James Arbaugh
[redacted]
FCI Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640

3-October-2022

United States Sentencing Commission
Attention: Public Affairs / Priorities Comment
One Columbus Circle, N.E. Suite 2-500
South Lobby
Washington, DC 20002-8002

Re: Comments on Sentencing Commission Priorities

Dear Members of the United States Sentencing Commission:

I am an inmate in federal prison, and write to express my appreciation for the work you are doing and to affirm your planned priorities. As someone with inside experience of the sentencing guidelines, I can provides a unique prospective to give helpful feedback.

I feel strongly of the importance of the following identified priorities:

(1) 1B1.13 - Reduction in Sentence.
(7) Studies on recidivism and the treatment of defendants with zero criminal history points.
(11) Simplify the guidelines while promoting the statutory purposes of sentencing.
(12) Diversion and alternatives-to-incarceration programs.
(13)(A) 3D1.2 - Grouping of Closely Related Counts.

As you consider priority eleven (11), how to simplify the guidelines and statutory purposes of sentencing, it is important to integrate the guidelines to the statutory maximum sentence allowable. Ideally, if all possible guideline enhancements for aggravating factors were applied in a given case, the guideline sentence would not exceed the statutory maximum. In some classes of crimes, particularly sex offenses, the guidelines for a typical case are at or beyond the statutory maximum.

In particular, consider cases of child exploitation, production, distribution, receipt or possession of child pornography. Most of these cases are given the following enhancements:

§ 2G2.2(b)(4) - material with sadistic or masochistic conduct
§ 2G2.2(b)(6) - use of a computer
§ 2G2.2(b)(7) - number of images involved

Because most cases receive these enhancements, they become "useless" and contribute to a guideline sentence at or above the statutory maximum. Frequently, judges do not have the backbone to give a downward variance accordingly. Those that do are scrutinized severely. Consider the confirmation hearings of Justice Ketanji Brown Jackson.

In cases of sexual abuse, there is no guideline consideration for the severity of the sexual act. 18 U.S.C. § 2246(2) describes a "sexual act" to include anything from (A) forced sodomy/intercourse to (D) simply touching the genitalia to cause sexual arousal. There is no guideline enhancement for more severe conduct.

The age of the victim becomes a primary consideration according to the guidelines sentence, particularly for a conviction under 18 U.S.C. § 2423(c). There is sentencing disparity between the guideline used, § 2G1.3(b)(5)(B) - "the offense involved a minor who had not attained the age of 12 years, increase by 8 levels", and other guidelines. The enhancement used for other sex offenses is at least half. Consider:

§ 2A3.1(b)(2) - increase by 4 levels
§ 2A3.4(b)(1) - increase by 4 levels
§ 2G2.1(b)(1)(A) - increase by 4 levels
§ 2G2.2(b)(2) - increase by 2 levels
§ 2G2.6(b)(1)(A) - increase by 4 levels

Accordingly, the § 2G1.3(b)(5)(B) enhancement should be reduced from 8 levels to 2 to 4 levels to prevent sentencing disparity.

The age issue is again double-counted under § 2G1.3(b)(2)(B) for Undue Influence because "some degree of undue influence" exists whenever an age disparity of at least ten years exists between a minor and another participant in the prohibited sexual conduct. § 2G1.3(b)(2)(B) cmt. n. 3. It would be a very rare case where there was not an age disparity, and the undue influence enhancement would not apply. The note should be modified not to apply the Undue Influence enhancement for age disparity alone.

I appreciate your work to revise and improve the sentencing guidelines which will make for more equitable sentencing.

Sincerely,

James Aldaugh

From: ~^! DOSS, ~^!THOMAS JASON
Subject: [External] ***Request to Staff*** DOSS, THOMAS, [redacted], PEM-B-N
Date: Thursday, October 13, 2022 7:20:13 PM

To: USSC Jennifer Dukes
Inmate Work Assignment: Unicor

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

I ask this commission to consider retroactive amendments to the sentencing table by reducing points for all of the offenses for all zero criminal history defendants. Please consider the abolishment of mandatory minimums. The defendants that have zero/minimal disciplinary infractions while incarcerated, and have worked to obtain a low recidivism rate through programing and counseling should be eligible for all of the first step act good time credits no matter the offense. This would allow all offenders of all offenses to have an incentive to rehabilitate and re-enter society.

Allowing for lighter sentencing for first time offenders and providing retro active resentencing for those already serving their sentence, along with the incentives of the first step act good time credits for all offenses would be a more fair sentencing structure for the federal system. Thank you very much for your time.

