

Decarceration Nation Episode 18: First Step Act Transcript

Hello and welcome to Episode 18 Decarceration Nation podcast, podcast about radically reimagining America's criminal justice system.

I'm Josh show formerly incarcerated person freelance writer and author and a criminal justice reform advocate. This week, I'll be talking about the First Step Act, which recently passed committee in the US House of Representatives with my guests Ames Growert a senior counsel at the Brennan Center for Justice, Jessica Jackson-Sloan the co founder, with Van Jones, of the organization #Cut50, and Jason Pye, the Vice President of legislative strategy at FreedomWorks.

Before we get to these interviews, a few announcements:

First, as you might have noticed during our last episode, Joel asked to take a sabbatical from the podcast. He is sorely missed. But I'm doing my best without him. Thanks to Joel for helping me get this podcast off the ground.

Second, I took my first week off last week and then some scheduling conflicts delayed the release of this episode. Apologies. I will do my best to get new episodes as expeditiously as possible.

Finally, I just want to tease some really exciting episodes coming up, including interviews with some of the folks behind the Oscar-nominated documentary-short "Knife Skills," and just a few days ago I got confirmation from Bruce Western, the sociologist at Harvard, who confirmed the will be doing an interview with me about his new book "Homeward" about re entry, which is very exciting to me.

I'm kind of a nerd so sociologists and criminologists of any note are, you know, kind of like my celebrities. There also be some more surprises coming soon as well.

But let's move on to our discussion of the First Step Act, or as it's technically known "The Formerly Incarcerated Reenter Society Transitioning Every Person Act," otherwise known as the First Step.

Okay.

As I mentioned, this bill recently passed out of the House Judiciary Committee on 25 to five vote. The First Step Act, as currently constructed, does a number of things. It requires implementation of evidence based recidivism reduction programming in front for federal prisoners and allows eligible offenders or, you know I hate that word eligible, incarcerated people to earn what we have always called good time credits, which would allow them to serve part of their sentence in home confinement halfway houses are in community supervision, and

yes I hate that word “eligible” in addition to the word “offender” because that means the bill contains a lot of carve outs. Anyone who listens his podcast knows I really don't like carve outs very much. We'll talk about that more when we get to the interviews.

Okay. It also has some very other some other very important provisions related to prisoner reentry into society, to the mentoring of prisoners and federal facilities and also after release, to creating opportunities for people to volunteer to providing program and mentoring and also ensuring better treatment of Women in Federal facilities which is very important.

If you know anything about women's prisons, or you for the, you know, other up there some of our episodes that talked about that there's a pretty unique need in women's facilities and a lot needs to be done there.

I keep mentioning the word Federal because this bill is federal which means that it will only directly reach prisoners at Federal facilities. I will include a link to the entire bill and most of the other support articles and things throughout the podcast for things we mentioned in the notes which you can find at Decarcertaionnation.com or through whatever app you're listening to

In the current political environment at the Federal level since the election of Donald Trump and especially since the appointment of Jeff Sessions as attorney general criminal justice reform has been considered more or less a dead issue.

So, what makes this bill different? Well one very gigantic thing. First of all, the bill is moving and there's a good reason for that. The bill is being shepherded by President Trump's son in law Jared Kushner whose father was also was incarcerated. This means it has a very good chance of being signed if it reaches the President's desk.

In addition, the bill has created some controversy on the hill, because for many months prior to the past to pass it or the introduction of the first step act Senator Grassley has been moving a sentencing reform bill which he and others believe can pass the Senate.

Another complicating factor here is that Jeff Sessions really doesn't like sentencing reform and so part of the delicate negotiations over that have caused that bill some problems in moving and there isn't sentencing reform in the first step act so the argument goes if there's a way to get the Senate on board the first step Act has a pretty good chance of passage, or at least end up being signed, whereas the Grassley bill. Well, it might pass the Senate might have a harder time becoming law now how that will play out.

We still have yet to see, but that is one of the splits that's causing problems on this bill. And one thing to keep in mind when thinking about all this is that for any criminal justice Form Builder path there has to be a final version that both houses will vote for the President signs. Unless, of course, the president doesn't sign it. In other words, he vetoes it while he could table it too. But if he vetoes it, forinstance, it would have to get a two thirds majority and that's very unlikely to

happen in the current political environment so it is more likely it has to pass both houses and in particular form and be signed for it to become law.

Okay. Finally, this bill is also getting a lot of attention because there have been splits in both the left leaning criminal justice reform community and the right leaning criminal justice reform community. There are a lot of people who support the bill on both sides and some people who don't support the bill on both sides. So one of the things I'm trying to do with this episode is to speak to some of that or to ask some of the experts about the splits and about the reasons they support or don't support the legislation and luckily I am also including a member of a more conservative organization FreedomWorks, who is going to talk to us about the what's happening on the right.

Apologies again for the long introduction. This is a very complex policy environment in the bill raises a lot of passion and both its supporters that detractors so let's get to the interviews.

Ames Grawert Interview (6:15)

Very excited to welcome my first guest Ames Grawert to discuss the First Step Act with me today. Mr Grawert is a senior counsel with the Justice program with Brendan at the Brennan Center for Justice. Tthe Brennan Center currently opposes passage of the first step back so Ames seemed like the perfect person to ask about their opposition to the bill.

Hello, Ames. How you doing?

Hey, thanks so much for having me. I'm delighted to be here.

So good to have you. And finally get to talk to you after all this time.

Glad to be your Twitter friend.

Yeah, for sure.

All right, so let's start with obviously the easiest question possible. What's your best case for why we should all join with the Brennan Center and opposing the First Step Act.

Yeah, for sure. This can look from the outside, or even from the inside and sometimes like a sort of high drama split between the different parts of the progressive coalition to end mass incarceration. I don't want people to come away thinking it is that. I have the utmost respect for everything. Cut 50 does Alex and I go back for as long as I've been in the field. I'm a big fan of his.

The first thing he said was I really, I really take that guy.

Alright, that's good. I was I was worried that like I'd lose someone who I consider to be a pretty good friend over this. So I'm glad to hear it's not the case at all.

Well, yeah, so the the simple answer is that we just don't view the First Step Act as a measurable step toward reducing mass incarceration. That's the long and the short of it,

You know, people will make the case saying look, this would lead to 4000 people going home immediately but how they define home is is really the rub of it, it could lead to 4000 people as many as 4000 people going to home confinement or different types of pre release custody. But those people would still be serving sentences under the Bureau of Prisons they'd still be incarcerated and at least some sense of the word, and all of that is subject to how directives would be drafted by the Jeff Sessions Justice Department, and you'll forgive me if I don't have a lot of a lot of respect or trust for the Jeff Sessions Justice Department.

I think one thing all the elements of our coalition would probably agree on is that we don't have a lot of faith in the Jeff Sessions Justice Department

Exactly right. Yeah. And there was a there was there was some news, a while ago I've not heard how this has continued to play out but to cut 50s credit this bill. Got a lot better. During the drafting process. The first time I saw something about it. Alex shared with me a draft that was,

you know, kind of decent but then the next draft he shared had been shot through with a bunch of poison pills placed there, it seems by Jeff Sessions, provisions to you know make sure wouldn't pass, basically. So it seems like sessions as opposed this from the start. And that gives me a lot of suspicion about how he would implement it and he would have a non trivial amount of power over the implementation of it

Well. So that's we're kind of headed in that direction. It sounds like anyway I mean I think some people have argued that bill is more about the politics not giving Trump or the sessions group a criminal justice victory that it is about good policy outcomes. Do you have any thoughts about that?

