



**Donna Makowski**

Attorney At Law

53 West Jackson Blvd., Suite 930  
Chicago, Illinois 60604  
Tel: (312) 347-0028  
Fax: (312) 347-0061  
email: donnamakowski@sbcglobal.net

March 7, 2011

The Honorable Patti Saris, Chair  
United States Sentencing Commission  
One Columbus Circle, NE, Suite 2-500  
Washington, D.C.

Dear Judge Saris:

As President of the Women's Criminal Defense Bar Association, I write to urge the Sentencing Commission to take two steps to make federal drug sentencing more just: first, make the crack cocaine guidelines retroactive. Second, lower all drug guidelines by two levels.

Congress passed the Fair Sentencing Act of 2010 to reduce harsh sentences for crack cocaine, sentences that were condemned as unfair, excessive, and a key contributor to racial disparity in sentencing. Accordingly, the Sentencing Commission changed the guidelines and now should make the crack cocaine retroactive. Thousands of defendants sentenced under the old crack guidelines remain in prison today serving sentences everyone agrees are unjustifiably long. Forcing these prisoners to serve sentences that Congress, the Commission and the President have soundly repudiated is simply wrong. Making the guidelines changes retroactive would help to right a wrong and restore faith in our criminal justice system.

In general, federal drug sentences are too long and come at too high a cost to families, communities and taxpayers. Part of the problem is that the drug sentencing guidelines are higher than mandatory minimum drug sentences. There is no evidence that Congress intended that to be the case. The Commission should change the guidelines to reduce all drug sentencing by two levels, as it did with crack cocaine sentences in 2007. The Commission should take this straightforward, simple and just step now.

Respectfully,

**DONNA MAKOWSKI**

A handwritten signature in cursive script that reads "Donna Makowski".

Donna Makowski, President, WCDBA

SYLVIA ROYCE  
ATTORNEY AT LAW  
5505 CONNECTICUT AVENUE, NW, #340  
WASHINGTON, DC 20015  
SYLVIA\_ROYCE@HOTMAIL.COM

TELEPHONE  
(202) 362-3445

FACSIMILE  
(202) 686-4271

March 5, 2011

The Honorable Patti Saris, Chair  
United States Sentencing Commission  
One Columbus Circle, NW  
Suite 2-500  
Washington, DC 20002

Re: Proposed changes in federal drug sentencing

Dear Judge Saris:

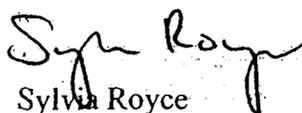
I am a former Department of Justice lawyer now in private practice. A regular part of my work involves reviewing the sentencing options and results for persons convicted of non-violent drug offenses, many of whom are first offenders.

I understand that the Sentencing Commission may consider two proposals in 2011 which would affect federal drug sentencing. The first proposal would make the crack cocaine guideline changes retroactive. The second would lower all drug guidelines by two levels. I support both proposals.

The Commission took an important step when it recently changed the crack cocaine guidelines. This should be made retroactive for all the same reasons that the initial, prospective action was taken.

Lowering all the drug guidelines by two levels is another proposal which cries out for implementation. Our sentences for drug offenses are longer than those of all or most Western democracies, and there is scant evidence that they either deter would-be offenders or make recidivism less likely. Lowering the drug guidelines by two levels would be an important first step in reining in spending at the Federal Bureau of Prisons and it would give us a chance, as a society, to see whether shorter sentences affect the offense rate.

Sincerely,

  
Sylvia Royce

# DPFT

## The Drug Policy Forum of Texas

713-784-2637 877-667-1888 toll free [info@dpft.org](mailto:info@dpft.org)

March 9, 2011

Office of Public Affairs  
U.S. Sentencing Commission  
One Columbus Circle, N.W.  
Washington, D.C. 20002-8002

The 100-to-one disparity in sentencing for crack and powder cocaine was a blight on our country for decades. We appreciate your part in urging Congress to adopt more equitable guidelines.

Please continue this work by recommending that the reforms be retroactive. This is clearly just and would save taxpayers millions of dollars.

Sincerely,



Jerry Epstein, President  
Drug Policy Forum of Texas

Name Melissa Jenney  
Address [REDACTED]  
City/State/Zip [REDACTED]  
Date 2-13-11

Public Affairs/Public Comment Section  
United States Sentencing Commission  
One Columbus Circle N.E., Suite 2-500  
Washington D.C. 20002

Dear Public Affairs/Public Comment Section:

I am writing with respect to the Public Comments due by March 13, 2011 regarding the proposed Amendment to the Fair Sentencing Act which would make the reduced "Crack Cocaine" Sentencing Guidelines retroactive to those inmates that were sentenced prior to the enactment of the Fair Sentencing Act.

It is wrong and morally offensive for prisoners to remain in prison for years or decades of additional prison time, when persons convicted after the enactment of the Fair Sentencing Act will serve vastly reduced sentences for the same or greater amounts of "Crack Cocaine." There is no correlation between the danger to society or recidivism rates for those who were sentenced before the enactment of the Fair Sentencing Act and those sentenced after the enactment of the Fair Sentencing Act which would justify the huge disparity of prison time given to pre-enactment versus post-enactment sentences.

I personally am in support of the Sentencing Commission making the Reduced Sentencing Guidelines on "Crack Cocaine" RETROACTIVE.

I do urge the Sentencing Commission to provide "additional guidance" on how to retroactively apply the Amended Guidelines, such as not limiting it to certain "Crack Cocaine" defendants. For example, those sentenced prior to the advent of the "Advisory Guidelines" or those sentenced prior to the opinion in Kimbrough v. U.S., which endorsed judicial discretion in "Crack Cocaine" sentencing.

Thank you for considering my Public Comment.

Very Truly Yours,

Melissa Jenney  
Signature

[REDACTED]

U.S. Sentencing Commission  
One Columbus Circle, N.E., Suite 2-500  
Washington, D.C. 20002

Date: 1-27-11

U.S. Sentencing Commission,

Greetings. The subject at hand (retroactively applying FSA to the guidelines) is very personal to myself and my family, thousands of other inmates and their families, and our communities. The passing of the FSA has been a much delayed change for the 100-to-1 crack disparity which was an extreme penalty from its conception. We, the incarcerated sufferers of the atrocious and remorseless 100-to-1 crack disparity, and our families and friends would like to give our thanks to the Sentencing Commission for your taking of action in 2007 and amending the guidelines with the two-level reduction for crack offenses. We thank you.

Today, I Craig Patterson, on the behalf of my dear family, along with the precepts of truth and civility, support and greatly encourage the retroactive application of the FSA to the U.S.S.G. Administering this change of the disparity to the U.S.S.G would place this benefit where it is most needed, upon those who are serving a sentence under the unjust and unfair 100-to-1 disparity.

The debate has been outstretched to where the opposition can no longer contrive any more fraudulent stories. Science has thoroughly collapsed the myth of vileness associated with crack which established the 100-to-1 disparity. With that said, retroactively applying the FSA to the U.S.S.G. is the just thing to do.