Respectfully,
T. Doss

From: ~^! GIOVINCO, ~^!CHARLES ANTHONY
Subject: [External] ***Request to Staff*** GIOVINCO, CHARLES, [redacted], DAN-C-A
Date: Friday, October 14, 2022 12:06:39 PM

To: Commentary
Inmate Work Assignment: Communications

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

I would like to comment on the following regulation proposals:

1. Commentary not 1b1.13
The scope and usage of 1b1.13 in regards to sentence reductions and compassionate release motions. The intentions of the First Step Acts enabling of the defendant (inmate) to bring forth their motion for compassionate release was created due to the BOP's reliance on 1b1.13 and their failure to adequately grant motion requests brought before them. Even after the FSA was passed the BOP has largely continued to deny a vast majority of the compassionate release requests brought before them. 1b1.13 deals primarily as to what constitutes extraordinary and compelling reasons for consideration of a compassionate release motion (sentence reduction).

As such the Sentencing commission should continue to allow courts to consider factors outside of the very narrow criteria set forth in 1b1.13 and even go as far as expanding the scope of 1b1.13 which is "other criteria as defined by the Director of the BOP". Currently many courts such as the 5th, 11th and 1st circuit are denying motions for compassionate release based on the 1b1.13 criteria. Even though the greater majority of circuits have found that 1b1.13 does not apply to motions brought by defendants.

2. Criminal History level 0

The commission should move to resolve this issue. Currently a defendant with no criminal history is sentenced the same as a defendant who has one or 2 felony convictions in their past. This is a great injustice to the first time offender. This can be resloved in one of two ways. First is the creation of a lower sentencing guideline table category that would represent a defendant as having no criminal history, or provide for a 1 or 2 point downward departure for inmates sentenced under category 1 but have no relevant criminal history. Also the sentencing commission should make this change retroactive, as it represents a miscarriage of justice.

3. Career Criminal Predicate offenses.

Currently there is a significant circuit split as to if a inchoate drug offense (attempt or conspiracy) constitutes a predicate for the application of the career criminal act enhancement provided for under 4.B1 of the sentencing guidelines. This enhancement significantly increases a defendant's term of incarceration by significantly increasing both sentence calculation points to a minimum of 34 and increasing criminal history to a level VI. This exposes a defendant to a substantial deprivation of life and liberty. As an example a inmate may only be facing a sentence of 70-87 months until the Career Criminal Enhancement is applied. After the application of the enhancement that inmate can face a sentence of up to 268 months. (These numbers may not be exact as the inmate writing this does not have direct access to the sentencing guidelines table) However, this shold be a great example of the impact of

this enhancement.

To use a attempt or conspiracy as a predicate there is substantial question as to the defendant's intent with no avenue for verification. This issue is well stated in the United States Supreme Courts decisions in US v. Taylor, and US v. Borden. Where the court found that inchoate (attempt/conspiracy) crimes did not qualify as crimes of violence for the application of Armed Career Criminal Act and Career Criminal Act enhancements for the same reasons.

Along the same reasoning these inchoate offenses should be catagorically excluded as predicate offenses for the application of the Career Criminal Enhancement. Further, this should be considered to be applied retroactively as is represents a great and unjustified deprivation of life and liberty.

Conclusion:

I do not know if this is a possibility in any way, But I would like to be able to meet with a representitive of the sentencing commission or their staff to discuss this further. I have been incarcerated as a first time offender for over 14 years of a 235 month sentence. I believe that if there is a greater understanding of the impact of these sentencing policies not the inmate and their families the commission has a opportunity to make a great change for the betterment not only of inmates but of society. Is is not about setting inmate free, but about making rehabilitation a viable, available and reliable component of incarceration from the time that a inmate enters the federal correctional system. Again this is am area that I have a great deal of personal observation and experience

Thank You
Charles Giovinco [redacted]
FCI \Danbury

October 2, 2022

TO:
U.S. Sentencing Commission
ATTN: Public Affairs Priorities Comment
1 Columbus Circle NE
Suite 2-500
Washington, D.C. 20002-8002

FROM:
Daniel Heath [redacted]
FCI Fort Dix
PO Box 2000
Joint Base MDL, NJ 08640

RE: Comments on Commission Priorities

Sentencing Commission,

How refreshing to hear that we have a Sentencing Commission after a long period of abeyance. Thank you for publishing a proposed list of priorities for your upcoming session of work. I would like to personally urge your attentiveness to the following priorities:

1. A Complete Overhaul of §1B1.13

I am in total agreement with your proposed list that attention to §1B1.13 should be your utmost priority. Since passage of the First Step Act (FSA) BOP inmates, BOP administration, and US Courts have been in a quandary about which circumstances rise to the standard of "extraordinary and compelling" under 18 U.S.C. §3582.

