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On Behalf of the Federal Public and Community Defenders

Before the United States Sentencing Commission
Public Hearing on Proposed Amendments to USSG §§2L1.2, 5D1.1 and 5D1.2

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My name is Jane McClellan, and I am an Assistant Federal Public Defender in the District of Arizona. I would like to thank the Commission for holding this hearing and giving me the opportunity to testify on behalf of the Federal Public and Community Defenders regarding the proposed amendments to the illegal reentry guideline at USSG §2L1.2 and supervised release guidelines at USSG §§5D1.1 and 5D1.2.

I. A STALE CONVICTION SHOULD ONLY BE COUNTED UNDER USSG §2L1.2 FOR PURPOSES OF THE AGGRAVATED FELONY OR FELONY ENHANCEMENT.

We were pleased that the Commission has proposed adjustments to §2L1.2 that would shorten sentences for some illegal reentry defendants with old convictions. The proposed amendment to §2L1.2 would reduce the 16- and 12-level enhancements when a prior conviction is too old to qualify for criminal history points, but it nonetheless would require an 8- level increase if the conviction would otherwise qualify for the 16- or 12-level enhancement. We encourage the Commission to strike from the proposed §§2L1.2(b)(A) and (B) amendments the last clause: *"or by 8 levels if the conviction does not receive criminal history points."* Under our proposed revision to the amendments, if the prior felony conviction under §§2L2.1(B)(1)(A) or (B) does not count under the criminal history rules, then it would receive an additional 8-level increase if it is an aggravated felony, and a 4-level increase if it is a non-aggravated felony.

The Commission's proposed amendment recognizes that stale convictions should not be given the same weight as recent convictions that count under Chapter Four.[1]

[1] A defendant with an old conviction deserves a lower sentence than one with a more recent conviction because he or she poses a lower risk to the community based on the age of the conviction and may have returned to the United States many years after sustaining the conviction. For example, a defendant who pled guilty to a drug trafficking offense when he was only 18 years old, served a short prison sentence, left the United States, and did not return until he was 40 years old does not present the same danger as a defendant who immediately returns to the United States after being deported. Likewise, a defendant who tries to follow the law and remains outside the United States for years before returning -- usually because of the need to reunite with family members or some other compelling reason -- should not be punished the same as the defendant who returns immediately and whose prior conviction still counts under Chapter

Our proposed revision, however, makes §2L1.2 more consistent with other sections of the guidelines, which recognize that stale convictions should not be used to enhance the base offense level. *See, e.g*., USSG §2K2.1 (firearms) and USSG §4B1.1 (career offender). At the same time, our suggestion recognizes that some additional punishment may be warranted in light of 8 U.S.C. §§ 1326(b)(1) and (b)(2), which impose greater penalties for defendants who illegally reenter after sustaining convictions for felonies and aggravated felonies.[2] Under the Federal Public and Community Defenders' proposal, a defendant with an aggravated felony conviction always will be subject to a longer advisory guideline sentence than one with a non-aggravated felony conviction, and a defendant with a felony conviction will be subject to a longer advisory guideline sentence than a defendant without one, regardless of the age of the aggravated or non-aggravated felony conviction.

By still requiring an enhancement if the conviction would otherwise count under §§2L1.2(b)(A) or (B), the proposed amendment unduly complicates the sentencing process. It would force the court, probation, and the parties to determine whether a given felony would otherwise qualify for the 16-level enhancement under (A) or the 12-level enhancement under (B), even for an offense that does not count under the criminal history rules of Chapter Four. With the current proposal, the court and probation will have to perform multiple categorical analyses for these stale offenses. One analysis will entail whether the offense qualifies as an aggravated felony for purposes of selecting the correct statutory penalty. This analysis must be performed in any illegal reentry case because it controls the statutory maximum penalty that may be imposed, regardless of the age of the offense. USSC, *Interim Staff Report on Immigration Reform and the Federal Sentencing Guidelines* 24 (2006) [hereinafter *Interim Staff Report*]. Additionally, the court and probation will have to determine whether the stale offense falls within any of the enumerated offenses in §2L1.2 (b)(1)(A) and then whether it falls within §2L1.2(b)(1)(B). This is because, even if the offense is not an aggravated felony, it could still receive an 8-level increase under §§2L1.2(b)(1)(A) or (B) if it qualifies, rather than the 4-level increase under §2L1.2(b)(1)(C). As the Commission is aware, the statutory definition of "crime of violence" for purposes of determining whether a conviction is an "aggravated felony" is different than the §2L1.2 definition of "crime of violence." *See generally id*. at 25 (explaining difference); *see also* USSG §2L1.2, comment. (n.7) (authorizing departure when offense qualifies for enhancement under subsection (b)(1)(A), even though it does not qualify as an aggravated felony).

