“Tough and Smart”

THE RESILIENCE OF THE WAR ON DRUGS DURING THE OBAMA ADMINISTRATION

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In July 2015, President Barack Obama toured the El Reno Federal Correctional Institution in Oklahoma and met with a multiracial group of six inmates, all serving lengthy sentences for drug offenses committed in their youth. The encounter, filmed for an HBO documentary called Fixing the System, represented the first time a current U.S. president had visited a federal prison. Obama identified the differing punishment for nonviolent drug cases as the primary evidence of racial bias against African Americans and Latinos in the criminal justice system, from arrest rates to prosecutorial discretion to sentencing outcomes. After exiting the cell block, the president told the assembled media that “a primary driver of this mass incarceration phenomenon is our drug laws—our mandatory minimum sentencing around drug laws. And we have to consider whether this is the smartest way for us to both control crime and rehabilitate individuals.” Obama emphasized the $80 billion annual cost to taxpayers of maintaining the world’s largest prison system and noted the bipartisan opening for criminal justice reform in Washington and in many state capitals. He then specifically distinguished “dangerous individuals who need to be incapacitated” from nonviolent drug criminals, “particularly young people of color,” who should be
diverted into treatment programs and provided with education and job training. Obama, who acknowledged marijuana and cocaine use in his 1995 memoir *Dreams from My Father*, sought to humanize the prisoners he had just met as “young people who made mistakes that aren’t that different than the mistakes I made,” except that their communities lacked the safety net of institutional resources and second chances. But the nation’s first African American president also reiterated his tough-on-crime philosophy, because “there are people who need to be in prison, and I don’t have tolerance for violent criminals. Many of them may have made mistakes, but we need to keep our communities safe.”

The Obama administration’s “tough and smart” approach to drug and crime control largely operated within the political boundaries of bipartisan consensus and pursued a moderate reform agenda during an era of unprecedented activism against racially discriminatory policing and heightened consciousness about the broader system of mass incarceration. Many factors shaped Obama’s cautious and incremental approach to drug policy reform, including the White House belief that an explicit “black agenda” promoted by an African American president would generate white backlash, the considerable power of “law and order” forces in the federal bureaucracy and in Congress, and not least the robust support for criminal prohibition and interdiction by most Democratic officials and the president himself. Obama first deployed the “tough and smart” formulation during a 2007 campaign appearance at Howard University, where he rejected the “false choice between being tough on crime and vigilant in our pursuit of justice.” The Democratic candidate endorsed the logic of criminalization—“if you’re convicted of a crime involving drugs, of course you should be punished”—while emphasizing that even many Republicans agreed that nonviolent offenders should be diverted into treatment. The 2008 Democratic Party platform likewise advanced a “smart on crime” blueprint that promised to be “tough on violent crime,” prioritize treatment over incarceration for drug abusers, and maintain the longstanding federal interdiction campaigns against Mexican and Colombian traffickers. In its first *National Drug Control Strategy* (2010), the Obama administration promised to move in a “new direction” through a “balanced public health and public safety strategy” that combined the traditional commitment to law enforcement and border interdiction with more funding for prevention and rehabilitation programs. The administration pledged to promote “alternatives to incarceration” for nonviolent drug offenders while disrupting trafficking networks and deploying law enforcement to “rid our streets of the drug dealers who infect our communities.”
President Obama’s commitment to balanced policies of drug control, combining “smart” public health solutions for deserving victims with “tough” law enforcement crackdowns on predatory criminals, was nothing new and indeed closely resembles the rhetoric and blueprints of every presidential administration since Richard Nixon proclaimed a federal war on “drug abuse” in the early 1970s. Nixon also championed a “balanced approach” of public health rehabilitation for addict-victims and tough punishment for traffickers, and he signed comprehensive drug legislation that offset discretionary possession penalties (as leverage to coerce users into treatment) with lengthy mandatory sentences for “professional” suppliers. The major federal drug and crime control laws enacted during the Nixon era passed Congress with near unanimity, a pattern of bipartisan policymaking that continued with the Anti-Drug Abuse Act of 1986 and the Violent Crime Control and Law Enforcement Act of 1994, signed by Republican Ronald Reagan and Democrat Bill Clinton, respectively. During his presidency, Barack Obama frequently criticized the “bipartisan cause to get tough on crime” during the 1980s and 1990s, especially the mandatory-minimum sentencing laws that exacerbated racial inequality and mass incarceration, but carving “smart on crime” exceptions for some nonviolent drug offenses did not disrupt the broader patterns of either drug prohibition or the carceral state. While Obama and other key administration officials repudiated the martial discourse of a “war on drugs,” they consistently opposed the transformative alternatives of legalization or decriminalization, even of marijuana, simultaneously labeling drug abuse and addiction a “disease” and advocating criminalization to compel offenders into treatment. Despite some important reforms, the resilience of the federal war on drugs during the Obama administration reflects the bipartisan consensus that the criminal justice system should ultimately regulate the illicit drug market and the parallel refusal to acknowledge that prohibition itself creates the context for violence and crime, whether by traffickers or law enforcement, both domestically and internationally.