As you address §1B1.13 I specifically ask that you heed the call of the FSA Title VI Sec 603(b) and truly help to "Increas[e] the Use and Transparency of Compassionate Release." The Commission was tasked by Congress with doing the proper amount of research to give guidance to the BOP and Federal Courts on which situations should compel them to consider a reduction in sentence for an inmate.

Specifically, I hope that you will expand the current

categories in §1B1.13 commentary, give the BOP Director and Federal Judges more free reign to consider inmates on an individual basis, and rely on case law to get a sense of situations that District Judges have found to be extraordinary and compelling.

Even more narrow, I ask that you include a provision on being a caregiver to any family member who may need assistance due to disability. Judges in at least 10 Federal Circuits have found it extraordinary and compelling that an inmate needs to be a caregiver to a parent, adult child, grandparent, or other extended family member. (See Attachment) I request that such situation is included in your revised §1B1.13.

2. Consideration of §4A1.1

In particular, I ask that you pay close attention to research regarding convicted persons with zero criminal history points, in which a criminal conviction represents truly aberrant behavior. Please consider reduced sentence guidelines for such inmates, and please make any changes retroactive.

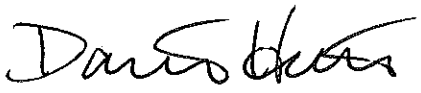
3. Changes to Guidelines Used to Calculate Range in Offenses of Sexual Nature

I am thankful that you plan to visit §2G1.3 in some way. Please take a look at changes needed for all guidelines in this sector. For instance, please consider getting rid of "computer enhancements." In an age when practically every crime in this category involves a "computer device" such behavior is no longer an aggravating factor. Please consider completely altering or dropping altogether "picture count" provisions such as in §2G2.2. With the proliferation of high speed internet it is quite impossible to infer the severity of a crime by number of images or videos downloaded.

I ask you again to use recidivism rate research for first time offenders in this category in comparison to other crimes to lower sentence ranges commiserate with other felonies.

Thank you for your time and consideration, and I am praying God's blessings on you as you go about fulfilling your duties.

Sincerely,



Daniel Heath

The following is a brief list of some cases in which a District Court Judge ruled that being a caregiver for a family member other than a spouse or minor child is considered extraordinary and compelling under §3582:

1st Circuit: United States v. Bucci, (D.Mass. Sept. 16, 2019); United States v. Daham, (D ME Jan. 27, 2021)

2nd Circuit: United States v. Lisi, (S.D.N.Y. Feb. 24, 2020); United States v. Riley, (D. VT May 12, 2020); United States v. Wooten, (D CT Oct. 16, 2020); United States v. Dragone, (D CT Feb. 1, 2021); United States v. Hasanoff, (S.D.N.Y. Oct. 27, 2020); United States v. Vargas, (S.D.N.Y. Nov. 24, 2020)

3rd Circuit: United States v. Dunich-Kolb, (D NJ Feb. 14, 2022)

4th Circuit: United States v. Hicklin, (W.D. VA Dec. 11, 2020); United States v. Vanlaar, (M.D.N.C. June 24, 2022)

6th Circuit: United States v. Walker, (N.D. OH Oct. 17, 2019)

7th Circuit: United States v. Rhodes, (D IL Mar. 3, 2021)

8th Circuit: United States v. McCauley, (W.D. MO June 23, 2021)

9th Circuit: United States v. Pickering, (W.D. WA Nov. 29, 2021); United States v. Kesoyan, (D CA Apr. 27, 2020); United States v. Mendoza, (N.D. CA May 20, 2022); United States v. Richardson, (N.D. CA July 7, 2022); United States v. Awbery, (E.D. WA May 17, 2021); United States v. Tuan Hong Tran, (W.D. WA Nov. 10, 2021); United States v. Alvarado, (S.D. CA Oct. 29, 2021)

11th Circuit: United States v. Hernandez, (S.D. FL Apr. 3, 2020); United States v. Griffin, (S.D. FL Dec. 8, 2020)

DC Circuit: United States v. Price, (D DC Oct. 6, 2020)

From: dreamflight@sprynet.com
To: Public Affairs
Subject: [External] Federal sentence issue
Date: Sunday, October 9, 2022 11:38:56 AM

