

**United States Sentencing Commission Public Meeting Minutes**  
**August 6, 2025**

Chair Carlton W. Reeves called the meeting to order at 3:11 p.m. in the Commissioners' Conference Room.

The following Commissioners were present:

- Carlton W. Reeves, Chair
- Luis Felipe Restrepo, Vice Chair
- Laura E. Mate, Vice Chair
- Claire Murray, Vice Chair
- Candice C. Wong, Commissioner
- Scott Meisler, Commissioner Ex Officio

The following Commissioner was not present:

- Patricia K. Cushwa, Commissioner Ex Officio

The following staff participated in the meeting:

- Kenneth P. Cohen, Staff Director
- Kathleen Grilli, General Counsel

Chair Reeves welcomed the public to the Commission's public meeting, whether they were attending in-person or watching via the Commission's livestream broadcast.

Chair Reeves introduced his fellow Commissioners. Sitting to his left were Vice Chair Claire Murray, Vice Chair Laura Mate, and Ex Officio Commissioner Scott Meisler. Sitting to his right were Vice Chair Luis Felipe Restrepo and Commissioner Candice Wong.

Chair Reeves stated that members of Commission staff were also attending, some of whom were in the room and many who were not. He stated that staff did the research, drafted the priorities, and set up the meeting room. On behalf of the Commission and the public, Chair Reeves thanked staff for the work it does every day.

Chair Reeves announced that the first item of business was a motion to adopt the April 11, 2025, public meeting minutes. Commissioner Wong moved to adopt the minutes, with Vice Chair Restrepo seconding. Chair Reeves called for discussion on the motion. Hearing no discussion, Chair Reeves called for a vote, and the motion was adopted by voice vote.

Chair Reeves announced that the next item of business was the Report of the Chair. He noted that the Commissioners would be voting on the final priorities for the coming amendment cycle and retroactivity regarding last amendment cycle.

Chair Reeves stated that the next item of business was a vote on the final policy priorities for the 2025-2026 amendment cycle. He called on the General Counsel, Kathleen Grilli, to advise the Commission on that matter.

Ms. Grilli stated that a notice of possible policy priorities was published by the Commission in the Federal Register on June 11, 2025, and the Commission received and reviewed the public comment pursuant to that notice and made changes to the tentative priorities.

A motion to adopt and publish in the Federal Register the final notice of policy priorities for the Commission's 2025-2026 amendment cycle would be in order.

Chair Reeves called for a motion to adopt and publish in the Federal Register the final notice of policy priorities for the Commission's 2025-2026 amendment cycle as suggested by the General Counsel. Commissioner Wong moved to promulgate the proposed amendment, with Vice Chair Restrepo seconding. The Chair called for discussion on the motion. Hearing no discussion, Chair Reeves called for a voice vote. Chair Reeves, Vice Chairs Mate, Murray, and Restrepo, and Commissioner Wong voted in favor of adopting the motion. The motion was adopted.

Chair Reeves stated that the next item of business was a possible vote on the retroactive application of Amendment 832 and Subpart 2 of Part A of Amendment 833. He called on the General Counsel, Kathleen Grilli, to advise the Commission on that matter.

Ms. Grilli advised that the Commission was considering whether to add Amendment 832, which was the amendment resolving two circuit conflicts, and Subpart 2 of part A of Amendment 833, which addressed drug offenses, to the list of amendments in §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) that may be applied retroactively.

In accordance with the Commission's Rules of Practice and Procedure, Rule 4.1(a), the Commission solicited public comment on the issue, instructed staff to prepare a retroactivity impact analysis report, which was released to the public during the comment period, and held a public hearing on the issue.

Ms. Grilli noted that a motion to promulgate the proposed amendment to §1B1.10 with an effective date of November 1, 2025, and technical and conforming amendment authority to staff was appropriate.

Chair Reeves called for a motion as suggested by Ms. Grilli. No responses were voiced, and the matter failed for lack of a motion.