The Reform Debate: Balance versus Legalization

Barack Obama entered the White House after a quarter century of exponential growth in the American prison system resulting primarily from “get tough” political choices rather than rising crime rates, in particular the bipartisan policy commitment to increased mandatory-minimum sentences and harsher policing and prosecution tactics in the intertwined wars on
crime and drugs. The Obama administration also encountered a more fluid political climate than at any point since the 1970s, with many state governments experimenting with diversion programs for nonviolent offenders, and civil rights and civil liberties organizations popularizing the concepts of “mass incarceration” and the “New Jim Crow.” The incarcerated population in the United States exceeded 2.3 million at the end of 2008, more than quadruple the total in the early 1980s. Federal and state correctional institutions held more than 1.6 million prisoners, with the remainder in local jails and 5 million more people on probation or parole. In the federal and state prison systems combined, 93 percent of inmates were male and the racial breakdown totaled 38 percent African American (triple the population rate), 20 percent Hispanic (1.2 times the population rate), and 34 percent white (half the population rate). One out of every one hundred American adults resided in a prison or jail during 2008, including one out of nine African American males between the ages of twenty and thirty-four. Half of all inmates in state prisons were serving time for violent crimes (including robbery), alongside about one-fifth each for property and drug convictions. In the federal system, conversely, slightly more than half of the 201,280 prisoners were serving sentences for drug felonies, a product of the increasing federalization of the war on drugs during and after the crack epidemic of the 1980s and a jurisdictional as well as political explanation for the Obama administration’s primary reform focus on nonviolent drug criminals.

From the start, the Obama White House portrayed its balanced philosophy of public health and public safety as a new departure in federal drug and crime control, with the second half of the “tough and smart” equation designed to neutralize the epithet of “soft” as a descriptor of medicalization and rehabilitation. President Obama named Gil Kerlikowske, the chief of the Seattle Police Department, as director of the Office of National Drug Control Policy, responsible for coordinating international interdiction and domestic enforcement, prevention, and treatment programs throughout the executive branch. Kerlikowske, the fifth consecutive “drug czar” from a law enforcement or military background (since 1991), did strike a different tone, declaring that the “metaphor and philosophy of a ‘War on Drugs’ is flawed” in a major 2009 speech to the International Association of Chiefs of Police. Because “addiction is a disease” rather than a “moral failing,” the new drug czar explained, the administration’s strategy would utilize public health resources on the demand side (“jail is not a solution”) while continuing to deploy law enforcement aggressively to stop the production and
distribution of illegal drugs. Kerlikowske then denounced advocates of legalization, asserting that this disastrous policy would not reduce crime and violence in American communities or save children from the tragedy of drug abuse.\textsuperscript{11} In essence, the White House strategy sought to marginalize the growing legalization movement by portraying its own balanced approach as a public health corrective to prior administrations that prosecuted the war on drugs “as an all-or-nothing choice between demand reduction and supply reduction,” a greatly exaggerated if not completely false interpretation of recent U.S. history. According to Kerlikowske, the Obama administration believed in “using the criminal justice system to spur people in need of treatment to get it,” a benevolent phrase that justified the continued criminalization of the “disease” of addiction and the illicit recreational market more broadly.\textsuperscript{12}