Hello ~ my friend Elmer Jones – Federal prisoner [redacted] has asked that I forward the below message to you. If you have any questions, you may contact me by e-mail or phone. Thank you.
John Pappas
[redacted]

Public Comment to # (7) THE IMPACT OF "STATUS" POINTS UNDER SUBSECTION (d) of 4B1.1

My name is Elmer Jones and I am currently serving time for a federal drug and firearm conviction. I had two prior offenses that qualified for 1 criminal history point a piece. At sentencing, I was assigned an additional 2 points because of the "status" provision of 4A1.1 which basically states since I committed my instant offense while under form of probation I must receive 2 more points. That gave me a grand total of 4 history points instead of the 2 points I had expected. Those with misdemeanor probation in my opinion should not be enhanced in such a manor. My prior Ohio state conviction was a misdemeanor and the judge stated at my sentencing that I was "to exhibit good behavior" for two years. Subsequently, I got arrested for my federal matter and was found guilty. When conducting the PSI, the writer determined I was under a form of probation because the judge stated I was to behave for two years despite my state judge never assigning me a probation officer or even took further action against me since catching a new case. Moreover, I was ultimately considered a criminal history category III and level 34 offender and sentenced to 270 months for my first ever felony conviction. If I did not receive those 2 points for my "status" then I would have been at a category II which would have significantly impacted my sentence. Please take into consideration my case and those similar to mine when the Sentencing Commission convenes this year. Thank you for your time. Elmer Curtis Jones [redacted]

TRULINCS [redacted] - MURRAY, AARON MICHAEL - Unit: COL-B-D

~~FROM: [redacted]~~
~~TO: Health Services LOW~~
~~SUBJECT: ***Request to Staff*** MURRAY, AARON, [redacted], COL-B-D~~
~~DATE: 10/02/2022 01:05:14 PM~~

~~To: Delete~~
~~Inmate Work Assignment: N/A~~

October 1, 2022

United States Sentencing Commission
ATTN: Public Affairs-Priorities Comment
1 Columbus Circle, NE, Suite 2500, South Lobby
Washington, DC 20002-8002

RE: Public Comment on Proposed Priorities for
Amendment Cycle Ending May 1, 2023

Dear Sentencing Commission,

My name is Aaron Murray and I am a federal prisoner at the Federal Correction Complex- Coleman Low in Coleman, Florida. During my incarceration, I received my paralegal certification and have held a position as the Legal Clerk in the prison's Law Library. Over the last several years, I have been in contact with Carrie Wilson of this Commission and I am aware that you periodically review comments and recommendations from inmates regarding potential changes to the sentencing guidelines. Therefore, I am offering several comments on possible policy priorities for the amendment cycle ending May 1, 2023.

My comments to the proposed priorities for the amendment cycle, that were enumerated by this Commission, are as follows:

(1) Consideration of possible amendments to 1B1.13 (Reduction in Term of Imprisonment under 18 U.S.C. 3582(c)(1)(A) (Policy Statement)).

-The First Step Act plainly intended that federal judges be allowed an independent and individualized consideration on whether to grant a sentence reduction or compassionate release. Despite the Eleventh Circuit's erroneous conclusion in UNITED STATES V. BRYANT, 996 F.3d 1243 (11th Cir. May 7, 2021), every other Circuit has concluded that U.S.S.G. 1B1.13 is not an applicable policy statement for defendant filed motions. While 1B1.13 needs to be updated, it is important to remember that the Guidelines are advisory and that, even absent a policy statement, federal judges have authority to adjudicate whether a defendant has offered "extraordinary and compelling reasons" warranting relief. The 3582 statute merely requires that courts' decisions on sentence reductions and compassionate releases be "consistent with" any applicable policy statement. 18 U.S.C. 3582(c)(1)(A). As the Seventh Circuit put it, "'Consistent with' differs from 'authorized by.'" UNITED STATES V. GUNN,, 980 F.3d at 1180 (7th Cir. Nov. 20, 2020). Congress delegated the authority to determine the meaning of "extraordinary and compelling reasons" to this Commission. See 28 U.S.C. 944(t). While this Commission "shall DESCRIBE what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples," (944(t)), you do not have the authority to "define" what can be considered "extraordinary and compelling." Therefore, district courts, directly authorized by Congress, have the inherent equitable power to grant a reduction in sentence or compassionate release for any reason beside rehabilitation alone. See 28 U.S.C. 994(t). Thus this Commission must update the 1B1.13 Guideline to include defendant filed motions while providing guidance to district courts on what can be considered "extraordinary and compelling."

