

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Western Division  
Crim. No. 00-30027-MAP

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UNITED STATES OF AMERICA,

v.

LINCOLN BROWN, Defendant.  
=====

**BRIEF OF THE DRUG POLICY ALLIANCE AND PROFESSOR NKECHI TAIFA AS  
*AMICI CURIAE* IN SUPPORT OF DEFENDANT**

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THESHIA NAIDOO  
STEPHANIE ANDRAKTAS  
JUDITH K. APPEL  
Drug Policy Alliance  
717 Washington Street  
Oakland, CA 94607  
(510) 208-7711

Attorneys for *Amici Curiae*

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## INTRODUCTION

Nineteen eighty-six was a year of legislative fear and panic about what appeared to be a new drug: crack cocaine. Although virtually the same substance, and despite scientific evidence that crack is no more addictive or destructive than cocaine powder, Congress passed The Anti-Drug Abuse Act of 1986 ("Act"), which treats one gram of crack cocaine as equivalent to one hundred grams of powder cocaine for sentencing purposes.

The Act is unjust because it disproportionately punishes African American drug offenders who are many times more likely to be arrested for crack cocaine than other racial groups. Although Congress purportedly acted to address concerns that crack cocaine was somehow more harmful than powder cocaine, it created a racist sentencing scheme where Caucasian offenders receive lighter sentences for using and selling the same drug as their African American counterparts.

The media reports suggesting that crack transmogrified African Americans into potent threats to public safety -- into monsters -- have been discredited. Yet, while media hysteria has largely been replaced with balanced social and pharmacological research, the Act's harsh, disproportionate and arbitrary sentencing scheme remains. In examining the Act and its legacy, it becomes clear that the crack/powder sentencing disparity does not protect the community or effectively

rehabilitate or punish offenders. Instead, the Act does exactly what it was designed to do: disproportionately punish African American drug offenders living in the inner cities.

Moreover, sentencing disparities between crack, cocaine base, and cocaine hydrochloride do not make scientific sense because all of these substances have similar or identical abuse potential and pharmacological effects. Crack cocaine and cocaine powder are virtually the same drug with similar physiological and psychoactive effects, and there is no plausible scientific basis for treating the two forms of the same drug differently

Current research demonstrates that Congress was misinformed regarding the sociological and pharmacological facts about cocaine. At the time the Act was passed, Congress made misguided conclusions about the dangers of crack cocaine versus powder cocaine and also failed to state any rational basis for creating a 100:1 sentencing disparity. Instead of holding extensive legislative hearings regarding these important issues, Congress expedited the passage of the Act.

The results of this hasty and uninformed legislative process have been catastrophic. Although the Act was designed to address the social impact of cocaine dealing and addiction, it has instead had a devastating and hugely disparate negative impact on the African American community.

Time after time, Congress has rejected and ignored the mounting evidence of the injustice created by this law. Congress has had multiple opportunities to do away with the disparity, and has been urged to do so by the U.S. Sentencing Commission. Ultimately, the courts must act to remedy this unjust sentencing scheme.

### **ARGUMENT**

#### **I. The Anti-Drug Abuse Act of 1986 Violates The Equal Protection Rights Of African Americans.**

The equal protection clause of the Fifth Amendment requires that similarly situated people be treated alike. *Plyler v. Doe*, 457 U.S. 202, 216 (1982). To establish an equal protection violation against a racial class, a criminal defendant must show that the governmental action can "ultimately be traced to a racially discriminatory purpose." *Washington v. Davis*, 426 U.S. 229, 240 (1976). Where an equal protection violation is found, strict scrutiny must be applied to determine the validity of the statute in question.

The question of whether or not a facially neutral piece of legislation is motivated by racial discrimination "demands a sensitive inquiry into such circumstantial evidence of intent as may be available." *Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 266 (1977). The *Arlington Heights* Court held that an equal protection violation

may be found where "a clear pattern, unexplainable on grounds other than race emerges from the effect of state action even when the governing legislation appears neutral on its face." *Arlington Heights*, 429 U.S. at 266.<sup>1</sup>

The Supreme Court identified several sources of circumstantial evidence that may demonstrate whether a law was motivated by racial discrimination.<sup>2</sup> These include: (1) the presence of disparate impact; (2) the historical context of the legislation; (3) the specific sequence of events leading up to the legislation; (4) departures from the normal legislative process. *Id.* at 266-288; *See also Hodgens v. General Dynamics Corp.*, 144 F.3d 151, 169 (1<sup>st</sup> Cir. 1998) (Court applied *Arlington Heights* test, including a review of "contemporary statements by members of the decision-making body" in showing discriminatory intent).

