

AN OPEN AND HONEST LETTER ON THE CRACK COCAINE SENTENCING DISPARITY

Crack and powder cocaine have the same physiological and psychotropic effects. Based on this and the perception that a 100-to-1 ratio promoted an unwarranted divergence based on race, the U.S. Sentencing Commission and other lawmakers sought several times to achieve a 1-to-1 ratio.

In 2010, the Fair Sentencing Act was enacted. It was supported by President Barack Obama, the U.S. Sentencing Commission, and a wide base of bipartisan lawmakers. The congressional purpose for the FSA was intended to end racially discriminatory sentences imposed in crack cocaine cases. The FSA did not eliminate this injustice, it continues to foster black crack cocaine offenders to be sentenced to an 18-to-1 ratio.

In his campaign booklet "Blueprint for Change" pages 48-49 February 2, 2008, President Obama said he would work to ban racial profiling and eliminate disparities in criminal sentencing. President Obama also said "he believed the disparity between sentencing crack and powder based cocaine is wrong and should be completely eliminated."

At a Democratic Primary Debate held at Howard University on June 28, 2007, President Obama faced the following colloquy during the question and answer session concerning The Criminal Justice System:

Q. In the last decade, whites were 70% of persons arrested, but only 40% of inmates?

A. The criminal justice system is not color-blind. It does work for all people equally, and that is why it's critical to have a president who sends a signal that we are going to have a system of justice that is not just us, but is everybody. I passed racial profiling legislation at the State level. It requires some political courage, because oftentimes you are accused of being soft on crime.

The First Step Act has made the FSA of 2010 retroactive as well as taken steps to fix the broken federal criminal justice system. President Trump, Jered Kushner and a host of bipartisan lawmakers have made a huge first step, but many more steps are needed to correct the wrongs that plague the federal criminal justice system.

The FSA's purpose was supposed to be addressing the obvious role that race played in crack cocaine sentences over the last thirty (30) years. Ask yourself, does the race based disparity caused by the 18-to-1 ratio, not constitute a continuing constitutional civil rights violation, just the same as that once caused by the

former 100-to-1 ratio. Is it really American, to punish defendants of color, 18 times more severely than white defendants for a different form of one drug that produces the same physiological and psychotropic effects? Or is it American to make sure all citizens are treated equal under the law, when they commit the same crime.

To continue with a statute that perpetuates discrimination, now becomes an intentional denial of equal protection. If you share my view and care to have an American Criminal Justice system that is color-blind, then voice your concern with this race based 18-to-1 ratio to President Trump, Jared Kushner, the U.S. Sentencing Commission, and any other lawmakers that support criminal justice reform. Thank you for your time and support with this problem faced by tens of thousands of people of color.

I DARWIN BOHANNON [REDACTED] share the views of this letter.

Other/Additional Concerns:

President Donald J. Trump

[REDACTED]

U.S. Sentencing Commission

[REDACTED]

Jared Kushner

[REDACTED]

Van Jones

[REDACTED]

Brittany Byrd

[REDACTED]

Kamala Harris

[REDACTED]

Cory Booker

[REDACTED]

Michael Bennett

[REDACTED]

Brittany K Barnett

[REDACTED]

Robert C. "Bobby" Scott

[REDACTED]

[REDACTED] wrote:

I am the fiancée of [REDACTED] a federal prisoner serving a 471 month sentence for robbery (First-Time Offender). I'm writing you as a citizen of the United States to express my feelings on priorities you are proposing. First, I'm happy to learn that the Commission might study how the Family Ties & Responsibilities policy statement works when incarcerating a parent. Minor children lose the parent's care and financial support. Please consider conducting this study, children suffer emotionally and financially when a parent goes to prison without a second chance. Second, I wholeheartedly support the Commission's work with Congress and others to implement the recommendations of the Commission's 2011 report to Congress, Mandatory Minimum Penalties in the Federal Criminal Justice System including its recommendations on the severity and scope of mandatory minimum penalties, consideration of expanding the "safety valve" at 18 U.S.C. section 3553(f), and particularly the elimination of the mandatory "stacking" of penalties under 18 U.S.C. section 924(c) and preparation of a series of publications updating the data in the report. Third, as I've stated earlier my fiancée was sentenced under the draconian penalty of 18 U.S.C. section 924(c) where some terrorist acts, spies, kidnappers and murders don't get as harsh sentences as my fiancée got. He is a First-Time Offender and has gotten sentence as if he was a career offender, or worse a murder. He's a father of two children who've grown up without him and if he has to complete his sentence they will be full grown adults when released in 2038! He's been sent to some of the worst prison and given this irrational punishment he won't be given a second chance to reclaim his status in society as a lawful citizen. I pray that people like you in these positions of authority will please help push this elimination of Stacking 924 not just drug related offenses, but gun crimes as well.

Sincerely,
Gina Casarez

[REDACTED] - HASANOFF, SABIRHAN [REDACTED]

FROM: [REDACTED]
TO:
SUBJECT: Sentencing guidelines revision
DATE: 01/07/2019 06:38:14 PM

[REDACTED]

January, 8, 2019

U.S. Sentencing Commission
One Columbus Circle NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: Petition Pursuant to 28 USC 994 (s) requesting modification of guidelines

Dear Commissioners,

I am making this petition on behalf of myself and all other similarly situated prisoners, pursuant to 28USC S994(s), requesting a modification of USSG S3A1.4, as I have found it is in direct contention with Congressional Directive of the violent crime control and law enforcement (VCCLE) act of 1994, section 120004, which specifically excluded my conviction of 18 USC 2339B by the very nature of its language.

