

Transcript: “Podcast: The DOJ’s Implementation of Prosecution and Sentencing Reform Principles Under the Smart on Crime Initiative,” June 2017

Stephanie Logan (SL): Welcome to the latest podcast from the Department of Justice Office of the Inspector General. My name is Stephanie Logan.

I’m here with Nadia Snoddy, a Senior Inspector in our Evaluation & Inspections Division, to discuss the findings of a new report examining the DOJ’s implementation of prosecution and sentencing reform principles under its *Smart on Crime* initiative. Thank you for joining me today, Nadia.

Nadia Snoddy (NS): It’s a pleasure being here, Stephanie. Thank you for having me.

SL: Nadia, let’s start with the basics. What was the DOJ’s *Smart on Crime* initiative?

NS: In August 2013, former Attorney General Eric Holder announced the *Smart on Crime* initiative, which was an initiative aimed at achieving criminal justice reform at the federal level through five principles, which were to: first, prioritize prosecutions to focus on the most serious cases; second, to reform sentencing to eliminate unfair disparities and reduce overburdened prisons; third, to pursue alternatives to incarceration for low-level, nonviolent crimes; fourth, to improve reentry to curb repeat offenses and re victimization; and finally, to use more resources to prevent violence and to protect the most vulnerable populations.

SL: And which of these principles did the OIG’s review focus on?

NS: Our review focused on the DOJ’s implementation of the first two principles: focusing prosecutions on the most serious cases, and sentencing reform.

SL: Alright, let’s talk about the first principle. How did *Smart on Crime* attempt to focus prosecutions on the most serious cases?

NS: Well Stephanie, the *Smart on Crime* principle changed DOJ policies to focus more directly on identifying and prosecuting the most serious cases that implicated clear, substantial federal interests, such as protecting Americans from national security threats, violent crime, and financial fraud, as well as protecting the most vulnerable members of society. *Smart on Crime* also required the development of district-specific prosecution guidelines for determining when federal prosecutions should be brought.

SL: And what about the second principle? How did *Smart on Crime* attempt to achieve sentencing reform?

NS: Well Stephanie, this principle sought to reform sentencing to eliminate unfair disparities and reduce overburdened prisons by revising DOJ charging policies so that certain defendants who have committed low-level, non-violent drug offenses and who have no ties to large-scale criminal organizations, gangs, or cartels, would no

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longer be charged with offenses that trigger the imposition of mandatory minimum sentences.

Smart on Crime policies also instructed federal prosecutors not to file recidivist sentencing enhancements in drug cases involving the same category of low-level drug offenders. As background, there is a law that allows federal prosecutors to file what is known as an 851 Information in cases where a defendant has one or more prior drug convictions. If a prosecutor files such an Information, the defendant potentially faces a higher sentence. *Smart on Crime* changed the DOJ policy regarding that practice.

SL: And what were the OIG’s findings about the DOJ’s implementation of *Smart on Crime*?

NS: We concluded that overall, the DOJ made significant progress implementing the first two Smart on Crime principles, but we also identified some areas where DOJ came up short. First, not all federal charging policies were updated to reflect *Smart on Crime* principles. For example, despite the new *Smart on Crime* initiative, the DOJ never updated the United States Attorney’s Manual, which is the primary guidance document for federal prosecutors.

Second, in a few districts there was a lack of communication between U.S. Attorney’s Offices, DOJ law enforcement components, and local law enforcement partners about the new *Smart on Crime* policies. This risked using limited federal law enforcement resources on investigations that ultimately would not result in a prosecution.

SL: Did the *Smart on Crime* initiative have a discernable impact on federal prosecutions and sentencings?

NS: Yes, it appears that it did. Now, I should point out that the data we were working with wasn’t perfect. It turns out the data kept by the DOJ was not sufficient to measure the impact of the *Smart on Crime* policies – for example, several relevant fields of data were missing, and some data was incomplete or inconsistent. So we had to rely on data from the United States Sentencing Commission, which was a little limiting. But based on the Sentencing Commission data from 2010 through 2015, we found that there were significantly fewer mandatory minimum sentences being imposed in federal drug cases nationwide. For example, the rate of federal drug offenders sentenced without a mandatory minimum rose from 40 percent in 2012 to 54 percent in 2015.

We also found that the use of recidivist sentencing enhancements became less common after *Smart on Crime*. For example, the percentage of cases in which prosecutors filed recidivist enhancements decreased from 20.6 percent of eligible cases in fiscal year 2012 to 17.6 percent in fiscal year 2014. In fact, this decline

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occurred even though the percentage of defendants eligible for such an enhancement increased over the same period.

SL: Were these overall impacts similar across the country, or did they vary from region to region?

NS: The statistics I just provided were nationwide trends. However, we found noticeable variations in the number of drug convictions and mandatory minimums imposed in different regions of the country. In some regions drug convictions increased, while in others they decreased.

SL: Is this the first time the OIG has done work related to the *Smart on Crime* initiative?

NS: No actually it isn’t. We’ve issued a couple of other reports that are also related to *Smart on Crime*. In May 2015, we released a report about the impact of an aging inmate population on the Federal Bureau of Prisons, which addressed, in part the BOP’s compassionate release program for aging inmates. And in July 2016, we released an audit report that examined DOJ’s use of pretrial diversion-based court programs as alternatives to incarceration.

SL: Is the *Smart on Crime* initiative still in effect today?

NS: No, actually, it’s not. On May 10 of this year, Attorney General Jeff Sessions issued new federal charging policies that, in part, rescinded the *Smart on Crime* policies. But we believe our report highlights lessons to be learned about DOJ’s implementation of the *Smart on Crime* initiative which can assist and guide the DOJ when it seeks to implement future charging policies and practices.

SL: Thanks for taking the time to speak with us today, Nadia.

NS: It’s a pleasure being here with you, Stephanie.

SL: That’s it for today. To read our report, please visit our website, oig.justice.gov. Thanks for joining us.

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