Respectfully,

  
Craig Patterson

Date: 1-26-11

U.S. Sentencing Commission  
Attention: Public Affairs  
One Columbus Circle, N.E., Suite 2-500  
Washington, D.C. 20002

Greetings. The subject of this letter is to give the sentencing commission compelling reasons why they should make the fair sentencing act retroactive. The sentencing commission has over the years studied the crack sentences and determined them to be unfair. These unfair penalties were based on faulty untrue information.

The sentencing commission realized long ago that something needed to be done because these penalties affected one class of people in an unfair way. I thank the sentencing commission for making the 2007 crack amendment change retroactive. But as the sentencing commission stated the 2 point reduction was merely a start and not the answer. I believe that if the sentencing commission were to make the fair sentencing act retroactive it would be a motivating factor for congress to consider in making the fair sentencing act retroactive to reach those inmates who are left behind due to the sentencing commissions lack of authority to change the statutory minimums sentences. I feel strongly that congress will follow the sentencing commissions lead this time around.

Therefore on behalf of myself and other inmates with guideline sentences and statutory minimum sentences, I hope the sentencing commission will correct the injustice once and for all by applying the fair sentencing act retroactive and giving crack defendants a second chance to do something with their lives which they will not have otherwise because of the harsh unfair sentences imposed on them for crack prior to the 2010 fair sentencing act.

Respectfully, *Mark Bew*

Defendant Jimmie Caldwell

[REDACTED]

Office of Public Affairs  
US Sentencing Commission  
One Columbus Circle  
NE., Suite 2-500  
Washington, D.C. 20002

I am defendant Jimmie Caldwell, reg. no. [REDACTED] and serving a sentence for crack cocaine. This letter is a request to make the Fair Sentencing Act that Congress passed; to become retroactive to all inmates that's serving a sentence for crack cocaine, also I am requesting that option 24 be employed as the permanent drug quantity level for the drug quantity table as set out in the United States Sentencing Guideline, because I feel that it would be unjust and unfair to not apply this Act to inmates that are serving a crack cocaine sentence before this S.1789 Bill was passed.

Thank you for your time into this very important matter as this relates to fair and equal sentencing for all.

Jimmie Caldwell

TO: The Sentencing Commission.

One Columbus Circle,

N.E., Suite 2-500, Washington D.C., 20002

This is a request from a concerned citizen, requesting that the Fair Sentencing Act of 2010, which reduces the guideline sentences for "Crack" Cocaine be made retroactive to all incarcerated.

The "Crack" epidemic that started in the 80's has caused at least 1.5 million people to be incarcerated abroad. Incarceration over treatment and education has not solved any problem with drug abuse in this country; all it has done was made the United States the biggest Penal system in the World; though, it is one of the smallest countries in population.

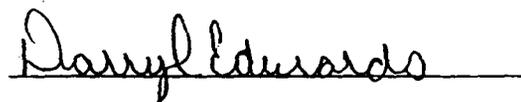
Men and woman have received harsh sentences even life in prison, for the equivalent of a package of sugar filled with Cocaine. While individuals who commit murder, rape, molestation, and even Terrorism receive shorter sentences. What does this say about the American "Judicial System, one word "Unjust".

The time has come to rethink incarceration over education. America now spends 3 times more on incarceration than it does on the education of our Youth. This has caused the literacy level of the Youth in America to fall below some Third World Countries.

While we are in an economic crisis, more money is being used to finance the "Penal Systems" abroad, than is being used to help the citizens and communities out of this economic crisis that we are now in.

It would be a disadvantage to the American people, to pass legislation correcting a recognized wrong but refusing to apply it to the ones that have been wronged. For that reason alone, I endorse making the Fair Sentencing Act of 2010 retroactive.

SINCERELY.

A handwritten signature in cursive script that reads "Darryl Edwards". The signature is written in black ink and is positioned above a horizontal line.

The Honorable Patti Saris  
Chair  
United States Sentencing Commission  
One Columbus Circle, NE, Suite 2-500  
Washington, D.C. 20002-8002

**February 15, 201**

Dear Judge Saris:

I think the Sentencing Commission should vote for retroactivity. My boyfriend has been incarcerated for 12 yrs now due to the harsh (crack) 100:1 sentencing guidelines. I am not saying that he did not deserve to be punished for what he done but there are people who commit much worst crimes than possessing (crack) and receive much lighter sentences. Now that congress has changed the harsh ratio for crack to 18:1 it would only be serving justice to make the new 18:1 apply retroactive to the ones that were punished so harsh when it was 100:1. I ask this of you because you have the power to make a change, make people believe and have faith in the judicial system. This is long overdue please make the right decision and apply the 18:1 retro.

Thank you for considering my comments as you decide how to amend the sentencing guidelines  
This year.

Sincerely,

LaToya

U.S. Sentencing Commission  
Public Affairs  
One Columbus Cir NE  
Suite 2-500  
Washington, D.C 20002

I, Shanita Hampton, believe by making the crack law retroactive, it will benefit the taxpayers. To the extent of not paying taxes on incarcerated inmates. Most of the inmates are reformed, ready to be employed, and pay their own taxes. The inmates have paid their debt tremendously on petty drug charges. I, for one, am ready to join society. I am looking forward to being a law-abiding citizen. These harsh sentences that have been given out for crack compared to powder are bias. Shining a little light of fairness on this proposed amendment will be justified by reduction of two-levels. Taxpayers have suffered immensely, because of improper sentencing guidelines dealing with crack cocaine. These changes that we are now trying to incorporate will only save money. The old guidelines did not help the public. The new guidelines are in favor of children, safety, psychological development and saving money. Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to be 'SHANITA HAMPTON', with a date '2.8.11' written below it.

Shanita Hampton

United States Sentencing Commission

One Columbus Circle, N.E. Suite 2-500

Washington, D.C. 20002-8002

Attn: Public Affairs

**Subject: Request to make changes made by the "Fair Sentencing Act" retroactive/Request to also establish a 2pt guideline reduction for all drugs.**

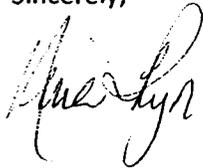
Dear Honorable Commissioners,

I am asking the USSC to help promote fairness in our judicial system by making the permanent crack sentencing guidelines via S.1789 retroactive. I am in full support of a fair judicial system, and by applying these guidelines retroactively, many unjustly sentenced crack cocaine offenders will receive a much fairer sentence which Congress has allowed offenders to receive post S.1789, the "Fair Sentencing Act".

In addition, I am also in full support of a 2pt guideline reduction for all drugs. Drug mandatory minimums are set to high, that by the time federal guidelines are combined, the results most likely always establish a greater than necessary penalty. These greater than necessary penalties are known to hinder rehabilitation by destroying family and community ties, employment contacts, etc...leaving a drug offender less likely to be an asset to his community upon release. As a concerned citizen and taxpayer, I would rather see my tax dollars allocated towards rehabilitation, education, community outreach, and restorative justice programs. This will help reduce recidivism, and prepare offenders before re entering society.

Thank you for your hard work and dedication towards establishing fairness in our judicial system. I trust this Honorable Commission will take my concerns into deep consideration. And I am hopeful that in the very near future my loved one and others will receive the fair sentence reduction they deserve. May God bless.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Lynn".