Yeah I don't I do and I disagree with that characterization if if President Trump presented us tomorrow with, you know, a sentencing reform bill. I think we'd all would be very surprised. For one, but I think we'd be the lighter than that no one wants to or no one's opposing real reform, or however it comes to us what I think this is instead is it's not the politics politics of it aren't about denying the president a win, Instead, I think the politics are people really he wants to see some proof that there's still a chance for anything to happen at a bipartisan way in Congress, so they're willing to accept whatever that looks like like they want to show bipartisan unity whether or not it's meaningful is beside the point. And I'm not we're not big fans of shows of unity that don't actually accomplish anything.

I think it's telling to that you don't really see the White House super excited about this bill. The they released some principles for reform, like any reform bill has to include the following this sort of thing that if they were really behind the bill, it would have been, you know, a big press conference with the president talking about it publicly on the Navy not in the Rose Garden with maybe make a pretty big deal of it. Instead, I think those principles dropped at like four o'clock on a Thursday or Friday with absolutely no fanfare, you had to Google around to find it there. This is not something they're super excited about or proud of. So it's definitely not we're not we're, we're not opposing this because we want to deny him uh when I questioned as to what even the weather even thinks this is a win.

Well, that's interesting. Most of the stuff that I've read seems to suggest that the first step Act is a bill that can reach the President's desk and that the President, even if reluctantly will probably sign maybe because of the involvement of his son in law, right?. Do you have a reason to believe. I mean, one of the things she talked about earlier was kind of the notion that what does it mean to go home and you also talked a little bit about the different you know that this might not be everything we hope it will be, but do you have a reason to believe there's a better bill out there with a chance of reaching the President's desk end up becoming law or do you have some other play in mind?

Yeah, I for two things. So first I think there's excuse me clear my throat, a little allergy season in New York Yeah, I think there's no I'm not there's there's it I could see a world where the President doesn't sign it. Like if the Attorney General was trying to sabotage the bill a mere weeks ago, I have no doubt that he's still trying to work some magic in the background and maybe that he ultimately want prevail and maybe that he's been told, you know, sit down and take this one for the team. But there are a couple obstacles to this bill and they're not all in Congress, but this is actually this is the one argument that resonates with me the most. And it's the one that I've honestly gone back and forth with a few times, like I'm reminded one of my favorite books is um this Robert Caro a book that's basically a biography of Lyndon Johnson and five parts for which have been written,

Believe it or not, I have read the series

Good man! That's that's such a good series so you know what I'm you know you know what I'm talking about. So naturally, the Senate is all about how Johnson took a pretty unimpressive civil rights bill just because he saw it as the way of breaking the log jam and filibuster and Congress and that like should, should we look at this first step back as something similar like not everything you want. But a way to get the ball rolling away to show real support for criminal justice reform in Congress should be just, you know, take it as a win and continue to advocate for change in the future. That is the thing that comes the closest to persuading me and where it falls short is a couple things for one I think I'd be more interested if I could see what the second step to the first step act is and I have not gotten a good answer to that. And I don't know what people think. The second step would be and where could come like if we'd been clued into a broad legislative strategy as to this is the first step. The second step will be an amendment to

include sends you form in the Senate that will certainly pass and then the both bills will pass together that would get me thinking like, that'd be the way to get us on board, but I haven't seen that strategy play out and aside from that, I don't know if this is the same as that sort of 1957 log jam. Most of Congress, if you gave them a clear vote today. I think would vote for sentencing reform. So why should we pretend that they wouldn't Why shouldn't we just give them a bill that they'd vote up and down on and favor. I realized the answer is, there's majority later politics. There's other congressional politics in the background. But, you know, can't we cut through that with good advocacy? And last but not least, you know, even if even if we did think this was 1957 all over again, you know, the progressive left had a part to play there to make sure that the the modest bill that passed then was as good as it could be. And I know Alex and the team have played that role admirably but other progressive leaders had an equally valuable role to play. They're saying, you know, this isn't enough. This is if you think this is going to keep us quiet, you're dead wrong we need to keep working on it and we need to see what the second step is and that's ultimately where I land, but I do. That's a tough question.

Basically, yeah, I think there's kind of two aspects to that question. It's not just, you know, is this something that could break through the log jam, but it's also is it seems to me, are you potentially making perfect the enemy of good, like you said a second ago that the Senate may pass sentencing reform that seems unlikely that the President would sign sentencing reform, given what we've heard so far. During administration certainly what Jeff Sessions thanks but earlier we talked about this to this notion that the people that would be helped might not be helped a large amount and you know I mean I totally get what you're saying. But what do you say to someone who is about to go home?

Yeah, I am have a real hard time with that like my I guess my answer is that you know the the main legislative proposal that we're backing is the Sentencing Reform and Corrections Act, which has a non-trivial corrections component to so like look we're holding out for something that would give you very similar benefits and that that could be improved. If we were allowed to continue consider moving that bill forward but yeah that's that's tough like at the end of the day, they're their actual people we're trying to help here it what it comes down to is, I don't think this is as much of a help for those people as as other say and you know their concerns that some of the other civil rights group of groups have raced here like we've had several conversations with the Leadership Conference on Civil and Human Rights and their concern is that the way that the recidivism reduction programming will be handed out in prison is in such a way that it could actually worsen racial disparities and it would be handed out using a tool devised by Jeff Sessions and his buddies in the Justice Department and that's not good.

So it's not an algorithmic tool. It's a risk assessment that they come up with?

It would be an adaptation of an existing risk assessment tool but I my sense is that that's there's enough discretion left up to the Attorney General in there that there could be harm done and some of the amendments that that came into this bill make that less likely but they don't ameliorate that risk altogether so that that's one concern and another this is the one that really

gets to me is a lot of the provisions of the bill make it sound like the most successful types of recidivism reduction programming would go to people who are already low risk and that that seems like a defeat. That seems like it's defeating the purpose, like we we know that people of all quote risk levels deserve some access to brain programming to give them a better time a better chance of successful re entry once they leave and the bill doesn't seem designed in a way to deliver that. So it's not just that it's not sentencing reform, it's that it's not as successful as we'd like it to be at it, even at stated goal some level you're singing fire on that one.

Probably my, my, you know, the thing I complain about the most is carve out from there seems like there's about 1000 of them in this bill. It took me you know 20 minutes to read through and try to make sense of the carve-outs. Do you have any sense you know of, you know, how many people would technically be helped?

Even when we were so yeah the the carve outs have changed significantly some iterations of the bill tried to make it made it simpler saying like just a quote aggravated felony people would that people can make it to those defenses would be carved out so the list got the list of carve outs got shorter but the number of people covered by the carve outs is probably the same. We haven't we haven't been able to do the math exactly how many people would be carved out from it but it's it's definitely non-trivial there, there would be some like because of the way race in the criminal justice system works there probably would be some disparate racial impact on that and yeah that that's that's something to be concerned about too.

So one of the objections that I've heard and seems somewhat persuasive to me is that the bill didn't include kind of funding for programming and bed spaces and there aren't there isn't enough programming or bed space is currently available. I suspect that part of the suspicion around the bill is that for profit enterprises would probably end up getting contracts for that, you know, I know we all have different opinions of that. But if there were alternatives that could be provided with that still be an objection to the bill?

I think so you've talked to my colleague lb about her views on private correctional court, I think, is that right yes?

Yes, I interviews Lauren about her book "Inside Private Prisons."

