From: Carlos [redacted]
To: Public Affairs
Subject: Proposed Crime Of Violence Amendment
Date: Wednesday, October 28, 2015 9:34:49 AM

Dear Commissioners,

I support the work that Prisonology does, and am writing to offer comments on the Commissions recently proposed "crime of violence" amendment.

I agree with the Commissions decision to eliminate the Guideline version of the "residual clause" in light of the Supreme Courts decision in Johnson v. United States, 135 S. Ct. 2551 (2015).. As the Commission has noted, the various circuits interpret the residual clause of the Armed Career Criminal Act ("ACCA") the same as the Guidelines version of the residual clause. If the ACCAs residual clause is unconstitutionally vague, then the Guidelines residual clause must be as well.

With regard to the proposed amendment to U.S.S.G. 4B1.2(a)(2), I strongly urge the Commission to only include burglary of a dwelling as en enumerated offense. Generic burglary should not be included because the same kinds of harms are not at issue when someone burglarizes a business or other structure. Moreover, by limiting the enumerated offenses to burglary of a dwelling, the Commission will help courts avoid interpretive issues resulting from the Supreme Courts decision in Descamps v. United States, 133 S. Ct. 2276(2013).

Finally, I respectfully urge the Commission to request the preparation of a retroactivity assessment for the crime of violence amendment, should it be adopted. The Commissions experience with retroactive amendments to the Sentencing Guidelines demonstrates the capability of federal district judges to apply such changes in a manner consistent with the safety of the public and the interests of Justice.

Thank you for your consideration of my Comments.

Sincerely,

From: [redacted]
To: Public Comment
Subject: Comment of Proposed Amendment to Sentencing Guidelines §4B1.2
Date: Wednesday, November 11, 2015 11:38:02 PM

Dear Members of the U.S. Sentencing Commission:

In response to your August 7, 2015 request for comments (Item 4D) on the proposed revisions to the definition of a "crime of violence" in §4B1.2 of the Sentencing Guidelines, please allow me to submit the following comments:

- A crime of violence is a serious matter and only truly violent acts should be classified as such. Murder, acts of terrorism, assault and/or battery with the use of a deadly weapon, rape, and any other unwelcomed and/or unsolicited act willfully committed by a perpetrator that causes, or is intended to cause, serious bodily injury, pain or death to the victim should be classified as a "crime of violence."

- Someone classified as having committed a "crime of violence" must have acted in a way that is a real menace and threat to our society, and this classification should only be used for serious criminal offenses.

- Specifically, as it relates to a "forcible sex offense" in §4B1.2(a)(2)(E), I do not agree that this type of behavior constitutes or should be classified as a "crime of violence." There are civil remedies for individuals who believe they have been harmed as a result of unsolicited, unwarranted and/or unwanted sexual advances or behavior. There are also criminal remedies if the behavior is serious enough (e.g., victim suffers bodily injury and thus the inappropriate behavior can be classified as a battery offense), but only in the case of rape or serious bodily injury, pain or death to the victim, should this type of behavior rise to the level of a "crime of violence."

- Specifically, the definition of "sexual act" and "sexual contact" per 18 U.S.C. 2246 should not be used to define a "forcible sex offense." Note that "sexual contact" as defined in 18 U.S.C. 2246 includes "the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person." While this type of behavior is clearly inappropriate, it does not warrant a "crime of violence" classification. At best, it is a misdemeanor or a third degree battery offense.

- As a taxpayer and voter, I am very dismayed by the persistent criminalization of minor drug and sex offenses. As a country, we are wasting billions of dollars prosecuting and incarcerating citizens (sometimes for a lifetime) who could be easily rehabilitated and returned to society to play a productive role. We have the world's largest prison population because we continue to incarcerate citizens for countless years for what are essentially minor offenses. The current policy of criminalizing any and all drug and sex offenses is counterproductive and very destructive to our families and to society at large. It is for this reason that I urge the Sentencing Commission to remove a "forcible sex offense" from the definition of a "crime of violence."

I would like this letter entered as a public comment to Item 4(D) in the "Issues for Comment" section of the United States Sentencing Commission proposal to amend Section 4B1.2(a)(2) of the Sentencing Guidelines.

Respectfully yours,

Juan [redacted]

10-15-15

Hello, my name is Mancer L. [redacted] I am writing to give my opinion on the "Johnson Fix" that would eliminate the Residual clause for career offenders. I propose the Sentencing Commission give the Court more discretion to consider who's a career offender. I ask that because everybody isn't a career offender just because a person has a prior conviction. When giving the courts this discretion it can consider the nature of the crime and the drug amounts for the state conviction. I propose this for two reasons;

1. most state convictions the federal Government wouldn't indict, also most cases are not "Drug Trafficking" under the Federal Definition.

2. Most career offenders had Bad Attorney Advice when taking those early plea agreements. For example, My first drug conviction was actually a simple possesion, due to the fact that it was my first felony, the small amount and how it was packaged, but by me not Knowing this and having a Lawyer that didnt have my best instint I plead guilty to intent to distribut cocain a felony.

I also disagree with the notion Requiring that a state crimes of violence or drug trafficking priors that are used as preclicates to triggee career offender status be classified by the state as felonies.

If you Agree with that their wouldn't be a "Johnson Fix". That's the same as the prior must be punishable by a term of imprisonment of more than one year. Most felonies carries a term of imprisonment of more than one year.

The problem is most priors drug convictions are not felonies under the Federal Requirements. Example. My two drug convictions drug Amounts were 0.50 and 2.5 grams of cocaine not cocaine base and we know the Federal Government wouldn't waste the time and money to indict those cases, but the Government uses these priors to enhance sentences. I pray and Hope your

Commission take these RECOMMENDATION into Consideration for the Thousands of people like myself.

Sincerely

Manuel L. [redacted]

RE: Career Offenders

Dear Honorable Judge Saris,

I am writing you today with the hope of the sentencing commission reviewing the 4B1.1 Career Offender Guidelines. This enhancement is very severe and it sentences defendants, with minor prior convictions to excessive amounts of time.

This guideline is used with entirely too much frequency. All a defendant needs to qualify for this guideline is two prior convictions involving drugs and/or violence, no matter how severe. The courts can acknowledge the non-severity of the priors, but in most cases the the prosecutors wield all the power. The only argument they use is that since the defendant has two priors, he/she is subject to the 4B1.1 enhancement.

In the states, felonies are categorized by degrees. For example, in New Jersey, you have degrees ranging from misdemeanor to 1st., 2nd., 3rd., or 4th. degree crimes, with 1st. being the worst and 4th. being the lesser severe crime. In many cases, defendants have 2 or more 3rd. or 4th. degree felonies are sentenced to less than two years, while defendants with 1st. or 2nd. degree felonies are being sentenced to ten years or more. These are what can be considered serious prior convictions with respect to the priorities of the commission for the 15 - 16 cycle.

I humbly request to the commission to consider adjusting the 4B1.1 Career Offender Guidelines to reflect the usage of only serious priors that carry a maximum penalty of 10 years as this would reflect the true purpose of the guidelines. Unfortunately, too many addicts and street level dealers are being sentenced to decades in prison with no recourse. Also, it should be known that defendants sentenced under the 4B1.1 Career Offender Guidelines receive no benefits from any of the previous and recent prison reforms.

SALVADOR [redacted]

[redacted] [197]

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500
Washington, DC 20002-8002

RE: Public Comment on "crime of violence" definition

Dear Commissioners:

This letter is in regard to the Commission's current effort to address the existing definition of a "crime of violence" in the Sentencing Guidelines. This term has a wide ranging effect on the length of sentences given to federal defendants, many of whom it applies to primarily because of the inclusion of language so broad as to extend the term to cover behavior that is not, by definition, violent in nature. A crime of violence should be one in which actual violence has been perpetrated against another.

Violence, by definition, in the context of a criminal act, ought not to be any behavior other than the exertion of physical force by any means, including use of an object (e.g. firearm, shovel, etc.) that causes physical harm to another person.