*Paul Holding*

Name

Reg. No.

February 23, 2011

Attn: Public Affairs  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500  
Washington, DC 20002

Re: Proposal to reduce all drugs by two levels

Dear Sir/Madam

I am in favor of the proposal to adjust the guidelines downward by two levels for all illicit drugs. This is because most drug laws were enacted decades ago in a frenzy using bad science.

The jury is in: harsh drug laws do not lessen crime nor make communities safer. In fact, the opposite is true, because families are torn asunder and countless children are left without parents due to bad drug laws. Treating drug possession and/or use as a crime that is worse than rape and murder cannot be justified in a civilized society, especially given the fact that most drug defendants are addicts, and, as such, should be treated as having a medical problem instead of a criminal one.

Also, a two level reduction for all drugs would help to alleviate the already overcrowded prison system and save taxpayers a staggering amount of money in a time when the country is facing huge fiscal deficits.

Bad laws are always passed with alacrity, but to repeal them politicians must temporize.

In closing, I pray the Commission use its best judgment and adopt the proposal to reduce the guidelines for all drugs by two levels.

Sincerely

*P. Holding*

Sign

01 February 2011

United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, DC 20002-8002

Attention Michael Courtlander  
Public Affair Officer

RE: proposals we would like to see happen in regards to changes in the Federal Sentencing Guidelines

- 1) The changes that have been made by the Fair Sentencing Act, should be made retroactive so that all individuals serving crack cocaine sentences under the old guidelines will receive appropriate reduced sentences. It should also be made retroactive for career offenders, (4.B1.1) that would make it fair for everyone.
- 2) All drug guidelines should be adjusted downward two levels to reflect the good programming that Individuals have made within their rehabilitation.
- 3) A two level reduction should be applied when a drug offender has no aggravating circumstances that lead to an increased sentence.
- 4) The supervised release portion of a sentence. Example: If the sentence is ten years and the judge gives the defendant three years supervised release, the term of actual imprisonment would be seven years. Supervised release is imposed as part of a sentence of punishment.
- 5) Individuals with drug charges as well as gun charges should still be eligible to take the 500 hundred hour drug program and receive the time off their sentence they deserve for program completion.
- 6) Persons who are eligible for a halfway house should have a choice of home confinement or halfway house if he has an established job and a place to live. This would free up halfway house beds for the ones that really need it. It would save a lot of unnecessary confinement to individuals waiting to be productive members of society.
- 7) As a citizen of this nation, and a believer in the liberties expressed in our Constitution, I urge you to listen to the voice of the American People and make these Amendments that would truly be fair.

Thank you for your attention.

Sincerely,

Name Gerald R Galipeau JR.  
Address   
Phone   
E-mail \_\_\_\_\_  
Fax \_\_\_\_\_

The Honorable Patti Saris  
Chair  
United States Sentencing Commission  
One Columbus Circle, NE, Suite 2-500  
Washington, D.C. 20002-8002

**February 9, 2011**

RE: Amendment 1

Dear Judge Saris:

The U.S. Sentencing Commission has the power to take two steps that would reduce injustices in crack cocaine sentencing. The first is to restore the base offense levels for crack cocaine to 24 (for 28 grams) and 30 (for 280 grams). The second is to make the crack cocaine guideline changes retroactive. I urge you to do both.

**Base offense levels:** Congress passed the Fair Sentencing Act of 2010 (FSA) to eliminate the 100:1 crack/powder cocaine disparity that was nearly universally condemned as unfair, excessive, and a key contributor to racial disparity in sentencing. Unfortunately, the Commission responded last fall by passing a temporary amendment that set the base offense levels for crack cocaine **higher** than the mandatory minimum sentence: 63 months for 28 grams, as opposed to 60 months; and 121 months for 280 grams, instead of 120 months.

There is no evidence that Congress intended the guidelines to call for longer minimum sentences than those Congress established. The Commission needs to align the guidelines and the statute by setting the permanent base offense levels for crack cocaine at levels 24 and 30.

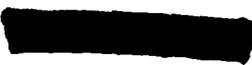
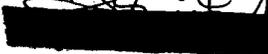
**Retroactivity:** Thousands of defendants sentenced under the old law remain in prison today serving sentences everyone agrees are unjustifiably long. The Commission can partly rectify this by making crack guideline changes retroactive. Forcing these prisoners to serve sentences that Congress, the Commission and the President have soundly repudiated is simply wrong. The Commission can do justice and restore faith in our criminal justice system by making the crack guidelines retroactive.

I have a loved one that has been incarcerated for over sixteen years and I don't understand how The Fair Sentencing act was changed but it hasn't yet been made retroactive. I believe people deserve a second chance. Since my Love has been locked up he has lost a five year old daughter to cancer, a 21 year son to gun violence, a brother and an aunt. If nothing else I believe the lost of his children has made him realize that he needs to make better choices for his future. If I had to put my life on the line I would for him. I am an educator and I don't take the law lightly and with his situation I know he was not sentencing fairly. He is still required to spend five more years in prison. It's just not fair.

Thank you for considering my comments as you decide how to amend the sentencing guidelines this year.

Sincerely,

Sylvia Lowe



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

Re: Revising the Drug Quantity Table

Date: 2-8-11

To: Public Affairs Officer

First and foremost, I want to thank the Commission for all of its continuing and ongoing efforts towards correcting the disparity of the 100 to 1 ratio involving crack/cocaine drug offenses.

As the Commission requested back in 1995 for the ratio to be completely eliminated and made 1 to 1, it is widely accepted that is the proper ratio from which crack cocaine sentencing should be based. However, when the Commission re-promulgates the temporary amendment as a permanent amendment established by the Fair Sentencing Act of 2010, I must request that the Drug Quantity Table for crack cocaine be amended so that base offense levels 24 and 30 rather than 26 and 32, correspond to the Act's new mandatory minimum penalties. Providing actual statutory minimums to the U.S. Sentencing Guidelines, as Congress intended.

Because certain proposed enhancements in the Act, are elements of an offense that require 6th Amendment standards. Most importantly, please make only the Drug Quantity request at the "level 24 option" in the Permanent amendment retroactive for all previously sentenced crack offenders. So that those who have been sentenced under the previous erroneous and draconian ratio quantity do not suffer a disparity in sentencing that new offenders, under the new ratio, will enjoy.

Your consideration is greatly appreciated.

Respectfully requested,

*Amir Sadig*  
[Redacted Signature]

attn: Public Affairs  
U. S. Sentencing Commission  
One Columbus Circle, N.E.,  
Suite 2-500  
Washington, D.C., 20002

re: Public Comment on proposed  
Guideline Amendments

Dear Sentencing Commission Staff:

I am writing this letter in re of the FAMM Gram's report on proposed amendments to the sentencing guidelines.

I have a FRIEND, Phyllis Hardy, #13542-066, who is incarcerated. She is serving  
(relationship)

366 months for drug conspiracy, and has been in prison since November 1991.