The administration’s antilegalization stance faced its first major challenge in the area of marijuana policy, which pitted state-level reform movements against hardline drug warriors in the Drug Enforcement Administration (DEA) and the Department of Justice (DOJ). During the 2008 campaign, Barack Obama criticized the Bush administration for crackdowns on dispensaries in the thirteen states that had legalized medical marijuana, often by popular referendum. Soon after the election, the DEA launched another series of high-profile raids, but new attorney general Eric Holder then pledged that the Obama administration would only target growers and dispensaries that violated both state and federal law by using “medical marijuana laws as a shield.” In October 2009, under pressure from the marijuana reform lobby, the Justice Department issued a directive to federal prosecutors that investigations should not prioritize activities “in clear and unambiguous compliance” with state medical marijuana laws. The DOJ memo reiterated, however, that marijuana remained a “core priority” of the federal war on drugs because of its dangers for consumers and status as the largest source of revenue for Mexican cartels.\textsuperscript{13} The DEA, a bureaucracy with considerable autonomy, then released its own political manifesto condemning the medical marijuana movement as a smokescreen for legalization and labeling most dispensaries “fronts for drug dealers, not health facilities.” The DEA also defended the continued classification of marijuana under Schedule 1 of the Controlled Substances Act, as a drug with “a high potential for abuse” and “no accepted medicinal value,” and recycled the hype that pot-smoking teenagers risked serious health hazards and were likely to graduate to cocaine, heroin, or methamphetamine addiction.\textsuperscript{14} During Obama’s first term, DEA agents and federal prosecutors actu-
ally escalated raids and investigations of state-licensed growers and dispensaries, angering progressive and libertarian groups that criticized the “chasm between rhetoric and reality” in the administration’s drug policies and labeled the president worse than George W. Bush on the medical marijuana issue.

The Obama administration’s opposition to marijuana legalization ultimately placed federal policy in conflict with a considerable anticriminalization shift in public opinion as well as reform initiatives approved in a majority of American states. In a series of pronouncements, drug czar Gil Kerlikowske blamed the marijuana legalization movement for increased rates of adolescent drug use and justified criminal enforcement (including 858,408 marijuana arrests nationwide in 2009) as part of the balanced collaboration between law enforcement and public health, the “surest route to reducing drug use and its consequences.” The administration’s first National Drug Control Strategy (2010) confirmed that marijuana interdiction remained at the center of the federal war on drugs and strongly rejected legalization as a mistake that would encourage youthful experimentation—without mentioning that a system of alcohol-style regulation would undercut the international cartels and underground traffickers the blueprint promised to “eradicate.”

The breakthrough for the marijuana reform movement came in 2012, when voters in Colorado and Washington approved referenda legalizing recreational possession and licensing the cultivation and sale of the drug. The DEA promptly announced its intention to “vigorously enforce” the federal prohibition against recreational marijuana providers, “even if such activities are permitted under state law.” But national opinion surveys revealed that a clear majority of Americans (58 percent in 2013) supported legalization, and twenty-five states had also established medical marijuana systems by the end of Obama’s presidency. Given these political realities, the Justice Department issued a new directive in mid-2013 that enumerated a policy of federal noninterference as long as states effectively regulated their legalized recreational or medical marijuana markets, while making clear the administration’s commitment to enforce national law to prevent involvement by criminal enterprises and any distribution to minors.

During Obama’s second term, the stark racial disparities in marijuana enforcement increasingly moved to the center of the national debate because of the advocacy of human rights organizations and the growing protest movement against “stop-and-frisk” tactics and “broken windows” policing. The antimarijuana crusade, according to a 2013 report by the American
Civil Liberties Union, effectively operated as “a war on people of color,” with African Americans 3.73 times more likely than whites to be apprehended, despite nearly identical usage rates, and marijuana violations accounting for more than half of drug arrests nationwide during the previous decade. The ACLU blamed targeted policing in nonwhite neighborhoods, criticized federal law enforcement programs that incentivized local and state arrests of low-level offenders, and advocated legalization as the only solution to these systematic racial disparities. That same year, a class action lawsuit against the City of New York succeeded in demonstrating unconstitutional racial profiling of young African American and Latino males, including massive discrepancies in marijuana arrest rates, as a deliberate “result of the NYPD’s stop and frisk practices.” And in 2014, after the Michael Brown shooting in Ferguson, Missouri, the Black Lives Matter movement escalated its demands for the end of racial profiling, stop-and-frisk sweeps, and the “criminalization and over-policing of communities of color.” The pressure from below clearly influenced Barack Obama, who began publicly observing that “middle-class kids don’t get locked up for smoking pot, and poor kids do,” particularly nonwhite youth. But the president continued to reject marijuana legalization, despite conceding that smoking pot was probably “less dangerous” than drinking alcohol, based on a “where do you draw the line” argument about cocaine, methamphetamine, and heroin.