If, for example, a person uses a firearm to "misappropriate" the property of another, it would not, in and of itself, be violent, unless any kind of physical assault took place. Behavior inclusive of touching, up to and including discharging the firearm, whether the other person sustains injury or not, would be violent. Likewise, any other object that the perpetrator employs as a weapon in the commission of the offense.

A verbal threat of physical harm is not violent, unless the threat is carried out.

Another aspect of "crime of violence" that is overly broad, and unduly affects those guilty of the offense, is the manner in which it applies to those guilty of violating 18 U.S.C.§2252(A)(1) thru (5) and (7). A person engaged in the type of activity therein described, in mine-run cases, poses virtually no risk of physical force or harm, or threat thereof, against anyone, and yet their sentencing is nonetheless greatly affected.

In summary, it is respectfully requested that the current definition of "crime of violence" in both the statutory and Sentencing Guidelines language, as it relates to the United States Sentencing Guidelines §4B1.2(a)(2), be abolished, and the definition only include an offense having, as an element, an act of violence such as outlined above.

Your attention to this matter is sincerely appreciated.

Yours truly, Raul [redacted]

November 9, 2015

Office of Public Affairs
United States Sentencing Commission
One Columbus Circle N.E. 500-Lobby
Washington, D.C. 20002-8002

RE: Career Offender Sentencing Guideline Manual § 4B1.1

Honorable U.S. Sentencing Commission:

Since the implementation of the Sentencing Commission in or about 1986, this Sentencing Commission utilizing its authority given to it by the United States Congress has use a Congressional direction to the Sentencing Commission Under 28 U.S.C. § 994(h) to Unlawfully implemented the most racists and arbitrary law ever made here in the United States of America, the so-called land of freedom and democracy. As a result of such bogus and "Flawed Law". Since my incarceration in July 31, 2002 for allegedly distribute 24.1 grams of "Crack Cocaine" to an 'informant and a undercover Police officer I was not only disproportionately Sentenced to a term of 262 months and five-years of Supervisory release to be Commence upon my release from incarceration; but also denied any form of early release, because of this highly racists" Career Offender Guideline that this Sentencing Commission not Congress Unlawfully Promulgated to racially targeted on African American and Hispanic Minority Crack Cocaine Offenders.

For instance, on December, 2007, the United States Sentencing Commission utilizing its authority given to it by Virtue of 28 U.S.C. § 994(o) decided to reduced two-levels from the harsh Crack Cocaine Sentencing Guidelines and voted to made Amendment 706 Retroactive utilizing its authority under 28 U.S.C. § 994(u) effective March 3, 2008. No Crack Cocaine Offenders Sentenced under the arbitrary Career-Offender Guidelines were available to benefit from the retroactive Application of Amendment 706.

On August 3, 2010, The Fair Sentencing Act of 2010 become law after President Obama signed it into law. Again the Sentencing Commission Following Congress intention enacted Amendment 750. The Fair Sentencing Act of 2010 (FSA), reduced the racial disparity between Crack and Powder Cocaine From 100-to-1 to a more linient 18:1 ratio. Once again "no Crack Cocaine Offenders" Sentenced as a Career-Offender under the Career-Offender Sentencing Guidelines Manual § 4B1.1, were able to benefit from neither the (FSA) nor the Amendment 750. (emphasis added).

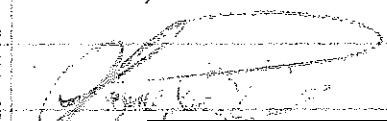
On July 18, 2014, Once again the United States Sentencing Commission utilizing its authority under § 994(o) Amended the Drug Sentencing Guidelines to reduced "two-level" from the harsh sentencing Guidelines. United States Congress did not Objected and Amendment 782 become law on or about November 1, 2014. The Commission utilizing its authority under § 994(u) voted to make this change retroactive effective November 1, 2015. Id. Once again the retroactive application of Amendment 782 did not affect Crack Cocaine offenders sentenced under the arbitrary and racially motivated Career-Offenders Guidelines § 4B1.1.

Accordingly, the fundamental Principles of the Equal Protection Clause of the Fifth and Fourteenth Amendments to the United States Constitution would mean very little and for that matter would mean nothing at all if the U.S. Sentencing Commission abusing its statutory authority giving to it by virtue of 28 U.S.C. § 994(o), continue to amended the Drug Sentencing Guidelines to benefit Certain drug offenders, but "not all" merely because a portion of those drug offenders were Sentenced Under a "Flawed" Career Offender Sentencing Guideline Manual § 4B1.1 and the other portion of those offenders were Sentenced Under a non-Career Offender Guideline.

The moral Charter of the equal Protection of the laws would be in direct Conflit with the U.S. Sentencing Commission's unlawful Practice of discrimination by racially targeting on a particular group of drug offenders While exhibit favoritism toward another Similarly individuals Convicted over the Same type of Offense, The United States Sentencing made no efforts to either Eliminate the "flawed" Career Offender Guidelin or Correct What appear to be a Constitutional defect which inherently result in a manifest injustice and a Completed Miscarriage of Justice. Let alone, a Clear denial of Equal Protection of the law. What the Commission Should do in Conformity with the fundamental Principles of the Equal Protection Clause is to Eliminate the bogus and "flawed" Career offender Guidelines to enable all drug offenders unjustly Sentenced under the old 100-to-1 ratio to receive the same benefit of other because it the right thing to do this will be applauded and celebrated not only by the People but also would Contribute to Practical Obama efforts to reduce the Cost of incarceration and lower the Still Overcrowded Federal Prison population wide.

I thank you in advance for your consideration and prompt resolution in this matter. It is not upto the United States Congress to eliminate or correct the "flawed" career offender guidelines that the United States Sentencing Commission promulgated it is up to the Sentencing Commission to do the right thing in accordance with its authority and the Constitution and law of the United States. I look foward to heer from you soon. Thank you!

Sincerely yours,



Lazaro [redacted]

[redacted]

[redacted]

U.S. Sentencing Commission
Public Affairs Office
One Columbus Cir. NE
Suite 2-500, South Lobby
Washington, D.C. 2002

Date: 8-8-15

Dear Sentencing Commission

I am writing you concerning recent proposed Guideline amendment do to the Johnson opinion. I agree that the same changes made to the ACCA concerning the residual clause should be made For Career offenders. It is just as unconstitutional For career offenders as it was For Armed career criminals.

Secondly, I read that another proposed Guideline amendment would define, or redefine what state priors are considered Felony crimes of violence or Felony controlled substance offenses that trigger career offender status under 4B1.1

As I believe this would be am importent and much needed amendment. I Feel just as strongly about clarification of the term ("punishable by a term of imprisonment of more than one year") as this is one of the Qaulifications For a prior Drug offence to be used to trigger the career offender status under 4B1.1

There seems to be a lot of confusion and circut split on the understanding of what was meant by (a term of imprisonment of more then a year) more so, the word "punishable by" a term of imprisonment of more than one year.

I was erroneously sentenced as a career offender because my state prior carried up to 18 months for a defendent with the worst possible criminal History. As it was my First conviction I was not Facing more than a year and only recieved probation on that case. Yet that case was used as a predicate offense to trigger the career offender status under 4b1.1.

