From: Joshua William Jackson [redacted]
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To: The Honorable United States Sentencing Commission,

I would like to make a comment on the Sentencing Guidelines and proposed amendments as per the notice on 9.29.2022. My name is Joshua William Jackson and I am the criminal defendant in Case No.: 3:16-CR-0196-L-1, in the Northern District of Texas. During my initial case, I proceeded Pro Se, and due to confusion and complications by my Sentencing Judge, I was sentenced to more than 110 months higher than what my sentencing Guidelines would have been, had they been properly applied..

Since then I have been focused on helping others around the nation (at the facilities where I am) resolve issues regarding the Sentencing Guidelines, and other issues. I would like to make requests and speak on proposed amendments that I have both experienced and personally witnessed.

USSG 1B1.13 - Compassionate Release

The original Compassionate Release Guidelines were extremely rigid and gave very few reasons for a petitioner or the Court to consider if a petitioner has an "extraordinary or compelling circumstance". As we have noticed over the last 4 years, many reasons can be considered Extraordinary and Compelling. Some of the reasons I would like to be considered are based on Supreme Court Cases that have gone into effect since the passage of the First Step Act;

*Gall, Molina-Martinez, and Rosales-Mireles - Misapplication of the United States Sentencing Guidelines:

One issue I have seen more often than not is when a Court during the Sentencing Hearing makes a grave misapplication of the Guidelines despite clear and concise instructions from the Sentencing Commission that have led to years (sometimes decades) in additional Incarceration.

In Gall, the Supreme Court explained that a Misapplication of the United States Guidelines can affect the entire sentencing proceeding. But after the issue has been made, it is nearly impossible for some inmates to amend the issue regardless of how clear the error was. There are so many procedural hurdles that prevent adequate review that families are stuck with a human-made error that would have otherwise not been an issue. Because the 3553(a) Factors also heavily rely on the Guidelines and the Sentencing Range the fact that Guidelines were misapplied could impact the entire Judicial Proceeding.

This was confirmed further in Molina-Martinez then Rosales-Mireles which explained that when the Guideline issue is clear, it can and most often should be resentenced. As mentioned before there are a number of procedural hurdles that would prevent an issue from being raised, and if a Court decides to ignore the issue, there is no chance for appellant review.

The 18 USC 3582 would provide a window for sentences that are unconstitutionally long to be reduced and errors made at a sentencing hearing to be resolved in a positive way that would also promote respect for the law, and fairness in the Courts.

Example:

I was charged in a three count Superseding Information with violating Use of a Facility of Interstate Commerce to Aid a Racketeering Enterprise 18 USC 1952(a)(3)(A) in violation of Texas Penal Code 43.02 (Prostitution), Illegal Receipt of a Firearm by a Person Under Indictment, 18 USC 922(n) and 924(a)(1)(D) and Cyberbullying 18 USC 2261A(2) and (b+5). My underlying offense for the Aiding Racketeering charge (1952) was Tex. Pen. Co. 43.02. Which is a Class B misdemeanor.

18 USC 1952 falls under the United States Sentencing Guidelines of 2E1.2. The Second Application Note states that if underlying conduct violates state law, the Court must determine the Most Analogous Federal Offense and use the Guidelines

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(See 2E1.2 cmt. n. 2). In my case the Court did not understand that 18 USC 1952 could be violated by a state law and did not understand that the Sentencing Commission had directed the Court to determine the most analogous Federal Offense to the charged underlying conduct.

Instead of my offense level being 20 bringing me a guideline range of 37-46 months, it ended up being 34 bringing my range to 168-210. That is nearly a decade of a difference in regards to the Guidelines, based on what is essentially a simple mistake.

I am not 7 years into an incorrect sentence because the Court still doesn't understand the guidelines despite the Langley Decision from 1990. (United States v. Donald Langley, 5th Cir 1990). Because of the complexity of the 2E1.2 Guidelines I have no recourse to fix an illegal sentence because the Judge still doesn't understand the clear instructions in 2E1.2 cmt. n. 2.

If the 1B1.13 Guidelines were to also consider Misapplication of the United States Sentencing Guidelines and Extraordinary and Compelling issue, then it would require Courts to consider Guidelines issues and how appropriate a sentence is for a defendant after the issue has been resolved. Numerous Courts around the nation in the last four years have decided that a Misapplication of the Guidelines does in fact require Resentencing to preserve the interest of justice, fairness, and the public reputation of the Court.

*Concepcion - Intervening Changes in law

One of the major things that affect Defendants is when a law changes in their favor after serving a 30 year sentence because it is discovered that the issue was reversible. But without it being made retroactive, The inmate would still serve a sentence they would not have to serve otherwise.

The truth is, it was once said, to even serve one day of additional time in prison then is necessary would be a violation of due process and civil liberties, I believe by allowing Courts to not only consider the Misapplication of Guidelines but amended Guidelines and Intervening Changes in law, it would allow for a fair consideration between similar defendants (3553(a)(6)) and it would give people chances to reunite with their families after the laws change.

Next, I would like to request an amendment to USSG 2E1.2(a)(2) and cmt. n. 2:

As mentioned before I was charged with 18 USC 1952(a)(3)(A) in violation of Texas Penal Code 43.02, in Count 1 of my Superseding Information. 18 USC 1952 is in the statutory appendix of 2E1.2, which is pretty straightforward. The problem came when my Court didn't understand the language in Application Note 2.