TRULINCS [redacted] - MURRAY, AARON MICHAEL - Unit: COL-B-D

~~FROM: [redacted]~~
~~TO: Health Services LOW~~
~~SUBJECT: **Request to Staff** MURRAY, AARON, [redacted] COL-B-D~~
~~DATE: 10/02/2022 01:28:55 PM~~

~~To: Delete~~
~~Inmate Work Assignment: N/A~~

(7) Consideration of possible amendments to the Guidelines Manual relating to criminal history to address the treatment of defendants with zero criminal history points.

-This Commission has performed numerous studies on how an offender's background and age effect recidivism. However, despite having zero criminal history points, many criminal defendants receive similar or greater sentences than those who have a much worse criminal history. With statutory minimums and maximums, the way most courts calculate guideline ranges do not account for defendants with zero criminal history points and who have no or low risk of recidivism. I propose that a first-time offender "safety-valve" guideline be created and that the Probation Office's Pre-Sentencing Report include a defendant's recidivism risk level prior to sentencing.

As this commission is aware, some first-time offenders are eligible for safety-valve relief under 18 U.S.C. 3553(f). However, most defendants do not meet the criteria for this reduction. Although district courts cannot sentence a defendant under the mandatory minimum, a new Guideline should be created to standardize how courts treat defendants with zero criminal history points. Just like U.S.S.G. 5K1.1, a court should be authorized to grant a downward departure for first-time offenders with zero criminal history points. In the Federal Sentencing Guidelines Manual, this new Guideline an be added under Chapter Five, Part K-Departures.

As far as including a defendant's risk of recidivism in the Probation Officer's PSR, this information would assist district courts with imposing an appropriate sentence. A defendant's risk or recidivism is currently not being considered at sentencing, despite being related to multiple factors under 3553(a)(2). The Department of Justice has already released a risk assessment tool, known as PATTERN, as required by 18 U.S.C. 3553(a)(2). Among other things, PATTERN was designed to evaluate "the recidivism risk or each prisoner as part of the intake process, and classify each prisoner as having minimum, low, medium, or high risk for recidivism." 19 U.S.C. 3632(a)(1). Therefore, it is reasonable to conclude that the Probation Office, the Department of Justice, and the Bureau of Prisons could work together to calculate a defendant's recidivism risk level prior to the district court's sentencing.

(9) Consideration of possible amendments to the Guidelines Manual to prohibit the use of acquitted conduct in applying the guidelines.

-Using acquitted conduct at sentencing is anathema to Due Process and the fundamental fairness of justice embodied in the Constitution. District courts should not have the authority to use conduct that the jury found a defendant innocent of to increase a sentence. However, while not using acquitted conduct is important, there are several other types of conduct that deserve this Commission's scrutiny.

Uncharged conduct, especially conduct that is in-and-of-itself a separate charge, should not be considered at sentencing. This uncharged conduct never appeared before a grand jury and criminal defendants never received fair notice. Prosecutors have full discretion to present this conduct to a grand jury to receive an indictment or superseding indictment. it is unfair to add uncharged conduct into a PSR for enhancement purposes and, besides objections to the PSR at sentencing, defendants have no way to defend themselves against this conduct.

Not only does uncharged conduct fly in the face of the legal axiom that criminal defendants are innocent until proven guilty, but so does using dismissed conduct to enhance a sentence. There are many reasons prosecutors choose to dismiss charges. Whether is is the result of a plea deal or lack of evidence to bring that charge to trial, defendants should not receive enhanced sentences for charges that were dismissed.

District courts use both uncharged conduct and dismissed conduct at sentencing through the "preponderance of evidence" standard, instead of the stricter "beyond reasonable doubt" standard that is required for a jury to convict. Thus, any conduct not admitted to in a plea agreement or found by jury at trial should not be used at sentencing. Therefore, this Commission should ensure that the Constitution and Bill or Rights is upheld to guide courts in not utilizing acquitted, dismissed, and uncharged conduct at sentencing.

TRULINCS [redacted] - MURRAY, AARON MICHAEL - Unit: COL-B-D

~~FROM: [redacted]~~
~~TO: Health Services LOW~~
~~SUBJECT: ***Request to Staff*** MURRAY, AARON, [redacted] COL-B-D~~
~~DATE: 10/02/2022 01:56:17 PM~~

~~To Delete~~
~~Inmate Work Assignment: N/A~~

(12) Multiyear study of court-sponsored diversion and alternatives-to-incarceration programs (e.g., Pretrial Opportunity Program, CASA Program, SOS Program), including consideration of possible amendments to the Guidelines Manual that might be appropriate.

