



## National Association of Assistant United States Attorneys

12427 Hedges Run Dr. • Suite 104

Lake Ridge • VA • 22192-1715

Phone: 800-455-5661 • Fax: 800-528-3492 • Email: [staff@naausa.org](mailto:staff@naausa.org)

[www.naausa.org](http://www.naausa.org)

July 2, 2014

The Honorable Patti B. Saris  
Chair  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, DC 20002-8002

Attention: Public Affairs-Retroactivity Public Comment

### **Re: Proposed Retroactive Application of 2014 Drug Guidelines Amendment**

Dear Chief Judge Saris:

The National Association of Assistant United States Attorneys (NAAUSA) submits the following comments regarding the proposed amendments to the federal sentencing guidelines, published in the Federal Register on June 2, 2014, that would make retroactive the revisions to the Drug Quantity Table used in the sentencing guidelines for those convicted of drug trafficking offenses which were approved by the Commission on April 30, 2014. On April 30, 2014, the Commission approved a proposed amendment to the Drug Quantity Table (together with conforming adjustments to the chemical quantity tables) that reduced the base offense level associated with quantities that trigger the statutory and ten-year mandatory minimum penalties from base offense levels 26 and 32 in the current guideline to levels 24 and 30, respectively.

As you may recall, NAAUSA wrote to you on March 18, 2014, to express our opposition to the amendments approved by the Commission on April 30, 2014. In our letter of March 18, we stated that, "NAAUSA opposes the Commission's proposed amendments because they will put public safety at risk and compromise the incentive of drug trafficking offenders to cooperate with law enforcement in the pursuit of crime." The concerns raised in our initial letter remain the same, and have only been heightened by recently released studies on recidivism rates among convicted drug offenders by both the Commission and the Bureau of Justice Statistics (BJS), which establish that the recidivism rate among such offenders remains extraordinarily high.

The Commission's own study released in May, 2014, revealed that offenders who received retroactive application of the 2007 "Crack Cocaine Amendment," which lowered the base offense level for offenses involving cocaine base, recidivated at a level of nearly 44 percent within five

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years of release.<sup>1</sup> Similarly, a report released by BJS in April, 2014, revealed that between 2005 and 2010, 76.6 percent of drug offenders were re-arrested within 5 years after their release from imprisonment.<sup>2</sup> Yet, despite these startling recidivism rates among drug offenders, the Commission now proposes to release over 51,000 dangerous drug traffickers through retroactive application of the two-level reduction to the Drug Quantity Table.<sup>3</sup> Simply stated, the proposal to make the April 30 amendment retroactive constitutes a grave danger to public safety and should not be adopted. The danger that many of these offenders present to society is evident from the Commission's own data on the "Guidelines Sentencing Characteristics," received by these offenders when they were originally sentenced. For example, over 20 percent of eligible offenders received a "weapons specific offense characteristic," 10 percent received a "firearms mandatory minimum" sentence, and 15 percent received an "aggravating role" adjustment.<sup>4</sup> Furthermore, over 60 percent of the eligible offenders fall within Criminal History Categories II through VI. Accordingly, many of the inmates who would be eligible for early release under the proposed amendment are already repeat offenders, and have demonstrated that the sentences they originally received were well justified.

Neither can retroactive application of these amendments be justified upon fiscal grounds. The costs associated with processing the over 50,000 applications by the Department of Justice and the court system, coupled with the fact that at least 50 percent of these offenders will likely have to be rearrested and prosecuted for committing new crimes, will significantly detract from any cost savings generated during the 30-year period over which these early releases are to occur. As noted by Sally Quillian Yates, United States Attorney for the Northern District of Georgia, during her testimony before the Commission on June 10, 2014, the diversion of resources from prosecutors' offices, the courts and probation in order to process such a large number of applications will have a negative impact on public safety.<sup>5</sup> Furthermore, the devastating impact of higher crime, which will most certainly result from this amendment and the earlier amendment to the Drug Quantity Table, will have both fiscal and intangible consequences upon society, and result in the re-victimization of

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<sup>1</sup> *Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment*, United States Sentencing Commission, May, 2014, at 3.

[http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527\\_Recidivism\\_2007\\_Crack\\_Cocaine\\_Amendment.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf)

<sup>2</sup> *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, Bureau of Justice Statistics Special Report, April, 2014, at 1.

<http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>

<sup>3</sup> Memorandum from Office of Research Data, Office of General Counsel, United States Sentencing Commission, to Chair Saris and Other Commissioners regarding Analysis of the Impact of the 2014 Drug Guidelines Amendment If Made Retroactive, May 24, 2014, at 10 [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527\\_Drug\\_Retro\\_Analysis.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527_Drug_Retro_Analysis.pdf)

<sup>4</sup> *Id.* at 13, Table 4B.

<sup>5</sup> Statement of Sally Quillian Yates, United States Attorney for the Northern District of Georgia, Before the United States Sentencing Commission Hearing on Retroactive Application of the Pending Drug Guideline Amendment to the Federal Sentencing Guidelines, June 10, 2014, at 6.

members of many of our most vulnerable communities. For these reasons, we also oppose any limited retroactive application of the amendment to the Drug Quantity Table to so-called “low-level, non-violent” drug offenders. The offense of drug trafficking simply cannot be divorced from the harms it renders on society.

Moreover, retroactivity, particularly in the case of defendants sentenced pursuant to a plea agreement, would undermine the plea bargaining process, whereby significant concessions are often made by the government to resolve a case expeditiously. Allowing an individual sentenced under a plea agreement to have his sentence reduced retroactively prevents the government from obtaining benefits gained through concessions during bargaining, while allowing defendants to make considerable gains without risk.

As we noted in our previous letter, the destruction that drug trafficking wreaks on our communities, whether through addiction, overdose deaths, gun violence, or property crime is indisputable, and costs millions, if not billions, of dollars each year. The strong sentencing scheme that has been in place over the last 25 years in our country has contributed to the lowest crime rates in more than a generation. Tough sentencing laws for drug traffickers have enabled law enforcement to take the most dangerous and repeat offenders off our streets for extended periods of time, and assisted in gaining the cooperation of other drug traffickers, which has resulted in law enforcement’s ability to dismantle large-scale drug trafficking organizations. This success has led to safer communities, which are now threatened by proposals like the one currently under consideration by the Commission.

At a time in our nation when we face a heroin epidemic causing the death of thousands of people each year, reducing the sentences of heroin and other drug traffickers sends the wrong message to those who may commit such offenses in the future. The proposed retroactivity amendment is contrary to sound public policy and the preservation of safe communities.

We urge the Commission to refrain from adopting the proposed retroactivity amendment. Thank you for your consideration of these comments.

Sincerely yours,

  
Dennis Boyd  
Executive Director