The proposed amendments would benefit her greatly. The amendments that would have the most impact on decreasing her sentence is:

1. Whether all drug guidelines should be adjusted downward two levels;
2. Whether a two-level reduction should be applied when a drug defendant has no aggravating circumstances that lead to an increased sentence;
3. Whether defendants who have more than one criminal history point should continue to be banned from the two-level safety valve reduction when they meet the other four safety valve criteria;
4. Whether defendants who truthfully provide all information and evidence about their offense to the government should receive a two-level reduction; and
5. The other change of a downward adjustment for inmates 65 years of age and older, that gives them 65% of their sentence off, instead of the current 75% off, after serving the amount of their sentence that coincides with the pass good time bill introduced. In her case, the 65% would begin to register after her serving 10 years.

The main goal of these proposed amendments is to ensure that the guidelines fairly account for the severity of the offense, and we feel that if the above mentioned amendment is approved, we can start working on her release plan.

Thanking you in advance for your time.

Sincerely,



SENTENCING COMMISSION  
One Columbus Circle N.E.  
Suite 2-500  
Washington DC 20002  
Attn: Public Affairs

February 5, 2011

To Whom It May Concern:

I have read the list of proposals in which you have requested public opinion. I do support making the sentencing retroactive regarding the crack cocaine law, the Fair Sentencing Act of 2010, regardless of the date of conviction.

I further support a two-point reduction for all drug offenses across the board, and I would like to see this made retroactive as well.

We, the taxpayers, are paying too much money to house non-violent offenders for such long periods of time.

Finally, I also support reducing the amount of required supervised release for non-violent offenders. I am completely supportive for spending whatever is necessary to supervise violent individuals, but I cannot justify unnecessary and excessive spending to supervise non-violent offenders.

Sincerely,

*Justin Relf*

To:  
The U.S. Sentencing Commission  
One Columbus Circle, N. E. Suite 2-500  
Washington D.C. 20002-8002

Honorable Commissioners,

Our country stands at a crossroads. Our economy is strained by ever increasing taxes, levied to try and cover the expenses of our growing government. Savings are needed, and what could be better than saving taxpayer funds, actually making a positive and deep change in the lives of many American families, and also addressing one of the most glaring problems our United States displays on the world stage.

The society of our nation is not inherently bad, yet we somehow have the highest ratio of incarcerated to free citizens in the world. This problem feeds on itself, for studies show that the longer someone is locked up, the more likely he or she is to re-offend. Yet, long and plentiful sentences are the order of the day for everything from paperwork errors, to simple drug addicts struggling to deal with their illness of addiction. Studies also show that longer sentences are not a statistically significant deterrent to crime, and in fact, increase crime rates due to recidivism.

What the people who make these bad and unlawful decisions need in their lives is a path to learn from their mistakes, and hereby repay society, not a ruination of their and their family's lives by trapping them in a downward spiral. Part of that path lies within your power to chart. You can right some of the wrongs inflicted on these people and their families by the well-meaning but ineffective and wrong-headed policies of the past.

Keep in mind that if a policy is ineffective, unfair, or wrong now, it was in the past as well. So as you consider any changes, when they are made, justice demands that they immediately, and clearly be made retroactive, to minimize the ongoing damage to our society.

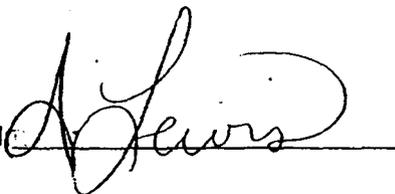
First and foremost, we thank you for your efforts so far in taking this serious look at changes which will make a real difference in both the Federal Deficit and the lives of prisoners and their families.

Here are some suggestions to begin a new day in our Country's treatment of our incarcerated Countrymen and Women.

1. Please consider making all amendments and reforms retroactive and have them apply to present prisoners.
2. Consider adjusting all guidelines for both Drug offenses and white-collar crimes down two levels.
3. Consider much more stringent proof when applying "Aggravating Circumstances" enhancements.
4. Consider a defendant with four out of five safety-valve criteria for a two point reduction.
5. Consider reducing by two points the sentence calculation of a Defendant who provides information and evidence about their own actions in their case to the Government.
6. Please review the "Obstruction of Justice" enhancement routinely given when a defendant simply wishes to make the full truth of their case known by going to trial.

Thank you for your time and attention.

Signed:



United States Sentencing Commission  
One Columbus Circle, N.E. Suite 2-500  
Washington, D.C. 20002-8002  
Attn: Public Affairs

Subject: Request to make changes made by S.1789 the FSA retroactive. And support for amending the Drug Quantity Table to reflect base offense levels 24 and 30.

Dear Honorable Commissioners:

I am asking the USSC to help promote fairness in our judicial system by making the permanent crack sentencing guidelines via S.1789 retroactive. I am in full support of a judicial system that is fair, and works for everyone. And by applying these guidelines retroactively, many unjustly sentenced crack cocaine offenders will have an opportunity to receive the fair sentences Congress has allowed offenders to receive post S.1789.

Also when the USSC re-promulgates the temporary amendment as a permanent amendment, I support amending the Drug Quantity Table to reflect base offense levels 24 and 30 so it'll correspond to the Act's new mandatory minimum penalties. I also support a 2 level downward adjustment in drug trafficking cases if there are no aggravating circumstances involved in the case. In addition, I support 1B1.10 to allow judges to use their full discretion in particular cases, and sentence below the guideline ranges when they feel the guidelines renders a greater than necessary penalty for that particular case.

Thank you for your hard work and dedication towards establishing fairness in our judicial system. I trust this Honorable Commission will take heed to my comments. And I am hopeful that in the very near future my loved one and others will receive the fair sentence reduction they deserve. May God bless.

Sincerely,

Carolyn Buckner

Date: Feb 8, 2010

United States Sentencing Commission  
One Columbus Circle, N.E., Suite 2-500  
Washington, D.C. 20002-8002

Dear Mr. Michael Courlander,

I would like to add my voice to the retroactivity of S.1789. The disparity in my sentence has hurt me and my family. If S.1789 is amended, it will give me a second chance to prove I can be a productive member of society.

The disparity in sentencing between crack and powder cocaine is unfair and should have been changed many years ago. It has inflicted far too harsh punishment on an untold number of inmates. The amendment will restore a much needed sense of justice in American Jurisprudence.

Sincerely,

Henry Saway  


February 18, 2011

To Whom It May Concern:

I'm a concerned citizen for the individuals that are incarcerated. Many of us are frustrated because numerous of inmates have been harshly charged; some even charged and were not responsible for the crime that was committed. We as tax paying citizens feel as though we are able to voice our opinion and it be heard and respected.

The purpose of this letter is to plead for compassion and understanding from the commission. Pleading for the inmates that they be given another chance, everyone makes mistakes throughout life ( even with charging the wrong man of a crime that he did not commit), but second chances can be granted to those who prove themselves worthy of making a change and wanting to do better.

When reviewing the proposed Bill H.R. 6548 that you will consider making it become Retro-active. If the bill would be considered it would one let us know as citizens that this letter has made an impact upon you and for the families, the relief that they would have. This letter is a pray as well as a plea. We are standing and speaking up for the inmates that deserve another chance.

Thank-You,

A handwritten signature in black ink, appearing to read "Carl Dick". The signature is written in a cursive, somewhat stylized font.

Robert Ellis

Name

Reg. No.