-The federal prison system is full of first-time, nonviolent offenders who have a very low risk of recidivism. In light of the COVID-19 pandemic and the CARES Act of 2020, this fact became perfectly clear. The Attorney General was granted permission by Congress to place federal prisoners on home confinement. Thousands of prisoners were granted home confinement placement and all indicators so far show that this program has been a success. In addition, many criminal defendants are granted bond and placed on Pretrial Services monitoring pending trial, proving that they are capable of following the law while on court monitoring without incarceration. Alternatives-to-incarceration programs will not only assist with the current overpopulation problem federal prisons are currently experiencing, especially now that private prisons have been shutdown, but it will also save the taxpayers the cost of incarcerating nonviolent and low risk criminals. Therefore, the federal criminal justice system needs more rehabilitation programs in lieu of prison sentences. Anything this Commission can do to help increase alternatives-to-incarceration programs would benefit not only criminal defendants, but society as a whole.

(13) Consideration of other miscellaneous issues, including possible amendments to (A) 3D1.2 (Grouping of Closely Related Counts) to address the interactions between 2G1.3 and 3D1.2(d).

-In many cases, the U.S. Sentencing Guidelines sentencing range will roughly approximate a sentence that would achieve the objectives of 18 U.S.C. 3553(a). These ranges are typically the product of this Commission's careful study, and are based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions. But not all Guidelines possess this pedigree. And where a Guideline does not reflect the careful study of this Commission, it is likely not a reliable indicator of this Commission's perspective on a fair sentence. As numerous courts and commentators have explained, the child pornography Guidelines are by and large not the result of this Commission's expertise, nor based on careful study and empirical data. See HENDERSON, 649 F,3d at 960-63; UNITED STATES V. DORVEE, 616 F.3d 174, 184-86 (2nd Cir. 2010). Instead, 2G2.2 is the result of two decades' worth of Congressional directives-at times actively opposed by this Commission-that have continually ratcheted up penalties and piled on enhancements. HENDERSON, 649 F.3d at 960-63; DORVEE, 616 F.3d at 184-86; see also generally Troy Stabenow, Deconstructing the Myth of Careful Study: A Primer on the Flawed Progression of the Child Pornography Guidelines (2009).

Of course, Congress' active role in shaping 2G2.2 is not in and of itself reason to question the Guideline's wisdom or efficacy. The real problem, as courts across the country have recognized, is that 2G2.2 simply does not work. GROBER, 624 F.3d at 607-10; HENDERSON, 649 F.3d at 960-63; DORVEE, 616 F.3d at 184-86; UNITED STATES V. DIAZ, 720 F. Supp. 2d 1039, 1041-42 (E.D. Wis. 2010)(collecting cases). Rather than carefully differentiating between offenders based on their culpability and dangerousness, 2G2.2 consists of a hodgepodge of outdated enhancements than apply in nearly every case. DORVEE, 616 F.3d at 186. As a result, this Guideline routinely results in sentencing ranges near or exceeding the statutory maximum, even in run-of-the-mill cases involving first-time offenders. Id.

This broken Guideline has not escaped this Commission's attention. Following several years of research, you issued a comprehensive report on 2G2.2. United States Sentencing Commission, Report to Congress: Federal Child Pornography Offenses (Dec. 2012). However, while this Commission recommended major revisions to the Guideline, you left it to the discretion of Congress because of its extensive involvement in crafting that Guideline. However, Congress has shown, time and time again, that politics prevents it from correcting this Guideline. The Senate's Confirmation Hearing for Justice Ketanji Brown Jackson made it perfectly clear that Congress will NEVER act to correct this problem. Thus, this Commission has an independent duty to correct 2G2.2 and the child pornography Guidelines.

Respectfully Submitted,
Aaron Murray

Aaron Murray
[redacted] [redacted]
FCC Coleman Low
P.O. Box 1031
Coleman, FL 33521-1031

From: ~^! NAUGHTON, ~^!JEREMY
Subject: [External] ***Request to Staff*** NAUGHTON, JEREMY, [redacted], LVN-B-B
Date: Friday, October 14, 2022 7:49:58 AM

To: U.S. Sentencing Commission/ Public Affairs
Inmate Work Assignment: Educ Tutor

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

Amending the Guidelines Manual relating to criminal history to address subsection (d) of 4A1.1 (Criminal History Category) would give individuals hope, and this sense of hope would allow inmates the opportunity to develop productively. Having long sentencing based solely on your past place prisoners in a mind set to continue their criminal behavior. Low recidivism is based on having hope for a productive future, without this hope then society has failed it's collective community. These "status" points for the Criminal History Category only further promote a high recidivism mentality.

