

# UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA  
Evo A. DeConcini U.S. Courthouse  
405 W. Congress  
Suite 5190  
Tucson, Arizona 85701-5053

**John M. Roll**  
Chief United States District Judge

Telephone: (520) 205-4520  
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September 3, 2010

Ms. Judith W. Sheon  
Staff Director  
United States Sentencing Commission  
Thurgood Marshall Federal  
Judiciary Building  
One Columbus Circle, N.E., Room 2-526  
Washington, D.C. 20002-8002

Re: Proposal to Make the Abolition of the  
Recency Enhancement Retroactive

Dear Ms. Sheon,

The recency provision, USSG § 4A1.1(e), adds 2 criminal history points whenever the offense conduct has occurred within two years after release from a prison sentence of sixty days or more. Effective November 1, 2010, Amendment 5 will eliminate the recency enhancement. The Sentencing Commission is now considering whether to make Amendment 5 retroactive.

Chief Judge Julie E. Carnes, Chair of the Criminal Law Committee, has written to you in opposition to this proposal. In her letter of August 23, 2010, Chief Judge Carnes makes many excellent points and I will not repeat them, although I concur with her.

My purpose in writing to you is to underscore the tsunami of litigation such action would engender for the 5 southwest border districts.

In FY-2009, the 5 southwest border districts, although constituting only a small fraction of the nation's 94 federal districts, had almost 40% of all federal criminal case filings.

Nationally, 76,655 federal criminal cases were filed in FY-2009. The 5 southwest border districts, consisting of the Southern District of California, the District of Arizona, the District of New Mexico, the Western District of Texas, and the Southern District of Texas, had 29,310 federal criminal case filings. (2009 Director's Report, pp. 201-203).

The 5 southwest border districts had 33,461 of the 97,982 federal criminal defendant filings in the nation in FY-2009. (2009 Director's Report, pp. 204-206).

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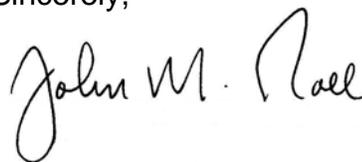
Of the 94 federal districts, the 5 southwest border districts ranked 1<sup>st</sup> through 5<sup>th</sup> in criminal case and defendant filings in FY-2009. (2009 Director's Report, pp. 201-206).

In FY-2009, the 5 southwest border districts had 28,022 of the nation's 79,153 felony and class A misdemeanor defendant sentencings reported to the Sentencing Commission. (2009 Sourcebook of Federal Sentencing Statistics, pp. 70-75).

The other 89 districts, to a greater or lesser extent, would be impacted by the proposal to make Amendment 5 retroactive. For the 5 southwest border districts, adoption of this proposal would trigger a totally unmanageable number of post-conviction re-sentencing motions made pursuant to 18 U.S.C. § 3582(c)(2). Such a development could not come at a worse time for the 5 district courts with the highest criminal caseloads in the nation.

Thank you for considering my comments. Thank you also for the very important work that the Sentencing Commission does. I always enjoy the opportunity to visit with you at Sentencing Commission events.

Sincerely,

A handwritten signature in black ink that reads "John M. Roll". The signature is written in a cursive, flowing style.

John M. Roll, Chief  
District Court Judge

JMR:kh

cc: Chief Judge Julie E. Carnes, N.D. Ga.  
Chief Judge Irma Gonzalez, S.D. Ca.  
Chief Judge Ricardo Hinojosa, S.D. Tex.  
Chief Judge Fred Biery, W.D. Tex.  
Chief Judge Bruce D. Black, D. N.M.