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United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002
ATN: Public Affairs—Retroactivity Public Comment
Via electronic mail to Public_Comment@ussc.gov

Re: Retroactivity Public Comment--SUPPORT

Dear United States Sentencing Commission,

We are writing in response to your invitation for public comments on whether to apply retroactively the Commission's amendments to the drug quantity table in the crack cocaine sentencing guidelines.

Lawyers' Committee for Civil Rights of the San Francisco Bay Area (Lawyers' Committee) is a non-profit organization that advocates for the legal rights of people of color, poor people, immigrants and refugees, with a special commitment to African-Americans. Our Second Chance Legal Clinic works primarily with low-income people of color who are seeking to overcome legal barriers due to past arrests and convictions. Studies have shown that the longer people are incarcerated, the more barriers they face to successful reentry. Some of the many debilitating factors that longer sentences imposes on drug offenders is the inability to receive addiction treatment, find employment, access public assistance, and obtain housing. Studies have also shown that "incarceration impacts the life of a family in several important ways: it strains them financially, disrupts parental bonds, separates spouses, places severe stress on the remaining caregivers, leads to a loss of discipline in the household, and to feelings of shame, stigma, and anger."¹ Through our Clinic, we witness the barriers formerly incarcerated people face on a daily basis.

We commend the Commission for successfully passing this new amendment that will integrate the 2007 crack cocaine amendment in the drug quantity table. Beginning in the 1980s, federal penalties for crack were 100 times more severe than those for powder cocaine despite the absence of any material difference in their chemical compositions. The Commission has long held that the 100:1 crack-to-powder sentencing ratio is unjust and has had an especially disastrous effect on African-American communities across the nation. The amendment is an important step in not only reducing the costs associated with an overpopulated prison system comprised of 50% inmates with nonviolent drug convictions, but also doing what is just by eliminating disproportional sentencing and systemic racism.

¹ Ricardo Barreras, Ernest Drucker, and David Rosenthal, "The Concentration of Substance Use, Criminal Justice Involvement, and HIV/AIDS in the Families of Drug Offenders," *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 82, no. 1 (2005), 168.

When the Commission determines whether to make an amended sentencing guide retroactive, it considers “the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under subsection (b).”² The Commission should apply the drug quantity amendment retroactively because the amendment is not a drastic change in the guideline range since it merely incorporates already existing mandatory minimums, would not be difficult for courts to apply, and is in furtherance of reducing severe penalties that harm communities of color.

The Commission has previously used proportionality as the deciding factor when determining whether to make an amendment retroactive. The main purpose of the Commission’s amendment to how oxycodone should be measured for sentencing guidelines was to address “proportionality issues in the sentencing of oxycodone trafficking offenses.”³ Because proportionality was the purpose of the oxycodone amendment, the Commission correctly determined that retroactivity was necessary to fully realize its purpose. The Commission should use the same analysis to apply the drug quantity amendment retroactively.

Allowing people with eligible crack cocaine convictions, who are disproportionately African-American and Latino, to have an opportunity to reduce their sentences will help to eliminate disparate sentencing problems.⁴ Currently, 18.7% of the eligible population has a crack cocaine conviction, but only 17% of this population previously received a reduced sentence under the 2007 crack cocaine amendment.⁵ Thus, retroactively applying the amendment will bolster the purpose of the crack cocaine amendment by allowing more people to become eligible for reduced sentences.

Statutorily required court procedures and the Commission’s studies on recidivism should significantly alleviate public safety concerns. First, a sentencing judge is required to take into account several factors upon a motion for resentencing, including whether the defendant will be a threat to public safety.⁵ Second, the Commission has released a report that shows there is no statistically significant difference in recidivism rates between people who receive retroactive sentence reductions and people who do not receive said reductions.

The final concern is difficulty for the courts in retroactively applying the rule. The change in drug quantity for sentencing purposes should not be difficult for courts to apply, especially because the Commission has projected that all the 51,141 people with convictions “will be eligible for release at various times over a period of more than 30 years.”⁶ Courts will thus not be overburdened by retroactive application.

For the reasons above, we urge the Commission to apply retroactively the drug quantity table amendment. Thank you for your consideration of this important issue.

Sincerely,



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² U.S.S.G. § 1B1.10(c) comments.

³ U.S.S.G. app. C, Vol. II, Amend. 657.

⁴ See Analysis of the Impact of the 2014 Drug Guidelines Amendment, 11 (“Hispanic offenders account for 43.5 percent of the eligible group, followed by 30.6 percent Black”).

⁵ *Id.* at 12.

⁶ See Analysis of the Impact of the 2014 Drug Guidelines Amendment, 15.