So there there are similar objections be raised to, you know, private reentry facilities there. There are some cases where private reentry facilities have have turns into like debtors prison gateways back to incarceration like you're charged a supervision fee for your participation in the rehabilitation center and then if you can't pay that and odds are, you might not be able to then you might wind up right back where you started from. So it's things like that. Then make me suspicious of, you know, turning that pretty important function over to private entities. The solution to that LB would say is structure the contracts, in a way, and structure the programs in a way to guarantee their success and I don't think that type of guarantee exists. Currently, one thing that I was surprised by actually it's there's been a lot of there's been a lot of interest lately

an repealing some thing that was created by the 1994 Crime Bill which, among many, many other things made incarcerated people in eligible for Pell Grants repealing that would be yeah repealing that would be super simple. I actually I've worked with the American Enterprise Institute on emphasize emphasizing the importance of education for people behind bars. You know, giving them a chance to learn if they want and I was I was sort of surprised to see that that simple repeal or provision wasn't in this first step act and I think that would have been that have been just a way to get people excited and it actually would have made a real difference for people to...

Yeah it's very frustrating. The whole Pell Grants situation. I think one of the things I get really frustrated. A lot is the combination of the inclusion of tablet technology into prisons, but only in a profit way in a way that really doesn't provide

Exactly, yes.

Yeah.

Yeah. And I like that. I'm preaching to the choir on this too, but through that through that connection with the American Enterprise Institute. I've talked to people who really benefited from education behind bars and it just strikes me as I just I was very frustrated to see that wasn't there. I think that's something that you know maybe could be changed during the amendment process and that would make me marginally more excited but still it's still sends the wrong but it'd be interesting.

Right. Okay, let's get to that sentencing reform question many of the opponents of this bill. I think, including you in this interview have made the argument that in order to really reduce mass incarceration. We have to have reform some both the front and the back end. But if people are continually released on the back end, wouldn't the effect on mass incarceration as a whole?

But again, like this is not this is not a bill that sees people ending their sentences early and any sense. And so one thing we've been monitoring to and this is sort of...

Yeah well and can you clarify that. Because if people get good time credits. And that ends up shortening their son, it's you just said it doesn't short sentences? So I just want to make sure we're on the same page on this.

Yeah. So what I'm talking about is if the the credits are in through the First Step Act, so that let you start your pre release custody slightly earlier. So, those aren't credits against the end of your sentence there your sentence is still being served just not in a federal prison. There's just served somewhere else and or home confinement or so I don't view that as a sure

I don't mean to get too deep and needs but like for instance in Michigan, we have you know when you're on parole and probation, you're considered still a prisoner. You're a level zero

instead of a level 1, 2, 3, or 4 prisoner, and so i i don't know if that's always the case, but certainly the case here. Are you saying that's not the case in other places or you're still considered under the custody of the Bureau of Prisons?

So what I mean by reduced mass incarceration is end of the sentence early. So if, for example, the First Step Act rather than saying these are credits for pre release custody. If it were credits off your sentence entirely. I think it actually would be a different story. And I think the Brennan Center relation might even be different but that's not what it is. Okay, so that that that's that's one thing. And number two, something we've been watching somewhat closely. Is it what is the real ebb and flow of prisoners in the Bureau of Prisons and you as, as you know, the federal prison population has been trending down for a while and that that downward trend wasn't really changed in the first year of the Trump administration, we put out a report called criminal justice one year and the Trump administration that collected information on that very thing but the rate of decline seems to be slowing so query whether this Attorney General and his insistence on seeking the most harsh punishment every case query, whether that's going to have an effect on how many people are going to prison and for how long I think it'll take like another year, at least for us to see whether the prison population is changing at all under sessions, but his policies and the the possibility that he might be having that impact of more people going to prison reversing the years of decline. We've seen underscore to me the importance of front end sentencing reform to rein in the Attorney General and make sure that he can't pursue these draconian policies all over again.

Okay. Well, as we've mentioned several times the other people who are going to be on the podcast to talk about this are from #cut50 Jessica Sloan is going to be my next guest and she sent a question for you.

Yes.

And here's that question. "Chuck Grassley himself is stated that no sentencing reform and active is going to be retroactive as such. What is your plan if first step does not pass to help the people who are already living in our federal prison?"

Yeah, I mean that's uh i saw that and that's a good question. So two things. Number one, we're we're, we're not like our priorities sentencing reform but all of the bills that were supporting our bills that include a corrections component, the sentencing horn corrections Act would include a component that creates rehabilitation programs in federal prisons. So when we say pass anything from what we really mean is passed that bill and that bill does include a component that helps people already in prison, so that that's that's part of the answer. Number two is we recently put out a report that covers you know what we would like to see actually enacted by Congress and one of them is the dignity for incarcerated women act. It's. It was really cheering to see as a unit in our pre show conversation like some of those provisions worked into the first step back. I'd like

I thought that was a really positive element of the bill was that the dignity for incarcerated. I'm an act was included in four leaf elements of it in the First Step Act.

Oh, I absolutely agree and I think that's that's a credit to cut 50s advocacy. I don't think that would have been in there without them. And people on the left, pushing for it so we we still want to see that passed. We just want to see it passed as part of a broader package and could just be passed on its own, it's it's somewhat it's somewhat ridiculous like the more you think about it, that the basic provisions that bill, one of which would make a women's health product or products free for incarcerated women. It's shocking that that doesn't already exist. It's so it's it's kind of going to say like, well at least we're getting that like that is such a basic reform and something that already should be achieved. Let's just have an up and down vote on that and make sure that that passes along with the package of other bills.

You may not believe I've actually had conversations with US senators who didn't even know that that stuff was what's allowed

Oh yeah, like I yeah I've learned so much about the basic indignities that women have to suffer during incarceration, not just from my colleagues here you know we partnered with Holly Harris adjusting justice Action Network group.

I know Holly.

Yeah, to do an event about incarcerated women and actually our Vice President for development Jennifer Weiss-Wolf recently put out a book called...by my liking on the title, she's going to be very disappointed.

Well, tell me the title and it will be included in the notes....

Periods gone public it's about menstrual equity, not just in prisons, but everywhere in society.

So it sounds logical to me.

Yes.

So all this to say like, well, we're definitely in favor of legislation like that just we want it to be part of a broader, more comprehensive package or to see a commitment from legislators to, you know, not stopped after the first step, but to be willing to take that second step into tell us how they're going to do it

Well, I feel given the your reference to the Carol book earlier I would be remiss if I don't follow up with a question for how you see this happening? I understand that there's senate support.

Yes. So what we're what I'd hope I understand their senate support in some way it what I've heard is that corn and and White House who were the backers of the correction act have basically decided to adopt the to introduce in back a Senate version of the first step back what what I'm hoping will play out is, I'm hoping we'll see some debate in the Judiciary Committee, you know, where Chuck Grassley led his committee to favorably report out a sentencing reform bill. I'm hoping we'll see chuck grassley, you know, push for some sincere form petitions to be included in first step and then you know we'll have to have a real if that happens like I could see I can see the Brennan Center coming out in favor of legislation that was first step back, plus some sensing provision. I think that'd be really exciting. And I think it's something chuck grassley really passionately believed in, you know, we'll see. So what we're looking for in your world we're looking for in your world is hopefully a need for a conference and and some senate and some support from Senator Durbin and Senator Chuck Grassley to push for sentencing reform to make it into the bill and then I think we'll be having a very different conversation. I can't commit my organization but but I think that'd be pretty exciting.