The most common examples we see where the definition matters are cases where the defendant was convicted of an offense that meets the definition of a crime of violence, but

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Four.

[2] We continue to believe that stale convictions should not be counted at all, but we acknowledge that the statutory framework of 8 U.S.C. § 1326(b) contains no exception for stale convictions.

received a sentence of probation. Such a conviction currently would qualify for the 16-level enhancement, but would not count as an "aggravated felony." *See United States v. Gonzalez-Coronado*, 419 F.3d 1090, 1095 (10th Cir. 2005) (defendant received 16-level crime of violence enhancement for prior conviction for attempted aggravated assault even though he received probation; "unlike 8 U.S.C.§ 1326(b)(2)'s requirement that an aggravated felony must result in a sentence of at least one year, U.S.S.G. §2L1.2(b)(1)(A)(ii) does not require that, to be a ‚crime of violence,' a prior conviction result in a sentence of any particular length"). The problem also arises for some enumerated, non-forcible or non-intentional offenses that are included in the 16-level definition of crime of violence, but are not included within the aggravated felony definition, which requires an element of (typically intentional) use of force or a risk of use of force.

If the Commission were to permit the use of remote convictions only in determining whether the defendant is eligible for an 8-level increase because the conviction is an aggravated felony or a 4-level increase because it is a felony, the inquiry would still be complicated, but much simpler. If the conviction did not count as criminal history, the only analysis would be that already required by statute: whether it is a felony or an aggravated felony. If the conviction is neither a felony nor aggravated, the inquiry ends. We encourage the Commission to take a small step in alleviating the complexity of the guideline calculation by requiring only one analysis of whether a stale conviction meets the definition of aggravated felony. A single analysis also would save time for probation officers who must find the criminal history documents necessary to conduct the analysis required under §§2L1.2(b)(1)(A) and (B).

In the synopsis of the proposed amendment, the Commission relies on *United States v. Amezcua-Vasquez*, 567 F.3d 1050 (9th Cir.), *reh'g en banc denied*, 586 F.3d 1176 (9th Cir. 2009), to justify an 8-level enhancement for a stale conviction even if it does not qualify as an aggravated felony. The Ninth Circuit held in *Amezcua-Vasquez* that it "may be reasonable to take *some* account of an aggravated felony, no matter how stale, in assessing the seriousness of an unlawful reentry into the country." *Id*. at 1055 (emphasis in original). Our proposal does just that. An aggravated felony, even if stale, would receive an 8-level enhancement under §2L1.2(b)(1)(C); a felony, even if stale, would receive a 4-level enhancement. Both are sizable increases over the base offense level of 8 at §2L1.2(a).

If the Commission were to adopt our proposal on counting stale convictions, the language in proposed application note 1(C) would have to be modified. We suggest the following change to the language of the application note:

> Prior Convictions. – In determining the amount of an enhancement under subsection (b)(1), note that the ~~amounts~~ *enhancements* in subsections (b)(1)(A) and (B) depend on whether the conviction receives criminal history points under Chapter Four (Criminal History and Criminal Livelihood), while the

enhancements ~~amounts~~ in subsections (b)(1)(C), (D), and (E) apply without regard to whether the conviction receives criminal history points.

We also suggest deleting the last sentence in the application note because it seems unnecessary.

~~A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points under Chapter Four.~~

II. PROPOSED AMENDMENTS TO USSG §§5D1.1 and 5D1.2 – IMPOSITION OF SUPERVISED RELEASE

We applaud the Commission's efforts to revise the supervised release guidelines in a way that begins to recognize the principles of evidence-based practices and helps focus limited supervision resources on offenders who need it. As the Commission's data show, sentencing courts impose terms of supervised release as a matter of course. *See* USSC, *Federal Offenders Sentenced to Supervised Release* 4 (2010) [hereinafter *Federal Offenders Sentenced to Supervised Release*] (supervised release imposed in 99.1 percent of cases where it was not statutorily required). The reason for such a high rate of imposition of supervised release does not necessarily reflect judicial belief that such terms are necessary in every case. The high rate of imposition may well turn on the fact that supervised release rarely gets any attention at sentencing hearings from the court, probation, or the parties.[3] When supervised release is the subject of discussion at sentencing, it is usually when the court seeks to impose unusual or onerous conditions. We urge the Commission to take even further advantage of this unique opportunity to focus the court's attention on the defendant's reentry needs and to fashion sentences that are sufficient, but not greater than necessary, to meet those needs by implementing the suggestions set forth below.