I believe it unconstitutional to be sentenced to so much extra time because of the misunderstanding of the term ("punishable" by a term of imprisonment of more then a year"). It should be made very clear that the perticular defendant must be facing more than a year of imprisonment on a prior conviction, not what the worst possible DeFent with the worst possible criminal History would Face. See Harp, 406 F.3d at 246., also United States V. Simmons. 649 F.3d 237, 243 (4th cir. 2011). United States V. Michael Thompson, 2012 U.S. App. LeXis 9358 4th cir. N.C. May 8, 2012. Carachuri Rosendo V. Holder, 560 U.S. 563 (2010). United states V. Brooks, 2014 BL 152749, 10th cir, No. 13-3166, 6/2/14

Thank you For your time and consideration

sincerly

MArio J. [redacted]

Mailo [redacted]

11-01-2015

Dear Members of the U.S. Sentencing Commission:

I am writing because I am a Federal Inmate that is Serving a 168 month Sentence because of the Career Offender provision 4B1.1 guideline enhancement. This enhancement was applied because of two prior low-level non Violent drug Convictions. As in the recent decision in the ruling from the Supreme Courts for the Johnson Case what define a Crime of Violence. Their Should be some Changes in the Same language that what determine a Serious drug offense that is used to enhance a defendant Federal Sentence.

The U.S.S.G 4B1.1 Career Offender provision is Unconstitutionality vague based on a language this is used in a prior Convictions Such as intent to deliver, Manufacture, distribute, dispence without definition Stating how much drugs was involved. Meaning a defendant will be affected by this erronous enhancement for a low-level non violent prior drug Convictions. Even that guideline is advisory in alot of Cases the Judges often do not exercise that discretion to Sentence a defendant to His/Her original guiedline range that is decades Shorter than the U.S.S.G. 4B1.1 Career offender provison.

But Strongly Urge the U.S.S.C. member too look into this issue more too Consider to make Changes to that erronous guideline. Thank you

Your Truly

David [redacted]

[redacted]

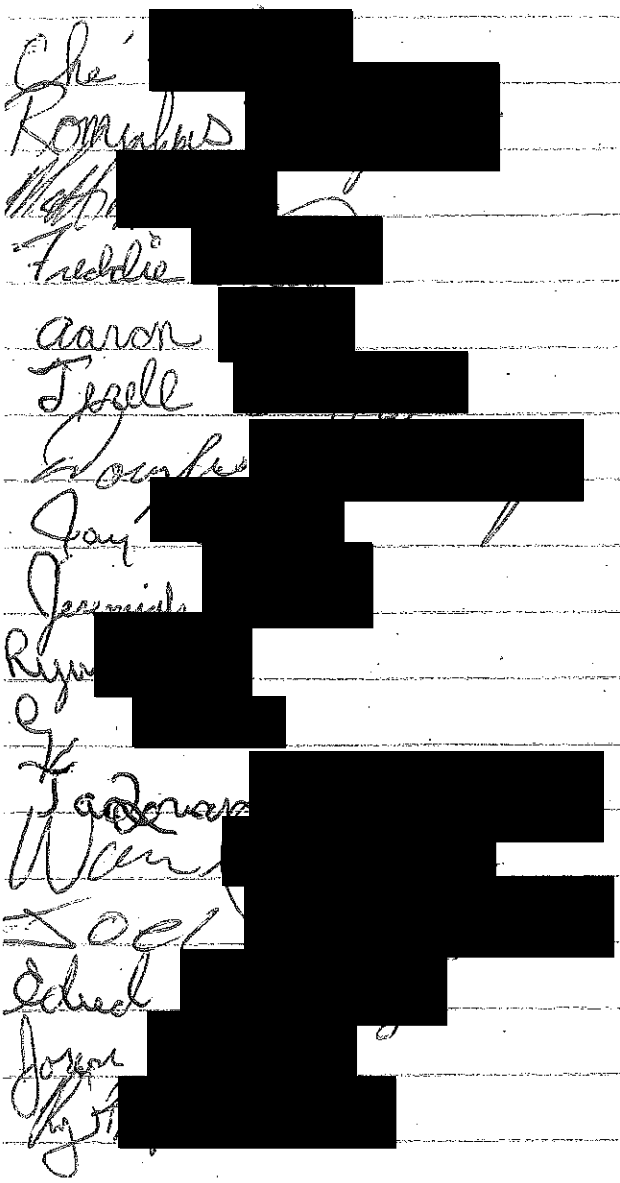
Sentencing Commission, 11/4/15

We (inmates awaiting trial) hope for you to eliminate the guideline version of the residual clause that was struck down by the Supreme Court as unconstitutionally vague in Johnson v. U.S. (No. 13-720, June 26, 2015). The vagueness that pervaded and ultimately doomed the statutory residual clause is just as ~~damaging~~ damaging, indeed more so, in the "Career Offender" context and should be removed from the guidelines. We are exposed to the sharply severe career offender enhancement and deserve the same protections of notice and clarity that those facing mandatory minimum enhancements under ACCA. Right now, for the prior offense to be counted for Career Offender purposes, the prior must have been "punishable by" a term of imprisonment of more than a year. (Which makes it too easy). Regardless of the disposition, amount of substance and time frame of the offense. Many of us inmates has never served an sentence of imprisonment for our priors and are still deemed a "Career Offender." The District Attorneys are using this provision to threaten and scare inmates into taking severe, unfair plea agreements, no matter the circumstances. We are thankful for all of the good works you are doing and greatly encourage you to fix the Career Offender, 851 and 924(e) enhancements. And also implementing for the prior to be able to be used within 10 years, instead of 15 years. Which also adds to the vagueness of the provisions.

Sincerely,

[redacted]

— Signatures on back —



Mr. Jackie [redacted]

August 12, 2015

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

RE: Public Comment/The Alias William [redacted] Was Used

Dear Honorable Saris:

I would like to thank you for your time and efforts in the many changes you and your colleagues have made to the Sentencing Guidelines.

This year, you and your colleagues are considering making changes to the guideline definitions relating to the nature of a defendant's prior conviction (e.g., "crime of violence," "aggravated felony," "violent felony," "drug traffficking offense," and "felony drug offense") and the impact of such definitions on the relevant statutory and guideline provisions (e.g., career offender, illegal reentry, and armed career criminal). [See United States Sentencing Commission, "Note of Final Priorties." 79 FR 49378 (Aug. 20, 2014); "Proposed Priorities for Amendment Cycle," 80 FR 36594 (June 25, 2015).

For the purpose of this public comment, the focus is on the career offender provision of §4B1.1 & §4B1.2. The guideline definition of "crime of violence" in §4B1.2(a) was modeled after the statutory definition of "violent felony." This guideline definition is used in determining whether a defendant is a career offender under §4B1.1 (Career Offender), and is also used in certain other guidelines.

This definition was used in the interpretation of one of my prior convictions, [redacted] In 1986 I was charged [redacted] and was ordered to pay a fine and cost of court. However, this particular offense, at that time, was classified as a misdemeanor offense; no jail time. On July 23, 2008, this offense was dismissed by the State of North Carolina District Attorney's Office. [See Letter From State Public Defenders Office]

On September 8, 1995 I was sentenced to life imprisonment. On August 27, 2009 my life sentence was reduced to 360 months imprisonment. [redacted] My offense level has changed three times, due to the changes to the Sentencing Guidelines over the years, from a total offense level of 43 to a total offense level of 37. [See Orders Regarding Motions For Sentence Reduction Pursuant To 18 U.S.C. § 3582(c)(2)]

In January of 2009 I filed a second 28 U.S.C. § 2255 petition to have my initial § 2255 reopened. I was challenging the fact of the dismissed prior conviction and to be moved from a Criminal History Category VI to Criminal History Category II. The District Court stated that it lacked jurisdiction to hear my claim and dismissed my petition. However, the court did advise me to seek permission from the Fourth Circuit Court of Appeals by filing a second or successive § 2255 petition. I filed a successive petition which was likewise denied by the Fourth Circuit Court of Appeals. From 2009 to 2014 I have filed numerous petitions in an attempt to get this claim heard to no avail.

If I had been granted the relief I was seeking, today my sentence would have change dramatically. I would, (1) move from a Criminal History Category (CHC) VI to a CHC II, with an offense level of 37; (2) this would give me a total Guideline Sentenceing Range (GSR) of 235 to 293 months imprisonment. I've already served over 240 months. This situation has created a gross miscarriage of justice.