Alright, so before we as we're wrapping up this interview. Is there anything else you'd like to add about the bill or just in general.

So I think it's really it's it's heartening to see some form of criminal justice reform coming up. Just what what continues to disappoint me is I think this bill is just so much more conservative than the senate as a whole would support on their own and and I think we really need to see especially progressive legislators stand up for what they believe in and say, you know, we believe in ending mass incarceration and this is this truly is a first step, but we need to see more and I think we chuck grassley is continued to fight against all odds for sentencing for him and I really hope he continues to do that. But most of all, I hope that you know if this really is the best bill that Congress can get out. I really hope voters, take note of that. And that voters when they cast their ballots in the midterms and then the presidential thinking very hard about what kind of legislators, they want to send to DC and what kind of reforms those legislators should support when we're that when they're there. I don't think voters pay enough attention to criminal justice reform don't pay enough attention to mass incarceration. So I think now is the time for them to start watching and I hope they, you know, hold legislators to account. If they can't do anything better

I hope anyone who's a fan of my #Bars2Ballots proposals who's listening heard that last part because one of my biggest things going into the next election is to try to get formerly incarcerated people to register and vote where they're where they can and to vote only for their interests

That is the Lord's work that is really important work. Yeah.

All right. Well, thanks so much for doing the same. It was a real pleasure to have you as a guest.

Thank you for inviting me. I hope to be back sometime. Thanks so much. Thanks. Talk to you soon.

Jessica Jackson-Sloan Interview 32:36

Okay. Our second guest today is Jessica Jackson-Sloan. Jessica is the national director and co-founder of cut 50 and national initiative pushing to reduce mass incarceration. Jessica is a human rights attorney who started out representing death row inmates and appeals and stays and now she oversees the Dream Core #Cut50 Initiative and recently she's been incredibly busy working very hard with legislators to ensure that the First Step Act will be the best bill capable of passing the House, The Senate, and ultimately receiving a presidential signature. So there's literally nobody better discuss support for the first step back and I'm really happy that she's here welcome Jessica so nice to talk with you.

Thank you for having me on

Not to get too far off track but I think I left one part of your bio out of my right that you're also the mayor of Mill Valley?

Well I served as mayor last year, I've been on the city council for almost five years now and we take turns being there. So I was got my turn. Last year and this year I'm back to being just a council member, but still pushing for progress on important issues in our community like affordable housing.

Awesome. I don't know where you find the time to do all the things that you do.

Alright, so here are the first question I always start with the easy ones. I'm kidding of course, I assume, one of the most persuasive adds to the first step back that you all pushed are pretty hard was when elements of the dignity for incarcerate women act were added to the bill but can you also make cut full case for passage of the First Step Act?

Yeah. And I'll say, you know, there are some elements of the Dignity For Incarcerated Women Act that are in this bill, but I think there's still a real need to pass the Dignity For Incarcerated Women Act. There are a lot of provisions in there that we're not put into the first step act, including getting mail guards out of the bathrooms or medical areas where women might be in a state of undress or they might be able to see women in a state of undress. This is a provision that we've been able to pass in several states at this point and we really want to see past on the Federal level as well so that we can really preserve women's dignity while they're incarcerated in the Federal system. But overall, you know, for us, the first step Act has been kind of a long journey we came on board about six months ago when when we started tuning in. At that time it was called the Prison Reform and Redemption Act and it was a piece of legislation that had some great intentions behind it but it just didn't go far enough to be considered meaningful

reform at the time when we came to the table. We were supportive of the process of continuing to push for bipartisan support even continuing to push just for prison reform but we were not in support of the bill. So over the last few months. This bill has really improved, particularly in its last iteration, the version that was introduced it fixes good time credits. It creates major incentives for participating in programming in in the form of time earned credits. It creates an expands life changing classes that people inside can take it prioritises people inside who need it the most to take those classes, it moves people closer to home. It does be in the shackling of women who are in labor and extends that protection for three months after their pregnancy provides IDs to people and it expands compassionate release. We've also got some provisions in there that hold the Bureau of Prisons accountable, which I think we can all agree is very important. So we're proud to now support this this act and are hoping to see it pass.

So your organization's mission is to reduce mass incarceration by 50% I think by 2030, but many organizations oppose the First Step Act, because it only addresses the back end of mass incarceration and they contend that that just doing the back-end really can't reduce mass incarceration. Why isn't reducing mandatory minimums and addressing some of the other sentencing reforms. For instance, in the Grassley legislation in the senate critical to meaningful criminal justice reform?

Well, let me start by saying I think this question assumes that we wouldn't think it was, of course, we believe strongly in sentencing reform. I think it's critical that we get sentencing reform, or else that mass incarceration is going to continue what the first step Act does is it takes the first step, it recognizes the political realities that we are facing and it takes the first step so that we can give people inside some of the relief that they need and some hope that they need. This bill will result in roughly 4000 people being released with that good time credit fix it also creates those time credits that allow people to go to halfway houses or home confinement sooner and not be stuck living in prisons. I've gotten out there and spoken to a bunch of the folks in our network who have family members who are in federal prisons or who have been in federal prisons and resoundingly every single one of them has has said to us. Listen, we get it you are in a very difficult political situation, but please don't make the people inside wait to get some relief. Please pass something that can give them some hope something to hold on to and start to improve conditions inside. I just don't think that you know we are in a position as people out here who are not living behind bars every day to tell people inside that they have to wait till 2021 or maybe even further. When we have the political reality to get something done. So the First Step Act is the first step we believe strongly in reducing mandatory minimums we believe strongly in sentencing reform but this represents a bill that we can get past now that actually helps the people who are inside and I'll take a second and say with the sentencing reform, you know, even Grassley who is a strong proponent of sentencing reform has admitted that it's not going to be retroactive so this bill right here is the only thing that can help people who are inside our federal prisons right now to create a path to come home sooner and provide them with some of the reliefs indignities that they need, formerly incarcerated person, obviously, to me, that's one of the most persuasive arguments is the notion that we need to bring home everyone we can bring home.

One of the features of the First Step Act, is that inmates would earn credits toward programming and bed space and halfway houses, given that programming right now is underfunded and there don't at least the reporting that I've seen suggests that there's not a lot of halfway house beds. Now, how do you think this will result in good outcomes for the people who leave?

Well I think I think the halfway house issue is something that is incredibly real to us. I've gone out and visited some of these halfway houses. I think that the BOP needs to be held accountable. We need more halfway house beds. I think there are ways that we can begin to address this even outside of first step back, I was honored to be invited to the meeting the Federal Interagency Reentry Council <FIRC> meeting at the White House. A few weeks ago and halfway houses and being able to expand the number of beds was actually one of the primary items discussed. There were several other people who had been incarcerated in the room who talked about how difficult it is to come home and not have a place to go or not have a place to live, or how they needed more time in a halfway house to really get ready to re enter fully...this bill. We worked hard to make sure that we were taking making the Bureau of Prisons accountable by changing a lot of the "may" language to "shall" which will put a force on them to figure out how to get more halfway house beds one idea that was tossed around at that first meeting was the fact that right now. There were so many people who are in our halfway houses that don't actually need a bed. I've met folks who were sent to halfway houses after prison that could have just as easily gone to home confinement because they had a family. They had a house they had a spouse that they could have gone and lived with but instead they were sent to a halfway house that needs to change immediately. We need to be using the halfway house beds for people who are re entering who don't have a home that they could go to and instead putting people who do have a home, they can go to on home confinement.