February 22, 2011

Attn: Public Affairs  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500  
Washington, DC 20002

Re: Proposal to remove enhanced guidelines for illegal re-entry

Dear Distinguished Commission Members

This missive is sent in support of the proposal to remove the enhanced guidelines, in certain cases, for those who are convicted of illegal re-entry.

My position is premised on the fact that the current enhancements conflicts with other aggravating factors and amounts to double counting.

Further, immigrants are not eligible for the six months to one year halfway house program; they are also ineligible to receive the one year early release for participating in the substance abuse program, and other community based release programs. Upon completion of their sentence, all immigrants are required to spend upwards of one month or more in an immigration detention facility while awaiting deportation proceedings.

Another issue that should be given serious consideration, is the fact that a number of immigrants convicted of illegal re-entry, lived in the U.S. for most of their lives and do not know much about the country they were deported to.

In sum, an immigrant spends a substantially longer time behind bars compared to a similarly situated American who received a comparable sentence, simply because of his/her nationality. That is un-American.

Doing away with the enhanced guidelines for illegal re-entry based on criminal history would help to ensure that all prisoners are treated equitably, regardless of national origin. There is no public safety factor associated with this amendment, because the offender more likely than not will be deported back to his/her native country. It would also save the taxpayer a handsome sum; money that could be best used for more meaningful programs.

Sincerely

Robert Ellis

Sign

Date:

To:

The United States Sentencing Commission  
One Columbus Circle, N.E., Suite 2-500  
Washington, D.C. 20002

**RE: PROPOSED AMENDMENTS ON RETROACTIVITY OF FAIR SENTENCING ACT OF 2010 FOR CRACK COCAINE OFFENDERS SENTENCED ON OR BEFORE THE DATE OF AUGUST 3, 2010.**

---

I am in full support of and favor retroactivity for ALL crack cocaine offenders - to include those sentenced to mandatory minimums and career offenders. It's long overdue; nevertheless, it's a welcoming relief for the many families (like myself) who have loved ones imprisoned with long prison sentences under the 100:1 ratio (disparity).

The inception of 18:1 is a start, along with the reduction of two full levels as being proposed by the United States Sentencing Commission. The FSA (Fair Sentencing Act) would be fair only if these proposed amendments are implemented and made retroactive. Having these measures taken up by this Commission will have a great affect on the families and everyone who has been sentenced under the disparity of the 100:1 ratio.

I would like to thank the Sentencing Commission for accepting public comments on this issue. Again, I am in full support for retroactivity of the FSA (Fair Sentencing Act) of 2010 and all measures being proposed by the United States Sentencing Commission.

Sincerely,



The Honorable Patti Saris, Chair  
United States Sentencing Commission  
One Columbus Circle, NE, Suite 2-500  
Washington, D.C. 20002-8002

Dear Judge Saris:

I write to urge the Sentencing Commission to take two steps to make federal drug sentencing more just: first, make the crack cocaine guidelines retroactive. Second, lower all drug guidelines by two levels.

Congress passed the Fair Sentencing Act of 2010 to reduce harsh sentences for crack cocaine, sentences that were condemned as unfair, excessive, and a key contributor to racial disparity in sentencing. Accordingly, the Sentencing Commission changed the guidelines and now should make the crack cocaine guidelines retroactive. Thousands of defendants sentenced under the old crack guidelines remain in prison today serving sentences everyone agrees are unjustifiably long. Forcing these prisoners to serve sentences that Congress, the Commission and the President have soundly repudiated is simply wrong. Making the guideline changes retroactive would help to right a wrong and restore faith in our criminal justice system.

In general, federal drug sentences are too long and come at too high a cost to families, communities and taxpayers. Part of the problem is that the drug sentencing guidelines are higher than mandatory minimum drug sentences. There is no evidence that Congress intended that to be the case. The Commission should change the guidelines to reduce all drug sentences by two levels, as it did with crack cocaine sentences in 2007. The Commission should take this straightforward, simple and just step now.

Sincerely,



February 9, 2011

To : UNITED STATES SENTENCING COMMISSION.  
ONE COLUMBUS CIRCLE N.E., SUITE 2-500  
WASHINGTON, D.C., 20002

From: CONCERNED CITIZENS

To whom it may concern,

**DRUG QUANTITY TABLE FOR CRACK COCAINE**

1. My position is that the drug table level 24 and 30, rather than 26 and 32, should be the Act's new mandatory minimum penalties, when Commission repromulgates the temporary amendment as a permanent amendment. "Reason being is simply of the FSA this office took it upon themselves to issue amendment 706, a temporary fix because if found that the 100 to 1 was unwarranted." This was agreed to by Congress when they failed to reject amendment 706. Since then Congress enacted FSA, Congress only took the baton that this office handed them and proceeded forward. Therefore, we can assume that Congress knew the 18 to 1 ratio will be applied to the new guideline and not imagine this office to go backwards instead of continuing forward.

**POSSIBLE RETROACTIVITY OF PERMANENT  
AMENDMENT OR ANY PART THEREOF**

2. Yes, the Commission should apply the crack guideline retroactive. Congress enacted the FSA because it found that 100 to 1 was unfair, unjust and unwarranted. Its hard to imagine the people who was harmed by the draconian ratio would not benefit. This is not only the right thing to do, but the moral thing to do.

**WHETHER ADDITIONAL REVISION TO THE DRUG  
TRAFFICKING GUIDELINES MAY BE APPROPRIATE**

3. The Commission should lower the base offense levels to 24 to 30, rather than 26 to 32, to correspond with the statutory mandatory minimum penalties, to all drug trafficking cases. If they do not involve death or serious bodily injury in §2D1.1 (a)(1)-(4), the Commission should also expand the "safety valve" criteria

that it applies to defendants with more than 1 criminal point or defendant who truthfully provide to the Government all information and evidence concerning the offense.

**ROLE ADJUSTMENTS**

4. A agree with the Commission's position to the levels in §3B.1.2 and 3B.1.1, because they already provide drastic increases in a defendant's sentence.

**SUPERVISED RELEASE**

5. The Commission, should include guideline language, that the Probation Department should consider the early termination of a defendant's supervised release if the defendant has followed all rules of his or her probation and give direction as to when to consider.

**CLOSING**

I would like to thank the Commission for the continuing courageous work it does in modifying the guidelines.

Respectfully Submitted,

Mary E. Fullard

Mary E. Fullard

United States Sentencing Commission  
Attention: Public Affairs  
One Columbus Circle, N.E., Suite 2-500  
Washington, D.C. 20002-8002

RE: Support of Retroactivity for the 18 -to- 1 Guideline Amendment (at what has come to be known as the Base Offense Level 24 Option or Lower) and a 2-Level Reduction for All Drugs.

Honorable Commissioners:

I present this most important issue to you as a citizen and taxpayer concerned with both, the unequal sentencing schemes and the wasteful government spending practices associated with the Federal Prison System as related to this issue at hand.