Human rights organizations responded by moving beyond the popular marijuana reform stance to challenge the bipartisan federal support for a criminal justice approach to drug markets on public health, civil libertarian, and racial justice grounds. In a 2014 “Nation Behind Bars” report, Human Rights Watch labeled criminalization of adult recreational use of any drug to be a violation of the fundamental right to privacy and “counterproductive to the purpose of furthering public health.” Combining a philosophical manifesto for comprehensive legalization with stark data on racial discrimination in drug enforcement, Human Rights Watch argued that absent direct harm to others, “government should not restrict the liberty and autonomy of individuals simply because some or even many members of the public find their choices offensive or immoral.” In 2016, the ACLU and Human Rights Watch jointly issued another exposé of the “human costs of criminalizing personal drug use” in the United States, including findings that racial disparities pervaded the drug prohibition regime at all levels and that law enforcement made more arrests for marijuana possession alone in 2015 than for all violent crimes combined. The DEA forcefully counterat-
tackled the legalization movement for promoting a dangerous policy that would “condemn tens of thousands of our fellow citizens to a life of dependency and horror and endanger the lives of countless innocent others.” And in 2016, the Department of Justice once again rejected a petition to remove marijuana from Schedule 1, citing established scientific knowledge about its hazards and lack of medical utility. After the November election, Barack Obama did imply that as a private citizen, he would speak out for the regulation of marijuana through a public health system, similar to the laws controlling alcohol and tobacco, but until the end the official policy of the Obama White House continued to “steadfastly oppose legalization of marijuana and other drugs.”

**Race and Mandatory-Minimum Sentencing**

During Obama’s first term, the administration sought to reduce racial discrimination in the criminal justice system primarily by focusing on “equitable drug sentencing” rather than curbing police enforcement, addressing prosecutorial discretion, or reconsidering mandatory-minimum penalties for violent offenses. The main achievement involved the Fair Sentencing Act, introduced in 2009 by a group of Senate Democrats to implement the repeated recommendations of the U.S. Sentencing Commission to eliminate the 100-to-1 disparity between crack and powder cocaine penalties established by the Anti-Drug Abuse Act of 1986, the bipartisan legislation that escalated the Reagan era war on drugs. The cocaine differential—a minimum five-year prison sentence for trafficking 500 grams of powder or 5 grams of crack—generated almost no controversy at the time but eventually came to epitomize racial inequality in federal drug enforcement. Critics such as the ACLU and the Sentencing Project publicized findings that the disparity lacked any pharmacological basis and “unjustly and disproportionately penalize(s) African American defendants,” who accounted for 80 percent of those sentenced under the mandatory-minimum crack laws. Both groups also emphasized that although the Anti-Drug Abuse Act explicitly targeted “major” traffickers, police enforcement and federal prosecutions had mainly resulted in the incarceration of low-level street dealers and couriers. Senator Richard Durbin (D-Illinois), the lead sponsor of the Fair Sentencing Act, portrayed the “smart and fair” elimination of racial injustice as a necessary component of a “tough” policy that would “redirect federal resources toward large-scale, violent traffickers and increase penalties for the worst drug offenders.” The Obama administration endorsed the
bill to achieve “equity in penalties for cocaine-related crimes while retaining the tools needed by law enforcement to protect our communities from the violence associated with drug trafficking.”

In 2010, the U.S. Congress unanimously approved the Fair Sentencing Act, and President Obama signed the legislation with a bipartisan group of congressional leaders standing by his desk in the Oval Office. The White House’s celebration of the new consensus for federal drug reform overshadowed the watering down of the final version, which rather than abolish only reduced the powder/crack disparity from a 100-to-1 to 18-to-1 ratio, a compromise demanded by Republicans on the Senate Judiciary Committee. The Fair Sentencing Act did eliminate the five-year mandatory-minimum penalty for simple possession of 5 grams or more of crack cocaine, which Congress had added in 1988. The Sentencing Project warned that the 18-to-1 disparity would continue to institutionalize racial discrimination in the criminal justice system but also underscored that sentencing reform only began to address the issue, because targeted police enforcement and prosecutorial discretion meant that African Americans served almost as lengthy prison terms for drug convictions (58.7 months) as white defendants did for violent crimes (61.7 months). In addition to its limited scope, the Fair Sentencing Act of 2010 did not apply retroactively, meaning that about 15,000 federal prisoners continued to serve mandatory-minimum terms under a statutory mandate now widely acknowledged to be racially unjust. In 2013, in an equal-protection case brought by two such black inmates, a federal appellate panel ruled that Congress’s refusal to apply the Fair Sentencing Act retroactively represented unconstitutional racial discrimination, an indictment with radical potential. Placing “law and order” over collective justice, the Obama administration successfully appealed this decision, arguing that Supreme Court precedent only barred legislative action based on deliberate racial animus, not just racially disparate impact, even if foreseeable.