That's a really interesting point. So in that solution you would actually not have to the Bureau of Prisons wouldn't have to have more funding it would just it would actually probably free up funding in a sense from parole and probation? Am I right?

Well, I haven't crunched the numbers on on how many people would be going home but you know because of the shelling which they're gonna have to find solutions for this. And because of the funding that's in there is authorized in there. I shouldn't say is in there but is authorized in there, you know, we can hope that more funding is coming for that but I think you know policy like that will make a big difference by freeing up some of the beds that people so desperately need to be going to that don't have a home that they can be confined them.

Okay, I think another concern that people have is there's a lot of, you know, I personally feel like all prisons, in a sense, are private prisons because they have certain incentives profit incentives for-profit incentives built into the system, but a lot of people I think are concerned that one of the ways that bed spaces and programming will be provided is through the for profit prison industry is this a concern for you? I still think it's probably we don't want to make perfect an enemy of the good and if people get that out. That's good. But I just wondering if you have any thoughts on that?

Well, first let's start with, you know, zoom out a little bit. So the for profit prison industry dilemma. Always, always kind of intrigues me because they're there are so many state prisons and so many companies that are making money off of people being incarcerated in state prisons as well...

Well, don't prisons become for profit partners with Securus and JPay and companies like that?

So in regards to the programming, you know, we were able to get a very, very important piece into this bill that I don't think a lot of people are talking about and haven't realized and that is the volunteer aspect currently prisons that have volunteer programs in programs that are being run by nonprofits or for profits tend to have much lower recidivism rates here at. We've actually got a policy that we have to stay as connected as we can to this issue and in order to honor that we actually all volunteer in a music program in the prison nearby here San Quentin Prison. It's probably my favorite time of the week, being able to go in there and work with the guys and see the progress there speaking and talk to them and talk through the legislation. We're working on and I just I learned so much from them and I learned so much and feel like it keeps me so grounded to be in there and working with folks but San Quentin Prison you know I'm not the only volunteer in there. There's actually 13,000 volunteers that come in there every single year for the programming and they're not only able to bring programming into the prison. That's not all of which is state funded much of it is not state funded, but they're also eyes and ears inside the prison, it really opens up the transparency to what's going on inside of the prison and it provides men inside and in the federal system and in women. It will be with an element of mentorship, especially because this provision allows for formerly incarcerated people to come in and work with people who are currently incarcerated, so I can't think of a better system for programming than having formerly incarcerated people who have come out successfully gotten through reentry who understand on a personal level, what sort of issues people coming out are going to be facing and can really serve as mentors to the men and women inside. So I think, you know, there, there will be some for profit prison some for profit companies who do programming, but there's also going to be a lot of nonprofits and a lot of volunteers who are able to come inside. Do some programming be the eyes and the ears serve as mentors another another piece that I think gives me some some rest is, you know, the bill doesn't say that these grants need to go through the do j perhaps we can get them to go through the Department of Labor and different organizations can go to the Department of Labor and apply for funding so you know there's several different elements of this bill that I really think are going to be beneficial for the men and women inside but the programming piece to me is the strongest

That's really interesting. I know in till last year, Michigan prevented any formerly incarcerated people from going into state prisons. I'm not as familiar with the federal system. We got some small changes to that made in the status. Are you saying that as a result of this bill at least some formerly incarcerated people would be able to be mentors to people who are in prison at the federal level?

Yes, yes, they will be able to go in and kept 50 really can't take the credit for that I know there was a lot of folks who were pushing for this including Pat Nolan and others, you know, our own Topeka Sam has been pushing on this because they realized how important it is for people who have been formerly incarcerated to be allowed to go into the facilities and help people inside and bring that personal perspective in.

Oh yeah I tell a story all the about how I had a mentor that was set up with me and both during prison and after prison I wasn't allowed as long as I was still on paper to have any contact with them, which seemed totally ridiculous since they were you know doing really well on the outside and very well adjusted so it is...

There's no public safety rationale behind it, because nobody is going to be able to help people reenter as well as somebody who's already been through it and knows what obstacles are out there and how to overcome them.

So earlier you said that, I think it was 4000 people would be able to get out I've read the bill and it seems like one of my biggest pet peeves is carve outs and it seems like there's like 100 carve outs in this bill, have you just that when you talk about the 4000 people. Does that they said, assuming all the carve outs and that's that's regardless of the carve outs?

If you look at the earlier drafts of this bill and you look for that exceptions piece was who all was not going to benefit from this bill, you will see how incredibly far. This bill has moved in terms of reducing the carve outs. Now I'll say somebody said it much better than I could. So I'm just going to quote Mr Kushner here and when we went to the problem solvers caucus and in Mr. Krishna and Van Jones myself several people from our team, including our own Michael Mendoza, who spent two decades in prison starting when he was 15, years old. There was a lot of legislators in there, who had some serious concerns about not restricting this to quote unquote non violent offenders and and I'll just tell you I hate that term.

Me too.

I think this is ridiculous wall that that really has been built by people within the movement that should never have been built and that we need to tear down. But what was interesting is, there was a lot of legislators who were raising their concerns around this and you know I was kind of looking towards Mr Kushner wondering how he was going to address this, because at the time there was a horrible exclusions list that really excluded a whole lot of people and I was wondering to myself, you know, is he going to stand up for the people inside or is he going to count down to these legislators and point to how many exclusions. There are and what he said actually surprised me. He looked at them. And he said, "Listen, I want you to know I don't care about...I don't care about the data that you guys are talking about the non-violent...violent." He said, "the only data I care about is not whether somebody was non-violent or violent, but whether or not they're going to be coming home one day," which I thought was pretty pretty amazing.

I have to agree with you on that I that that's music to my ears.

Absolutely. So are there carve-outs in this. Yes, but after you know months of working on this exclusions list. We've been able to narrow it down to a pretty small percentage of the population and you know even that I feel bad about I feel bad if anybody is excluded from this but politically speaking, we've gotten into a place where 4000 people immediately will be able to benefit from retroactive good time credit and, you know, over 100,000 will be able to benefit from the time credits and all the other provisions in here. There's also provisions that everybody benefits from so you know at the end of the day, I wish we didn't have to exclude anybody and it pains my heart to know that we are, but I think we've gotten this bill as far as we can. Politically, and it would be unfair to those who will get out to stop it because it doesn't go all the way. All right.

Great answer. I'm also, as you know, I already talked to Ames from the Brennan Center and I asked him if he had a question for you. And this was his question his question was, "This is the first step. What's the next?"

Well I love that question because that means that Ames is on the same page as I am, which is our works not finished here if anything has been evident to me from this process. It is how much work. We still as a movement have to do to create empathy in our legislators and in the general public, you know, just even this violent non violent conversation around the exclusions list that showed me you know how important it is to get some of the folks who have come home up there to Capitol Hill talking to our legislators that day we went up to the hill with Mr Kushner, we brought Michael Mendoza with us and Michael probably had the most poignant comments of anybody when he talked about having been incarcerated for a violent crime and what his transformation in journey to accountability and rehabilitation had been like, and how legislative changes had inspired hope in Him and to see the faces on those legislators to see the looks on those legislators faces when he was telling his story. It was like they couldn't believe that you know he had ever been in prison, he presents in a suit, he's well spoken. He's articulate intelligent and it was as though they were putting a whole different face to this issue than they ever had before. So the next step is that we need to continue to build empathy in our legislators and work together as a movement so that we can get to sentencing reform, so that we can make sure people aren't being excluded from other reforms and so we can bring more people home.