A. Supervised Release Terms Should not Ordinarily Be Required for Deportable Aliens Unless Required by Statute.

We support the Commission's proposed amendment regarding deportable aliens, which would advise courts that they "ordinarily should not impose a term of supervised release in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment and likely will not be permitted to return to the United States in a legal manner." Proposed Amendment Option 1A, §5D1.1 (c) and Proposed Amendment Option 1B, comment. (n. 4).

[3] As one witness explained at the Commission's regional hearing in Chicago, supervised release is not an issue on which clients focus very much. "It's really one of secondary importance if that, because they're really concerned about am I going to prison, and if so, for what period of time." Transcript of Public Hearing Before the U.S. Sentencing Comm'n, Chicago, Ill., at 345 (Sept. 10, 2009) (Thomas W. Cranmer).

As Henry Bemporad, the Federal Defender for the Western District of Texas discussed at the Commission's regional hearing in Phoenix:

> Supervised release is a misnomer when it comes to deported defendants. They receive no supervision at all -- no opportunities for training, education programs, drug or alcohol addiction or psychiatric treatment, or any of the other benefits regularly available to U.S. citizen releasees as they attempt to re-enter society. Deported defendants are simply dropped on the other side of the border and told not to return -- even if, as Judge Cardone and Judge Alvarez noted, they have spent virtually their entire lives in the United States, and their family, friends, and coworkers are all in this country. Given the lack of support, the imposition of supervised release in these cases does nothing but establish a basis for additional punishment.
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> The threat of additional punishment is not necessary for its potential deterrent effect. Many other punishment threats already perform this purpose. A defendant who returns to the United States after a prior reentry offense faces an increase in the maximum statutory penalty from 2 to 10 years. He faces a significantly increased offense level under §2L1.2(b)(1), and an increased criminal history score.

Statement of Henry Bemporad Before the U.S. Sentencing Comm'n, Phoenix, Ariz, at 17 (Jan. 20, 2010).

Cases where defendants return illegally to the United States after being sentenced to supervised release also present an administrative nightmare. Take for example a defendant who was placed on supervised release in the Southern District of California following his illegal entry into the country, but then deported after serving his term of imprisonment. Authorities later arrest him in the District of Arizona and charge him with illegal reentry into the United States through Arizona. Only the District of Arizona has jurisdiction over the new illegal reentry charge. The parties in Arizona can seek to have the California petition to revoke supervised release transferred to Arizona. This is a complicated process and requires coordination between the probation offices in California and Arizona. This is usually advantageous to the defendant, because he can enter into a plea agreement in the District of Arizona that will resolve both the new charge of reentry of a removed alien and the pending supervised release case. While most judges impose consecutive sentences for the new charge and the supervised release violation, consolidating the cases nonetheless gives the defendant the opportunity for concurrent sentences, and he is saved the stress of being transported in custody from one district to another. The transfer process, however, may take several months. Further, some districts are amenable to transfer whereas others are not. If the petition to revoke supervised release is not transferred, then the defendant will most likely serve out his sentence for the new charge that is imposed in the District of Arizona and then be transferred to the Southern District of California for further proceedings to resolve the pending supervised release violation. These transfers in custody are costly and time consuming.

Another example of unnecessary administrative and bureaucratic expense involves a defendant who was on supervised release in Utah following a conviction for reentry of a removed alien, pursuant to 8 U.S.C. §§ 1326(a) and (b)(2). The defendant was arrested in

Arizona on state charges. While the state court proceedings were pending, the District of Utah filed a petition to revoke his supervised release. A federal detainer was placed on him in state custody. After the state matter was dismissed, he was brought to federal court in Arizona for proceedings pursuant to Fed. R. Crim. P. 40. He waived his hearing and went to the District of Utah for adjudication of the pending supervised release matter, and he was sentenced to eight months of imprisonment followed by twenty-eight more months of supervised release. After he served the eight-month sentence, the District of Arizona filed new charges of reentry of a removed alien and now he is back in Arizona facing this new charge. This process of bouncing the defendant back and forth from one jurisdiction to another wastes government resources. Discouraging courts from imposing supervised released on deportable aliens would help alleviate these problems and allow for more efficient case processing should the defendant return to the United States after deportation.

