

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



Dear Commissioners:

I am writing on behalf of the Drug Policy Alliance (DPA), which is the leading organization in the United States advocating for evidence-based policies that address harms associated both with drug use and punitive drug policies. DPA works to reduce to the greatest extent possible the role that law enforcement plays in dealing with drug use, and increase to the greatest extent possible the extent to which drug use is treated as a health issue. We pursue legislative, grassroots and media-centered strategies at both the federal and state level to realize effective change. We work with partners at the federal and state level to achieve positive change and provide a voice to affected individuals and communities. Our staff collectively brings decades of professional expertise in policy, scientific inquiry, criminal law, prevention, political and grassroots organizing and media relations to our work.

The Commission seeks comment on whether the definition of “crimes of violence” and “controlled substance offense” as used in Commentary to § 4B1.2, the Career Offender and Criminal Livelihood guidelines, should include attempts, conspiracies, and aiding or abetting offenses as it currently stands. The Drug Policy Alliance would urge the Commission to not include vicarious and inchoate conduct since that undermines the purpose of the crimes-of-violence enhancements by triggering massive sentencing enhancements for non-violent crime. Additionally, this overbroad definition ensnares individuals who may not themselves be violent, but are nevertheless culpable by virtue of their criminal associations.

As the Commission is undoubtedly aware, the inclusion of attempts, conspiracies, and aiding or abetting offenses within the definition of “crimes of violence” and “controlled substance offense” increases the number of individuals subject to mandatory minimum sentencing provisions. Most notably, a defendant may be attributed to have possessed or distributed a far greater quantity of drugs than was ever individually possessed or distributed if charged as a member of a drug conspiracy. As the Commission noted in its 2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, “[m]andatory minimum provisions typically use a limited number of aggravating factors to trigger the prescribed penalty, without regard to the possibility that mitigating circumstances surrounding the offense or the offender may justify a lower sentence. For such a sentence to be reasonable in every case, the factors triggering the mandatory minimum penalty must always warrant the prescribed mandatory minimum penalty, regardless of the individualized circumstances of the offense or the offender. This cannot necessarily be said for all cases subject to certain mandatory minimum penalties.”

At that time, the Commission called upon Congress to consider enacting a safety valve mechanism for low-level, non-violent offenders otherwise convicted of an offense carrying a mandatory minimum sentence, the Commission, in fact, has the authority to narrow career offender guidelines by omitting attempts, conspiracies, and aiding or abetting offenses within the definition of “crimes of violence” and “controlled substance offenses.” Congress’s intervention

is unnecessary, however, since the Commission relied upon its general authority when it expanded the definition to include attempts, conspiracies, and aiding or abetting offenses since 29 U.S.C. § 994(h) makes no reference to conspiracies or inchoate offenses. In asking for comment, the Commission seemingly acknowledges its own authority and the Commission should act on that authority to narrow the career offender guidelines by omitting conspiracies, attempts, aiding and abetting.

Thank you for opportunity to comment and thank you as well for your dedicated and deliberate attention to this very important issue.

Regards,

A handwritten signature in cursive script, appearing to read "L Battaglia", with a long horizontal flourish extending to the right.

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