Well, I mean, that's a great answer. And I definitely want to thank you for specially when you told the story about going back every week to prison. I know for people like myself that just hearing that makes makes us all very happy and so all the rest of the stuff that you're talking about, you know, a lot of it really touched me pretty deeply listening to. Is there any last things you want to say to people who are still uncertain about the First Step Act?

If you're uncertain about the First Step Act. We've got a website up, FirstStep.org you can go there. You can read some of the stories of people who would be impacted by this bill, you can sign a petition if you're so inclined, and you can read more about the legislation.

I know that uh if it's true cut 50 fashion, you probably have a hashtag, or no?

Hashtag first step.

Okay. Figured I'd put that out there too. Thanks so much for taking the time to do this. I know you're super busy right now.

Thanks, Josh. I appreciate you having me on.

No problem. Thanks again.

Bye.

Jason Pye Interview (54:00)

Our third guest is Jason Pye, who's the Vice President for Legislative Affairs at FreedomWorks and a supporter of the First Step Act. I came across Jason's writing recently as I was doing background research for this episode and was impressed with his perspective and evidence-based approach. I also wanted to include his voice because he was addressing some pushback against the bill from the right side, right side of spectrum that I had not heard before.

I also should probably note that like me. He's a lifelong baseball fan. Hello, Jason and welcome to the podcast

Hey Josh,

You have to be thrilled with how the Braves started off the season.

Hey 10 games over 500 get given where I thought we would be right now i'm i'm pretty happy. Yeah.

Unfortunately, my Rangers are not doing well.

You got Bartolo cologne pitching like what he's like five years older than God. And he's still throwing a fastball.

So yeah, he's actually winning some games for whatever methods you know remains to be seen how he's doing that.

Well, a lot of a lot of cheeseburgers and hot dogs and beer I imagine you know big, and all that. All right,

Let's get to the question. So, all right, there have been splits on the left between traditional criminal justice reform organizations, but after reading your article. It sounds like there's been some pushback from the right as well

Yeah it's it's kind of unfortunate because we've you prison reform as really the lowest hanging fruit of what we can do on criminal justice reform, you know, taking out sentencing reform and over criminalization and some other things that this is really like the easiest thing it's it's there's almost consensus agreement that recidivism reduction is important and we should do it. Unfortunately, a lot of the same voices who criticize like the sentencing reform and corrections act in the Senate and the 114th Congress are back now criticizing the first step back and they're citing a couple of different provisions in the first one is the 500 my driving mile rule and the second one is the retroactivity have earned time credit center truth in sentencing laws and they're they're framing it as a jailbreak Of course they frame circa the sentencing reforming corrections act as a jailbreak and it's really unfortunate because some of this is is some of the things they're putting forward are entirely misleading. If not completely outright false and it's it's just really frustrating for those of us on the who are center writer libertarian because there's been huge again universal agreement, especially at the state level that the approach that we're taking in first step works you have states like Georgia in Texas in south carolina and many others who in Mississippi just adopted their second round of criminal justice reform just recently who and they've all recognize this this step works and my governor, Governor Nathan Deal has made this kind of a linchpin of his legislative agenda. It's going to be his legacy when he leaves office after two terms as governor Georgia and it's it's just unusual to see or frustrating to see these people sort of say no we shouldn't do this, we should be locking up more people and you know recidivism reduction be damned. And we're not, we're just going to warehouse them with no real effort to rehabilitate them and get them ready for a wife, where they can be productive taxpaying citizens.

Yeah, it's pretty strange, given that over 90% of people come home that would want people to come home in a situation where they're, you know, at more risk of offending than not, I would say,

Yeah, yeah. I mean, so in let me let me just add to that, and that's I think you really hit the sweet spot there in terms of you talk about 90 more than 90%. It's actually, it means closer to 96% of people who enter in a prison into a prison cell are going to come out of that prison cell and this is what we always tell our, our academic community because we are, first and foremost, an act of a grassroots activists community or organization. We have roughly 5 million activists across the country. And that's the question we posted them is is what state of mind. Do you want these people to be and if they have addiction problems you want their addiction to be addressed. If they have if they have a criminal record. Do you want them to be able to find a job where they can contribute to society. They'll have to rely on on you know the sort of the the drug trade and that's really it. And that's the question that's what we posed to people is and there's a sort of misconception about why people get involved in the drug trade and that was the you mentioned the 500 blog post you read a mind. There was a second blog post you wrote that we published

the next day talking about some of this stuff and specifically focusing on why people get involved in drugs and they get involved in the drug trade because they have first and foremost, they have addiction problems. And that leads him down to a path of becoming a dealer and then eventually even doing more and secondly, people who get involved in drugs lack economic opportunity in these people come from impoverished areas in a lot of cases and when they were if they get a criminal record their employment options become even less than what they were before. And when they get out of jail, they go back into the same routine, they go back to an impoverished area that where there isn't economic opportunity employers are skeptical of hiring the because they have a criminal record. So we what we're trying to do is to clamp down on that or break the cycle of crime and occasionally violence that this will eventually lead to if we don't get a handle on.

I really love that we can have these kind of conversations because it's really one of the areas where I've been able to reunite with my right wing libertarian friends and say a lot of the same thing.

Yeah, I mean the war on drugs has been a failure. I think you I think people who don't realize that are ignoring the past 40 years and the trillion dollars we spent in the lives that have been lost drugs are just as readily available as they were as they are. They're just as readily available now as they were 20 years ago 10 years ago.

One of my favorite things to say is, you know, since 1971 the drug the war on drugs has never reduced supply. So,

Absolutely.

So anyway, we could go off on that one for a long time. So one of the points of the tension that you raised was about people objecting to the provisions and the First Step Act mandating that it makes would be located closer to their families and friends. Can you speak a bit about the 500 mile rule.

Yeah. So basically what we're what the First Step Act states is that that a prisoner has to be incarcerated within 500 driving miles of their family or their primary residence basically is what it says. So 500 driving miles is very different from linear miles, because they'll, they'll put someone within 500 linear miles, but the driving miles is like 900 miles so it's it's going to take a lot longer to get there. We're talking about almost 1000 miles away. So, and the other is that we have the best evidence that we have is that the closer at inmate is into their to their family and they can see their loved ones and, you know, develop that that sort of like, Look, I want to be home with them. I don't want to be here. It's actually it encourages them to to lead, lead a better life. And there was one guy from Idaho and his name escapes me I source and in the blog post and I have the blog post here. I'm trying to find the quote is he says anytime you move in mates away from the people who can support them away from their where they're going to actually reenter society. I had to say that it's flat out correctional malpractice, and it's Kevin Kemp of the Idaho

Department of correction who said that he's absolutely correct. Do you want these people to be close to their loved ones. And unfortunately, people are misleading it and they're saying, well, we're going to wind up releasing we're going to run that putting someone like Zacharias. I have or Zacharias me Sally within 500 driving miles of their homes and there are carve outs, both in the text of what the first step back says is in section for one of the bill, as well as, as well as in current code and then current code is 18 USC 3621 be their qualifiers. It takes into account the nature and circumstances of the offense and it also if the if the court. The judge the sentencing judge recommends that they spend their time that a Supermax facility or or a maximum security facility that's where they're going to spend their time people who are who are citing this provision as a reason to incite opposition are flat out misleading people. If not, why

Am I crazy here or, for instance, this or not certain. I have. I mean, the odds of him compiling enough good time credit for meaningful pretty small?