Moreover, adherence to a particular policy or practice -- such as failing to repeal or amend a law -- "with full knowledge

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<sup>1</sup>International standards for evaluating legislation with a racially disparate impact do not require evidence of specific intent to discriminate. International Convention on the Elimination of All Forms of Racial Discrimination *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969; 140 CONG. REC. S7634-35 (daily ed. June 24, 1994) U.S. Senate advice and consent (U.S. entered into force Nov. 20, 1994). The reasoning behind this evolving standard is persuasive - that legislators will rarely declare overtly an intent to discriminate.

<sup>2</sup>Once discriminatory intent is established, the government must demonstrate that its action served a compelling interest and was narrowly tailored to advance that interest. *Miller v. Johnson*, 515 U.S. 900, 913 (1995); *Boston Police Superior Officers Federation v. City of Boston*, 147 F.3d 13, 19 (1<sup>st</sup> Cir. 1998).

of the predictable effects of such adherence upon racial imbalance . . . may be considered by a court in determining whether an inference of [discriminatory] intent should be drawn." *Columbus Board of Education v. Penick*, 443 U.S. 449, 464 (1979).

Here, enactment of the crack/powder sentencing structure was racially motivated because the law has a well-documented disparate impact on African American defendants. Moreover, Congress clearly focused on the African American community when the legislation was passed and the sequence of events leading up to the Act's passage demonstrates Congress' race-based motive. Finally, Congress has continued to adhere to the disparate cocaine sentencing structure despite reports and hearings fully documenting the legislation's disparate effect. If this Court cannot find discriminatory intent on these facts, *Arlington Heights* sets a standard that is impossible to meet.

**A. The Historical Record Demonstrates Congress' Discriminatory Intent Because The Legislative Hearings Leading To The Act Focused on Misleading Media Reports About Crack In Minority Communities.**

In response to the purported urgency surrounding crack cocaine, Congress passed The Anti-Drug Abuse Act of 1986<sup>3</sup> ("Act") Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207

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<sup>3</sup> Two years later, Congress passed the Anti-Drug Abuse Act of 1988, that extended sentencing disparities for crack cocaine possession. In fact, this Act made crack cocaine the only drug with a mandatory minimum penalty for a first offense of simple

(1986) (codified as amended in scattered sections of title 18, 21, and 31 of the U.S.C). The Act implemented a sentencing scheme that differentiates between powder cocaine and crack cocaine, treating one gram of crack cocaine as equivalent to one hundred grams of powder cocaine. 21 U.S.C. §841(b)(1)(A)(ii); 21 U.S.C. § 841(b)(1)(B)(ii). Given this 100:1 sentencing disparity, with all else being equal, a defendant convicted of possession with intent to sell five grams of powder cocaine is sentenced to significantly less time in prison than a defendant convicted of possession with intent to distribute the identical amount of crack cocaine.

The Act, along with its state counterparts, was enacted when reports about crack cocaine were consistently in the news. Crack was first recognized in late 1984 and 1985 as being used primarily in impoverished African-American and Latino inner-city neighborhoods in New York, Los Angeles, and Miami. Craig Reinerman and Harry Levine, *Crack in Context*, CRACK IN AMERICA: DEMON DRUGS AND SOCIAL JUSTICE 1, 2. (Craig Reinerman et al. eds., 1997). Media attention, which included a bombardment of images connecting African Americans to what was dubbed -- albeit without scientific justification -- an "epidemic", created a growing public hysteria about crack. *Id.*; see also UNITED STATES

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possession. UNITED STATES SENTENCING COMMISSION, SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY (1995) at 7.

SENTENCING COMMISSION, SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY at 16 (1995)[hereinafter "1995 SENTENCING COMMISSION REPORT"] (citing to statements from Senators Biden, Deconcini, D'Amato and Mattingly). The alarm about crack as an "epidemic" was *not* grounded in reality, since there were no "prevalence statistics on the use of crack" at the time. 1995 SENTENCING COMMISSION REPORT at 6. Further, the "first statistics on crack cocaine use compiled by the National Institute of Drug Abuse showed that snorting powder cocaine was still the preferred method of ingestion by 95 percent of cocaine users." 1995 SENTENCING COMMISSION REPORT at 16. Moreover, it was the close identification between crack and communities of color that created the framework for the political discussion regarding the adoption of highly punitive crack sentencing laws that became the 1986 Act.

