice as high as this group's percentage of the population (CP).

* All the data in this section are attributed to the following sources: *Compendium of Federal Justice Statistics, 1999*, Washington, D.C.: U.S. Department of Justice, May 2000 (CFJS), *Correctional Populations in the United States, 1997*, Washington, D.C.: U.S. Department of Justice, November 2000 (CP), and *Federal Pretrial Release and Detention, 1996*, Washington, D.C.: U.S. Department of Justice, February 1999 (FPR&D).

² "Non-Hispanics" may be Black, White, or Asian individuals who are not of Hispanic descent.

- **Hispanic federal prison inmates in 1997 were the least likely of all racial/ethnic groups to receive any type of substance abuse treatment.** Only 36.4% of Hispanic federal prison inmates received any substance abuse treatment or program during 1997, while 53.7% of Whites and 48.4% of Blacks received some type of treatment or program to address their substance abuse dependency (CP).

In sum, despite the fact that Latinos are no more likely than other groups to use illegal drugs, Hispanics are more likely to be arrested and charged with drug offenses, and less likely to be given pre-trial release. Once convicted, Latinos do not receive lighter sentences, even though the majority of Hispanic offenders have no criminal history. As a result, Hispanics are severely overrepresented in the prison system, and once in prison, are the least likely to receive any substance abuse treatment.

That these sobering statistics are largely the result of irregularities in drug enforcement is largely beyond dispute. For example, as seen in the table below, nearly three-quarters of Latino federal prison inmates are incarcerated for drug offenses, the largest proportion of any group. Moreover, Latinos are the least likely of any major group to be incarcerated for violent offenses.

Offenses of federal prison inmates by race and ethnicity, 1997

| Current offense | Federal Prison Inmates | | | |
|-----------------------|------------------------|-------|----------|-------|
| | White | Black | Hispanic | Other |
| Violent offenses | 18.6% | 15.3% | 6.8% | 32.8% |
| Property offenses | 13.0% | 4.3% | 2.6% | 11.4% |
| Drug offenses | 49.4% | 67.2% | 74.0% | 42.7% |
| Public-order offenses | 8.0% | 12.2% | 15.5% | 10.8% |

Thus, contrary to the popular stereotype, the overwhelming majority of incarcerated Latinos have been convicted of relatively minor, non-violent offenses, are first-time offenders, or both. Recent public opinion research reveals that a large majority of the public is prepared to support more rational sentences for these first-time offenders, and little wonder. The costs of excessive incarceration to the groups affected, and the broader American society – in terms of reduced current economic productivity, barriers to future employment, inhibitions on civic participation, and growing racial/ethnic societal inequalities – are extremely high. NCLR believes that this Commission can play a critical role in reducing unnecessary and excessive incarceration rates of Latinos in the U.S., as discussed in further detail below.

IV. RECOMMENDATIONS

The U.S Sentencing Commission has requested comments concerning the sentencing of defendants convicted of crack cocaine and powder cocaine under the sentencing guidelines. Currently, a conviction for possessing five grams of crack cocaine triggers a five-year mandatory minimum sentence, while it takes 500 grams of powder cocaine possession to trigger the same sentence. And while possession of 50 grams of crack cocaine triggers a 10-year mandatory minimum sentence, the law requires possession of 5,000 grams of powder cocaine to trigger the same sentence. NCLR shares concerns expressed by numerous commentators regarding the blatant discriminatory effect of this 100-1, powder-crack sentencing disparity.

However, we would oppose any attempt to reduce such disparities by increasing penalties on powder cocaine users. As the Commission's own data demonstrate, Latinos are significantly over-represented among those convicted of powder cocaine offenses (Figure 27).^{*} Furthermore, lowering powder thresholds would increase average sentences by at least 14 months, with the inevitable increase in incarceration rates, (Figure 26).⁺ In our judgment, the real-world, tangible harm produced by lowering the powder thresholds would far outweigh the abstract, symbolic value of reducing statutory sentencing ratios.

Specifically, NCLR urges the U.S. Sentencing Commission to:

- **Substantially redress the crack/powder ratio disparity by raising the crack thresholds and maintaining the powder thresholds.** NCLR commends the Commission's 1995 recommendations to Congress that called for the elimination of the difference in crack and powder sentence thresholds. We recognize that current law constrains the Commission from resubmitting this recommendation; in this context we urge that the ratio be equalized as much as possible by raising to the greatest allowable extent the level that triggers penalties for crack cocaine.
- **Resist proposals that would lower the powder thresholds.** NCLR believes that the only proper way of equalizing the ratio is by raising the crack threshold, and not by lowering the powder threshold. We note that reducing the powder threshold would have a disproportionate, negative impact in the Latino community, according to the Commission's data. We note further that although this action might be perceived as reducing sentencing inequalities, it would have the perverse effect of substantially increasing incarceration levels.
- **Make more widely available alternative methods of punishment for first-time, non-violent, low-level drug offenders.** Under 18 USC Section 3553(a), penalties should not be more severe than necessary and should correspond to the culpability of the defendant. Where current law prevents judges from imposing just sentences for such offenders, the Commission should recommend that Congress enact appropriate reforms.

^{*} *Drug Briefing*, January 2002, United States Sentencing Commission.

⁺ *Drug Briefing*, op. cit.

NCLR urges that any new thresholds be scientifically- and medically-justified, and be correlated directly to the impact of penalties on both the defendant and the larger society. The current massive disparities in the criminal justice system and the resulting excessive rates of incarceration of racial and ethnic minorities offend the nation's commitment to the principle of equality under the law. For Latinos and other minorities, they constitute a major barrier to economic opportunity and civic participation; for the nation as a whole, they inhibit economic growth and social cohesion. Finally, they severely undermine the credibility of and confidence in the nation's entire system of criminal justice.

We urge the Commission to seize this unique opportunity simultaneously to narrow drug sentencing disparities and reduce incarceration of first-time, nonviolent, low-level offenders.