

Holder & Obama Are Playing Us On Mandatory Minimums, the Drug War and Mass Incarceration

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Once or twice a year Eric Holder and/or the president discover police brutality, racial profiling, or the injustice of the drug war, or mass incarceration. Black America gets some sound bytes of “drive-by” concern, some noises about a study or a “policy change.” But 55 months into the Obama administration, when we compare the prez and attorney general’s words with their actions, black America looks like it’s been played. Again.

After 55 months as US Attorney General, preceded by years as a remarkably vicious federal prosecutor, Eric Holder made what could have been a groundbreaking speech – if only he’d made it 50-some months ago and followed it up with four and half years of the persistent, wide ranging action needed to begin undoing and unraveling the prison state. Let’s stand Eric Holder’s and this administration’s expressions of concern over mass incarceration alongside its actual record of exercising the power in its hands. When we do, Eric Holder looks a lot like a lying hypocrite, and the administration looks like it’s playing black America for a nation of chumps.

At no time in this 55 months have the White House, its Attorney General, or its allies in Congress ever seriously pushed for the repeal of mandatory minimum drug sentences, and there is no full court press on this now either. Holder merely says that he’ll instruct federal D.A.s not to file drug charges which under federal law invoke the mandatory minimum sentences in small scale cases where the feds see no violence or gang affiliation. For all kinds of reasons federal D.A.s don’t exactly and often will not follow these instructions. More importantly they can be quietly revoked at any time by this or any future attorney general, and none of it affects drug prosecutions under state law. That’s a lot less than the sea change in the prosecution of the drug war you’d think happened if you watched CNN or [MSNBC](#) this week.

Changing a few rules and calling for a Department of Justice study would be a good start when you have and intend to use your next seven plus years in office to follow it up and make it stick. But more than half the Obama administration’s time is up, including 24 months when they held majorities in both the House and Senate. It’s late. And this is just a little.

Holder and Obama have established a pattern. Once or twice a year, generally but not always in front of black audiences, they pretend to have newly discovered police forces and prosecutors around the country routinely profile and stalk black males. They publicly admit, as if it’s new news, that black and brown people are arrested more often, charged more aggressively, sentenced more harshly and serve longer sentences than whites. This very week Eric Holder uncovered the fact the US locks up too many people for too long, and

that mass incarceration (though he won't use that term unless quoting the title of a certain book) ravages and punishes entire communities. But it's all talk.

What could the administration actually do?

What Holder and the Obama administration will NOT discover is a way to reduce the budget of the Federal Bureau of Prisons, which grew 4% in this year of budgetary austerity. They won't find a way to NOT open that new federal supermax prison in Illinois, or a way to close existing torture facility like the one Florence CO. They aren't looking for ways to use federal law enforcement and corrections funding to pressure states to close their supermaxes, or encourage them to provide educational opportunities and decent medical care to the 2 million plus in state and local prisons and jails. These are practical measures Holder and his boss have had the power to do for 55 months now, and haven't done, haven't even discussed.

After the 2010 passage of the Fair Sentencing Act, and court decisions which say its provisions ought to be retroactive back to the 1980s, President Obama could have, as Margaret Kimberley pointed out two weeks ago, simply commuted the sentences of the 5,000, 10,000 or 12,000, depending on the degree of retroactivity applied, who have already served excess prison time under the old and outlawed 100 to 1 crack vs powder cocaine penalties.

What has the Obama Justice Department actually done?

President Obama signed the Fair Sentencing Act in August of 2010 reducing the 100 to 1 crack vs powdered cocaine penalties to 18 to 1, but the Department of Justice refused to actually reduce the sentences of prisoners already serving time. In July 2011, after resisting pressure from the families of prisoners serving that unjust time for ten months, Attorney General Eric Holder announced sentence reductions would be implemented, but only retroactive to August 2010. That hasn't happened either.

As we revealed [two weeks ago in Black Agenda Report](#), the Obama Justice Department argued in 2010, 2011 and as late as May 2013 that the old, unfair crack vs powder sentences just continue to apply and that nobody should be let go a day early. The 6th circuit court disagreed with the Justice Department and declared that sentence reductions should go back at least to 2003 and perhaps to 1987. The Justice Department is still opposing this, and appears set to take it up to the US Supreme Court — the same gang that overthrew the Voting Rights Act. Good luck for us all on that one.

The administration continues to funnel NSA intercept data to local cops for evidence in drug and other cases

Last week, Black Agenda Report was one of the few places that reported on a [Reuters story](#) that a pipeline of unknown dimensions exists between NSA's vacuum cleaner surveillance and local police departments around the country through the DEA, the federal police agency explicitly created to prosecute the war on drugs. DEA manuals, the copyrighted Reuters story says, instruct their operatives to tell local cops they must conduct "parallel investigations" to effectively launder the illegal evidence against suspects, and that they should conceal its existence from judges and prosecutors. Conspiracy and perjury, this would be called if anyone else but DEA and local cops did it. The DEA is part of Eric Holder's and President Obama's Justice Department.

Since the drug war principally targets nonwhites and nonwhite communities it's absolutely certain that disproportionate numbers of black and brown people have been effectively framed with this illegally acquired and laundered evidence.

Justice Department spokespeople have not commented in the NSA-DEA link, except to say they are "investigating" themselves. For his part, President Obama, [who now says](#) he is open to the appointment of "civil libertarians" or observers in the NSA processes and as secret witnesses in his secret courts, and that he may allow some of them a say in how the information gathered by NSA is used, presumably including by the DEA and local cops around the country. But this is the same president who assured us two months ago that nobody was listening to our phone calls or reading our emails, unless we were terrorists.

What Obama and Holder say VS what they do

The president and attorney general have waxed philosophical about racism, profiling, police practices and mass incarceration, although again they won't use that phrase. The president observed that Trayvon could have been his son or even himself 35 years ago. The attorney general shared with us that as a black father he must carefully instruct his young sons as to how to comport themselves in the presence of aggressive cops.

But Holder and Obama are not philosophers, pastors or teachers. They are the two most powerful black men in the US. They've been in actual power 55 months now, with a little over 40 to go. Their actions reveal their expressions of concern and feeling our pain are no more than politically expedient drive-by gestures to keep black America in line. Occasional expressions of concern, and constant celebrations of the victories of the civil rights era, are all that black America really wants from its black attorney general and black president, no matter what they actually do with the very real power in their hands.

The rest of our useless black political class is quiet too. None of them from the NAACP, the Urban League, the National Action Network and all the usual corporate funded suspects have commented on the Department of Justice's 3 year fight to keep crack defendants in jail serving longer sentences. None of them have a mumbling word, let alone a press conference on the disturbing implications of the NSA-DEA pipeline of laundered evidence in countless local drug trials. Maybe they're all too busy getting ready for the 50th anniversary of the historic 1963 march on Washington for Jobs and Justice. After all, the president is speaking, and what he says, and how he looks saying it seems a lot more important, than what he and his attorney general actually do.

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