By implementing these changes to the guidelines, it would cure this miscarriage of justice and potentially give me immediate release. I ask that you and your colleagues make the recommended changes to the guidelines for individuals that are in situations like this or similar situations.

If you need any additional information please feel free to contact me at your earliest convenience. I thank you in advance for your prompt response in this most urgent matter.

Sincerely,

Jackie [redacted]

Jackie [redacted]
Cc:file

10-26-15

Dear Members of the U.S. Sentecing Commission:

I am writing to try to Strongly urge the Commission to redefine the definition of a serious drug convictions to trigger the U.S.S.G. 4B1.1, Career Offender Provision. Where this unfairly lump a defendant in the Same category as a Kingpin that the Career offender provision was originally design for.
The 4B1.1 Career Offender provision is [redacted] unconstitutionality vague. Just because a defendant have two prior convictions in very many cases they are low-level Street dealers that is easily targeted by the local law eforcement angines. Are Sent to Federal prison for decades for a low-level drug conviction and when the Kingpin is arrested he get a light prison Sentence.
So where is the Just in this Criminal Justice System it is reform that needed to be done to this broken System Because I am a victim of this broken System that is giving people like me to harsh of Sentecing for low-level Crimes and drug convictions.

Thanks again for Considering my Comment

Your truly
Reg # David [redacted]

[redacted]

November 25, 2015

To Whom It May Concern:

We were glad to learn that the United States Sentencing Commission is revising its sentencing guidelines in order to make the guidelines for crimes of violence more specific. As people who are incarcerated, we know from experience how citizens do not always fully understand the range of punishment that they can face, and how the unclear language can sometimes be used by prosecutors to make penalties seem worse than they are when negotiating with someone for a plea.

The proposed language is for the most part concise, precise, defined, and helpful. Many people often will have defense lawyers that do not have the time or desire to explain the full penalties that people are facing, and so having this sort of clear language is a big help to those who are facing a prosecution. Not understanding these penalties can sometimes be the difference between going home, and facing additional time and charges because you did not know the consequences of your plea.

The one thing we would take issue with is the "comparable classification" language. We believe that this language is also apt to be exploited in the same way that some of the other vague language was, and that it would be helpful to have something that is more cut and dried, and easily understood. The guidelines should be useful for lawyers, but also make for "friendly reading" to people who are sometimes going through the system for the first time.

Aside from the comments above, we would just encourage the commission to continue to move in this direction, simplifying language to the extent that it can, and remembering that while this is a regime that is meant for judges and lawyers, it is sometimes the defendants themselves who have to make sense of it when weighing a plea.

Sincerely,

Richard [redacted]

Dwayne [redacted]

Perry [redacted]

Jerrod J [redacted]

Andre [redacted]

Jermaine[redacted]

Kenyon[redacted]

Davon[redacted]

Richard[redacted]

From: Fred [redacted]
Sent: Monday, November 02, 2015 7:57 AM
To: Public Comment <Public_Comment@ussc.gov>
Subject: Reforms for non-violent offenses

Gentlemen:

I have no problem reviewing and reforming sentencing guidelines going forward, taking into account the defendant's past criminal record and the charges in the pending case. But I have a serious problem with willy-nilly changing sentences for past convictions on what look like non-violent offenses. That approach ignores the defendant's established criminal record and ignores the fact that many (most?) convictions for non-violent offenses are negotiated dispositions (plea bargains) where an offense including violent acts are pled down to a non-violent offense and a reduced sentence. This approach will allow hundreds, if not thousands, of hardened criminals inclined to violence out into our communities.

The resulting blood-letting through violence against law-abiding citizens will be on your hands.

Sincerely,

Fred [redacted]

Frederic W. [redacted]

~ Hours by Appointment ~

From: Teddy [redacted]
To: Public Comment
Subject: 8/12/15 PROPOSED AMENDMENTS/PUBLIC COMMENT(S)
Date: Thursday, November 05, 2015 3:38:06 PM

I am writing to comment on the USSC August 12, 2015 Proposed Amendment to the Sentencing Guidelines:

1) [Re: Retroactivity of the Amendment]
Since the United States Supreme Court has held the statutory definition of "violent felony" unconstitutional for ACCA [18 USC Sec. 924(e)] purposes--as relates to the "residual clause"--the same must be held true for "career offender" [28 USC Sec. 994(h)] application as well. In either case, an offender who has wrongfully been exposed to increased punishment should be entitled to an appropriate reduction--or immediate release for time served, if applicable--regardless of when the sentence was imposed, or whether or not all appeals or other vehicles for review have been exhausted.
If there is no fairness correlation between current sentences and those that would not have otherwise been imposed pursuant to today's standards--then where is the "justice" and "Truth in Sentencing" that has been so highly touted? In the interest of "fairness" and "justice", it seems to me Teddy [redacted] a concerned citizen that "fairness" and "justice" are the intersection of two-way streets. If an offender(s) enhanced punishment imposed 20 years ago could not, or would not, be imposed today in the same circumstance(s), then the term imposed should be retroactively reduced so as to be in line with that permitted today;

2) [Re: Proposed Amendment (A) to USSG Sec. 4B1.2 (Definitions of Terms Used...)]
If the Sentencing Commission is to remain true to the holding in Johnson v. United States, and not run afoul of the due process notice issue(s) therein, the Commission should delete from the proposed amended Commentary [Application Notes:] all reference to "attempting to commit such offenses." as found the the proposed Commentary Application Notes: 1.
Such "attempt" reference is arguably encompassed within the very "residual clause" catch-all language the Johnson Court has opted to excise as unconstitutional:

"...'or otherwise involves conduct' that presents a serious potential risk of physical injury to another." {Internal quote added}

A plain reading of the foregoing clearly includes "attempted" within the meaning of the excised statutory content. A person cannot reasonably be said to have committed the offense of attempting to attempt an act, which, when the proposed amended commentary note is read conjunctively with the "elements clause" (4B1.2(a)(1)), is precisely the preposterous and superfluous result. One either uses force; attempts to use force; or threatens to use force against one's person--one simply [does not] "attempt to attempt to use force." Thus, it appears to this citizen that the Commission is "attempting" to over-reach in such a manner as to deliberately undermine or vitiate the Supreme Court's holding in Johnson.

Further, the "definitions" for a "crime of violence"--for ACCA and Career Offender application--should require and track the same language and analysis as that proposed for Classification as a Felony [Proposed Amendment to 4B1.2(B)] under State Law. For example: Many States have Check Boxes [] on their respective Judgment & Commitment Orders with specific boxes that Officially indicate the designation of certain types of

offense(s) as "VIOLENT" or "NON-VIOLENT". Where these types of papers are readily available, the Judgment(s) should be paid due difference to ensure a term of imprisonment does not run afoul of the "Full-faith-and-Credit" or "Ex Post Facto" clause(s) of the United States Constitution. The Commission is not at liberty to "redefine" or "upset" the final Judgment of the Court wherein said Judgment was issued. By way of yet another example: Up until Title 18 U.S.C. Sec. 4251 (b) was repealed by the Sentencing Reform Act (SRA) of 1984 [Pub.L. 98-473, Title II, Sec. 218(a)(6)--effective Nov.1, 1987] all crimes of burglary [were not] designated as a "crime of violence."
Pursuant to both California Penal Code Annotated Sec. 459, and Title 18 U.S.C. Sec. 4251(b): "(b) 'Crime of violence' includes...burglary or housebreaking in the nighttime."

The "nighttime" element of the offense--when residents were more likely to be home-- was the focus and, as such, was critical to the designation of whether burglary or housebreaking constituted a "crime of violence" where there may otherwise have been no actual violence; attempted violence; or actual threat of violence to the person of another. Hence, many offenders--whether through plea or a finding of guilt by jury--were adjudicated "non-violent" offender(s) at the time of the offense. Thus, such offender(s) were not provided due process notice the offense(s) could later be redefined as a "crime of violence" for enhancement purposes, notwithstanding final judgment of the sentencing court at the time the conviction was sustained.