From: ~^! NEWTON, ~^!MARK JONATHAN
Subject: [External] ***Request to Staff*** NEWTON, MARK, [redacted], PEM-B-N
Date: Thursday, October 13, 2022 8:35:21 PM

To: Jennifer Dukes
Inmate Work Assignment: unit orderly

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

In response to your request for public comment regarding the Sentencing Commission's policy priorities this amendment cycle, I ask the Commission to modify Category I of the Sentencing Table by reducing the points for all defendants with NO criminal history, regardless of the offense. It doesn't make sense to sentence people to essentially life in prison for a first-time offense. Although it may not be possible, I would also ask that such a change be made retroactive.

Thank you.

From: ~^! SIMPSON, ~^!MATTHEW NORMAN
Subject: [External] ***Request to Staff*** SIMPSON, MATTHEW, [redacted], TRV-M-A
Date: Thursday, October 13, 2022 7:35:56 PM

To:
Inmate Work Assignment: Laundry

ATTENTION

Replies to this message will not be delivered.

Inmate Message Below

re: US Sentencing Commission priorities

Please consider the following items for review.

1. Create a Category "0" Non-violent Offender Category

Discussion: The government is able to use the guidelines enhancements to boost sentences for non-violent offenders to level 43 and higher, which in the current sentencing table recommends a sentence of Life. This results in extremely long sentences for non-violent crimes.

For instance, an offender (such as myself), charged with a violation of 18 USC 1349, Conspiracy to Commit Wirefraud, and 18 USC 1512(k), Conspiracy to Corrupt an Object to be used in an Official Proceeding, the offense level starts at 7. A category 1 "first-time" offender's range would fall in probation. However, after application of the numerous 2B fraud guidelines, an offense of level 43 is reached, and with the "Life" sentencing recommendation, a sentence of 480 months is applied by stacking the two offenses' maximum sentence of 240 months.

In my case, I was a 25-year-old college student, with absolutely no criminal history, and I received a 480 month sentence in a non-violent conspiracy that although charged under the Fraud statute, was about disputes concerning billing between telecommunications companies. My case is not unique, but is an example of the government being able to obtain a massive sentence for activity that the USSC starts in the probation range in the guidelines table.

Request: That the USSC create a category "0" for true first-time, non-violent offenses that carries a reasonable maximum sentencing exposure, and make this retroactive to provide relief to those adversely affected. Once 360-life or Life is reached on the guidelines table, the government is able to ask for sentences capped only by the amount of counts on the indictment multiplied by the maximum exposure per count, and the courts generally acquiesce.

2. Fix the 2B "Affecting a Bankruptcy" enhancement

Discussion: The government is able to apply the +2 "affecting a bankruptcy proceeding" enhancement without any proof that the crime of conviction actually materially affected a bankrupcty.

In my case, the government charged that a conspiracy to not pay bills for telecommunications services existed from 2000-2009, involving various defendants and companies. At some point, one company that I did business with declared bankruptcy, but before I actually did business with that company, or knew any of the principals. The mere

fact that a bankruptcy proceeding existed was enough for the government to apply the 2 point enhancement for affecting a bankruptcy proceeding, without having to prove any actually material effect or nexus to the bankruptcy.

Request: That the government must establish that the crime of conviction actually materially affected and had a nexus to the bankruptcy proceeding, and that this change be retroactive.

Thank you for your consideration.

Matthew Simpson [redacted]
FCI Three Rivers
PO Box 4200
Three Rivers, TX 78071

From: Michael Smith
To: Public Affairs
Subject: [External] Public Comments
Date: Saturday, October 1, 2022 1:03:06 PM

I need to comment on the propsed priorities for May 1, 2023. Specifically the way defendants are treated with Zero criminal history points. It's not fair that they are treated as most repeated offenders, and not giving any benefits from staying out of trouble. I think they should gain some kind of relief if they have 0 criminal history points, and not classified with individuals who has criminal history points. This will serve justice. I know several individuals who were first time offenders who served substantial amount of time because of thes kind of guidelines that did not take these things into account.

Thank you
God bless

To: United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002
Attn: Public Affairs Priority Comment

Date: Oct. 2, 2022

From: Zachary Stinson [redacted]
FCI Oakdale
PO Box 5000
Oakdale, LA 71463

Re: Comments on proposed ammendments to sentencing guidelines.