During Obama’s second term, the administration launched a more comprehensive initiative to reduce the impact of mandatory-minimum sentencing laws, again focused primarily on nonviolent drug offenders. The 2012 Democratic Party platform pledged to address the “disproportionate effects of crime, violence, and incarceration on communities of color,” a much more visible acknowledgment of racial inequality in the criminal justice system than in the 2008 version. The Obama administration recognized that criminal justice reform, especially if focused on nonviolent offenses and offset by tough policies toward violent crime, aligned with shifts
in public opinion and would receive support from “people on the right,” in the words of Attorney General Eric Holder. In a 2012 national survey, the Pew Charitable Trusts reported that a large majority believed that too many Americans were in prison; notably, policies promoting alternatives to incarceration for nonviolent offenders secured the approval of 91 percent of Democrats and 77 percent of Republicans. In August 2013, Holder delivered one of the most consequential speeches of the Obama era to the American Bar Association, labeling the criminal justice system “in too many respects broken. . . . Too many Americans go to too many prisons for far too long and for no truly good law enforcement reason.” The attorney general did not identify racially selective policing as the cause and instead decried the “harsher punishments” for African American and Latino males who broke the drug laws but should be diverted into treatment or community service. In Holder’s vision, the federal government would become “both smarter and tougher on crime,” reducing racial disparities in criminal justice while keeping “violent criminals off our streets” and “reserving the most severe penalties for serious, high-level, or violent drug traffickers.”

Following Holder’s speech, the Department of Justice released a “Smart on Crime” blueprint that critically assessed the “nation’s system of mass imprisonment” and acknowledged the “demographic disparities that have provoked questions about the fundamental fairness of the criminal justice system.” In discursive terms, the DOJ’s acceptance of the indictment of “mass incarceration” represented a major breakthrough for the progressive movement for criminal justice reform, even as its artfully worded acknowledgment of the perception of racial discrimination did not place blame on any ongoing actions by police, prosecutors, judges, or policymakers—just the “unfair sentencing disparities” locked in by antiquated mandatory-minimum laws. The DOJ’s “Smart on Crime” program endorsed state-level reform efforts that had reduced incarceration and recidivism levels through the diversion of nonviolent drug offenders, singling out Texas and Arkansas as cost-effective models for national policy. This strategy deliberately appealed to the conservative politicians and intellectuals in the Right on Crime coalition, a recently launched initiative that criticized excessive big-government spending on criminal justice programs, particularly the overreliance on prison for nonviolent offenders. As an initial bureaucratic measure, Holder issued a memo instructing U.S. prosecutors not to bring full charges under available mandatory-minimum statutes for nonviolent drug offenders who did not deal to minors, work in a criminal organization, or have multiple prior offenses. As the next political step, the attorney
general endorsed the Smarter Sentencing Act, a bipartisan Senate bill sponsored by Richard Durbin (D-Illinois) and Mike Lee (R-Utah) that would restore more judicial discretion in mandatory-minimum drug cases and apply the 2010 crack penalty revision retroactively.39

Between 2013 and 2016, the Obama administration pursued a two-part strategy of promoting mandatory-minimum sentencing reform in Congress and launching a clemency initiative for federal inmates serving lengthy prison terms for crack cocaine offenses punished “under an unfair system.” President Obama announced the clemency program by criticizing the non-retroactivity of the Fair Sentencing Act of 2010 and calling on Congress to restore the “promise of equal treatment for all” by enacting the Smarter Sentencing Act.40 In 2015, the Republican-controlled Senate Judiciary Committee approved a compromise version that retained the retroactive crack provision, exempted a narrow class of nonviolent drug felons from mandatory-minimum penalties, slightly lowered the required minimums for second and third convictions, and increased sentences for drug offenders with violent records. Families Against Mandatory Minimums, an influential lobby, criticized the revised package for continuing to subject low-level drug offenders and especially racial minorities to “harsh, expensive, one-size-fits-all sentences” and failing “to match the overwhelming support for reform that can be found across the political spectrum.”41 In the end, the polarized politics of the 2016 presidential election doomed even the diluted sentencing bill, leaving Eric Holder (after stepping down) to say that he was “ashamed of this nation” since Congress would not “simply do the right thing.”42 As a limited substitute, the DOJ’s clemency program solicited applications from federal drug prisoners who were “not hardened criminals,” had no record of violent crime or links to trafficking organizations, and had served at least ten years under outdated mandatory-minimum laws.43 Criminal justice reformers criticized the restrictive selection criteria and urged categorical clemency for entire classes of drug offenders, similar to the 1970s amnesty for Vietnam draft resisters. Instead, President Obama ultimately commuted the sentences of almost 1,700 nonviolent drug offenders, an unprecedented number but also only 10 percent of total applicants.44