For the foregoing reasons, in the interest of justice, the preservation of precious resources, and "TRUTH IN SENTENCING"--as the Comprehensive Crime Control /Sentencing Reform Act was also once known--this citizen, and those who agree with these comments, submit the Sentencing commission should render the Proposed Amendment(s) retroactive and fairly redraft its commentary to reflect prior felony convictions not be redefined as applicable "crimes of violence" if not defined, classified, and/or adjudicated as such by the State or Federal Court wherein the conviction(s) were initially sustained.

Being a voting and concerned citizen, of sound mind, interested in the fair treatment of all human beings, I urge the Commission to remember-- as Pope Francis commented in his recent address to the United States Congress--
"We are all equal in prayer."

Let us likewise be equal in justice and humanity. Thank you. Respectfully submitted

NOTE: If my Public Comment is to be published in any format or media of any kind whatsoever, my name may remain but all personal information [MUST] be redacted.

From: Daniel [redacted]
To: Public Comment; [redacted]
Subject: Residual Clause/Johnson Decision Comment
Date: Friday, October 30, 2015 11:43:04 AM
Attachments: Comment to U.S. Sentencing Commission.pdf

While the Amendment adopts the Johnson decision, as it must, the Amendment is merely sip service without making the Amendment retroactive.

(see also [redacted] for contact information)

From:	Peggy[redacted]
To:	Public Comment
Subject:	Proposed Amendment to Sec 4B1.2 of the Sentencing Guidelines
Date:	Monday, November 09, 2015 5:45:17 PM

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

Re: Proposed Amendment to Section 4B1.2 of the Sentencing Guidelines, "Crime of Violence" Definition

To Whom it May Concern:

In response to request for public comment, I am writing this letter to share my personal belief that possession of child pornography should be EXCLUDED from the definition of a “forcible sex offense". Non production possession, receipt, transportation or distribution of child pornography does not meet the criteria of being a sexual act or of having sexual contact. Therefore it should be excluded as a violent sexual act.

Using the classification of violent offender placing the offender under the same label as someone who has had sexual contact with a child distorts the truth and is at the very least misguided.

We are all passionate about protecting our children however, we have taken this passion to a level where we are applying a definition that does not fit the crime and using this to perpetuate a life time of punishment. Therefore, I would like this letter to be entered as public comment to item 4 (D) in the “Issues for Comment” section of the United States Sentencing Commission proposal to amend Section 4B1.2(a)(2) of the sentencing guidelines.

Sincerely,

Peggy[redacted]
[redacted]
[redacted]

From:	Darla
To:	Public Comment
Subject:	Proposed Amendment to Section 4B1.2 of the Sentencing Guidelines. “Crime of Violence” Definition
Date:	Sunday, October 25, 2015 6:17:25 PM

Re: Proposed Amendment to Section 4B1.2 of the Sentencing Guidelines. “Crime of Violence” Definition

Dear Commission Members:

In response to request for public comment, I am writing this letter to share my personal belief that possession on child pornography should be excluded from the definition of a “forcible sex offense”. Non-production possession, receipt, transportation or distribution of child pornography does not meet the criteria of being a sexual act or of having sexual contact. Therefore it should be excluded as a violent sexual act. Using a classification of violent sexual offender placing the offender under the same label as someone who has had contact with a child distorts the truth and is, as the very least, misguided.

We are all passionate about protecting our children however, we have taken this passion to a level where we are applying a definition that does not fit the crime and using this to letter to be entered as public comment to item 4 (D) in the “Issues for Comment” section of the United States Sentencing Commission proposal to amend Section 4B1.2 (a) (2) of the sentencing guidelines.

Sentences for child pornography crimes in the Federal system have increased dramatically over the last fifteen years, due in part to easy access from the internet. The statistics I have read indicate that no-contact offenders have very low rates of reoffending. Meanwhile, since becoming aware of this crime, I have noted that many charged at the local/state level serve minimal sentences or none at all, with sexual therapy as a parole requirement.

Although I understand that these offenders have committed criminal acts, I believe that not all “sex offenders” are equally culpable. A person who takes a child’s innocence to abuse him or her and then films the abuse for profit should be sentenced to the maximum under the law, as should the internet service providers who knowingly allow their servers to transmit these images. Viewing these images is offensive, but hardly to the same degree. These mandatory minimum sentences with their enhancements are too severe. I strongly believe that sentencing for these crimes should be reduced. Taxpayer money could be greatly saved by lowering the sentences of “viewers.”

My [redacted] has served 3 years of his 5 year mandatory sentence. Prior to be sentenced, he had been working 2 jobs to put himself through college and was only 18 credits from getting his degree. This was his first and only offense. Even Judge [redacted] who sentenced him, told [redacted] that if he could have, he would have only sentenced [redacted] to 2 years on probation plus counseling & therapy because of the circumstances and that it was his first offense, IF he had had the authority to sentence him according to his crime rather than being forced to follow a mandatory sentencing guideline. After five years in prison, my [redacted] will have served his time and more than paid his debt to society, he should not have to continue to pay for his mistake for the rest of his life by having this label.

Sincerely,
C. Darlene [redacted]
[redacted]

Thursday, November 4, 2015

United States Sentencing Commission
C/O Public Affairs
One Columbus Circle N.E. Suite 2-500
Washington DC 20002-8002

RE: Proposed Amendment to Section 4B1.2 of the Sentencing Guidelines definition of "Crime of Violence."

Members of the Commission:

Concerning the proposed amendment, I as a registered sex offender (arrested in August 2002, sentenced in February 2003, released in January 2005, and off probation in January 2008) was charged with possession of child pornography 18 U.S.C. Code 2252A. It is my understanding there will be a decision made on the proposed amendment to change the current guidelines as they are now that will directly affect all registered sex offenders. I understand that the proposed amendment will raise all Tier I sex offenders to Tier III classifying them as violent sex offenders. Currently Tier I and II make a distinction between the different types of convictions. Tier I offenders are non-violent and have no direct hands-on victims. A large percentage of those at this level were charged with possession of child pornography with no direct harm to a child. This is not to say that many charged with child pornography have the propensity to advance to other types of offenses. With this in mind, it is imperative to examine each case throughout the duration of their registration. It is precipitous to "lump all convicted sex offenders together in an indistinguishable mass, and all offenders – no matter the severity of their crimes – reap the consequences, which can range from difficulties finding employment to vigilantism by irate neighbors. This does not provide much incentive for convicted sex offenders to work on rehabilitating themselves in prison. Although they may have served their prison time, convicted sex offenders still face rejection by a society that refuses to accept the possibility of their redemption."[1] (Not Monsters: Analyzing the Stories of Child Molesters, By Pamela D. Schultz)

Therefore, it is important not to change the Tier system as it is, but instead allow non-violent sex offenders the opportunity to prove themselves to society and their community. How can a non-violent offender be re-classified if he/she has not committed a violent act? Furthermore, to make this retroactive would cause undue harm to offenders who have already been burdened with an arduous list of registration laws. These not only affect the offender, but also their families, relatives, their children or relatives children, employment, housing, to mention only a few. By changing the Tier system as it now, affecting offender's children will subject them to taunting and possible verbal or physical abuse by other children. This would not seem to be an effective consequence as now you have not only made more stringent challenges for the offender, but now their children become direct victims as a result of this amendment. Considering the offender's employment, many have successfully made changes in their lives where their jobs could be in jeopardy. For example, if a sex offender was employed in a fast food restaurant and started out as a line cook, then because of good behavior and work ethics, moved through the ranks and became an assistant manager or store manager. As a Tier I offender this would not directly affect the employer as they were made aware of the charges when the offender was hired. The storeowner or manager saw that this person

had made positive changes in his life and was promoted over time to a better position with better pay. If the offender was now re-classified as a Tier III offender the employer would risk his/ her business by continuing to keep this person employed because a violent offender would negatively affect the store's profits, customers going elsewhere as they now are aware there is a violent offender working at this restaurant. As an assistant manager or store manager this person would be directly working with the public and considering the nature of the business the owner would have to let this person go.