As to the specific language of an amendment addressing supervised release for deportable aliens, we prefer that the guideline rather than commentary address the issue. We encourage the Commission to adopt the language from Option 1A, USSG § 5D1.1(c) and Option 1A application note 5. Those provisions state directly in the guideline that the court ordinarily should not impose supervised release for deportable aliens and then emphasize the point with an application note that explains why supervised release is unnecessary in such cases. In contrast to the language in Option 1A, Option 1B combines in a single application note the text of proposed §5D1.1(c) and application note 5. Because the proposed amendment regarding supervision of deportable aliens represents a significant policy shift, it deserves emphasis in a guideline, followed by explanation in the commentary.

B. Courts Should Be Given Guidance in Exercising Their Discretion to Terminate Supervised Release Early.

The next section of this testimony addresses the various proposed amendments to USSG § 5D1.1 and 5D1.2. As an initial matter though, we strongly advocate that the Commission include in §5D1.2 proposed application notes 4 and 5, which set forth the factors a court should consider when imposing supervised release and the appropriateness of early termination of supervised release.

Data from the Office of Probation and Pretrial Services show that defendants can be terminated from supervision early without jeopardizing public safety.

> Based on the charged data entered into PACTS by 70 of the 94 federal probation districts, it is clear that offenders granted early termination do not pose a greater safety risk to the communities in which they are released than offenders who complete a full term of supervision. In fact, *early term offenders in this study presented a lower risk of recidivism than their full term counterparts*. Not only were early term offenders charged with a new criminal offense at a lower rate than full term offenders, but when they were charged with a new crime, it was generally for misdemeanor offenses. Early term offenders committed a lower percentage of felony offenses than did full term offenders.[4]

[4] Office of Probation and Pretrial Services, *Early Terminated Offenders: A Greater Risk to the*

Because the guidelines insist on minimum terms of supervised release and provide no guidance on when early termination might be appropriate, judges often are reluctant to end supervision even when a defendant has complied with all conditions, including payment of fines and restitution.

Take for example the case of Hal Hicks. Mr. Hicks asked the court to terminate his three-year period of supervised release because he had complied with all the terms of his supervision and wanted to work in the trucking industry, which would require travel outside the district. The judge refused to terminate his supervision, stating that courts "generally do not consider mere compliance with the terms of supervised release grounds for early termination."[5] The court added: "Hicks' desire to work within a particular field that may require travel does not constitute the sort of changed circumstance that might induce the Court to grant a request for early termination in the interest of justice." What the court missed is that keeping Mr. Hicks on supervision could well increase his chance of recidivism by depriving him of an employment opportunity and otherwise disrupting his attempt to get his life back on track.

Judges are not alone in their reluctance to exercise the authority to terminate supervision early. Some probation offices view supervision as a "punitive sentence designed in part to serve the interests of retribution in general."[6] Hence, such offices take the position that "the mere fact that a defendant has adjusted well and has complied with the terms and conditions of [supervision] affords no justification for early termination." *Id*. Instead, "some special hardship should be shown" that justifies early termination. *Id*.

Viewing supervision as a retributive punishment is clearly contrary to the provisions of the Sentencing Reform Act. Both in imposing supervised release, and in deciding to terminate a period of supervised release, the court must consider a wide variety of factors set forth in 18 U.S.C. § 3553(a). *See* 18 U.S.C. §§ 3583(c) and (e). The statute excludes from consideration the need for the sentence imposed to "reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." *Id*. (omitting 18 U.S.C. § 3553(a)(2)(A) as a relevant factor). *See* Guide to Judiciary Policy, *Vol. 8: Probation and Pretrial Services, Part E: Supervision of Federal Offenders* (Monograph 109) § 160.10.20 (c) [hereinafter *Monograph 109*] ("punishment is not a purpose to be considered in the imposition of a discretionary term or of the condition of any term of supervised release").

Consistent with the statutory purposes of supervised release and the risk principles (discussed more fully below), it is essential that the guidelines encourage terms of release no longer than necessary to facilitate the defendant's transition into the community and make it clear that early termination is in the "interest of justice" when the defendant presents a low risk

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Community? (June 2010) [hereinafter *Early Terminated Offenders*] (emphasis added) (prepared for Criminal Law Committee of the U.S. Judicial Conference), available from OPPS, James L. Johnson/DCA/AO/USCOURTS (summary reported in OPPS, News and Views, January 18, 2010).