A variety of unsubstantiated justifications for the highly punitive Act were discussed. Claims were made that crack cocaine was more "contagious" and addictive than any other drug -- yet the Congressional record (and the literature itself) is deplete of any support for those claims. 1995 SENTENCING COMMISSION REPORT at 4 (citing 132 CONG. REC. S8092 (June 6, 1986) (Statement of Sen. D'Amato) and 132 CONG. REC. S14293 (Sept. 30, 1986) (Statement of Sen. Bumpers); see also Reinerman, *supra*, at 77. The contention that crack cocaine consumption would lead to

criminal activity finds no support in any of the major national crime statistic databases. Paul J. Goldstein et al., *Crack and Homicide in New York City*, in Reinerman, *supra*, at 113, 114. Such claims were not scrutinized and Congress failed to conduct further investigations before passing the Act.

Instead of providing scientific backing for their decision to penalize crack cocaine users at a disproportionately higher level than powder cocaine users, legislators lodged media clippings into the Congressional record to support the enactment of the Act. The Congressional Record is filled with news articles submitted by members that tie the idea of dealing and using crack to African Americans, which struck fear in the hearts of the general public. See 132 CONG. REC. S2495 (daily ed. Mar. 12, 1986) ("big city ghettos" are "infested with crack houses" and "are centers of the new cocaine trade" in crack); 132 CONG. REC. S4670 (daily ed. April 22, 1986) ("Most of the dealers, as with past drug trends, are black or Hispanic . . . whites rarely sell the cocaine rocks."); 132 CONG. REC. S7123-25 (daily ed. June 9, 1986) (dealers "organize small cells of pushers, couriers and lookouts from the ghetto's legion of unemployed teenagers"). Many of these clippings contained language that was either overtly or subtly racially biased and meant to instill fear of African Americans into the public at large. See e.g., 132 CONG. REC. S4672 (daily ed. April 22, 1986)

("For the growing numbers of the white middle class who have become hooked on cocaine rock, buying the drug can be like stepping into a foreign culture."; 132 CONG. REC. S7123-25 (daily ed. June 9, 1986) ("There are ominous signs that crack and rock dealers are expanding well beyond the inner city."))

The congressional record, pregnant with such racist inferences, can only lead to the conclusion that Congress' intent was discriminatory.

**B. The 1986 Act Violates The Equal Protection Clause Because It Has Had An Enormously Disparate Impact On African Americans.**

There is irrefutable evidence that the sentencing disparity for crack versus powder cocaine disproportionately affects African Americans. In the years since the Act was passed, there has been mounting concern about the sentencing disparity and its impact on minority defendants, particularly African Americans.

In its 1995 Special Report to the Congress, the United States Sentencing Commission<sup>4</sup> ("Sentencing Commission") stated that "federal sentencing data leads to the inescapable conclusion that Blacks comprise the largest percentage of those affected by the penalties associated with crack cocaine..." 1995 SENTENCING COMMISSION REPORT at 1. For the first time, the Sentencing Commission recommended that the sentencing disparities be eliminated.

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<sup>4</sup> The Sentencing Commission has statutory authority to advise Congress on sentencing policy. 28 U.S.C. § 995(a)(20).

A 1997 Sentencing Commission Report also unanimously supported eliminating the sentencing disparity. The 1997 report emphasized that while a majority of crack users are Caucasian, nearly 90% of all individuals arrested for crack related offenses are African American. UNITED STATES SENTENCING COMMISSION, SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY at 8 (1997) [hereinafter "1997 SENTENCING COMMISSION REPORT"]. The Sentencing Commission statistics showed whites accounted for only 3.2% of crack convictions in 1995 and only 5.6% in 2000; whereas the overwhelming majority of crack cocaine convictions consistently have been black: 91.4% in 1992 and 84.7% in 2000.

This has contributed to a widely held perception that the current penalty structure promotes unwarranted disparity based on race[]. Moreover, to the extent that the 100-to-1 drug quantity ratio is shown to result in unduly severe penalties for most crack cocaine offenders, the impact of that severity falls primarily upon black offenders.

UNITED STATES SENTENCING COMMISSION, SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY at viii, 62 (2002) [hereinafter "2002 SENTENCING COMMISSION REPORT"]. Once again, the 2002 Sentencing Commission Report showed that while Caucasians used cocaine at significantly higher rates than African Americans, they are far less likely to be arrested and consequently convicted under the mandatory sentencing guidelines for crack cocaine.

