

**U.S. District Judge Carlton W. Reeves,
Chair, U.S. Sentencing Commission
Remarks for Public Meeting
January 12, 2023**

Good morning! Whether you are joining us in person or via live stream on our website, I welcome you all to this public meeting of the United States Sentencing Commission, the first of 2023.

Now, I have the pleasure of introducing my colleagues. First, I introduce the Commission's Vice Chairs: Claire Murray, who most recently served as the Principal Deputy Associate Attorney General and Laura Mate, who served as the Sentencing Resource Counsel to the Federal Public and Community Defenders for many years. Also with us today: District Judge Claria Horn Boom, who serves in both the Eastern and Western Districts of Kentucky, Candice Wong, who is an Assistant United States Attorney and Chief of the Violence Reduction and Trafficking Offenses Section in the U.S. Attorney's Office in Washington, DC and the Commission's ex-officio member representing the Attorney General, Jonathan Wroblewski.

Joining us by phone today is Judge Luis Felipe Restrepo, who serves on the U.S. Court of Appeals for the Third Circuit and Commissioner Judge John Gleeson, who previously served in the Eastern District of New York. Patricia Cushwa, the ex officio member representing the United States Parole Commission, was unable to join us today.

Happy New Year! There are no shortage of practices and traditions throughout the world that are believed to bring success and good things in the New Year. Some eat black eyed peas (and if Mississippi is your home, you must have cabbages and cornbread,

and if you are from Yazoo City those cabbages are called cabbage greens). I've learned that others eat fish for luck and prosperity, while some smash dishes and there are those who jump seven times in the ocean waves. I have even heard of eating twelve grapes at the stroke of midnight on January 1, each grape representing a month of the year. Regardless of how we all rang in the New Year and the traditions we practice; I have no doubt that 2023 will be a very busy, but good and successful year for this Commission. We have worked hard, and we will continue to do so.

When my esteemed colleagues and I were confirmed by the Senate on August 4th— not even six months ago-- we knew we had a lot of work ahead of us. After four years without a voting quorum, the Commission was faced with quite a backlog of policy work.

By statute, we must submit our amendments to Congress for review no later than May 1, 2023 –less than four months away. We know that we are working under an abbreviated amendment cycle. But we are committed to meeting our deadlines with the focus on this initial amendment cycle on the most urgent policy concerns.

The Commission and staff have worked, as the saying goes, full steam ahead.

Quite frankly, I am constantly amazed with the amount of work and with the efficiency the staff works. We, the Commission and staff, have worked hard, we have worked thoroughly, and we have worked diligently and thoughtfully.

This work has led us to today's deliberations on our proposed Guideline Amendments.

Before I turn to amendments however, I would like to provide an update on the additional work the Commission has been doing over the past few weeks, as well as a look ahead.

Last month, the Commission released an updated Compassionate Release data report, examining motions filed with the courts during fiscal years 2020, 2021, and 2022.

This report follows the significant work the Commission has done over the past few years. Consistent with previous reports on compassionate release, the Commission found that the likelihood of compassionate release motions succeeding varied significantly depending on the circuit or district in which they were filed.

The First Step Act amended 18 U.S.C. § 3582 to allow defendants for the first time to move for compassionate release on their own, without having the Director of the Bureau of Prisons make a motion.

In the absence of a Commission policy statement recognizing this new avenue, courts of appeals generally have held the Commission's policy statement governing compassionate release does not apply to motions filed by defendants. Without guidance from the Commission during the COVID-19 pandemic, the debate about what constitutes extraordinary and compelling reasons for compassionate release motions became a debate within the federal courts throughout the nation, and with differing results.

It is the Commission's obligation to provide clearer guidance to the courts. We will do so.

In fact, implementation of the First Step Act is among our top priorities and one that we will discuss today.

In light of the patchwork of state laws regarding simple possession of marijuana, as well recent Administration policy developments on the federal level, this week the Commission released a report titled, "Weighing the Impact of Simple Possession of Marijuana: Trends and Sentencing in the Federal System." The report looks at the number

of offenders sentenced for the federal offense of simple possession in the last five fiscal years, as well as the demographics and sentence lengths of these offenders.

The Commission's stakeholders asked, and again, we listened.

I am pleased to announce that the Commission will soon launch yet another valuable online resource. In the next day or so, the Commission will add an interactive data tool to the website that provides information on programs that offer alternatives to incarceration throughout the nation. Speaking of website, please remember there is so much information just fingertips away at www.ussc.gov. I implore you to visit and spend some time at our site. It is easy to navigate and is packed with information for everyone: judges; law clerks; practitioners; stakeholders; the general public; and those who are simply curious about our federal criminal justice system.

During the recent proposed amendment comment period, we received many requests for this information, and I have no doubt this new tool will add to the wealth of resources already offered by the Commission.

This, of course, follows last year's launch of the Judiciary Sentencing Information tool, or JSIN. As of late 2022, JSIN, which provides its users with comparative sentencing data, was accessed more than 1,300 times each month and its data was cited in more than 1,700 presentence reports.

In addition, I am happy to announce a new public comment portal on our website that will go live after this week's Commission meeting has concluded. By providing access to the list of proposed amendments and allowing letters and comments to be submitted through a fillable online form, this portal will make it even easier for those who want to offer comment on the Commission's proposed amendments.

Of course, the Interactive Data Analyzer continues to be a regular resource for the federal sentencing community.

Now, turning to an overview of today's agenda—it's a busy one. Today we will discuss the Commission's proposed Guideline Amendments and Issues for Comment.

In addition to implementation of the First Step Act I discussed earlier, we will discuss the safety valve, for which eligibility was expanded in the 2018 law. The Commission needs to amend section 5C1.2 to recognize this change, but we also need to consider changes to the 2-level reduction in the drug trafficking guideline for meeting the safety valve criteria.

The Commission also intends to implement the Bipartisan Safer Communities Act, firearms legislation that was passed after the Uvalde shootings and signed into law in July. The Act directs the Commission to increase penalties for certain firearms offenders, particularly straw purchasers.

I have heard consistently from judges throughout the nation that the categorical approach should be reconsidered. Judges are far too often flummoxed by how to apply the categorical approach. This is certainly a matter that the Commission will continue to discuss and one that may warrant a public hearing. In addition, we will examine status points and the treatment of offenders with zero criminal history points.

Many judges and stakeholders have also told me that acquitted conduct is important to them. The Commission may consider possible amendments to limit the use of acquitted conduct in sentencing.

The Commission's possible guideline amendments also include examining and resolving the most critical circuit conflicts regarding guideline interpretations, as suggested in some denials of writs of *certiorari*.

Yes, we have been busy, and I have outlined only a few of our priorities.

But I know I join my colleagues in continuing to be grateful for this opportunity to serve our nation in this important capacity.

I appreciate the feedback and public comment we have received thus far and look forward to comments on the Commission's proposed Guideline Amendments.

I now turn to Ken Cohen, the Commission's Staff Director, as we move forward with today's agenda, for the Staff Director's report.