Thirdly, we take this offenders wife, who has been employed with the school district for 15 years. There is a much higher risk of losing her job as her husband has now been re-classified as a violent sex offender and no longer is a Tier I non-violent offender. Considering the registration laws, some states will require more stringent public notification. In the situation described, the school district would no longer be able to employ his spouse, as it is would be now public knowledge that he is classified as a violent offender.

Only three examples were mentioned in this example, not including what may occur with both spouses losing their jobs and possibly their homes. Most likely they will now have to apply for public assistance and will not be able to provide as they have for their children and now will no longer be a tax asset to the community, but a tax burden. This is only one example of many that are most likely accurate for some and the devastating affects by changing one amendment that could affect more an more people who have become productive citizens but if this amendment passes would become a burden to society.

Please think seriously about the consequences of this amendment. This is not to say that we now lighten the load on those who need to be punished and should remain on the sex offender registration and classified as Tier III offenders. To even consider making changes to the Tier ratings will do more harm than good. Go after those who are producing the child pornography and trafficking the innocent children. Those who have served their time and become productive citizens should not be punished once again by the choices that others have made.

I am certain as Members of the Sentencing Commission that you will make a wise decision and take into consideration these particulars mentioned in this letter.

Thank you for your time and consideration.

Respectfully,

From: Karen[redacted]
To: Public Comment
Subject: Proposed Amendment to the Sentencing Guidelines
Date: Sunday, November 08, 2015 8:48:30 AM

November 8, 2015

United States Sentencing Commission

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

Washington, D.C. 20002-8002

Attention: Public Affairs

RE: PUBLIC COMMENT ON THE PROPOSED AMENDMENT TO THE SENTENCING GUIDELINES

To whom it may concern,

As you consider both prison reform and the proposed amendment to the sentencing guidelines, I would appreciate your review of a layperson's thought and concerns as they apply to non-contact sex offenders, the general prison population, defining violence and the true objective – which should be prevent victimization through education and training, with incarceration as a last resort.

In 2012, the commission heard statements from mental health professionals, the judiciary and legal community and the Practitioners Advisory Group. The summation of these presentations was the concern regarding excessive and mandatory sentencing currently being applied to non-contact child pornography offenses. Additionally, the commission advised great care to the judiciary community in considering application of the sentencing guidelines in light of the lack of empirical evidence in support of the current laws and to deviate from the sentencing guidelines where the sentence clearly violates the tenets and responsibilities of 18 US Code 3553 – the need to impose a sentence *sufficient, but not greater than necessary.*

Sadly, in too many cases, fear and misinformation have dictated poorly conceived laws and inappropriate sentencing where non-contact offenders have received markedly higher sentences than contact offenders due to the enhancements defined under current law.

My concern is that as you consider redefining violence and prison reform, the same prejudicial laws and sentencing will prevail. If we are truly considering prison reform, we must change the way we think about the people we imprison. Defining people as violent based on a single act or charge, and determining that based on that assignment, these people will NEVER change and should NEVER be given the chance to earn their way back into

society, and should be endlessly punished, both in and out of prison, will only create a prison population shell game but won't provide any real solution or reform.

In order to consider true prison reform, we must stop our predilection towards mass incarceration and consider that the *majority* of prisoners could be eligible at some point to earn good time and early release credits and some should be able to avoid incarceration altogether. Charges *by themselves* cannot be the sole determination for assessing a person's propensity or tendency for violence. For consideration should be a tier system of incarceration, where the lowest level of offenders, who have no prior history of violence or criminal records - including those convicted of non-contact child pornography offense - should be considered for home confinement and monitoring as an alternative to incarceration. Since the average cost of incarceration for minimum and low offenders in a Federal prison is some $30,000 per inmate, the immediate cost saving benefit of an alternative prison sentence becomes obviously apparent. Instead of costing money, these low level offenders would continue to work and support their families, participate in educational and treatment programs (at their own expense where possible), and continue to interact with family and friends – thus increasing the likely deterrence of future inappropriate or unlawful behavior.

November 6, 2015 *(cont)*

United States Sentencing Commission

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

Washington, D.C. 20002-8002

Attention: Public Affairs

RE: PUBLIC COMMENT ON THE PROPOSED AMENDMENT TO THE SENTENCING GUIDELINES

As offenders moved to secondary and tertiary tiers, there should still be an opportunity to earn good time, early release and/or a reduced security assignment. Medium and high level offenders would be subject to rigorous behavioral testing, education and performance objectives designed to assist the offender is adopting both mental and physical behavior that adheres to the defined standard of society. As security level assignments rise, so do costs – so again – recognizing and rewarding improved behavior and performance will demonstrate additional costs savings as those offenders are moved to lower security levels, home confinement and monitoring and eventually release. Both unfortunately and truthfully, there will remain some set of offenders who through demonstrated behavior will force us to confine them indefinitely. This small segment of offenders should then be humanely incarcerated to ensure public safety.

Under the principles of mass incarceration, the only accomplishment we can claim is that we have become home to the world's largest prison population. As our prison population grows, we must conclude that we have failed to address the issues of mental health, race and

socio-economic position that contribute to this growth. We must also conclude that as long as prisons make and generate money (which they do), there will be no incentive for these policies and laws to cease. Under our current process, we can never expect to achieve the true and only solution – to prevent or significantly reduce the occurrence of crime and the suffering of the victims of those crimes.

As a taxpayer, a victim of crime and abuse, and a human being, I call on you to consider true reform, not just a shell game of prison reform, with no meaningful change.

Sincerely,

Karen [redacted]

[redacted]

From: [redacted]
To: Public Affairs
Subject: amendment to Section 4B 1.2
Date: Thursday, October 29, 2015 4:11:38 PM

Distinguished Members of The United States Sentencing Commission
Attention: Public Affairs
Re: Proposed Amendment to Section 4B 1.2 of the Sentencing Guidelines, "Crime of Violence" Definition

The person who views pornography is described at sentencing as a dangerous sex offender. Non-production possession does not meet the criteria of a violent sexual act.

This classification will enhance sentencing and because of the AWA will give the defendant another sentence after serving a sentence that is in most cases 20 years. The probation sentence is life. In most cases the defendant at sentencing will be told they cannot use a cell phone or computer for life. The chances of becoming employed or finding a place to live are going to be limited if not completely unobtainable. This designation is another sentence besides the prison sentence.

If Internet Child Pornography is illegal...why is it there...it is freely accessible to anyone who can click on the keyboard.
My [redacted] was a college student, on the

dean's list, worked at the local supermarket, lived here at home with me. He was the designated driver for his friends. He received porn on his computer. He didn't create this porn or copy it or send it to anyone. He didn't delete it and it sat on his computer and that is what his crime is...it was a video and the frames were counted so all those images showed that he could go into that site at any time..not hundreds of thousands (like Jared Fogle) but points and enhancements earned [redacted] a 20 year sentence. (not a 5 year sentence like [redacted] [redacted] had a public defender, not an expensive attorney (like [redacted] had [redacted]. The public defender told us that [redacted] was going to get a 20 year sentence and for [redacted] not to say anything. [redacted] wanted to apologize to the court. The fees and restitutions were paid and [redacted] is now in a federal prison in Edgefield, South Carolina teaching math and composition to inmates earning their GED.

When my [redacted] is released he will face another sentence the AWA. This will be his prison for life after prison because he is classified a dangerous sexual offender.

Thank you for reading this.

Nancy [redacted]

From: [redacted]
To: Public Affairs
Subject: child pornography sentencing and definition comment
Date: Saturday, November 07, 2015 2:02:21 PM

Rules and Rules ? right? Justice is blind? More and more cases of possession of child pornography exist than ever see the light of day. Our justice system would be overwhelmed by cases using the current definitions. Just having pictures or drawings of a person that could be interpreted a pornography on a computer can result in Federal Prison time.