The issue of the disparate impact on African Americans has also been the subject of numerous non-governmental studies

illustrating the impact of the disproportionate sentencing laws on African Americans. For example, one author reported that in 1986, before the mandatory minimum sentences for crack offenses became effective, the average sentence was 6% higher for blacks than for whites. Just four years later, in 1990, the average sentence was 93% *higher for blacks*. Meierhoefer, Barbara S., *THE GENERAL EFFECT OF MANDATORY MINIMUM PRISON TERMS: A LONGITUDINAL STUDY OF FEDERAL SENTENCES IMPOSED*, FEDERAL JUDICIAL CENTER, WASHINGTON DC, 1992; see also Reinerman, *supra*, at 234, 343, 261-266. (Discusses multiple studies documenting the disparate impact of crack sentencing laws.)

The real life result of these harsh penalties has been devastating - filling federal prisons with low-level offenders, many of whom are addicted to crack and are sorely in need of treatment. This has dealt a crippling blow to large portions of the African American community, with children being hit the hardest. In 2003 more than 1.5 million children had a parent in prison, including one of every 14 African American children.<sup>5</sup>

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<sup>5</sup> Many of these children end up in state foster care systems. Even after families are reunited, the welfare, public housing and education loan bans for people with drug felony convictions along with employment barriers increase the chances that these families will live in poverty. Mark Mauer, *Invisible Punishment: Block Housing, Education, Voting*, FOCUS (May-June 2003) at 3-4.

Mark Mauer, *Invisible Punishment: Block Housing, Education, Voting*, Focus (May-June 2003) at 3-4.

In sum, three Sentencing Commission reports and a sizable body of independent research reveal that African Americans bear the burden of the crack/powder cocaine sentencing disparities. This overwhelming evidence of disparate impact satisfies the first *Arlington Heights* factor.

**C. Congress' Ongoing Adherence To Crack/Powder Sentencing Disparity -- Despite The Sentencing Commission's Repeated Rejection Of The 100:1 Ratio And Scientific Evidence Demonstrating That Crack And Powder Are Equivalent Substances -- Is Further Evidence Of Discriminatory Intent.**

Time and again the Sentencing Commission has advocated the repeal of the current sentencing disparities due to the racially disparate impact of the guidelines on African Americans (see Section I.B. above). And each time Congress has steadfastly refused to do so. Such adherence to a particular policy or practice, "with full knowledge of the predictable effects of such adherence upon racial imbalance . . . may be considered by a court in determining whether an inference of [discriminatory] intent should be drawn." *Columbus Board of Education*, 443 U.S. at 464.

In 1995, the Democratic Members of the House Judiciary Committee condemned the majority's refusal to repeal the sentencing disparity:

On September 12, 1995, the Republican majority on the House Judiciary Committee had the opportunity to eliminate the disparity in sentences between crack cocaine and powder cocaine offenses. The Committee could have eliminated blatantly discriminatory federal laws. Regrettably, the majority opted instead to perpetuate these discriminatory laws by passing and reporting out H.R. 2259, which disapproves the recommendations of the U.S. Sentencing Commission to eliminate the disparities in federal sentencing for crack cocaine and powder cocaine offenses.

Committee Report 67 of 95, House Rep. No. 104-272; H.R. 2259 (104<sup>th</sup> Congress); Disapproval of Certain Sentencing Guideline Amendments; Dissenting Views; available at <http://www.house.gov/judiciary democrats/dlv40018.htm>.

In concurring with the opinion of the Commission, Vice-Chair Michael S. Gelacak wrote:

If the impact of the law is discriminatory, the problem is no less real regardless of the intent. This problem is particularly acute because the disparate impact arises from a penalty structure for two different forms of the same substance. It is a little like punishing vehicular homicide while under the influence of alcohol more severely if the defendant had become intoxicated by cheap wine rather than scotch whiskey. That suggestion is absurd on its face and ought to be no less so when the abused substance is cocaine rather than alcohol.