The Obama administration played a key role in repositioning nonwhite drug offenders as sympathetic victims of excessive criminal sanctions, a status generally reserved for “otherwise law-abiding” white youth in American political culture, but the “tough and smart” reform binary of violent versus nonviolent criminals constrained its critique of mass incarceration.45 In 2015, President Obama delivered a major speech on criminal justice re-
form to the NAACP’s annual conference, just a few days before visiting the Oklahoma prison, in a political climate transformed by the Black Lives Matter movement against police violence and racial overcriminalization. Obama started by indicting a criminal justice system “skewed by race and by wealth” but also told the audience that he would “be honest. There are a lot of folks who belong in prison. . . . Murderers, predators, rapists, gang leaders, drug kingpins . . . Our communities are safer, thanks to brave police officers and hardworking prosecutors who put those violent criminals in jail.” Then the president, inaccurately, singled out the “real reason our prison population is so high”—inflexible sentencing laws that sent nonviolent drug offenders away for far too long, where the “punishment simply does not fit the crime.” In an expansion of the administration’s critique, Obama also highlighted differential treatment based on race by police and prosecutors, citing research showing that “people of color are more likely to be stopped, frisked, questioned, charged, detained . . . [and] sentenced to more time for the same crime.” As remedies for racially inequitable mass incarceration, Obama advocated social welfare investments rather than simply policing disadvantaged neighborhoods as “danger zones,” reforming the school-to-prison pipeline of the juvenile justice system, improving carceral conditions to promote rehabilitation rather than recidivism, and “banning the box” to increase employment opportunities for released inmates. For the first time, he also called for legislative action to “get rid of” mandatory-minimum sentences for nonviolent drug crimes “entirely.”

The White House’s reform emphasis on nonviolent drug offenders closely tracked the “New Jim Crow” critique of the war on drugs popularized by legal scholar Michelle Alexander, but other advocacy groups and criminologists argued that this agenda remained too narrow to reverse mass incarceration in significant and lasting ways. In 2015, the Department of Justice announced that the combined federal and state prison population had declined for the first time in at least four decades, by 15,400 prisoners during the previous calendar year, or 1 percent of the total. The steady, decades-long reduction in the national rates of violent and property crime accounted for much of this decrease, combined with the modest effects of sentencing reforms and drug offender diversion programs. The data also revealed that in state prisons, which contained the vast majority of inmates, racial disproportionality in incarceration rates for violent crimes exceeded those for drug offenses for African Americans and Hispanics alike. In a 2015 analysis, the Urban Institute found that sentencing reforms for nonviolent drug offenders “have helped stem the tide of prison growth,
but they will not be sufficient to further cut the prison population dramatically,” an outcome that would require policy decisions to reduce the severity of punishment for property and violent crimes as well.49 The Department of Justice did accelerate its investigations of racially biased policing practices in the aftermath of Ferguson, but President Obama also continued to walk the line of “tough and smart” criminal justice reform. In a late 2015 speech to the International Association of Chiefs of Police, Obama highlighted racial disparities in arrests and sentencing policies but made clear that “I don’t have sympathy for dangerous, violent offenders. . . . This is not some bleeding heart attitude here. . . . Those who peddle drugs need to be punished. I don’t think decriminalization is some panacea.”50

**Interdiction and Drug Markets**

In the areas of foreign policy and border interdiction, the Obama administration’s commitment to the traditional supply-side suppression policies of the war on drugs differed little from its predecessors’, as did the federal government’s continuing inability to eradicate or even meaningfully impede an illicit global market that serves the demands of millions of American consumers. The bipartisan consensus around drug interdiction is most evident in international policy, where the bureaucratic autonomy of the State Department and the Drug Enforcement Administration is extensive.

In the 2010 *National Drug Control Strategy*, the Obama administration pledged to disrupt the transnational drug cartels, primarily based in Mexico and Colombia, which “move large quantities of cocaine, heroin, methamphetamine, marijuana, and other illicit drugs into the United States.” The main initiatives, as for the previous half-century of federal interdiction policy, included concentrated resources on the Southwest border, collaboration with “international partners . . . to protect the public health and safety of our citizens,” crop eradication and promotion of “alternative livelihoods” for coca and opium farmers in supplier nations, and joint counternarcotics missions in source and transit countries from Latin America to the Middle East. The *National Security Strategy* labeled Plan Colombia, the U.S. military intervention and coca eradication program launched by the Clinton administration in 2000, a “dramatic success”—a stark contrast to Amnesty International’s verdict that the initiative had escalated violence and human rights abuses, merged counternarcotics with American corporate imperialism and support for right-wing paramilitary organizations, and represented a “failure in every respect.” The Obama administration
also praised and doubled the funding for the Bush administration’s Merida Initiative, a bilateral counternarcotics partnership with the government of Mexico that received $1.5 billion between 2007 and 2015.  

