UNITED STATES DISTRICT COURT
District of New Mexico
Santiago E. Campos Courthouse
106 South Federal Place, Second Floor
Santa Fe, New Mexico 87501

July 7, 2014

MARTHA VÁZQUEZ
District Judge

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

via mail & email: public_comment@ussc.gov

Re: Issue for Comment Regarding Retroactivity of the Amendment to the Drug Quantity Table

Dear Judge Saris,

I write this letter in support of applying retroactively the amendment to the Drug Quantity Table, effective November 1, 2014, to all prisoners affected by the amendment, without exclusion. I have been a federal district judge since 1994. Sentencing an individual to prison is, without question, the most difficult part of my job. It does not become easier with time, nor should it. I have sentenced thousands of defendants in the pre and post-*Booker* era. From this experience, I know firsthand the inequity and disparity that can result from applying bright line rules and categorical approaches in sentencing.

Congress, the Department of Justice and the United States Sentencing Commission have determined that drug quantities weigh too heavily in sentencing decisions without just cause. The result has been unduly long sentences, overburdened prisons and sentencing inequity between crimes—with drug crimes receiving some of the harshest punishments in the federal system; while more violent and dangerous offenses receive lower sentences. Therefore, I applaud the efforts of the Sentencing Commission to implement a more reasoned approach to drug crimes to "advance common sense criminal justice reforms" as stated by Attorney General Eric Holder to the Commission in March of this year. Far too many times a defendant has stood before me facing a lengthy sentence solely based upon the quantity of drugs he or she transported for another. Commonly, these individuals were merely low-level couriers without knowledge of the type or quantity of the drugs they were carrying. Routinely, these individuals would be promised a few hundred dollars, which they desperately needed to support their family. While the defendant committed the crime and is deserving of punishment, he or she rarely deserves a punishment harsher than that given to street dealers and suppliers actively involved in the drug trade. Yet all too often, that is precisely what is recommended under the Guidelines.

As Attorney General Holder also said, the amendment "send[s] a strong message about the fairness of our criminal justice system." Fundamental fairness demands application of the amendment retroactively. Failure to apply the amendment retroactively will leave approximately 51,000 prisoners serving sentences now deemed to be based on an unfair sentencing regime. The date a crime is committed has no bearing on fairness. It is not a consideration relevant to a district court's sentencing analysis under 18 U.S.C. § 3553(a). The calendar should not be a factor for consideration when an individual's liberty interest is at issue. It is fundamentally unfair to punish more harshly individuals who committed a crime last year than individuals who will commit the same crime next year.

I am also aware of the proposed limitations to retroactive application of the amendment. Based upon my experience, I believe unilaterally excluding certain prisoners from consideration will not serve the goals of sentencing. A defendant's criminal history category and role, as well as the presence of weapons, bear upon the defendant's Guideline calculation and a court's assessment of the nature and circumstances of the offense pursuant to § 3553(a). However, these factors by no means represent the whole picture. Excluding prisoners from eligibility based solely upon an assessment of his or her Guideline calculation at sentencing is contrary to *Booker* and its progeny. Such an approach only takes into consideration the Guidelines, which is fundamentally and constitutionally unfair.

Additionally, prisoners whose sentences were imposed post-*Booker* received the benefit of an individualized sentence that took into consideration the many relevant sentencing factors, including the nature and circumstances of the crime and the history and characteristics of the defendant. Categorically excluding some of these prisoners from consideration now undermines the very sentences previously imposed. The Commission simply cannot know which factors weighed most heavily in the original sentencing judge's decision.

Furthermore, it would be wrong to assume a defendant's criminal history category is determinative of his or her dangerousness or threat to the public. I have sentenced defendants with long criminal histories, including violent offenses such as aggravated domestic abuse involving a weapon; yet for reasons individual to the case, many of the defendant's prior offenses did not receive criminal history points. The result was a low criminal history category that did not truly reflect the defendant's criminal history, likelihood of recidivism or dangerousness to the community. Likewise, I have sentenced defendants with higher criminal history categories, but very short criminal histories. These defendants often have one prior felony (including non-violent offenses) and received two additional points for committing the drug offense while under a criminal justice sentence. They will begin in Category III for purposes of sentencing. However, these offenders may pose no significant threat to the public. The relatively short period in which these offenders committed their crimes may point to a future pattern of behavior; or it may point to a brief period in an individual's life in which their circumstances led them to make poor choices they are not likely to repeat. The Guidelines are not equipped to differentiate between the two. A district judge is in the best position to assess these types of sentencing

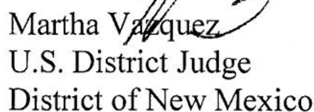
issues. Reliance upon a prisoner's criminal history category to determine eligibility is not a sufficient proxy for the careful analysis district judges engage in when sentencing defendants.

Similarly, consideration of a prisoner's role or the presence of a weapon is not determinative of a prisoner's threat to the public. Defendants have come before me for sentencing receiving no role enhancement despite having played a significant role in the drug trafficking conspiracy. Typically these defendants have agreed to plead guilty in exchange for a stipulation from the government that the role enhancement will not apply. On the contrary, I have had low-level drug traffickers come before me who have received a role enhancement for directing another individual despite the fact that the defendant had virtually no more knowledge or authority than the person he or she directed. A district judge is able to weigh these factors at sentencing. A bright line provision assuming a role enhancement or the presence of a weapon (potentially unknown to the defendant at the time of the offense) is sufficient to assess a prisoner's dangerousness is inaccurate and short-sighted.

Finally, fundamental fairness in sentencing should not give way to administrative inconvenience. It is the job and duty of every district judge to consider each individual who comes before us and impose a fair and just sentence in accordance with 18 U.S.C. § 3553(a). Beginning with a base offense level applied equally to all defendants charged with the same offense is paramount to achieving a fair sentence and avoiding disparity. The district courts have recently dealt with the 2007 and 2010 amendments regarding crack cocaine. We worked closely with our Pretrial Services and Probation office, the United States Attorney's office and the Federal Public Defender's office to efficiently and effectively resentence defendants who met the criteria for eligibility. This experience will benefit us as we proceed forward with the new amendment. We are well-prepared and quite able to accomplish the task of resentencing defendants who meet the criteria for a sentence adjustment under the amendment to the Drug Quantity Table. That said, no matter how great the strain on judicial resources, when errors affecting individuals' lives and liberty come to light, it is our duty to correct those errors for all prisoners affected, not just some. Anything less would be fundamentally unfair.

Thank you for your time and attention.

Sincerely,



Martha Vázquez
U.S. District Judge
District of New Mexico

cc: Eric J. Holder,
U.S. Attorney General
via mail & email: askdoj@usdoj.gov