[5] *United States v. Hicks*, 2009 WL 1515203 (S.D. Ill. June 1, 2009).

[6] U.S. Probation and Pretrial Services Office District of Rhode Island, *Frequently Asked Questions*, http://www.rip.uscourts.gov (last visited Feb. 9, 2011).

of reoffending because his or her rehabilitative needs have been met and he or she no longer needs transitional services. Toward that end, we would encourage the Commission to add additional language to application note 5, which states the following:

> *The court should consider early termination of supervised release if the defendant has no rehabilitative needs that can be met with supervision, no longer needs transitional services, or otherwise presents a low risk of reoffending.*

C. In Cases Where Supervised Release is Not Statutorily Required, The Guidelines Should Advise Courts to Exercise Their Discretion In Whether to Impose a Term of Supervised Release and the Length of the Term.

Of the two proposed options for revising USSG §5D1.1, we encourage the Commission to adopt Option 1B, but as we discuss above, add to it the proposed language from Option 1A §5D1.1(c) and application note 5 regarding the supervision of deportable aliens. Of the proposed options for amending §5D1.2, we believe the Commission should adopt Option 2B and eliminate the minimum terms of supervised release.

Option 1B in §5D1.1 and Option 2B in §5D1.2 maximize a judge's flexibility to impose supervised release unless required by statute. We do not believe that courts should be advised to automatically impose supervised release when some minimum term of imprisonment is imposed -- be it 15 months or more as in Option 1A or some greater term of imprisonment.

A one-size-fits-all approach is especially inappropriate in the context of supervised release, where the individual offender's reentry needs should be paramount. As noted in the Commission's recent report, "Congress intended supervised release to assist individuals in their transition to community life." *Federal Offenders Sentenced to Supervised Release*, at 2 (quoting *Johnson v. United States*, 529 U.S. 53, 59 (2000)); *see also id*. at 9 (legislative history of 18 U.S.C. § 3583(c) indicates that "primary purpose of supervised release is to facilitate the integration of offenders back into the community rather than to punish them"). Supervised release should only be imposed when it is necessary to accomplish a specific purpose related to the defendant's rehabilitative needs.

According to U.S. Probation and Parole, "[t]wo goals of post-conviction supervision are (1) to protect the community by reducing the risk that an offender will commit future crimes, and (2) to bring about long-term positive change in individuals under supervision." *Early Terminated Offenders*, at 8 (June 2010); *see also*, *Monograph 109*, § 150. If the defendant is at low risk of committing future crimes and does not have rehabilitative needs that supervision can meaningfully meet, then imposition of a term of supervised release is a greater than necessary sentence. If a defendant has no history of violence, poses no identifiable risk to public safety, and is likely to have a place to live, financial support, transportation, and access to any necessary treatment, then there is no real need for supervision. *Cf. Monograph 109*, § 380.10 (setting forth standards of early termination of supervised release).

Nor is supervised release automatically necessary to help an inmate prepare for reentry and adjust to life on the outside. While prison itself does little to prepare a person for reentry, mechanisms other than supervised release are designed to facilitate reentry. By statute, inmates may serve a portion (not to exceed 12 months) of their remaining term of imprisonment in a

community correctional facility or home confinement. 18 U.S.C. §§ 3624(c)(1) and (3). These statutory provisions are expressly designed to facilitate release planning, and the United States Probation Office is statutorily mandated to "offer assistance to a prisoner during prerelease custody." 18 U.S.C. § 3624(c)(3). That mandated assistance is not dependent upon whether the inmate is subject to a term of supervised release.

Permitting a court to forego sentencing a defendant to a term of supervised release or to impose a lesser term of supervised release is consistent with evidence-based practices. Low risk offenders with stable family, employment, and housing should not be required to undergo intense supervision. *See generally* The PEW Center on the States, Public Safety Performance Project, *Putting Public Safety First: 13 Strategies for Successful Supervision and Reentry* 2 (2008) ("By limiting supervision and services for low-risk offenders and focusing on those who present greater risk, parole and probation agencies can devote limited treatment and supervision resources where they will provide the most benefit to public safety."). Studies show that intense supervision of low risk offenders either has no effect, thereby wasting limited resources, or leads to increased recidivism. *Id.*[7]

