



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CHAMBERS OF
PATRICK J. SCHILTZ
CHIEF JUDGE
UNITED STATES COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS, MINNESOTA 55415
(612) 664-5480

June 30, 2023

United States Sentencing Commission
c/o The Honorable Carlton W. Reeves
United States District Court
Thad Cochran Federal Courthouse
501 East Court Street – Room 5.550
Jackson, MS 39201-5002

Dear Chairperson Reeves and Members of the Sentencing Commission:

I write to urge you not to apply retroactively the 2023 amendments regarding criminal-history points. I agree with the views expressed in the June 23, 2023 letter of the Committee on Criminal Law and in the June 29, 2023 letter submitted by Chief Judge Stephen R. Clark on behalf of the judges of the Eastern District of Missouri. I want to emphasize just a couple of points:

First, I very much share the concern about the lack of finality in our criminal-justice system. Because of the constant changes instigated by the Supreme Court, Congress, and the Sentencing Commission over the last decade or so, defendants are increasingly viewing their sentences as nothing more than “opening bids.” There are many defendants whom I have sentenced and then resentenced and then resentenced again, and many other defendants who have *asked* to be resentenced on multiple occasions. (I deem compassionate release to be a form of resentencing for purposes of this comment.) Over the past year, criminal cases have increased 136% in the District of Minnesota, from 108 defendants to 255 defendants. We are struggling to give new cases the attention they require; we do not have the resources to “relitigate” — over and over again — our old cases.

Second, when the Commission calculates the impact of retroactive application on the federal courts, I urge you to consider not only how many defendants will be *eligible* for relief, but how many defendants will *seek* relief. Most defendants are not lawyers,

United States Sentencing Commission

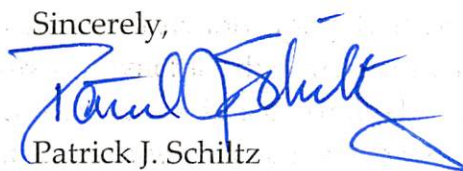
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and they understandably do not parse legal text carefully. When defendants learn that the law has changed in some way that could conceivably apply to them, they tend to file motions or letters and let us judges figure out whether they are entitled to relief. Of course, *every* defendant knows that he or she was assigned criminal-history points—and thus, if the criminal-history amendments are made retroactive, I expect that we will be buried under an avalanche of both meritorious and meritless motions.

For these reasons, and for the other reasons described by the Committee on Criminal Law and Chief Judge Clark, I urge you to apply the criminal-history amendments prospectively only. Thank you for considering this comment.

Sincerely,



Patrick J. Schiltz

Chief Judge