Section 120004 mandated the sentencing commission to 'Amend its sentencing guidelines to provide an appropriate enhancement to any felony, whether committed within or outside the United States, that involves or is intended to promote international terrorism, unless such involvement or intent is itself an element of the crime.' 139 Cong Rec 517116 (November 24, 1993). No subsequent amendment to this enhancement by congress has removed the limiting factor '... unless such involvement or intent is itself an element of the crime.'

18 USC S2339B, Support of a foreign terrorist organization, by it's very nature requires involvement and intent to promote international terrorism, hence it is specifically exempted by congress from the 3A4.1 enhancement. "The supreme court has held that although the sentencing commission 'enjoys significant discretion in formulating guidelines" *Mistretta V. United States*, 488 US361 (1989) it still "must bow to the specific directive of congress" in determining whether the guidelines accurately reflect congressional intent; we turn as we must to the statutory language. *U.S. V. LaBonte*, 520 U.S. 751(1997).

As the modification requested is simply a correction of the language mandated by Congress in 1994, the modification must be applied retroactively. In order to correct any unintentional manifestation of injustice. (See attached legal summary).

Thank you for your time and consideration regarding this matter and I look forward to hearing from you.

Sincerely,

Sabirhan Hasanoff
[REDACTED]



**SENTENCING GUIDELINE 3A1.4
IS IN DIRECT CONFLICT WITH
CLEAR CONGRESSIONAL INTENT**

In the 1994 Violent Crime Control and Law Enforcement Act (VCCLEA of 1994) Section 120004 Congress directed the Sentencing Commission to "Amend its sentencing guidelines to provide an appropriate enhancement for any felony, whether committed within or outside the United States, that involves or is intended to promote international terrorism, unless such involvement or intent is itself an element of the crime" 139 Cong. Rec. S17095, S17116 (November 24, 1993).

While the Sentencing Commission complied by creating enhancement 3A1.4 with the following language "(a) If the offense is a felony that involved, or was intended to promote, international terrorism, increase by 12 levels; but if the resulting offense level is less than 32, increase to level 32..." Clearly leaving out the language "unless such involvement or intent is itself an element of the crime." Thus disregarding clear Congressional intent that this enhancement not be applied to a crime where the intent is already considered in the establishment of the initial crime level.

The language that the Sentencing Commission deleted is clearly found in the 2007 Federal Sentencing Guideline Manual in Appendix B - Selected Sentencing Statutes. "Sentencing Guidelines Increase for Terrorist Crimes. Pub L. 103-322, Title XII section 120004, September 13, 1994, 108 Stat. 2022, provided that The United States Sentencing Commission is directed to Amend its sentencing guidelines to provide an appropriate enhancement for any felony, whether committed within or outside the United States, that involves or is intended to promote international terrorism, unless such involvement or intent is itself an element of the crime."

In *United States v. Delerosa* 2006 US Dist. Lexis 25070, "The Supreme Court has held that although the Sentencing Commission 'enjoys significant discretion in formulating guidelines' *Mistretta v. United States*, 488 US 361(1989) it still 'must bow to the specific directive of Congress. In determining whether [the guidelines] accurately reflect Congressional intent we turn as we must to the statutory language. *United States v. La Bonte* 520 US 751 (1997)

Here much line *United States v Butler* 207 F.3d 839 the Sentencing Commission "failed to comport with clear Congressional Directive.

Although Section 3A1.4 has been amended since its creation, the deletion of the exception created in the initial directive has not been address by the Sentencing Commission or Congress, it cannot be assumed that Congressional silence removed this section of a lawfully passed statute by the same body, as held in *Burns v. United States*, 111 S.Ct. 2182 at 2186 (1991), "an inference drawn from Congressional silence certainly cannot be credited when it is contrary to all other textual and contextual evidence of congressional intent"

The Sentencing Commission must amend 3A1.4 enhancement to reflect the language and meaning of Congressional Directive 120004 which mandated such enhancements creation.

Dear Sirs,

I am writing in response to the request for public comment. In regards to sentence reform I feel policy has been misguided for decades and an over emphasis on punitive rather than reform has been the focus and the requirement of mandatory minimums removes discretion from judges which is a primary purpose of a judge reducing them to mere puppet figures used as tools by the prosecution. The increase in prosecutor powers needs to be reviewed and adjusted as it is being abused in many instances. Possession charges for things like drugs and child pornography are exaggerated in their risk threat to the public and are a misguided use of resources which should be used for truly violent crime involving guns and repeat offenders. Categorizing child pornography as a violent crime under the claim the nature of the offense warrants and justifies it is a political cop out. The use of life time supervision or extended excessive time periods over 5 years is another problem that needs immediate addressing. Supervised release should not be longer than five years without truly mitigating circumstances and a criminal history that supports it not the claim that the nature of the offense is sufficient when it is not. Thousands of people have been sentenced to life time supervision without any medical diagnosis to support nor criminal history of sex offenses which is a waste of tax payer money supervising people for politically exaggerated offenses. Probation needs to stop misrepresenting threat risks to justify policy i.e. someone admits to having had sex with a teenage girl after they were 18 yrs of age which on paper can appear out of context because the dynamics are removed when the persons ages were 19 and 15 but that isn't expressed in statistics. Motions for request for removal from supervision and the sex offender registry need to be given fair consideration rather than the policy of denial based on the nature of the offense.

Thanks

James B. Norris ■