A November 07, 2015 new article states Students circulated up to 400 lewd photographs with at least 100 students trading nude pictures and posting them on social media, news reports said.Some of the kids in the photographs were as young as 12, and included eighth graders from the middle school. "[redacted] gave police one phone with several hundred images that investigators will work to identify, police Chief [redacted]" "The school is offering a counseling hotline to students worried about getting in trouble for sexting. [redacted] emphasized that, while some may face serious consequences for what they have done, prosecutors will use "common sense" in deciding whether anyone should face criminal charges.""The possession of explicit photos of minors is a felony in Colorado, which, like many states, has not updated laws intended to fight adult exploitation of children for the smartphone age. Convictions can carry a requirement to register as a sex offender, but [redacted] said he would only pursue that option if it was in the best interest of the community and possible victims."

The current laws which ad points for using a computer are from an era when expensive and used more by producers of child pornography to sell their wares. Now nearly everyone had a form of computer in their pocket or on their desk. When prosecutors use "common sense" their bias enters into the system. Those with a tendency to never throw things away will have hundreds of pictures wether or not they actively shared them with anyone. Those who regularly delete files or move them to other storage devices will not appear to be as bad.

The article went on to say "District Attorney [redacted] said he would focus on whether anyone was coerced into sharing photos, whether any adults were involved and whether there was any corresponding sexual contact." Our prisons are full of prisoners who did not coerce or have and corresponding sexual contact yet they are classed as violent sex offenders.

PLEASE change the definition of "forcible sex offense" to exclude non- production possession, receipt, transportation, or distribution of child pornography.

Please change the sentencing point system for using computer.

Please make it retroactive.

Times change. Attitudes change. "[redacted] an associate professor and psychologist at the University of Texas Medical Branch at Galveston who has studied sexting, said his research found that a sizable minority of teens — 28 percent of both girls and boys — send racy text messages. They are more likely to be having sex than teens who don't sext, but there's no evidence that sexting is a sign of poor mental health or other problems, [redacted] said."More kids are having sex in person than they are sexting," he said.

This isn't an isolated case.
December 16, 2014 [redacted]
November 7, 2015 [redacted] Township police charged three T/E students, ranging in age from 11 to 15, with distributing images of child erotica, nudity, child pornography, and pornography
June 1, 2015 sexting scandal in [redacted] schools
May 27, 2015 20 Charged in 'Sexting' Scandal in Two New Jersey Schools(but look what they were charged with "The 20 people involved were charged with third-degree invasion of privacy"
Posted Apr. 27, 2015 Sexting scandal strikes [redacted] High School

Outside of Federal Justice laws have evolved to offer alternative sentences. In New York, where sexting is also considered a crime, a law was passed in 2011 that gives teens the option to complete an eight-hour education course in exchange for having charges dropped. Adults and teens who are first time offenders

need to be given a second chance with counseling and education not just starting with a 5 year mandatory sentence at the federal level.

Its personal. My [redacted] believed true love waits. While he waited he used porn. He saw the ads for girls. Mixes in with those huge peer to peer files were under aged girls as well as adults. He looked. He kept every file he downloaded for 7 years. Some of them the same file over and over because they were too big to search thru for the small bit he wanted. He knew it was bad and he tried to quit but he had no idea he could get such life changing consequences. He said it felt just like playing a video game like Grand Theft Auto -something exciting that you would never do in real life. He didn't know who to turn to. He said at least he would get counseling in jail. In the Federal system counseling doesn't even start until you have less than 2 years left to serve. Faith based counseling doesn't count for anything in the Federal system and going to it only identifies you to other inmates as a sex offender. Labeled as a violent sex offender in prison is dangerous.

Please help us. The simple act of changing the definition will make a difference in our lives. Please help

Sue @[redacted]

July 24, 2015 (Resubmitted on August 7, 2015)

The Honorable Patti B. Saris
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002
Attention: Public Affairs Priorities Comment

Re: "Single Sentence" Rule:
-- Subsection (a)(2) of USSG §4A1.2 (Definitions and Instructions for Computing Criminal History)
-- Amendment 709

Dear Chair Saris:

Thank you for allowing me this opportunity to present my concerns to the distinguished members of the United States Sentencing Commission.

I'd like to take a moment to commend your fortitude in urging Congress to pass legislation that will bring fairness into federal sentencing policies, and to express my appreciation for your dedication to fairness and justice in the continuing promulgation of the sentencing guidelines.

My comment today concerns a change that was made to §4A1.2(a)(2) by Amendment 709 in 2007, specifically the change in the definition of "related cases" in Application Note 3.

I understand the reason for the change in terminology from "related cases" to "single sentence." This change appropriately provides the clarification necessary to ensure proper and consistent application of the guidelines. It's the revision to the rules for counting multiple prior sentences that must be reexamined because it is resulting in defendants being unjustly deprived of Safety Valve relief. I believe it is your obligation to reexamine this issue, especially in light of the statement in the Commission's 2014 Annual Report (page 3): "Going forward, the Commission has prioritized examining ways the guidelines can be made fairer, more efficient, and more effective."

§4A1.2(a)(2) in the 2006 guidelines allowed for *related cases* to be treated as *one sentence.* The criteria for cases to be considered *related* was found in Application Note 3 of §4A1.2. It stated that, if there was no intervening arrest, ". . . prior sentences are considered related if they resulted from offenses that (A) occurred on the same occasion, (B) were part of a single common scheme or plan, or (C) were consolidated for trial or sentencing. The court should be aware that there may be instances in which this definition is *overly <u>broad</u>* and will result in a criminal history score that underrepresents the seriousness of the defendant's criminal history and the danger that he presents to the public. . . ."

Amendment 709 states that it also "simplifies the rules for counting multiple prior sentences and promotes consistency in the application of the guideline." In the current guidelines, §4A1.2(a)(2) now reads: ". . . If there is no intervening arrest, prior sentences are counted separately unless (A) the sentences resulted from offenses contained in the same charging instrument; or (B) the sentences were imposed on the same day. Count any prior sentence covered by (A) or (B) as a single sentence." This revision has *over simplified* the rules to the extent that they are now *overly <u>narrow</u>.*

I understand your attempt to simplify the guidelines, but you have done so at the expense of fairness. This is unacceptable. ***Fairness* must take precedence over *simplicity.***

Calculation of the criminal history score is critical in determining a fair and just sentence. Marjorie A. Meyers (Federal Public Defender) said it very well in the conclusion of her presentation "Criminal History: Calculation and Variance" at the U.S. Sentencing Commission's Annual National Seminar in 2010: "Careful analysis of a defendant's criminal history is necessary in determining the ultimate sentence. Enhancements based on the nature of the offense require an examination of the statute and documents of conviction and comparison of the specific offense with the provision defining the predicate. Calculation of the criminal history score itself requires attention to the timing and relationship of the offenses. Finally, the sentencing court has the duty to evaluate this criminal record under 18 U.S.C. §3553(a) in determining what sentence is sufficient but not greater than necessary to meet the sentencing purposes set forth in the statute."

Fairness and justice can be restored to this provision by revising §4A1.2(a)(2) so that the criteria for a "single sentence" is the same as it was for "related cases" in Application Note 3 of §4A1.2 in the 2006 guidelines. If prior sentences are *obviously related,* they should count as a "single sentence" for the purposes of calculating criminal history points. The sentencing court is in the best position to evaluate each case individually and therefore should be given the discretion to determine how prior sentences should be counted. Furthermore, if any confusion or conflict arises in the courts with regard to the counting of prior sentences, it is the statutory duty of the Commission to provide

". . . specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on federal sentencing issues, including application of the guidelines." (U.S. Sentencing Commission's 2014 Annual Report,

page 1). The courts are well able to understand many issues that are more complex than the issue

of counting of prior sentences.

