

**Remarks of Judge Carlton W. Reeves,
Chair of the US Sentencing Commission**

October 28, 2022 Public Meeting

Good morning. Whether you are joining us in person or via live stream on our website, I welcome you all to this public meeting of the United States Sentencing Commission. I am honored to Chair my first public meeting, which also marks the first time in four years that the Commission has held a public meeting with a full slate of Commissioners.

I was confirmed by the Senate on August 4th along with six other highly qualified and well-respected individuals who I am pleased are with us today. Equally notable is that our confirmation is the first time since 1999—more than two decades—that a full slate of voting commissioners was appointed at once.

Since Commissioners are generally appointed to staggered six-year terms, the fact that all seven of us are new to the Commission is highly unusual, and very exciting.

Before introducing my colleagues, I want to take this opportunity to acknowledge the passing of former Commissioner Sterling Johnson. It so happens he was in that class of Commissioners from 1999, having served on the Commission until 2002. Commissioner Johnson was a district judge on the EDNY, where he served with distinction with one of my current colleagues. We appreciate all he did for the Commission, the State of New York and this great nation.

Now, I have the pleasure of introducing my colleagues. First, I introduce the Commission's Vice Chairs: Laura Mate, who served as the Sentencing Resource Counsel to the Federal Public and Community Defenders for many years; and Judge Luis Felipe Restrepo, who serves on the U.S. Court of Appeals for the Third Circuit. Many of you know that Judge Restrepo has also served as United States district judge, Federal Public Defender and as private practitioner accepted cases

through his court's CJA panel. Also with us today: Commissioners Claire Murray, who most recently served as the Principal Deputy Associate Attorney General; Judge John Gleeson, who previously served in the Eastern District of New York (along with Sterling Johnson); and Candice Wong, who is an Assistant United States Attorney and Chief of the Violence Reduction and Trafficking Offenses Section in the U.S. Attorney's Office in Washington, DC.

Commissioner Wong previously served as the Commission's ex-officio member, a position once again filled by Jonathan Wroblewski, who is here today as well.

Joining us by phone today is District Judge Claria Horn Boom, who serves in both the Eastern and Western Districts of Kentucky.

I am grateful to these colleagues, each of whom will bring a wide breadth and robust experience and a unique and very important perspective to our conversations and deliberations on sentencing policy.

As everyone is fully aware, after four years there is a backlog of policy work awaiting us. Upon our appointment, we quickly rolled up our sleeves and began the important mission work that is entrusted to us.

The 2022-2023 amendment cycle is already somewhat abbreviated because by statute, we must submit amendments to Congress for review no later than May 1, 2023. Our year-long amendment cycle is down to just over six months.

Nevertheless, we are committed to meeting our deadlines with the focus in this initial amendment cycle on the most urgent policy concerns.

As such, on September 29th the Commission issued its tentative policy priorities and notice for public comment, with our top focus on implementation of the First Step Act of 2018. These priorities were posted on the Commission's website.

Indeed, the volume of feedback we have received as part of this public comment period is incredible and certainly indicative of the important work the Commission has ahead of us.

We have received well over eight thousand public comments!

The Commission heard from District Courts throughout the nation. We heard from Members of Congress. We heard from federal public defenders as well as criminal defense lawyers. We heard from both the Departments of Justice and Homeland Security as well as other executive branch agencies. We heard from dozens and dozens of advocacy organizations, in addition to probation officers. We heard from universities. We heard from many individuals who are currently incarcerated, and we heard from many of their families.

I am grateful for this input. That input is important. It will be valuable to the Commission as we move forward in the amendment process.

But before I delve further into today's agenda, I want to take a quick moment to recognize the good work done under the leadership of my predecessor, Judge Charles Breyer, Senior Judge for the Northern District of California.

We all owe him a great deal of gratitude for the two years he served as Acting Chair and lone voting Member of the Commission. I commend his great stewardship of the Commission and acknowledge its impressive productivity under his leadership.

This year alone the Commission has released 14 reports on many timely and important topics in our federal criminal justice system: recidivism; the impact of Bureau of Prisons programming; robbery; illegal reentry; and two areas on which legislation awaits implementation by the Commission, compassionate release and firearms offenses.