1997 SENTENCING COMMISSION REPORT at 1.

In yet another effort to convince Congress to critically reevaluate the sentencing disparity, the Sentencing Commission prepared a third special report to Congress in 2002. The report exposed the inaccurate assumptions made by members of Congress in enacting the penalty scheme, ultimately concluding that there

is no social or scientific basis for maintaining the current 100:1 ratio. The Commission made the following findings:

**The Current Penalties Exaggerate the Relative Harmfulness of Crack Cocaine**

- Cocaine in any form produces the same physiological and psychotropic effects [].
- The negative effects of prenatal crack cocaine exposure are identical to the negative effects of prenatal powder cocaine exposure and are significantly less severe than previously believed.
- Recent data indicate that the epidemic of crack use by youth never materialized to the extent feared.. Crack cocaine use among students and young adults historically has been low, particularly in relation to powder cocaine use [].

2002 SENTENCING COMMISSION REPORT at v-vi.

The foregoing was provided to Congress after the First Circuit Court of Appeals upheld the constitutionality of the Act in *United States v. Singleterry*, 29 F.3d 733 (1<sup>st</sup> Cir. 1994).<sup>6</sup> The significant additional information provided by the Sentencing Commission reports demonstrate that in adhering to the sentencing disparity, Congress is acting with discriminatory intent.

Congress is now well aware that crack and powder cocaine are essentially the same substance. Crack cocaine is a form of cocaine base that is derived from cocaine hydrochloride (cocaine

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<sup>6</sup> It is unclear what information the Court in *U.S. v. Eirby*, 262 F.3d 31 (1<sup>st</sup> Cir. 2001) had before it, since Appellant had "offered [them] nothing new" since *Singleterry*. At the very least the 158 page 2002 Sentencing Commission report was not a part of the record.

powder). Powder cocaine is easily converted to crack cocaine by being dissolved in a solution of sodium bicarbonate and water. 1995 SENTENCING COMMISSION REPORT at 14.

Congress also created the Act in light of other misinformation about crack cocaine. For example, prior to the passage of the Act, politicians believed that crack cocaine was extraordinarily addicting. 1995 SENTENCING COMMISSION REPORT at 4. However, at that time, no scientific studies of crack cocaine had been conducted. John P. Morgan & Lynn Zimmer, *The Social Pharmacology of Smokeable Cocaine: Not All It's Cracked Up to Be* in Reinerman, *supra*, at 134. In fact, the physiological and psychoactive effects of cocaine are similar regardless of whether it is in the form of cocaine powder or cocaine base. Hatsukami, D. K., PhD, et al., *Crack Cocaine and Cocaine Hydrochloride: Are the Differences Myth or Reality?*, 276 JAMA 1580 (1996). Smoked cocaine and intravenously injected powder cocaine have a similar potential for abuse which is higher than that of intranasally administered cocaine powder. *Id.* at 1583. As a result, sentencing disparities between crack, cocaine base, and cocaine hydrochloride do not make any scientific sense.

Moreover, science has now shown that the abuse potential of cocaine is determined by method of administration rather than form. While crack is usually smoked, it has a similar abuse potential to intravenously administered cocaine hydrochloride,

which carries lighter mandatory sentences. In sum, crack cocaine and cocaine powder are virtually the same drug with similar physiological and psychoactive effects, and there is no plausible basis for treating the two forms of the same drug differently.

The evidence described above demonstrates that Congress has continued to adhere to a discriminatory policy or practice despite full knowledge of the disparate impact and lack of scientific evidence supporting the disparity. This race-based discrimination demonstrates an equal protection violation that requires strict scrutiny analysis. *Columbus Board of Education*, 443 U.S. at 464.

**D. Congress Intended To Discriminate And Violated The Equal Protection Clause Because It Departed From The Usual Legislative Process In Creating The 100:1 Ratio.**

Evidence that Congress departed from the usual legislative process is further evidence of improper purpose. *Arlington Heights*, 429 U.S. at 266. Here, Congress acted hastily, arbitrarily and without sufficient information to craft a fair sentencing law:

The 1986 Drug Act was *expedited* through Congress. As a result, its passage left behind a *limited legislative record*. While many individual members delivered floor statements about the Act, *no committee produced a report* analyzing the Act's key provisions []. The sentencing provisions of the Act were initiated in August 1986, following the July 4th congressional recess during which public concern and media coverage of cocaine peaked as a result of the June 1986 death of NCAA basketball star Len

Bias. Apparently because of the heightened concern, Congress dispensed with much of the typical deliberative legislative process, including committee hearings.