It is now widely understood that crack cocaine penalties are unjust in comparison to powder cocaine penalties. Believing that crack cocaine differed from powder cocaine and responding to the fears of the public, Congress enacted laws in 1986 that sentenced crack cocaine defendants far more severely than powder cocaine defendants. For those defendants sentenced under that law, five grams of crack (the weight of "5" packets of common household sweetener) carried the exact same mandatory sentence as five hundred grams of powder cocaine (the weight of 1 pound of flour) commonly referred to as the "100 to 1 ratio." In the years since these laws were enacted, numerous experts have testified that there is no scientific basis for the difference. The effects of both forms of cocaine are the exact same, yet African Americans and Hispanics were unfairly being sentenced to 20 or 30 years and more for crack cocaine while, White Americans were being sentenced to 5 or 10 years for powder cocaine.

In their efforts to make the existing law more reasonable, Congress passed the Fair Sentencing Act of 2010 (FSA) and President Obama signed it into law on August 3, 2010. This Law adjusted the ratio between crack cocaine and powder cocaine from (100 to 1) to (18 to 1). While this change attempts to address this gap, it falls well short of true justice and equality. Also, as of this writing, the FSA and the crack guideline changes by this Commission have not been made retroactive. So, they do not apply to people already in prison serving severe sentences for crack cocaine offenses.

With regard to costs, the Congressional Budget Office (CBO) estimates that FSA will save the Federal Government \$42 million in reduced Federal Bureau of Prisons spending between the years 2011-2015 alone. Supporters of retroactivity emphasize that the savings would be significantly greater if these guidelines were made retroactive. Those opposing retroactivity stress the undue burden it would place on the courts. The decision to make the new changes in the law available for those already serving long sentences under the discriminatory 100 to 1 ratio should not be based on government savings or the burden it may place on the courts. The decision to make this law available to those serving unjust sentences should be made because it is the right thing to do, the fair thing to do and the moral thing to do. To acknowledge the injustice and discrimination, but fail to correct this injustice is more harmful than the injustice itself.

There is no dispute that crimes committed should be punished with a just sentence, but determining what is just isn't always an easy task, but we can recognize injustice when we see it. The injustice of crack cocaine sentences has been openly acknowledged. This Body issued such an acknowledgement as far back as 1992.

This Commission now has not only the opportunity, but the obligation to do what is within your power to help correct this unfairness. It would be a cruel injustice to change the crack guidelines based on the long unjust sentences suffered by people in prison, but not apply these guidelines to people unfairly sentenced. Failing to act is the same as to compounding the cruel injustice that has existed for decades.

Can this Commission, a body created to help limit unwarranted sentencing disparity, in good conscience convey to the American public and prisoners that, "We now know that crack and powder cocaine are basically the same drug." "We now know people have been severely sentenced." "We now know these sentences are unfair.", but "only prisoners convicted after August 3, 2010 will benefit from the new (18 to 1) law."? By not making the Guideline Amendments retroactive so the prisoners already sentenced can benefit also, would send a message that this Commission is not concerned with fairness and justice.

The decisions you make affect the lives of thousands of families! Those already sentenced to the harsh 100 to 1 ratio should not be excluded from receiving justice.

I am in favor of retroactivity for the 18 to 1 Guideline Amendments at the level 24 option "in the least". I am also in favor of a 2-level reduction for all drugs.

Thank you for your time and for doing what is right.

Signed



Date:

3/1/2011

January 28, 2011

United States Sentencing Commission  
One Columbus Circle, N.E., Suite 2-500  
Attention: Public Affairs  
Washington, D.C. 20002-8002

Dear. Sir(s)., Madam(s),

I come to you (once again) as a concerned ... citizen in support of this written public comment: with regards to the issued proposals submitted on Tuesday January 11, 2011, pending before this Commission, "issues for comments," in anticipation of a vote on or before March 13, 2011, addressing: (1) whether the Fair Sentencing Act (FSA) of 2010 should be made "retroactive" to apply to individual's serving crack cocaine sentence(s) under the old guideline; (2) whether the Temporary guideline Amendment should be made permanent based on the FSA of 2010 applying an option-level 24 and (3) whether a defendant's criminal history should bar them from receiving the reduction.

In response, to the introduction of the proposed Amendment(s). Applying S.1789 (FSA) "retroactive" will allow individual's already confined under the "old law" request their respective sentencing Judge to shorten their term of imprisonment. It's a simple matter of fairness, and justice providing the same relief as to those individual's (now) entering the BOP.

In addition, "with respect" to the (October 15, 2010) Temporary guideline Amendment. This Commission has the authority to make the proposed Amendment ... permanent based upon the FSA of 2010's 18:1 ratio disparity adjusting the guideline to reflect an option 24 rather than the option 26 in order for this Amendment to be considered fair under the equal protection of law.

("Issues for Comments,") Cont'd:

Nevertheless, this Commission should (also) take into ... consideration defendant's whose criminal history that currently bars them from receiving the reduction (and in doing so adjust the guideline(s) would not increase the original sentence) should (in fact) be applied retroactive.

Finally, this letter!! is written for the sole purpose to "alert" Commission members that the public supports the "retroactivity of this bill." Because, in the past "retroactivity" has been given to other individual's with little or no resistance."

Sincerely,



---

A Concerned Citizen

Attention: Public Affairs  
The United States Sentencing Commission  
One Columbus Circle, N.E., Suite 2-500  
Washington, DC 20002

RE: Proposed Guidelines Amendments

Dear Honorable Commissioners:

Firstly, I would like to offer my respect and gratitude to the Commission for reaching out to the public for comment on the proposed 2011 sentencing guidelines amendments. Your work throughout the decades acknowledging the adverse impacts and injustice of several laws was noticed and appreciated by many. As a tax paying citizen, I would like to express my opinion regarding which of your 2011 guidelines proposals will curb unnecessary government spending while still providing safety and security in a humane and effective manner.

1) Retroactivity of The Fair Sentencing Act of 2010

In February 2011, the Second Circuit addressed a transitional problem regarding the application of the Fair Sentencing Act. US v. Acoff 10-285 brought to light a congressional oversight: if the previous 100-1 crack sentencing law was deemed unjust, how can we allow anyone to continue to be sentenced under such austere guidelines? More importantly, how can we allow the thousands of people previously sentenced to serve time under the old law which was found to be unconstitutional? Accordingly, I recommend retroactivity of The Fair Sentencing Act of 2010.

2) Downward Adjustment of Two Levels on All Drug Guidelines and an Additional Adjustment of Two Levels when a Drug Offender has No Aggravating Circumstances.

Forty years later, the intended objectives of the war on drugs have become increasingly elusive. Our country's mass incarceration of non-violent drug offenders, many of whom are addicts themselves, have yielded nothing more than broken families, higher recidivism rates, and a greater federal deficit. The effectiveness of any plan is gauged by results. Clearly, overstated sentences for non-violent offenders have not yielded favorable results in reducing recidivism, drug activity, and cannot justify the monetary investments. Therefore, I recommend a downward adjustment of two levels on all drug guidelines and for drug offenders with no aggravating circumstances with a retroactive application.

3) Repeal of Ban from Two Level Safety Valve Reduction for Those who Meet Other Criteria but Have More Than One Criminal History Point.

Yes, I recommend that this ban should be repealed.

- 4) Two level reduction for defendants who truthfully provide all information and evidence about their offense to the government.