Application Note 2 states that if underlying conduct violates state law, then the Court must determine the most analogous Federal Offense and use the guidelines (a)(2).

While the reading is clear the understanding was not for my Judge Sam A. Lindsay. It lead to an increase of more than 110 months in my federal guidelines and forced my 3 five year sentences to be run consecutively.

Texas Penal Code 43.02 is Prostitution in the State of Texas, a Class C Misdemeanor at best. But the Court stated that it "did not deal with state charges" despite the Guidelines stating specifically, "to find an Analogous Federal Offense to the underlying state conduct."

I believe if the Guidelines were a bit more clear, it would prevent issues like this in the future. I would propose something similar to;

Application Note 2: If the charged underlying conduct violates State Law,(ie a State Penal Code) the Court must first Determine the Most Analagous Federal Offense to the charged Underlying State Code, and use the applicable Federal Guidelines. If the charged underlying conduct violates Federal Law, the Court is to use the Federal Guidelines for the charged conduct.

This would stop the confusion with District Courts, and Appellant Courts (like in United States v. Langley {5th Cir. 1990} and my own case United States v. Jackson {N.D.Tex. 2016}) It would also reduce the risk of inappropriate sentences based on the misapplication of the United States Guidelines and errors in Sentencings.

Also by clarifying the Application Note, it would reduce the chance of Gall, Molina-Martinez, and Rosales-Mireles issues at the District Court Level. It would also allow more comfort in Guilty Pleas and confidence in the Sentencing Procedure. Even though the Guidelines are merely "advisory", the Court is still required to accurately calculate the Guidelines for the 3553(a) Factors.

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The chances of inflated sentences are drastically reduced when there is clear instruction that can not be misconstrued.

If this is made retroactive as well, I would finally fix a sentence that is currently 4 years past it's prime.

I believe by showing an example of what 18 USC 1952(a)(3)(A) looks like and then explaining how to find the most analogous Federal Offense to any given state offense, would also help judges who are confused by the statutes or guidelines instructions. Other Guidelines show examples of how to apply the application notes. I believe 2E1.2 also needs to have explanations or examples because 18 USC 1952 is considered a complex charge due to its dual statute nature, and how it can be violated by both Federal and State laws in the same statute or multiple underlying offenses. (2E1.2 cmt. n. 1)

USSG 2X5.2 - Class A Misdemeanors:

While I was in COurt with United States Distict Judge Sam A. Lindsay, he could not understand that Class A Misdmeanors not listed in the statutory appendex of 2X5.2 still fell under 2X5.2 if it was not listed in another Federal Guideline.

I believe there are a number of Judges who have made a similar mistake and it can lead to potentially decades of additional prison time for defendants based on an issue ultimately caused by a Courts failure to understand the law.

I would like to request that 18 USC 1384 - Prostitution on or Near a Military Base or Establishment be added to the statutory appendix of USSG 2X5.2, as it is a Class A Misdemeanor but could accidentally fall under another statutory appendix if left unchecked, unclear, or decided.

The issue affected me directly because of Tex. Pen. Co. 43.02 and 18 USC 1384 are nearly identical with the exception of the Federalizing Element. If 18 USC 1384 was listed in the Guidelines of 2X5.2 it would have greatly reduced the risk of the Guidelines being misapplied in my case and my sentence being enhanced by 110+ months.

USSG 3E1.1 - Acceptance of Responsibility

I would like to also address the issue of the Government withholding Acceptance of Responsibility based on objections to the PSR based on a misapplication of the Guidelines.

Many federal inmates feel as if they are conned into pleading guilty with the bait of a lesser offense only to be enhanced based on "irrelevant conduct" that had been dismissed or never charged at all. Then if the defendant practices his rights to object, the Government withholds the acceptance of responsibility. It makes a mockery of the justice system because it shows that the Government does not have to honor a plea agreement it crafted, and then most of the time Inmates can not even withdraw the plea based on the duplicity they feel during their sentence that Justice was not served.

Acquitted Conduct:

I would also like to request not only Acquitted but uncharged conduct and conduct outside of the offense of conviction be removed from "relevant conduct".

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**From:** ~^! MILLER, ~^!NATHAN
**Subject:** [External] ***Request to Staff*** MILLER, NATHAN, [redacted], CAA-F-A
**Date:** Friday, October 14, 2022 8:51:17 AM

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To: pubaffairs@ussc.gov
Inmate Work Assignment: n/a

***ATTENTION***

Replies to this message will not be delivered.

***Inmate Message Below***

In consideration of possible amendments to 2k2.1 the sentencing commission should consider the recent supreme court ruling in New York state rifle & pistol association inc v Bruen as well as the Western District of Texas ruling on 922(n) and its as well in United States v Jose Quiroz in the light of these two land mark decisions the commission should strongly consider making changes to this law with respect to united states citizens 2nd amendment rights......

In considering amendments to the categorial approach in determining whether an offense is a crime of violence's or a controlled substance, the commission should consider the Jerome presumption (SUPREME COURT) as well as district courts rulings on this matter, many courts have ruled that only those substances listed in the federal CSA should be considered when determining whether a controlled substance qualities in subsection 4b1.2 including the 11th circuit court of appeals. This will eliminate the issue of different states with it broad laws and its different controlled substances.

another thing theres no FSA credits being applied to us inmates we getting denied programs for no reason they using high recidisvism as 1 of the reasons and in a memo i read it doesnt matter if you high recidivism or not if you qualify you qualify based on your offense your arrested for. thank you for your time and effort sincerly

nathan miller