I know that you are already aware of the urgency to revise the current rules concerning mandatory minimum sentences. There are far too many low-level nonviolent drug offenders in federal prisons that are serving 5- or 10-year mandatory minimum sentences that Congress had intended only for serious or major drug traffickers. Most of these defendants are not major drug traffickers but mere addicts that could have benefited from rehabilitation alone. These people must be given supervised release, given the opportunity to rehabilitate and a chance to become productive citizens once again. Instead of sitting in prison being a *burden* to society, they should be free being an *asset* to society. This would have a great impact on the crisis of over-capacitated prisons. We must also keep in mind the current illegal immigrant issues. If any legislation such as "Kate's Law" were to be enacted, this would surely contribute dramatically to the problem of prison overpopulation. The huge percentage of DOJ funds, now being used to house prisoners unnecessarily must be reallocated to much more urgent issues. I don't want my tax dollars to continue to be wasted on the so-called "War on Drugs," which is still creating more problems than it ever solved. America's priority today should be the

"War on Terror." This war *must* be won. There's no more time for talking. It's time to take action because this war has already begun. Terrorists attack when *they* are ready, not when *we* are ready. Funding must be immediately redirected to protect Americans, with safe streets and

secure borders being top priorities. I believe that I speak for many Americans when I say that I feel more threatened by terrorists than by low-level non-violent drug offenders.

The change that I suggest for §4A1.2 will not only contribute to fairness and justice but will also cause this provision to become part of the solution instead of being part of the problem.

Any revisions to §4A1.2 need to made retroactive to bring justice to any defendant that received an unfairly elevated criminal history score due to the implementation of Amendment 709.

I cite *U.S. v* [redacted] (2013), Northern District of Iowa, as an example of the injustice directly caused by the Amendment 709 redefining the term "related cases" (now referred to as "single sentence"). Following is a brief summary of this case:

[redacted] is serving a 10-year mandatory minimum sentence after having been convicted of *Conspiracy to manufacture and distribute 50 grams or more of actual methamphetamine* and *Possession of pseudoephedrine with intent to manufacture methamphetamine.* After trial, the judge released [redacted] (electronically monitored) until sentencing. He made the following statements at the Detention Hearing:

> (Trial transcript, pp. 497, 498) --- "All matters of methamphetamine manufacturing are serious. The Court's well aware of that. But this case, the evidence was pretty clear, that there wasn't anybody really selling any methamphetamine. There wasn't -- nobody had any big cars or stacks of 20s in their pocket or anything like that. It involved a group of addicts who were satisfying their own addiction. Now, she cooperated with the Court. She didn't cause a mistrial. She conducted herself properly in court here. I have in mind, of course, what Mr. [redacted] says that she's helping her elderly parents. . . ."
>
> (Trial transcript, p. 501) --- ". . . The jury found that she was making methamphetamine. I don't believe there's any of those people who testified that will ever be out to her house trying to get her to make some more or make some methamphetamine. And I don't believe that there's going to be any risk to the community in that regard."
>
> (Trial transcript, p. 505) --- ". . . However, the ruling of the Court is that she will be released. She will be under house arrest . . ."
>
> (Trial transcript, p. 506) --- ". . . this is no great safety to the community situation. Nobody made any money. Nobody even bought anything. A group of addicts trying to satisfy their addiction and that's the primary reason why the Court is doing what it says it's going to do and has done."

The government appealed the judge's decision which resulted in [redacted] being taken immediately into custody as required by federal statute.

Due to the prosecutorial charging policy of specifying the quantity of drugs in the indictment, she was charged with an offense level that substantially overstated the seriousness of her offense. Attorney General Eric Holder, in his speech of Aug. 12, 2013, acknowledged this problem with the charging policy and therefore instructed prosecutors to use discretion when filing indictments to ensure that defendants are charged with offenses for which the accompanying sentences are better suited to their individual conduct. This remedy came too late for [redacted] though, leaving her to face the extremely harsh sentence that Congress had intended only for "major" drug dealers. The sentencing judge made the following statement (Sentencing Transcript, p. 102):

> ". . . the attorney general did make a strong statement and say to his helpers who are United States attorneys and assistant United States attorneys that they should be very careful about charging counts that have mandatory minimums. But this is in the future. He made this statement in the last couple of weeks, and it doesn't apply and can't apply to this defendant who's already been through a trial."

When it came to sentencing, [redacted] again fell through the cracks of our justice system, suffering a great injustice due to the change made to USSG §4A1.2 in 2007 by Amendment 709. One of the reasons for the amendment was to simplify the rules for counting multiple prior sentences. It eliminates the use of the term "related cases" at §4A1.2(a)(2) and instead the terms "single" and "separate" sentences. The change to USSG §4A1.2(a)(2) narrowed the criteria for prior sentences to be counted as a single sentence: "If there is no intervening arrest, prior sentences are counted separately unless (A) the sentences resulted from offenses contained in the same charging instrument; or (B) the sentences were imposed on the same day."

Under the earlier versions of the Guidelines (1987-2006), [redacted]'s two prior sentences would have been considered *related cases,* so would have been counted as a single sentence for the purposes of calculating criminal history points. Therefore, having only 1 criminal history point, she would have been safety valve eligible.

Here are the circumstances of [redacted]'s two prior sentences:

> The charge of *Purchasing Pseudoephedrine Over Limit* stemmed from purchases made in [redacted] between Jan. 19 and Feb. 19, 2008. [redacted] was notified of the purchases on Feb. 26, but there was no arrest made at this time. Instead, the purchases were used as probable cause to obtain a [redacted] search warrant. When the warrant was executed on Feb. 27, officers found drug paraphernalia (indicating use of methamphetamine), so [redacted] charged her with *Possession of Drug Paraphernalia.* On Feb. 29, she was sentenced to pay a $50 fine for this offense. Four days later, on March 4, 2008, [redacted] charged her with *Purchasing Pseudoephedrine Over Limit.* She was sentenced for this offense on May 9, 2008 (2 yrs. probation, $325 fine).

Even though these two prior sentences are *obviously related,* they are counted separately only because they are neither on the same charging instrument nor sentenced on the same day. This *alone* caused [redacted] to be ineligible for safety valve relief. There is no doubt that the judge would have given her a much shorter sentence if she had been safety valve eligible. Making the following statements, he reduced the sentence down as far as the law allowed:

> (Sentencing transcript, p. 4) --- ". . . if we do have a safety valve or don't have a safety valve, it's going to make quite a bit of difference."
>
> (Sentencing transcript, pp. 83, 84) --- ". . . the Court is going to rule that the defendant was not an organizer, leader, manager, or supervisor because, as stated previously at other hearings here, the Court is persuaded after hearing all the evidence that this was a group of people who had next to no money and were not selling anything and were all working together trying to satisfy their addictions and that you didn't really have to lead anybody or manage anybody."

> (Sentencing transcript, p. 84) --- "The problem I have, however, is the matter of criminal history. I think she ought to get safety valve, but I can't do it because of the criminal history."

This judge made it abundantly clear that he believed [redacted] should receive Safety Valve relief but he was restricted *only* by the criminal history score which was calculated according to §4A1.2.

This situation must be corrected by restoring discretion to the sentencing judge to decide what is fair for each individual defendant. The judge has seen the evidence, heard testimony, etc. This puts him/her in the best position to decide if the defendant is actually a major drug trafficker or merely an addict that needs rehabilitation. A guideline itself cannot possibly take into consideration all the variations that can exist concerning prior sentences. We must trust our judges to make a fair decision. *Judges must be allowed to judge.*

I pray that the United States Sentencing Commission will begin to restore justice very soon. Please strengthen America so we can stand against terrorism and all evil that already exists in our land. Please put a stop to the needless suffering of many inmates and their families. Thank you for taking the time to carefully examine and reconsider further revision to the Sentencing Guidelines at §4A1.2. We must all stand together against the ever-increasing threat from ISIS and all terrorists.

May God bless each one of the distinguished members of the U.S.S.C.

Thank you,

Linda [redacted]