The fact that a defendant is willing to fully cooperate exhibits a clear change in the abandonment of criminal behavior. Government cooperation is also primary means by which law enforcement arrests new offenders considering these factors, defendants should be awarded the 2 level reduction.

- 5) Other changes to upward and downward adjustments for aggravating and mitigating roles.

I recommend that the commission look more closely at upward adjustments in crimes involving child victims, especially those involving sexual abuse, and at downward adjustments for drug and white collar crimes involving mitigating roles.

- 6) Reduction of the number or the time individuals spend on supervision follow release from prison.

I agree that such lengthy terms are unnecessary and do in fact dilute resources with little proof of effectiveness. I support this reduction.

- 7) Reduction of enhanced penalties for those convicted of returning to the United States illegally following removal.

I support this reduction. Spending massive amounts of tax dollars to house deportable aliens in prison for excessive sentences is fiscally irresponsible.

- 8) The Dodd-Frank Wall Street Reform and Protection Act.

I believe a multi-year review is necessary for adequate research purposes. Therefore, the commission should delay responding to the Dodd-Frank initiatives.

Dissent against harsh, dead-end sentencing rises as fast as budgets are cut. This letter is to demonstrate that there is public support for sentencing relief. The goals of the United States Sentencing Commission are to reduce unwarranted disparity, increase rationality and transparency of punishment, and make punishment fair and proportionate. To effectuate these objectives, I hope you may consider the sentiments of the public expressed in this letter.

Sincerely,



To: United States Sentencing Commission  
One Columbus Circle N.E., Suite 2-500  
Attention: Public Affairs  
Washington, DC 20002-8002

From: Concerned Citizens

RE: Solutions for overcrowding and lengthy sentences for  
federal inmates

Nearly one in every 31 adults is incarcerated at any given time. An overwhelming majority of the nation's criminal case load consists of non-violent offenders. In the federal system, it is very common to find non-violent offenders serving sentences of 15 years or more. This is actually the norm and not the exception. Fortunately, there is some good news. Changes can be made, and they would not take a literal act of Congress. The following is a list of changes previously introduced by the U.S. Sentencing Commission that can set the United States Department of Justice on the right course:

1. Make the new crack guidelines retroactive. The reason for changing the guidelines was to install fundamental fairness into the criminal justice system. It is only right to extend the guidelines for prisoners who were wronged when sentenced under the old law at such a wide disparity. Fairness is "Prospective Application."
2. Reintroduce the 2002 65/35 "Good Time for Federal Inmates" proposal and make it retroactive to help alleviate overcrowding.
3. Make the Recency Act retroactive.
4. Approve a sentence reduction for all drug offenders.
5. Re-evaluate what constitutes a violent/non-violent offender.
6. If the "Safety Valve" criteria are met, increase the sentence reduction.
7. Increase downward departure for non-violent offender.

Our goal, as concerned citizens, is to reduce the number of non-violent offenders in our federal prisons. This reduction will benefit the community as well as State and Federal governments in many social, political, and economic ways.

Most Sincerely,

*Pocahontas Houston Newby*  
A Concerned Citizen

*Pocahontas Houston Newby*  
Signature

To: United States Sentencing Commission (USSC)  
Attention: Public Affairs  
One Columbus Circle, N.E., Suite 2-500  
Washington, D.C. 20002-8002

January 20, 2011  
Re: 76 FR 3193

**Comments on the January 19, 2011, Federal Register "Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments, Notice of public hearing."** FR Doc. 2011-994 Filed 01/18/2011

*The specific proposed amendments and issues for comment in this notice that I have comments on are as follows:*

(6) a proposed amendment to §2L1.2 (Unlawfully Entering or Remaining in the United States) that would provide a limitation on the use of convictions under §2L1.2(b)(1)(A) and (B) in certain circumstances; .....

**6. ILLEGAL REENTRY**

.....

The amount of the enhancement may be 16 levels, 12 levels, 8 levels, or 4 levels, depending on the nature of the underlying offense. This proposed amendment would amend §2L1.2 to provide a limitation on the use of convictions under subsections (b)(1)(A) and (B). **Specifically, such a conviction would receive the 16- or 12-level enhancement, as applicable, if the conviction receives criminal history points under Chapter Four (Criminal History and Criminal Livelihood), and 8 levels if it does not.**

.....

The proposed amendment would reduce the 16- and 12-level enhancement when the prior conviction is too old to qualify for criminal history points, but would not entirely eliminate the enhancement.

.....

**Proposed Amendment**

Section 2L1.2(b)(1)(A) is amended by inserting "if the conviction receives criminal history points under Chapter Four or by 8 levels if the conviction does not receive criminal history points" after "16 levels".

Section 2L1.2(b)(1)(B) is amended by inserting "if the conviction receives criminal history points under Chapter Four or by 8 levels if the conviction does not receive criminal history points" after "12 levels".

The Commentary to 2L1.2 captioned "Application Notes" is amended in Note 1 by adding at the end the following:

"(C) Prior Convictions.--In determining the amount of an enhancement under subsection (b)(1), note that the amounts in subsections (b)(1)(A) and (B) depend on whether the conviction

receives criminal history points under Chapter Four (Criminal History and Criminal Livelihood), while the amounts in subsections (b)(1)(C), (D), and (E) apply without regard to whether the conviction receives criminal history points.

A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points under Chapter Four."

The Commentary to 2L1.2 captioned "Application Notes" is amended striking Note 6 and redesignating Notes 7 and 8 as Notes 6 and 7.

**The following from:**

[http://www.ussc.gov/Guidelines/2010\\_guidelines/Manual/11/11/11/211\\_2.htm](http://www.ussc.gov/Guidelines/2010_guidelines/Manual/11/11/11/211_2.htm)

## **2010 FEDERAL SENTENCING GUIDELINES MANUAL**

### **§2L1.2. Unlawfully Entering or Remaining in the United States**

#### *Commentary*

*Application Notes:*..... [This note is being deleted.]

6. *Computation of Criminal History Points.*—A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

*I fully support this overall change. For an illegal alien who reenters the U.S. after having been formally removed, it is wholly suitable that such an individual should have this sentence enhancement. While it is fair to use as a deterrent against further illegal reentry both to that individual and others similarly situated, it was unfair not to take into account the distance (in time) from that prior conviction, especially when that would have been committed while possibly still rather young (and foolish) and may have been overly punished in the first place. The passage of time has improved our society's ability to overcome certain racial and ethnic biases quite a lot but we must admit that the vast majority of **these individuals**, based on the raw demographics of illegal aliens in the U.S., may have been subject to bias in the past in our criminal justice system. That disparity should not continue unaddressed. I view this change as an acknowledgement of the probable bias in a majority of the past criminal cases involving these individuals and as an affirmative ameliorative action in the present and future.*

(8) a proposed amendment in response to miscellaneous issues arising from legislation recently enacted and other miscellaneous guideline application issues, including proposed changes to the policy statement at §6B1.2 (Standards for Acceptance of Plea Agreements) in light of United States v. Booker, 543 U.S. 220 (2005), ....

