**Fact-checking Chesa Boudin’s NowThis** [**Video**](https://www.facebook.com/NowThisNews/videos/381644256121631/)

Remy Reya

On October 14, 2019, a Facebook page called NowThis posted a video entitled “SF District Attorney Candidate Chesa Boudin On Criminal Justice Reform”. The clip serves to introduce the candidate to the channel’s 15 million followers, with a focus on his personal relationship with the criminal justice system and how it informs his perspectives on policy. Throughout the five-minute video, Boudin makes several claims about the criminal justice system and the American public, some of which merit further investigation.

*“The majority of Americans have an immediate family member who is either currently or formerly incarcerated.” (0:06-0:12)*

Boudin has made similar claims in the past – in an [op-ed](https://www.latimes.com/opinion/op-ed/la-oe-boudin-incarceration-criminal-justice-reform-20190407-story.html) for the *Los Angeles Times*, he identified himself as “one of the more than half of Americans with an immediate family member currently or formerly incarcerated.” In both cases, his statements assume that over half of all Americans have an immediate family member who has spent time in jail or prison. But does the data back him up?

In a December 2018 [report](https://everysecond.fwd.us/downloads/EverySecond.fwd.us.pdf) called “Every Second: The Impact of the Incarceration Crisis on America’s Families”, researchers from Cornell University worked with FWD.us to publish detailed statistics on the reach of mass incarceration in the United States. Among their key findings, they indicated that “approximately one in two adults (approximately 113 million people) has had an immediate family member incarcerated for at least one night in jail or prison” (10).

Census Bureau [population estimates](https://www.census.gov/quickfacts/fact/table/US/PST045218) from July 2018 indicate that the total population of the United States is 327,167,434. Within this statistic, 22.4% are minors (under 18 years of age), meaning that 77.6% of the total population – or 253,881,928 people in the U.S. – are adults. 113 million is about 44.5% of 254 million, so the assertion that 1 in 2 adults is affected is roughly accurate.

More recent [research](https://journals.sagepub.com/doi/pdf/10.1177/2378023119829332) from Cornell, published in March of 2019, shows survey results indicating that around 64% of Americans have had any family member incarcerated (6) – but that only 45% of Americans have ever had an *immediate* family member in jail or prison (5). This statistic reflects the findings from the earlier study.

**These findings show that Boudin’s claim about incarceration is somewhat false.** If he had broadened his claim to include extended family members, he could have justifiably asserted that a majority of Americans are affected. Alternatively, changing his phrasing from “the majority” to “around half” of Americans would have rooted his statement in research.

*“We’ve got thousands and thousands of different kinds of conduct that are criminalized in tremendous detail. And for virtually all of them, the punishment is the same: some amount of time in a cage.” (3:08-3:17)*

In his 1989 [Report to the Attorney General on Federal Criminal Code Reform](https://link.springer.com/content/pdf/10.1007/BF01096585.pdf), Ronald Gainer (a member of the District of Columbia Bar who had worked within the Department of Justice) estimated that “there appear approximately 3,000 separate provisions that carry criminal sanctions for their violation” (110). A 2004 [study](https://fedsoc-cms-public.s3.amazonaws.com/update/pdf/BNvfVKmeVXx9uulnQbIvKotdpzytrAliLKLilhaX.pdf) by the Federalist Society reported a one-third increase in this number as of the early 2000s – “over 4,000 offenses that carry criminal penalties” (23). In 2008, the Heritage Foundation [updated](https://www.heritage.org/report/revisiting-the-explosive-growth-federal-crimes) this number to show that at least 4,450 federal crimes existed.

These numbers back up Boudin’s claim that there are “thousands and thousands” of different actions that can be considered criminal behavior in the United States, just under federal law. But the second part of his claim, which suggests that almost all the crimes are linked to punishments involving incarceration, is less certain.

According to the [National Conference of State Legislatures](http://www.ncsl.org/research/civil-and-criminal-justice/misdemeanor-sentencing-trends.aspx), violations of criminal statutes can take the form of infractions, violations, misdemeanors, or felonies. The former two types of actions can lead to fines but no incarceration, while the latter two may be (though aren’t always) punished by jail or prison time.

Approximately [1,700](https://link.springer.com/content/pdf/10.1007/BF01096585.pdf) of the 3,000 provisions identified in Gainer’s report “penalize conduct that involves only a minor infraction of regulatory requirements” – meaning that more than half of the original set of provisions may carry a less severe punishment than incarceration. While it is unclear how high this number is in the context of the modern estimates outlined above, it is obvious that a large subset of criminalized conduct is punished through means other than incarceration.

**This clarification makes Boudin’s claim about punishments** **half-true**. If he had made a more specific assertion about incarceration in the case of felonies and misdemeanors, his statement would have been closer to reality.

*“This is the first time in, in really any of our lifetimes when there’s a national consensus that the tough on crime status quo is not working to keep us safe.” (3:36-3:44)*

This statement is a bit more difficult to quantify. To start, the “tough on crime status quo” can probably be taken as a reference to local, state, and federal policies and legal practices that reflect approaches to criminal justice [espoused](http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1014&context=bjalp) by Richard Nixon and Ronald Reagan in the 1970s and 80s. These approaches generally involved strict laws and harsh sentencing, especially in response to [drug use](http://www.drugpolicy.org/issues/brief-history-drug-war). They also played a role in the massive expansion of the prison population

Boudin seems to be claiming that there exists a “national consensus” that these policies are not producing the desired effect of keeping us safe. If this is the case, the sentiment would likely be reflected in public opinion polling indicating an opposition to the continuation of these policies.

In early 2016, the Mellman Group and Public Opinion Strategies conducted a [nationwide survey](http://www.pewtrusts.org/~/media/assets/2016/02/national_survey_key_findings_federal_sentencing_prisons.pdf) of 1,200 registered voters in which they asked several questions pertaining to voters’ perceptions of crime policies in the United States. They found that 79% of voters preferred flexible (case-specific) sentencing over mandatory minimums in drug cases; moreover, only 20-30% of voters polled were in favor of a ten-year mandatory minimum sentence for drug couriers, drug mules, and street drug dealers (in contrast to 68% who supported such a sentence for a drug kingpin).

But Gallup [polling](https://news.gallup.com/poll/1603/crime.aspx) from late 2016 complicates this account, showing that only 38% of respondents believed that current sentencing guidelines for people convicted of routine drug crimes are too tough. On the other hand, 34% of respondents thought that guidelines are not tough enough, and 25% believed they were “about right”. This hardly screams “consensus”.

**Taking these trends into account, Boudin’s claim about a national consensus is somewhat true.**