I would like to submit comments on the following proposed amendments to the guidelines:

1B1.13 Application note 1(D) should be amended to move the discretion to determine "other reasons" from the director of the BOP to the district court for inmate filed motions pursuant to the First Step Act amendment to 3582(c)(1)(A). It does not make much sense at all for the director of the BOP to be determining the extraordinary and compelling reasons for a motion that is not being filed on an inmate's behalf by the BOP, and that discretion lies more properly with the district court.

Also, Application note 1 should be amended to specifically allow a provision for situations in which the conditions of a defendant's confinement have changed in a significant way beyond what the sentencing court could possibly have forseen and contemplated when sentencing a defendant. This would allow District courts to have the discretion to resentence defendants when the punitive effect of their incarceration has increased, which renders their sentence to be more harsh than the sentencing court had originally intended. The significant changes to BOP procedures during the covid-19 pandemic are an example of a situation that may warrant relief. The conditions in the BOP changed drastically and turned many inmates' sentences into solitary confinement when they were not sentenced to such a harsh term of imprisonment.

Another appropriate reason for a sentence reduction that should be added to Application note 1 of the guideline is to correct a sentence disparity. 3553(a)(6) provides that a sentencing court should consider the need to avoid sentence disparities. However, without the ability to correct a sentence disparity that arises outside of a change in the guidelines, that particular 3553(a) factor is rendered moot as the disparity must remain. Allowing district courts to use sentence disparity to reduce a sentence will allow review of a guideline calculation when courts, over time, modify their interpretation of guidelines and allow those changing interpretations to benefit defendants who did not have the luxury of the changed view of the guidelines at the time of their sentencing. This will also allow unreasonable sentences to be corrected outside of the window of time available for appeal.

Defendants with zero criminal history points. The sentencing table in the guidelines should be amended to move defendants with 1 criminal history point into catagory II, leaving catagory I only for defendants with zero points. The sentencing ranges in catagory I should also be lowered by one. This would give first time offenders a more leniant sentence range than repeat offenders by leaving the sentencing range of 0-6 months until offense level 9. It would also remove the mandatory life sentencing for first time offenders and replace it with the range of 360 months -life for defendants scored at level 43. Life sentences would still be available if the statutory maximum allowed it, but the guideline range would leave district courts more discretion.

Proposed amendment to prohibit acquitted conduct consideration.

I wholeheartedly agree that both acquitted conduct and (in the case of plea agreements) uncharged conduct that is not relevant conduct to the charged count of conviction should be prohibited from guideline calculations. Considering either of these factors in determining a sentence seriously undermines the perception of fairness in judicial proceedings. It is actually quite surprising that, in a country where citizens are presumed innocent until proven guilty, any discussion needs to be had about whether to sentence a defendant for aquitted and uncharged conduct. It is a bedrock principle of justice that individuals should only face penalties for crimes that they actually committed, and that clearly and obviously precludes acquitted conduct from a defendant's sentencing.

Also, defendants often accept plea agreements specifically to reduce their sentencing exposure, and the use of uncharged conduct in sentencing undermines the plea bargaining process. Courts frequently use "pseudo counts" that are not relevant conduct as defined in 1B1.3 to any charged count of conviction to enhance defendants' sentences with the multiple count provisions of 3D1.1. While the commentary of 3D1.1 clearly indicates that the provision only applies to counts that are included in an indictment or information, that doesnt stop the use of uncharged "pseudo counts" against defendants. The willingness of district courts to adopt the phrase "pseudo counts" is in itself quite troubling. Webster's New World College Dictionary, Fourth Edition (2002) defines the word pseudo as "Sham; false; spurious; pretended; counterfeit." Nothing about that definition strikes a chord of legitimacy. The flagrant use of such a term erodes the public confidence and perception of fairness and integrity of judicial proceedings. Use of "sham" counts also does absolutely nothing to advance the 3553(a)(2)(A) factor of promoting respect for the law and providing just punishment.

Recently, Russia held a refferendum on the anexation of territory in Ukraine which the government of the United States decried as a "sham". Why, then, do district courts in the United States regularly sentence defendants with enhancements based upon a synonymous term?

The use of "pseudo counts" also creates sentence disparities that are to be avoided according to 3553(a)(6) by allowing sone district courts to sentence some defendants for uncharged conduct while other courts do not. Once again, a fundamental principle of fairness is that defendants should only face penalties for crimes for which they were actually charged and convicted.

This short circuiting of the basic ideas of legitimacy, fairness, and integrity of judicial proceedings needs to be stopped to restore public trust in the institution.

Thank you for your time.

Zachary Stinson