I mean, it is. I mean, especially because he's been sentenced to life that multiple counts. He has multiple licenses, you have Zacharias, who has life sentences and like in the case was there and I have yeah he's gonna be transferred, but he's gonna be transferred a USP Terry hope Terre Haute where where we execute federal prisoners here on federal death row now I'm not taking a position one way or the other on the death penalty. But that's that's where he's eventually going to lead up he's not going to get the urn time Craig earned good target that's going to be well it's not going to meet halfway house. Right, exactly. Well, and also you have to you have to look at the tech in the law. The, the First Step Act, specifically exclude certain crimes. If people are committed certain crimes are getting good time credits.

Now, there's like 100 carve outs in the bill

Right there are several right and there's like four pages worth or five pages worth so people are making misleading statements about about what what the 500 drunk driving mile rule does as well as who someone like is there and I have is not going to get good time credits to go out of prison.

Right. Okay, so your article also discusses truth in sentencing. As you may know, mid Michigan where I live. We are one of the only states that still has real life truth in sentencing so I'm pretty familiar with this. Can you talk about how truth in sentencing functions at the federal level, and in this law.

Sure. So section one or two of the bill of the first step act in men's another part of us code and the part is 18 USC 3624 be basically to clarify congressional intent under under current law, it says that a prisoner can earn 54 days of their term of imprisonment. The Bureau of Prisons has calculated that entirely differently. They have interpreted the language to require president the prisoner serve 85% of their time and excludes excludes the sentencing time taken off by good time credit so it results in a maximum of four seven days per year of good time served so it's it's misapplication of law. Unfortunately, the Supreme Court has upheld that interpretation. So this

is a simple fix to current law, which in again, it says 54 days in statute. It's just the way BOP calculates it is wrong. It's a glitch. So it just fixes it it addresses it and it makes it retroactive to people who are already serving to fix the the issue here with truth in sentencing law and this is part of the 1994 crime bill and it's it's again just been Miss misinterpreted misapply BOP.

Gotcha. Okay. So finally I mean one of the biggest concerns with the bill seems to be that there's probably right now gaps in programming and shortages halfway houses before the bill ever takes effect. Do you have any take on how this might be addressed?

Well, so the first episode does require...does require the Justice Department and BOP utilize home confinement, to the extent that they can, which means which home confinement is substantially cheaper. We're talking about a ankle bracelets ankle monitors that people have to wear when they when they are released that now they're given the opportunity to go to church, go to a if they have a job to go to that job to search for a job as well as to meet with their, their probation officer or or their their their who who's dealing with them when they're in pre release custody. So there are certain measures that are taken to ensure that they will be able to find gainful employment and comply with their, their release, but this is a positive step we want we want more people placed in home confinement, mainly because it's cheaper mainly because it provides a certain level of freedom to the to the prisoner to do things that normal people would do like finding a job or working. So these are all things that we we see as positive reforms, we would like to see less reliance on halfway houses because they are more expensive because we have shortages and frankly we, you know, I would prefer someone be sort of left alone, rather than exposed to other people in a halfway house who may not be quite quite up to the same level of recidivism risk that this person is like if we have someone who's low risk and there's someone in the halfway house, who is a medium risk. I wouldn't want them to be exposed together.

Okay. And what about the programming aspect.

Look, in terms of in terms of what we're doing here on programming the in prison. The in prison programming is going to be the same as largely when the person comes out still try to reduce recidivism making sure they're complying with the terms of release it and in terms of the in prison side. Look, we've seen these state prisons. There's a particular program in Texas, where they come in and they teach inmates business skills and I forget the name of the program off the top of my head, but the recidivism rate is 7%, which is extraordinary low, we always say anything under 40 is okay. Once you start dropping below 30% recidivism which is either the re arrest rate or re incarceration rate after three years. You're doing great work. And if you're down at 7%. That's phenomenal. So that's an example of a program. We would like to, we would like to see him would have the opportunity to have in bureau prison system should the first step back, be a doctor adopted. There are other ones.

So one of the things that I always say is that we should treat prison like a hospital in the sense that we should start planning for return the moment somebody gets in right and programming is certainly one way that that would happen

Well. And let me just Josh real fast. Yeah, I know. And often talks about like if you have if you have a hospital. The hospital comparison to spot on if you're if you're sending people to a hospital net that hospital has a failure rate of 66% or 67%, which is the current recidivism rate in federal prisons, you would never send a patient to that hospital again. So you have to do something different here.

Yeah, so the other question was, what about the shortages and programming. How does the how, how do you think that maybe right now we're having some shortages in the availability of programming. There's certainly a lot of great programming out there, but how do you think we might be able to address some of the shortages after with new people coming out after the first step?

Well, look, I mean, I think that the bill incentivizes a lot of a lot of companies to earn a comfortable companies secondary universe schools, universities, colleges, nonprofits, including faith based nonprofits to do recidivism reduction programming. So, it expands the opportunity by allowing more people to come in and do that programming, whereas the current system basically it's it's their inmates who run it from time to time. I've heard Kevin ring from families against mandatory minimums who served I think for 18 or 20 months in a federal corrections Correctional Facility talk about how the programming, both in and outside of prison is not that great. This would. This would allow the this would provide us financial improvement over current law.

Great. Well, I wish we could talk forever probably hit. It's really glad that I'm really glad that you came on on such short notice.

Yeah. Thanks for having me. Josh, I appreciate it man

Yeah hope to talk again

Yes and Same here. All right, bye

bye

Concluding Thoughts And Response to the Deocratic Opposition Letter (1:10:33)

So after three excellent interviews where does that leave us today. Several democrats sent a letter encouraging their colleagues to oppose the first step back, I should preface this by

mentioning that several of the signatories or people I greatly admire, including Cory Booker Kamali Kamala Harris and one of my heroes John Lewis, despite my deep affection and support for the signatories I have to admit I disagree with many of their conclusions.

Let's go through the main arguments in that letter first that the first step act excludes too many incarcerated people. This is a tough one for me. I hate carve outs with a passion and often find them counterproductive and based on little to no evidence. But the question should not just be our people left behind, but also are the people left behind it and worse or better shape as a result of the legislation, regardless of how many people go home. If the remainder in our in no worse position. I am always going to be for sending folks home or whatever is closer to home than being in prison. Maybe this just a formerly incarcerated person thing but having been in prison. I want as many people to come home as soon as they possibly can and in the best situation they can..I'm generally not a fan of home confinement or monitoring or other forms of community supervision, but I'm also for people being able to see their families reconnect with their friends and start working on a new life. I'm for people being able to go to the store, go to the church of their choice. And we're possible participate directly in the democratic process these things most often cannot happen from inside a prison cell. I always say to people, likely to go to prison that they should look at incarceration as a process of being moved into better and better boxes, you know, you start out in the worst box possible and you keep moving to a better and better box and even if that's not technically true I tell people that they should think of it that way because ultimately at the end of the rainbow you're out boxes outside of prison are better than boxes inside prison. And remember, I was on parole and probation for much longer than some people and my parole and probation was pretty restrictive or I only got a certain amount of hours out per day. I think was five during the week and no hours out on the weekend I still say being in my box outside of prison was better than being in my box in prison. Now I will always fight to the death for the people left behind. That's why I think it's really important that this bill is called the First Step Act, which seems to explicitly acknowledge that there will be a second and a third and a fourth step, hopefully, and that we can continue to fight. Unlike many criminal justice reform bills. It doesn't make the argument that this is reform and once it's done all reforms.