In 2009, the White House unveiled a comprehensive, multiagency strategy to “support the Mexican government’s campaign against the violent cartels” and prevent the “spillover” of instability and bloodshed from the border cities of Tijuana and Juarez. The Obama administration also announced its commitment to halt not only the “flow of drugs and violence into the United States” but also the “illegal flows of weapons and bulk cash to Mexico.” The next month, in an unusual (and diplomatically essential) admission of American responsibility, Secretary of State Hillary Clinton traveled to Mexico City to acknowledge that “our insatiable demand for illegal drugs fuels the drug trade” and that guns smuggled from the U.S. facilitated much of the violence in northern Mexico. President Obama, in a joint appearance with President Felipe Calderon of Mexico, also conceded that American consumer demand and weapons were “helping to keep these cartels in business.” But the immediate solution, according to both Clinton and Obama, required enhanced border security and increased military assistance to help the Mexican government succeed in “destroying and disrupting the cartels.” Escalation of the Merida Initiative produced extraordinary violence in northern Mexico, including an estimated 50,000 to 100,000 deaths between 2006 and 2015, with many civilians caught in the crossfire. Drug war opponents argued that the U.S. policies of prohibition and interdiction were themselves the fundamental causes of violence by generating an immensely profitable underground market policed by the military and law enforcement rather than an alternative system of legal regulations on production, distribution, and consumption. Even the mainstream Council on Foreign Relations concluded in 2011 that the long war on drugs in Mexico had completely failed to curb either supply or demand in the illicit market, and the time had come for U.S. policymakers to recognize that “prohibition bestows enormous profits on traffickers” and interdiction had only “intensified” the violent competition among transnational cartels.  

As in domestic drug war politics, the U.S. government faced increasing pressure from international advocates of legalization and decriminalization during the Obama era, including unprecedented resistance from political leaders in Central and South America. Drug czar Gil Kerlikowske labeled the growing opposition to U.S.-financed interdiction from within these “strategic partner” nations to be a “profound mistake,” while the DEA responded with an antilegalization manifesto insisting that drug prohibition...
reduces rather than “contributes to violence along the Southwest border.” Then in 2011, President Juan Manuel Santos of Colombia jolted the U.S.-led international drug control regime when he called for new “market alternatives” that would “take away the violent profit that comes with drug trafficking. . . . If that means legalizing, and the world thinks that’s the solution, I will welcome it.” That same year, the Global Commission on Drug Policy concluded bluntly that “the war on drugs has not, and cannot, be won” and called for harm reduction policies to replace interdiction, including legal regulation of marijuana and licensing experiments with other prohibited drugs “to undermine the power of organized crime.” At the 2012 Summit for the Americas, held in Colombia, President Obama responded that “legalization is not the answer” and pledged that his administration would continue to pursue the balanced policies of demand-side reduction and supply-side interdiction, “for the sake of the health and safety of our citizens.” But pressure for a fundamental reorientation of international drug control policy continued to build throughout Obama’s second term, culminating in a 2016 declaration, signed by more than one thousand world leaders, that the global war on drugs “has proven disastrous for global health, security and human rights. . . . It created a vast illicit market that enriched criminal organizations, corrupted governments, triggered explosive violence, distorted economic markets, and undermined basic moral values.”

During Obama’s second term, the federal drug control system also faced a pronounced challenge from the deadly intersection of the legal market for prescription medication produced by the pharmaceutical industry and the illegal market of heroin and methamphetamine imported by Mexican cartels or manufactured by domestic sources. The division between legal and illegal drugs is a political one, not directly related to the pharmacological properties or the public health hazards of regulated or prohibited substances, whether public policy facilitates lucrative and licit markets for corporations that produce pharmaceuticals, alcohol, and tobacco or involuntarily creates profitable if illicit markets for international and domestic traffickers. In assessing the Obama administration’s embrace of its “predecessors’ militaristic counternarcotics policies in the Americas,” foreign policy expert Suzanna Reiss argues that the international drug control regime has long rested on the “power of the United States to designate players in the drug trade as either legal or illegal,” and that pharmaceutical companies in particular have extracted raw materials from developing nations designated as illegal suppliers and then recirculated these drugs as prescription medications for international and domestic consumers. Between 1999 and
2014, the sale of pharmaceutical pain relievers quadrupled in the United States, leading to more than 165,000 overdose deaths during these years, a significant increase in heroin use by Americans who started out in the prescription market, and the declaration of an “unprecedented opioid epidemic” by federal public health agencies. In 2007, Purdue Pharma pleaded guilty to felony charges and paid a $600 million fine, a small fraction of profits, for deliberately “misbranding” and marketing OxyContin as a safe painkiller with low potential for addiction and abuse. The Obama administration’s 2010 National Drug Control Strategy did include prescription drug abuse as a major federal priority but targeted “rogue” pain clinics and heroin smuggled by Mexican cartels rather than the “legitimate benefits” provided by pharmaceutical corporations.