1995 SENTENCING COMMISSION REPORT at 116-117, (emphasis added). Several members of Congress commented on how hastily the Act was developed and enacted. See, e.g., 132 CONG. REC. 26,462 (Sept. 26, 1986) (statement of Sen. Mathias) ("Very candidly, none of us has had an adequate opportunity to study this enormous package. It did not emerge from the crucible of the committee process."); 132 CONG. REC. 22,658 (Sept. 10, 1986) (statement of Rep. Lott) ("In our haste to patch together a drug bill - any drug bill - before we adjourn, we have run the risk of ending up with a patch-work quilt . . . that may not fit together into a comprehensible whole."); 132 CONG. REC. 26,449 (Sept. 26, 1986) (statement of Sen. Rockefeller) ("I know it seems to some that we are moving too fast and frenetically to pass drug legislation.").

In addition to the truncated passage of the Act, Congress acted arbitrarily in arriving at the 100:1 quantity ratio for sentencing. Prior to the Act becoming law, there was some discussion of quantity ratios of 50:1 or 20:1 for powder cocaine versus crack cocaine sentencing. 1995 SENTENCING COMMISSION REPORT at 118-119, citing H.R. 5394 (Narcotics Penalties and Enforcement Act of 1986; S. 2787 (Mandatory Crack and Other Drug Enforcement Act of 1986)). However, as the Act hurriedly

advanced through the legislative process, the Senate increased the powder cocaine-to-crack ratio to 100:1, providing no justification for this ratio. *Id.* This smoking gun alone provides strong evidence of the arbitrariness of these guidelines.

**II. The Act Fails To Pass Strict Scrutiny, The Appropriate Standard, Given The Law's Racially Discriminatory Intent.**

The foregoing analysis under the *Arlington Heights* framework demonstrates that Congress was motivated by discriminatory purpose in enacting the 100:1 ratio, a motivation that has intensified with each year that Congress refuses to amend the Act in light of compelling evidence of discriminatory impact. Once discriminatory intent is established, this Court is no longer required to give deference to the legislature, and must apply the strict scrutiny standard in evaluating the law. Under the strict scrutiny standard, the government must demonstrate that its action serves a compelling interest and is narrowly tailored to advance that interest. *Miller v. Johnson*, 515 U.S. at 913; *Boston Police Superior Officers Fed'n v. City of Boston*, 147 F.3d at 19.<sup>7</sup>

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<sup>7</sup> Even if the Court fails to find that Congress acted with discriminatory intent, under rational review basis there is still no legitimate governmental interest in maintaining the sentencing disparity. As demonstrated above, Congress' assumptions about crack cocaine have proven to be inaccurate, and there is no justifiable basis to maintain the penalty enhancement for crack cocaine.

Under strict scrutiny, the sentencing disparity in the Act is unconstitutional because it serves only to advance racially discriminatory sentencing. Moreover, the Act is not narrowly tailored to serve any purported legitimate government interest because the 100:1 ratio is arbitrary and overbroad.

Although Congress has an interest in deterring drug use and distribution, it cannot legitimately punish certain offenders more severely based solely on their race. Moreover, Congress has no compelling interest in remedying social ills by invidious discrimination.

Even if this Court were to find that Congress was serving a compelling interest when passing the Act, the means it chose to address that interest were in no way narrowly tailored to meet their goals. Instead, the 100:1 ratio is as arbitrary as picking numbers out of a hat. In fact, lawmakers considered several other possible ratios and no justification was given for the ratio that they finally chose. 1995 SENTENCING COMMISSION REPORT at 118-119.

There is no evidence that the 100:1 ratio is narrowly tailored to deter inner-city drug crime. In fact, the Sentencing Commission undertook extensive studies about crack cocaine and related issues, and unanimously and firmly concluded that "Congressional objectives can be achieved more effectively

by decreasing substantially the 100-to-1 ratio." 2002 SENTENCING COMMISSION REPORT at viii.

Further, the ratio was designed to address a social ill that was misunderstood in 1986. The record of the past 18 years has shown that the original concerns about crack cocaine have never materialized. For all of these reasons, the 100:1 ratio is not narrowly tailored to serve any legitimate government interest, and disproportionate sentences under this law violate the equal protection clause of the U.S. Constitution.

**CONCLUSION**

For the foregoing reasons, this Court must find that the sentencing disparity under the Anti-Drug Abuse Act of 1986 is unconstitutional.

Dated: May 12, 2004

By: /s/

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THESHIA NAIDOO  
STEPHANIE ANDRAKTAS  
JUDITH K. APPEL  
Drug Policy Alliance  
717 Washington Street  
Oakland, CA 94607

Attorneys for *Amici  
Curiae*