



Chairman Reeves, Commission Members: Thank you for the opportunity to testify on the proposed amendment on federal supervised release.

My name is Brett Tolman. I'm a former United States Attorney for the District of Utah, appointed by George Bush in 2006, and a former chief counsel for crime and terrorism for the U.S. Senate Judiciary Committee. Today, I serve as the Executive Director of Right On Crime, a national criminal justice campaign of the Texas Public Policy Foundation, where we focus on conservative, data-driven solutions to reduce crime, restore victims, reform offenders, and lower taxpayer costs.

The Sentencing Commission's proposed amendments on drug sentencing today cover many issues and seek to improve the complicated and evolving area of drug sentencing. I will be focusing my remarks on Part A and Part B: the amendments that seek to improve how the drug quantity table serves as a barometer for culpability, and the amendment on addressing the methamphetamine purity distinction.

I've seen firsthand how the laws and sentencing guidelines on federal drug crimes have evolved over time. And as a former U.S. Attorney, I leaned on the Guidelines to inform sentencing recommendations. When cartel members and transnational drug organizations peddle drugs to manipulate low-level actors and poison those with substance use disorders, I sought punishments that fit the crimes. But often the sentencing ranges – both statutorily and in the Guidelines – recommend punishment that is too long. They can be too punitive and offer little reprieve for those who can rehabilitate themselves and reenter society as a law-abiding taxpayer.

The Sentencing Commission has been at the forefront of rectifying many of the wrongs of drug sentencing policy. For example, it was this body that first called to attention how the disparate sentencing between powder and crack cocaine was unnecessary and overly punitive for crack offenders. The Sentencing Commission also regularly reevaluates drug sentencing based on what is actually happening in courtrooms. And this body does not shy away from facing the evolving drug landscape, taking in stride the unique sentencing challenges of synthetic drugs – like fentanyl.

Today, the Sentencing Commission is taking on an important issue: a thoughtful reevaluation of the drug quantity table as the best measure of culpability. Right now, the drug quantity table overly relies on quantity and type of drug as a measure of offense culpability, often resulting in sentences greater than necessary. Right On Crime believes that the Commission should consider revisions to the Guidelines that would focus on an individual's culpability in the offense as opposed to just quantity. Sentencing enhancements already exist at a prosecutor's disposal for identifying leaders, organizers or managers of criminal enterprises. Therefore, if a particular defendant's case warrants it, those enhancements are applied. But as both the methamphetamine purity issue and the growing prevalence of synthetic drugs illustrate, quantity-based determinations for sentencing are no longer probative. A role-based approach is likely a better

long-term solution, and the Commission is uniquely equipped and situated to evaluate this method.

The Commission is also considering an amendment to address methamphetamine sentencing. Methamphetamine is the most common drug in the federal criminal justice system.<sup>1</sup> But, unlike most of the illicit drugs subject to federal criminal penalties, methamphetamine offenders are subjected to different sentences based on the purity of the drug involved in the offense. The current statutory penalties effectively create a 10-to-1 ratio, where it takes ten times less pure methamphetamine to trigger the same penalty as it would for a more pure, detectable amount of methamphetamine.<sup>2</sup> The Guidelines similarly use drug purity as a proxy for a defendant's culpability.<sup>3</sup> This disparity has resulted in overly punitive and lengthy sentences for offenders culpable of the same conduct.

The impetus of the purity distinction for methamphetamine offenders was rooted in addressing the domestic production crisis earlier this century.<sup>4</sup> However, most methamphetamine now distributed and used in the United States originated in Mexico and is smuggled across the southwest border.<sup>5</sup> And more so, the purity of this Mexican-made methamphetamine rarely tests less than 90% pure.<sup>6</sup> So the alleged purpose behind the purity disparity is now moot.

A growing number of federal courts have recognized the absurdity of this purity distinction.<sup>7</sup> To that end, we urge the Commission to eliminate this arbitrary and meaningless purity distinction, and instead apply the "mixture" Guidelines for all methamphetamine cases. This will result in more predictable and consistent sentencing ranges for offenders while still ensuring that culpable actors are held accountable for their illegal methamphetamine-related acts.

I thank you again for your time and will be happy to take your questions.

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<sup>1</sup> U.S. Sentencing Comm'n, *Methamphetamine Trafficking Offenses in the Federal Criminal Justice System* (June 13, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> U.S.S.G. § 2D1.1 comment 27(C).

<sup>4</sup> *Supra* n. 10.

<sup>5</sup> U.S. Drug Enforcement Administration, *National Drug Threat Assessment 2024*, p. 2 (July 5, 2024).

<sup>6</sup> *Supra* n. 10.

<sup>7</sup> See, e.g., *United States v. Robinson*, No. 21-14, 2022 WL 17904534 (S.D. Miss. Dec. 23, 2022); *United States v. Moreno*, 583 F. Supp. 3d 739 (W.D. Va. 2019).