The overwhelming whiteness of the “opioid epidemic,” and especially the media and political focus on the confluence of prescription drug abuse and new heroin markets in the Middle American heartland, increased the bipartisan push for medicalization rather than incarceration of the users caught up in the nation’s latest drug crisis. A 2015 expose in the *New York Times* portrayed a ruthless network of Mexican heroin traffickers who were exploiting the prescription painkiller epidemic in rural and suburban areas to provide illegal narcotics to a new group of “victims—mostly white, well-off and often young.” That same year, President Obama traveled to West Virginia, a mostly white state with the nation’s highest overdose rate, for a highly publicized community forum on the rising tide of addiction to prescription painkillers and heroin. With universalistic language that echoed every president since Nixon, Obama portrayed a drug abuse epidemic that “doesn’t discriminate. It touches everybody—from celebrities to college students, to soccer moms, to inner city kids. White, black, Hispanic, young, old, rich, poor, urban, suburban... There is no ‘us’ and ‘them.’” Obama’s “tough and smart” resolution, however, only reinforced the administration’s drug war binary between supply-side predators and demand-side victims. The president redoubled his call for treatment rather than “long prison sentences for nonviolent drug offenders” but reassured the crowd that the federal government would “go after the hardened criminals who are bringing drugs like heroin into our country,” specifying Mexican cartels without mentioning the complicity of pharmaceutical corporations. The U.S. Congress responded with the Comprehensive Addiction and Recovery Act of 2016, a bipartisan measure that passed overwhelmingly and provided additional funding for drug treatment and diversion programs. President Obama signed the legislation but criticized its only “modest steps to address...
the opioid epidemic” and called for a much greater federal commitment to public health solutions and treatment for drug abuse and addiction.67

The policies of criminalization and interdiction at the center of federal drug control are deeply embedded in American political culture and state-building processes. The Obama administration’s “tough and smart” approach maintained the traditional merger of law enforcement and public health while seeking to shift the balance from incarceration toward medicalization and coercive rehabilitation, but only for deserving victims and low-level nonviolent offenders. During the second term, President Obama and Attorney General Holder more vocally embraced the cause of criminal justice reform and increasingly addressed racial disparities in drug war enforcement, an unprecedented although only partial alignment of top federal officials with the agenda of civil liberties, human rights, and grassroots racial justice organizations. The Obama administration continued to reject the policies of legalization or even decriminalization, promoting reforms of discriminatory policing and excessive sentencing rather than confronting the racial inequalities and imperialist violence inherent in drug war interdiction at home and abroad. After the November 2016 election, which unexpectedly returned a “law and order” Republican administration to power, Obama pledged to keep fighting for racial justice and expressed frustration with progressive critics and activists who did not acknowledge “the constraints of our political system and the constraints on this office.”68 Yet in the end, the Obama administration’s policy preferences shaped its drug control agenda as much as the political calculations, bureaucratic obstacles, and legislative opposition encountered by the nation’s first African American president. Obama’s invitation to David Simon, the creator of The Wire, to visit the White House in 2015 captured the dissonance between the reform and antiprohibition positions most clearly. Simon, who had recently denounced the administration’s continued “prosecution of our misguided, destructive, and dehumanizing” war on drugs, disparaged the arrest-first philosophy of criminalization. President Obama responded by lamenting racial disproportionality in incarceration rates, urging “smarter” treatment of nonviolent offenders arrested on drug charges, and championing the “tough” law enforcement mission of fighting trafficking and violent crime.69
Chapter 11: “Tough and Smart”: The Resilience of the War on Drugs during the Obama Administration


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17. National Drug Control Strategy 2010, 8–9, 72.


42. Holder, interview (2016).
47. Alexander, New Jim Crow.
NOTES TO CHAPTER 12


61. Reiss, “Beyond Supply and Demand.”


Chapter 12: A Promise Unfulfilled, an Imperfect Legacy: Obama and Immigration Policy