Treatment is most effective when intensive services are reserved for higher risk offenders.[8] To successfully address the needs of higher risk offenders, probation officers need smaller caseloads and "well-developed case plans." Jesse Jannetta, et. al., The Urban Institute, *An Evolving Field: Findings from the 2008 Parole Practices Survey* 24 (2009) [hereinafter *An Evolving Field*]. Permitting a court to exercise discretion in imposing a term of supervision, and the length of such term, will free up resources for probation officers to concentrate on high-risk offenders. *Johnson v. United States*, 529 U.S. 694, 709 (2000) (courts should be encouraged to use their "discretionary judgment to allocate supervision to those releasee who need[] it most").[9]

D. The Maximum Term of Supervised Release Under USSG §5D1.2(a)(1) Should Not Be More than Three Years.

We strongly encourage the Commission to lower the maximum terms of supervision set forth in §5D1.2(a)(1) from five to three years. Three years would be consistent with the average term of supervised release currently imposed for persons not subject to statutorily mandated supervised release. *Federal Offenders Sentenced to Supervised Release*, at 52.

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[7] *See also* Christopher T. Lowenkamp and Edward J. Latessa, *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders*, Topics in Community Corrections – 2004, at 3 (2004) (published by U.S. Dep't of Justice, National Institute of Corrections); *Monograph 109*, at § 310.10.

[8] *See generally* Brian Lovins, Christopher Lowenkamp, and Edward J. Latessa, *Applying the Risk Principle to Sex Offenders*, 89 The Prison Journal 344, 345 (2009), available at http://www.uc.edu/ccjr/Articles/sextxtprisonjournal.pdf.

[9] Unfortunately, current data show that supervised release is not reserved for those most in need. the Commission's data from Fiscal Year 2005 to 2009 show that a sizable percentage, 96.5%, of offenders in CHC I received a term of supervised release. *Federal Offenders Sentenced to Supervised Release*, at 56, n. 249. And, on average, CHC I defendants received the same average supervised release term (41) as defendants in CHC II-V. Id. Yet, "the success rate for offenders in CHC I is nearly twice that for offenders in CHC VI." *Id*. at 66.

The length of supervision, like other components of the sentence, should be sufficient, but not greater than necessary, to satisfy the purposes of sentencing. 18 U.S.C. § 3583(c) (directing courts to consider various factors under § 3553(a)). As discussed above, supervision should be based on the defendant's rehabilitative needs and not as a further means of punishment. Most offenders who fail in supervision do so early on. Many fail during the first six months. *Monograph 109* § 330(a). Other data show that "[w]ithin the first three years after release, nearly two-thirds of inmate recidivism occurs within the first year, indicating that monitoring and support will achieve the most crime reduction during this period." Justice Center, The Council of State Governments, *The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime, and Corrections Spending* 7 (2011) [hereinafter *Justice Reinvestment*]*; see id*. at 20 (citing New Hampshire study, which showed that "half of all people released on parole who reoffend or violate conditions and are returned to prison do so within the first eight months of their release); *see also Federal Offenders Sentenced to Supervised Release,* at 63 ("Violations of conditions of supervised release that result in revocation on average occur early in the supervision process.").

Imposing shorter supervised release terms will also encourage the front-loading of supervision resources. Research shows that for individuals released from prison, the "first few hours, days, and weeks . . . are especially critical to [the supervisee's] success." *An Evolving Field,* at 25; *Justice Reinvestment*, at 57 ("[s]upervision strategies should address the risk of early recidivism and better align resources during the period after release when individuals are most likely to commit new crimes or violate their conditions of supervision"). If USPPO front-loads resources to focus on the supervisee's immediate needs, it can more effectively reduce the risk of recidivism. Once needs are met, there is no need to continue the person on supervision.

Shorter periods of supervision can also provide powerful incentives for supervisees to participate in treatment, stay sober, keep a job, and satisfy financial obligations. *An Evolving Field*, at 26 (discussing incentives that can be built-in to supervision process, including elimination of conditions of supervision and early discharge). Supervisees will know that if they comply, they will regain their liberty and if they do not comply, they will likely face revocation and an extension of the term of supervision. 18 U.S.C. § 3583(e).

III. CONCLUSION

We would be happy to discuss with the Commission any of the issues addressed here, as well as any other modifications to the guidelines that would advance the purposes of sentencing under 18 U.S.C. § 3553(a). We are especially pleased that the Commission has proposed amendments that would help ameliorate the harsh effects of §2L1.2 for a discrete segment of defendants, reduce the practice of placing deportable aliens on "non-supervised" release, and that would provide judges with greater flexibility and guidance in deciding whether to impose a term of supervised release and the length of any such term.