The release of these reports is a testament to the dedication of Judge Breyer, my friend, and the remarkable public servants who staff the Commission.

Before turning to the business of the day, I would be remiss if I did not acknowledge the calls, text messages and emails I received from many of you upon my nomination and subsequent confirmation as Chair. You've offered your support and encouragement. Many have also given me a blank look followed by a slight gasp and then the question: "How are you gonna do it?"

I don't yet know how to answer that question. What I do know is that we will not be able to do anything without the incredible staff or without the Commissioners listening to one another and keeping an open mind. Our criminal JUSTICE system has many moving and interrelated parts. (And note, I emphasize the word justice!). Justice will be front and center on all that we do.

We know much is expected of this new Commission beyond the immediate priorities, and we are eager to dig in and do the important work that has been entrusted to us.

We will operate in a deliberative, empirically based, and inclusive manner. And we are all committed to a shared common goal – to build upon the good work of past Commissions and leave an even more improved federal sentencing guideline system for the next set of Commissioners.

Now, I will be the first to acknowledge that our work is not easy. It is challenging, sometimes tedious, and always vitally important. As a Commission, we will deliberate, discuss, debate, and at times, we may even disagree, but we will not be disagreeable. We will work hard. We will have fun.

And at the end of the day, we will have the satisfaction of knowing we did what we think is best for our nation's criminal justice system.

Turning back to today's business, the Commission's proposed priorities, first on our list is implementation of the First Step Act of 2018. The First Step Act amended 18 U.S.C. § 3582 to allow defendants for the first time to move for compassionate release on their own, without having the Director of the Bureau of Prisons make a motion.

In the absence of a Commission policy statement recognizing this new avenue, courts of appeals generally have held the Commission's policy statement governing compassionate release does not apply to motions filed by defendants. And without guidance from the Commission, during the COVID-19 pandemic the debate about what constitutes extraordinary and compelling reasons for compassionate release took front and center stage across the nation with differing results. A Commission report on compassionate release found that the likelihood of

compassionate release motions succeeding varied significantly depending upon the circuit or district in which they were filed. This suggests to me that courts could benefit from clearer guidance from the Commission, and that will be an important part of our agenda this year.

In addition, the First Step Act expanded eligibility for the safety valve to certain offenders with more than 1 criminal history point. The Commission needs to amend section 5C1.2 to recognize this change, but we also need to consider changes to the 2-level reduction in the drug trafficking guideline for meeting the safety valve criteria.

Our consideration may be complicated by differing caselaw among the circuits regarding the scope of the new statutory safety valve criteria.

The Commission also intends to implement the Bipartisan Safer Communities Act, firearms legislation that was passed after the Uvalde shootings and signed into law in July. The Act directs the Commission to increase penalties for certain firearms offenders, particularly straw purchasers. The Commission also will work to implement other legislation that warrants action.

The Commission's proposed priorities also include examining and resolving the most critical circuit conflicts regarding guideline interpretations, as suggested in some of the United States Supreme Court's denials of writs of *certiorari*.

While these are the most critical, time sensitive matters before the Commission, we also outlined several other policy priorities that we will certainly work on this year but may not complete this amendment cycle given their complexity and the abbreviated timeframe we are working under. Remember, we have a little over six months.

These include continuation of the Commission's examination of the categorical approach in determining, for example, whether an offense is a crime of violence or a controlled substance offense. And we may examine amendments to the criminal history guidelines to account for recent recidivism research regarding zero point offenders and the impact of status points.

Multi-year priorities also include possible amendments to prohibit the use of acquitted conduct in applying the guidelines; simplification of the guidelines; an examination of case law concerning the validity and enforceability of guideline commentary; and a study of court-sponsored diversion and alternatives-to-incarceration programs.

Again, I wish to thank my colleagues and Commission staff for the hard work that is behind today's public meeting. And thank you to all who submitted comment on these proposed priorities. The work ahead of us will not be easy, but we are up to the task.

I now turn to the Commission's General Counsel, Kathleen Grilli to advise us further on today's proceedings.