

United States Senate

WASHINGTON, DC 20510-1304

April 5, 2023

The Honorable Carlton W. Reeves, Chair
United States Sentencing Commission
One Columbus Circle, NE
Washington, DC 20002-8002
Attention: Public Affairs

Dear Chair Reeves:

I write in response to Minority Leader McConnell's February 8, 2023 letter to the Commission (published on March 14, 2023), in which he makes certain assertions about a December 7, 2022 meeting between myself and the Commissioners. He inaccurately ties this meeting to the failure of Congressional negotiations over a compromise legislative proposal, based on the EQUAL Act, which would have reduced the "crack / powder disparity" from 18:1 to 2.5:1 as part of the omnibus Consolidated Appropriations Act of 2023.

First, the letter asserts that my urging the Commissioners to include "the defendant is serving a sentence that is inequitable in light of changes in the law" as a permissible basis for compassionate release¹ "ended any possibility of a compromise [on EQUAL] then and there." This is incorrect. Bipartisan staff negotiations on the EQUAL compromise continued through December 21, 2022—a full two weeks after my meeting with the Commission. The compromise provision was drafted and ready for insertion in the Consolidated Appropriations Act, and it was Senator McConnell, exercising his prerogative as Minority Leader, who refused to approve its inclusion.

Second, Senator McConnell's letter could be interpreted to suggest that in the December 7th meeting I urged the Commission to amend the sentencing guidelines to a 2.5:1 crack-powder cocaine ratio without Congressional action. To make the public record clear, this is not accurate. As you will recall, I did not suggest that the Commission revise the guidelines for crack-powder cocaine sentencing.

Finally, Senator McConnell suggests that considering whether "the defendant is serving a sentence that is inequitable in light of changes in the law" would constitute "a strange new reason that would justify 'compassionate release.'" In fact, at least five United States Courts of Appeals have approved this basis for compassionate release under the Commission's *current* policy statement. While some other circuits have held to the contrary, this is hardly a "strange new reason" for granting compassionate release. Moreover, as with any "extraordinary and compelling reason" for compassionate release, a change in law cannot by itself justify a reduction in sentence. A court must also consider the 18 U.S.C. § 3553(a) sentencing factors and the remainder of the Commission's policy statement.

¹ I.e., a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A)).

Thank you again for considering my views.

Sincerely,

A handwritten signature in blue ink that reads "Dick Durbin". The signature is written in a cursive style with a horizontal line underneath it.

Richard J. Durbin
United States Senator
Chair, Senate Committee on
the Judiciary