Okay. The second argument they make is that risk assessments are inaccurate and racist I've actually done a lot of research in this area. And I believe this argument is framed incorrectly. The question should not be our risk assessments and algorithmic tools biased. Of course they are. Because humans made them and humans are biased. The question should be our risk assessments, more or less biased than human beings left to their own devices. Right now the alternative to algorithms or risk assessments is performance a disciplinary records. Those are assessed based on the whims of the Bureau of Prisons employees. Now I was at a state facility, not a federal facility but I remember correctional officers at one of the facilities. I was at openly supporting a basketball team. I played for simply because we had more white guys on the team than the other team. I wish I was kidding but that is actually true. I've had so many experiences anecdotally, for sure. With these kind of interactions with prison personnel all of the research I've been done. I don't know the research on the specific risk assessment tool being used here

but I have read a lot of research on risk assessment and while it is biased. Most of the evidence. I've read suggests that it's a less biased than human beings left to their own devices which is exactly what happens in the status quo without this bill.

The third argument they make is that the bill discriminates against immigrants. I absolutely oppose this element of the bill. I will fight for it to be changed if the bill passes, I will fight for it to be changed in the second, third, and fourth step x.

The fourth argument they make the first step gives low and meet the first step back gives low and medium risk inmates first access to programming when high risk inmates are most in need of program boy I have experienced this myself at the state level and I totally I feel this one pretty deeply. I agree the bill gets this precisely backwards and should be changed. I do not think this is a reason to oppose the bill entirely in less relief is possible through a different vehicle. I do not see another vehicle passing in this day status quo. However, I will fight for this to be changed if the bill passes, I will continue to fight for change in the second, third enforced back.

The next argument they make is that there's not enough programming or space pretty sure I discussed this with all three guests. I think we should have more programming and more space, but I also believe we should not make perfect the enemy of good

The sixth argument is that there's inadequate funding for prison staff. Okay, I'm gonna split this into two areas for those who remain in prison after the bill, regardless of if there's a first step back the prison budget was cut in the world or the first step back, more people go home or at least during community supervision, which means less people remain in prison to be supervised or to be given programming in prison. You can even make the argument that this would make the resource crunch less acute as the result of passage. Okay. In addition, the bill creates alternative avenues beyond correctional officers and official prison employees to create programming mentoring and services. I suspect that this and not necessarily concerned for prisoners well being is why the correctional officers union opposes the first step act. Okay. Now, for those who will be leaving prison. Yes, more resources need to be dedicated to programming and bed space, but just like Jason pi said the preference in the bill is to up for home confinement whenever possible, which is one way to free up bed spaces. I absolutely support increasing the resources for programming and housing for people released from prison and always will. Is this enough for me to say that we should vote against the bill. Not in my opinion

The seventh argument Attorney General Sessions cannot be trusted to administrate the first step back. I agree with this, in principle, but there's one real problem with this Jeff Sessions Donald Trump and mark inch are 100% in control of all inmates in the Federal Bureau of Prisons now 100% How in the world could the first step back, make this worse if they release anyone from custody. If they put anyone out of there. If anyone gets off of community supervision faster or gets into communities kick it community supervision quicker that takes them from total control to less control. Yes, they still administer administer these programs, but the it has to be better than the status quo worst case, Mr. Sessions doesn't let us make people

out as we would like. or doesn't administer things as well as we would like. But it's still better than the status quo. It just doesn't seem like a good argument for opposing the bill. To me, this is a zero sum game now Sessions an inch or 100% in charge and nobody gets out after the bill people get out. Yes, we should absolutely be vigilant. Yes, I don't trust Jeff Sessions yes this is problematic but is absolutely not a good argument for why the bill should be opposed. Finally, Jeff Sessions won't always be the Attorney General legislation is easier to pass and is to repeal what might be the possibilities of this bill with a pro criminal justice reform Attorney General, I suspect pretty good. Okay.

The eighth argument doing facilities will be privatized I've said this before and I will say again prisons are all ready for profit enterprises regardless if they have a corporate shingle or not a corporate shingle they become more so every single day they have for profit partnerships where they get kickbacks from companies like Securitas who cut them in so that they won't fight back against you serious pricing and other kinds of terrible practices. This is not what you would call a unique complaint against this bill. Second. The question is not will private interest get more of a foothold. It is if they're being paid for better outcomes or just paid to provide programming alone obviously what we're shooting for is them to start having to meet standards that ensure better outcomes. I don't think that there's a reason to oppose the bill. I do definitely think it's a very important thing to watch for. And we should certainly insist that bidding is accepted based on outcomes for prisoners, not just on the provision of programming, which is the way the status quo works and it's been a problem for a really long time.

The ninth argument 4000 people won't be helped immediately. Okay. I don't get why this is a reason to post the bill if 501,000 2000 3000 or 4000 people get to leave prison, the day. This bill is signed that is good. That is not something to take lightly I voted for President Obama twice and I celebrated his commutations but if I remember correctly if you total up all of his commutations, it was a little over 1000 maybe I'm wrong on that, but I'm pretty sure it's right and so if 2000 or 3000 people, which is I suspect given the way the letter is written, what would likely be the effect of the bill. Get out because of the bill. Why shouldn't we celebrate that any more than I celebrated the commutations I'm always for people being released

The 10th argument we have to address sentencing as well as reentry first in the letter. They say that prisons are full of non violent inmates who should not be in prisons as part of their argument for why we should dress sentencing. I just want to point out that while this is true as they mentioned above, Bill will make it easier for all low level nonviolent inmates to get out more quickly, which means on its face given their own arguments, they would reduce mass incarceration. Second, if more people are getting out on the back end. This means there is less churn and therefore less incarceration and this John FAFSA said a lot of people going into prison are on shorter terms which means with less churn you would have less mass incarceration. Third, we should be pushing for sentencing reform to it will likely not pass or be signed by President Trump at the current moment. But we should always keep pushing for it. Finally, the sentencing bill in the Senate is flawed in several troubling ways to, for example, it doesn't uniformly decrease mandatory minimums it also increases mandatory minimums for some

criminals while decreasing mandatory minimums for others it is hard to take the arguments about carve outs that were made above. Seriously, given the fact that they're pushing for a bill that actually increases mandatory minimums in certain areas. This shouldn't be a choice, a forced choice between these two things anyway. These should both be pushed at the same time, we should be trying to get as much reform as we can and we certainly shouldn't stop one bill that has a lot of potentially great effects, simply because it's not the same bill that someone else supports. There's also a really good chance that in order to pass this bill that there will be other kind of poison pills put into it like Tom Cotton spent no exceptions or other brutal add ons that could destroy or make the sentencing reform more harmful than good. I'm not saying I post sentencing reform. I'm saying there's something in consistencies and the arguments being made in this letter against the first step back.

Okay, now that was a long episode but I hope it helped deepen your understanding of the first step back, I want to send a special thank you to all of my guests. I really am thankful for all of you, Jason Jessica and aims for coming on the show. I also want to send a special thank out shout out excuse me to Andrew Stein without whose help on the technical side this episode would never have been possible make sure and listen to his podcast registry matters as well. It's also available on all the same places we are okay.

As always, you can find the show notes at Decarcerationnation.com. If you want to support the podcast directly, you can do so from [Patreon dot com/OnPirateSatellite](https://www.patreon.com/OnPirateSatellite). You can also support us by leaving a five star review from iTunes or Stitcher, or like us on Spotify. Thanks so much for listening to the incarceration nation podcast. See you next time.