The following from:

[http://www.ussc.gov/Guidelines/2010\\_guidelines/Manual\\_HTML/Ib1\\_1.htm](http://www.ussc.gov/Guidelines/2010_guidelines/Manual_HTML/Ib1_1.htm)

## 2010 FEDERAL SENTENCING GUIDELINES MANUAL

### **§1B1.1. Application Instructions**

#### *Commentary*

#### *Application Notes:.....*

*Background:* The court must impose a sentence "sufficient, but not greater than necessary," to comply with the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2). See 18 U.S.C. § 3553(a). Subsections (a), (b), and (c) are structured to reflect the three-step process used in determining the particular sentence to be imposed. If, after step (c), the court imposes a sentence that is outside the guidelines framework, such a sentence is considered a "variance". See *Irizarry v. United States*, 128 S. Ct. 2198, 2200-03 (2008) (describing within-range sentences and departures as "sentences imposed under the framework set out in the Guidelines")

## 8. MISCELLANEOUS

Part A of the proposed amendment updates the policy statement at §6B1.2 (Standards for Acceptance of Plea Agreements) in light of *United States v. Booker*, 543 U.S. 220 (2005), and the Federal Judiciary Administrative Improvements Act of 2010, Pub. L. 111-174 (enacted May 27, 2010). The proposed amendment amends §6B1.2 to provide standards for acceptance of plea agreements when the sentence is outside the applicable guideline range. The proposed amendment also responds to the Federal Judiciary Administrative Improvements Act of 2010, which amended 18 U.S.C. § 3553(c) (2) to require that the reasons for a sentence be set forth in the statement of reasons form (rather than in the judgment and commitment order). The proposed amendment amends both §6B1.2 and §5K2.0 (e) to reflect this statutory change.

### **Proposed Amendment:**

#### **(A) Plea Agreements and Statement of Reasons**

The *Statement of Reasons Form* can be found at:

<http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO245B.pdf>

On pages 21- 24 of: AO 245B (Rev. 09/08) Judgment in a Criminal Case form.

Section 6B1.2(b)(2) is amended by striking "departs from" and inserting "is outside"; by striking "specifically set forth" and all that follows through "order" and inserting "set forth with specificity in the statement of reasons form".

Section 6B1.2(c)(2) is amended by striking "departs from" and inserting "is outside"; by striking "specifically set forth" and all that follows through "order" and inserting "set forth with specificity in the statement of reasons form".

The Commentary to §6B1.2 is amended in the second paragraph by striking "departs from" and inserting "is outside"; by striking "(i.e., that such departure" and all that follows through "order" and inserting "and those reasons are set forth with specificity in the statement of reasons form. See 18 U.S.C. § 3553(c)".

Section 5K2.0 (e) is amended by striking "written judgment and commitment order" and inserting "statement of reasons form".

*Current: (e) REQUIREMENT OF SPECIFIC WRITTEN REASONS FOR DEPARTURE.—If the court departs from the applicable guideline range, it shall state, pursuant to 18 U.S.C. § 3553(c), its specific reasons for departure in open court at the time of sentencing and, with limited exception in the case of statements received in camera, shall state those reasons with specificity in the written judgment and commitment order.*

*Amended: (e) REQUIREMENT OF SPECIFIC WRITTEN REASONS FOR DEPARTURE.—If the court departs from the applicable guideline range, it shall state, pursuant to 18 U.S.C. § 3553(c), its specific reasons for departure in open court at the time of sentencing and, with limited exception in the case of statements received in camera, shall state those reasons with specificity in the statement of reason form.*

The Commentary to §5K2.0 captioned "Application Notes" is amended in Note 3(C) in the second paragraph by striking "written judgment and commitment order" and inserting "statement of reasons form"; and in Note 5 by striking "written judgment and commitment order" and inserting "statement of reasons form".

**The following from:**

[http://www.justice.gov/opa/documents/United States v Booker Fact Sheet.pdf](http://www.justice.gov/opa/documents/United%20States%20v%20Booker%20Fact%20Sheet.pdf)

“[March 14, 2006], the USSC released its report on the impact of *United States v. Booker* on federal sentencing. This report shows that the fairness, consistency and accountability that were the hallmarks of the Sentencing Reform Act of 1984 (SRA) are in serious jeopardy.”

The alarming rise in below guideline departures in sentencing is still appalling. This is seen in the drop in the rate of within guideline sentences: ~69% in FY 2003, ~61% in FY 2006, and ~56% in FY 2009.

Any actions taken to strongly remind sentencing judges of their duty to punish criminals and deter future criminal acts while maintaining fairness is welcome. The changes made by **these** amendments to the Sentencing Guidelines, commentary and policy, however, are quite trivial.

Combining the two items upon which I comment, I ask that the USSC consider at least adding commentary or application notes that take into account plea agreements entered into by alien defendants in light of Padilla v. Kentucky, 130 S. Ct. 1473 (2010), which held that "because counsel must inform a client whether his plea carries a risk of deportation, Padilla has sufficiently alleged that his counsel was constitutionally deficient. Whether he is entitled to relief depends on whether he has been prejudiced, a matter not addressed here."

On the other hand, Padilla must be clearly distinguished from "United States v. Restrepo, 999 F.2d 640, 644 (2d Cir. 1993) (holding that none of the following collateral consequences are a basis for departure: (1) The fact that an alien is not eligible to be imprisoned in a lower-security facility or to participate in certain prison programs; (2) the fact that an alien will face deportation upon release from prison; and (3) the fact that an alien, upon release from prison, will be civilly detained until deportation)" as noted by USSC at 75 FR 3525 (at 3531) (01/21/2010).

As promulgation under the APA is so burdensome, I feel no opportunity should be wasted to make substantive changes when forced to promulgate for mere "technicalities". This was a missed opportunity.

Thank you for the opportunity to be heard on this matter.

Joseph Whalen  
[REDACTED]  
[REDACTED]

1  
Ruben L. Bullock [REDACTED]  
[REDACTED]  
[REDACTED]

The United States Sentencing Commission  
2ne Columbus Circle, N. E.  
Washington, D. C. 20002

Date: 1-31-11

Attention: Public Affairs

I am Ruben Lamant Bullock my sentence of 210 months for 50 grams of crack cocaine has been and still is effecting my ability to provide for my family and be father to my 5 daughters. I took full responsibility for crime with a promise of a New York State Sentence of 5 years in prison but as soon as I plead guilty to the charges US Attorney Brett Pushick dropped a superseding indictment and I ended up with 12 1/2 more years in federal prison then I was promised.

By me being considered a career offender with prior felony convictions which one was a attempt possession and being denied proper lawyer that can handle a special case like mine only hope to see this New Law effect myself and everyone with a crack cocaine sentence. My entire family and I support king the crack cocaine guideline reductions based on the Sentencing Act retroactive, Reducing All drug Guidelines a Full Two Levels across the board and Explaining Guideline safety valve (That Reduces Guideline sentences by two levels when a defendant meets Five criteria) To include drug defendants Who's Criminal

History currently bars them From receiving the education. As myself I didn't get nothing from the 2007 change in the laws but this can give me a chance to start my life fresh. No I want get out real soon but it will be alot sooner than my releasedate is right now.

Thank you for reading my letter

Rubenz Bullock 