



NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
4805 MT. HOPE DRIVE • BALTIMORE, MD 21215-3297 • (410) 580-5777

LORRAINE C. MILLER
Interim President & Chief Executive Officer

OFFICE OF THE GENERAL COUNSEL
July 7, 2014

ROSLYN M. BROCK
Chairman, Board of Directors

VIA EMAIL

U.S. Sentencing Commission
Public Comment
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

RE: THE NAACP'S COMMENT ON WHETHER, PURSUANT TO 18 U.S.C. § 3582(C)(2) AND 28 U.S.C. § 994(U), AMENDMENT 3, OR ANY PART THEREOF, SHOULD BE INCLUDED IN SUBSECTION (C) OF §1B1.10 AS AN AMENDMENT THAT MAY BE APPLIED RETROACTIVELY TO PREVIOUSLY SENTENCED DEFENDANTS.

Dear Judge Saris and Commissioners,

The National Association for the Advancement of Colored People (NAACP), the nation's largest and oldest civil rights organization, urges the Commission to make the new sentencing requirements that have been passed under Amendment #3 retroactive, without limitation. Since Congress created mandatory minimum sentences for drug crimes in the 1980s, the federal prison population has grown into the largest prison system in the country. The intended purpose of such sentencing guidelines was to take away judicial discretion and ensure uniform and unbiased sentencing of every offender. However, studies have shown that African Americans and Hispanics disproportionately suffer harsher and lengthier prison sentences than white Americans, especially as it applies to drug offenses. More than 60% of the people in prison are now racial and ethnic minorities. Although the NAACP believes that your vote to lower drug sentences is a positive step towards eliminating the unconstitutional and disparate treatment of people of color, it has no effect upon the individuals and families that have already been affected by this disparate treatment. The NAACP urges you to make the new sentences retroactive without limitation in

order to address not only the present but also, the past unconstitutional and disparate treatment of minorities.

The NAACP opposes policies that force judges to impose a one-size-fits-all sentence without taking into account the details of an individual case. It is imperative that Amendment #3 be applied retroactively to allow eligible prisoners that have already been sentenced under the old disparate guidelines, to have the opportunity for individualized review under the new Amendment. Where the law is unjust, we must act to restore justice for all of the affected persons. Allowing persons currently incarcerated to suffer excessive, mass punishment that an individual convicted of the same crime after November 1, 2014 would not suffer, is inherently inequitable. It is the individual's crime and not the date that the crime was committed that should be the determinative factor in determining punishment. Applying Amendment #3 retroactively takes the emphasis off the date the crime was committed because it ensures that persons currently incarcerated are held to the same sentencing guidelines as individuals who commit the same crime after November 1, 2014.

Applying Amendment #3 retroactively to persons currently incarcerated poses no immediate threat to public safety. A return to judicial discretion means that federal judges will have the authority to decide when a prisoner poses a threat to public safety and when releasing an individual would be appropriate. The NAACP believes that judges have expertise necessary to conduct these evaluations and that judges can be trusted with upholding public safety. Fear that applying Amendment #3 retroactively will result in a flood of judges releasing prisoners that pose a threat to public safety is irrational and unsupported by data. These sentencing guidelines result in the decimation of communities, a deep distrust in the criminal justice system and excessive prison sentences. We cannot ignore the fact that not every prisoner sentenced under the inflexible guidelines is violent. Accordingly, every drug prisoner that has served his punishment does not pose a threat to public safety.

Furthermore, retroactivity will reduce the costs of over-incarceration and the burden of prison overcrowding. According to a 2012 Pew Center Poll, 88% of Americans believe that there are "too many low-risk, nonviolent offenders in prison." Incarceration increasingly diverts limited funds from law enforcement and crime prevention to housing inmates. Applying Amendment #3 retroactively will reallocate scarce law enforcement resources. Public safety concern demands

that we find ways to preserve law enforcement resources. Ensuring taxpayer funds are spent to increase law enforcement resources and giving eligible individuals a second chance to succeed, outweighs any potential benefit derived from restricting the Amendment to future crimes.

The National Association for the Advancement of Colored People urges you in the strongest terms possible to make Amendment #3 retroactive and restore judicial authority to craft sentences rationally related to the crimes actually committed.

Sincerely,

A handwritten signature in black ink, appearing to be 'K. Keenan', with a long horizontal stroke extending to the right.

Kim M. Keenan
General Counsel