

**From:** [~^! LAM, ~^!TONY](#)  
**Subject:** [External] \*\*\*Request to Staff\*\*\* LAM, TONY, [REDACTED], POM-E-A  
**Date:** Thursday, October 13, 2022 8:35:18 PM

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To: Public Affairs Comment  
Inmate Work Assignment: Teacher's Aide/Tutor

\*\*\*ATTENTION\*\*\*

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\*\*\*Inmate Message Below\*\*\*

Hello members of the Sentencing Commission,

My name is Tony Lam and as you already know that I am an inmate serving a term of imprisonment in the Bureau of Prisons. Recently, I have been sent an email in regards to your amendment priorities this coming cycle ending May 1, 2023. I must inform you that I strongly disagree with the Commission's intent to amend the guideline provision by bringing into the provision the language of the Commission's commentary. The authority of the Commission granted by Congress under the Constitution of the United States does not extend that far. The Constitution does not permit delegation of legislative power. See Constitution of the United States, Article I, Section One. (All legislative Powers herein are vested in Congress.) This is not a suggestion of the Constitution. It is a command. Congress understood that when it laid specific directives for the Commission to follow in promulgating its guidelines provisions pursuant to 28 U.S.C. 994(a). Promulgate its guidelines "consistent with all pertinent provisions of any Federal statute." 28 U.S.C. 994(a). In your report to the Congress titled "Career Offender Sentencing Enhancements" published in 2016, you admitted to not doing so with the Career Offender section of the guidelines. In that section, which was directed by 28 U.S.C. 994(h)(1)(B) for the definition of the term "controlled substance offense", the Commission instead of adopting the numbered sections described in 994(h)(1)(B), the Commission instead adopted the definition of 18 U.S.C. 923(e)'s "serious drug offense" to perform the work of 994(h)(1)(B). In 1995, the Commission went further to justify the modification of the directive by invoking upon its general promulgation authority of 994(a)-(f), (o) and (p). I wish to remind the Commission that 994(a) directs the Commission to be "consistent with the relevant statute". The rest of 994 directs the Commission to promulgate the provisions pursuant to 994(a). The Commission's amendment authority is for the Commission to make clarifying corrections to bring in line the guideline provision to be in harmony with the relevant statute, not to continue to broaden the scope. I have sent to the Commission a letter expressing my strong disagreement to your intentions. This option opened up today so I wanted to also wanted to express it here, but being that there is a time limit on how long I can remain on this terminal and I cannot type as fast to complete this comment letter. I only wish for you to review some of the principles of your law, governed by the Constitution of the United States and the authorities I have cited in the letter that was sent to your agency. I have also written a similar letter and will be sending copies of it to various different Law Universitites, Senators, News Media, and Law Reform advocates to bring awareness to these actions of the Commission that have been compiled over the decades past that have exacerbated the population of the prison system beyond manageable. It is my hope that the Commission, should it choose to amend the guidelines, to amend them and bring it in line with its pertinent federal statute in accord with the directives set by Congress under the Constitution. Thank you for your patience and consideration with this issue. Please have a pleasant day!

Sincerely,  
Tony Lam [REDACTED]

**From:** [~^! WILKERSON, ~^! DENNIS MICHAEL](#)  
**Subject:** [External] \*\*\*Request to Staff\*\*\* WILKERSON, DENNIS, [REDACTED], OAD-O-B  
**Date:** Thursday, October 13, 2022 6:35:20 PM

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To: Priorities  
Inmate Work Assignment: n/a

\*\*\*ATTENTION\*\*\*

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\*\*\*Inmate Message Below\*\*\*

Number 10 of the priorities - determining how commentary to the Guidelines should be used...

Commentary to the Guidelines or application notes should only be referred to when a statute is truly ambiguous. If the statute is not ambiguous, then its clear what Congress intended when creating the statute.

For example, I was convicted under 2422(b) and sentenced under 2G1.3 based solely on the application notes to the commentary of the Guidelines. The application notes to the commentary says a "minor" can be a law enforcement officer portraying themselves as a "minor" or someone who the defendant believes is a "minor". I never talked directly or indirectly with a real or fake "minor" but, again, referring to the commentary, the government said the statute could be violated "through an adult intermediary". Nowhere in the actual statute 2422(b) or the Guidelines 2G1.3 does it say that a "minor" can be anything other than a real person or it could be violated "through an adult intermediary". By referencing the application notes, the government expanded the true meaning of the statute as passed by Congress and Courts throughout the country are allowing this to happen. Recently, the Third, Fourth, and Seventh circuit said that deference to the guidelines should only be used when a statute is clearly ambiguous and only as a last resort. This is the only way to maintain the true intent of Congress and prevent the government from convicting a person like me who is actually innocent of violating the statute.