Chair Reeves stated that the next item of business was a possible vote on the retroactive application of Subpart 1 of Part A of Amendment 833. He called on the General Counsel, Kathleen Grilli, to advise the Commission on that matter.

Ms. Grilli advised that the Commission was considering whether to add Subpart 1 of Part A of Amendment 833, which amended the mitigating role cap, to the list of amendments in §1B1.10 that may be applied retroactively.

In accordance with the Commission's Rules of Practice and Procedure, Rule 4.1(a), the Commission solicited public comment on the issue, instructed staff to prepare a retroactivity impact analysis report, which was released to the public during the comment period, and held a public hearing on the issue.

Ms. Grilli noted that a motion to promulgate the proposed amendment to §1B1.10 with an effective date of November 1, 2025, and technical and conforming amendment authority to staff was appropriate at this time.

Chair Reeves called for a motion as suggested by the General Counsel. Vice Chair Mate moved to promulgate the proposed amendment, with Vice Chair Restrepo seconding. The Chair called for discussion on the motion.

Chair Reeves stated that the Commission is committed to two things above all else: data and democracy. The Commission's commitment to data means making decisions based on the best available evidence and research. And its commitment to democracy means interpreting that evidence and research through a deliberative process, one that aims to reflect the voices, views, and values of *all* the people in "We the People."

Sometimes, Chair Reeves noted, the Commission's deliberations result in unanimous agreement about what the single best policy is. At other times, these deliberations lead to a slate of policies that, together, we agree is worthwhile. Unfortunately, there are times the deliberations end in disagreements the commissioners cannot fully resolve. Today, he observed, is one of those times.

When it comes to retroactivity, Chair Reeves continued, the commissioners have a wide range of deeply held and well-reasoned views about what the right path forward is. And while we disagree on that path, we have not been disagreeable. He was proud to serve alongside his colleagues. Each gave their all to the deliberative process, to live out their commitments to data and democracy. To further those commitments, he said, all of the commissioners will shed some light on their individual views about retroactivity.

Speaking for himself, Chair Reeves stated that he would have voted to make many of the Commission's recent amendments retroactive, including the one being voted on today. He believes the benefits of retroactivity often outweigh the perceived costs and those benefits are often overlooked because of how we approach the underlying data.

Chair Reeves explained that the Commission's policy statement on retroactivity says we must consider, among other factors, the "difficulty of applying the amendment retroactively." When we talk about that specific factor, we often use the term "administrability." And that term often ends up being shorthand for the administrative impact of retroactivity on the justice system. That

impact is usually described in terms of work added to court dockets. Of course, that work can take a significant amount of time to complete. And that work can be annoying. It can feel frivolous. It can even delay other important judicial business.

But, Chair Reeves continued, it's not enough to simply recognize the costs of administrative annoyance and delay of retroactivity. Those costs need to be calculated, clearly. And they must be weighed against all other administrative costs, including the costs of administering imprisonment. Today, those costs stand at \$51,711 (and rising) for the work performed by the Bureau of Prisons and paid for by the taxpayers to incarcerate a single person for a year.

For the amendment we are discussing today, Chair Reeves stated that the relief of retroactivity to the Bureau of Prisons and taxpayers easily runs into the many millions of dollars. He believes that a full consideration of all the administrative costs, standing on their own, would weigh in favor of retroactivity. Moving forward, he also believes that the Commission should avoid weighing abstract claims about administrability that only discuss costs on one side of the government's financial ledger.

Of course, Chair Reeves acknowledged, the Commission should take less quantifiable costs and benefits into account. But even there, he thinks the Commission's calculus was off because it is easier to estimate the costs we have felt personally. He said we know the costs of doing extra lawyering. The costs of addressing the merits of a motion. The costs of crimes caused by recidivism. But there's one cost few of us here have ever paid: The price of spending one day more than necessary in prison.

That cost is often immense, Chair Reeves emphasized. He believes that was the case for the amendment the Commission was voting on today. Here, retroactivity would have ended hundreds of years of imprisonment. The struggle across the justice system to recognize the true cost of imprisonment is a problem, he asserted. It is a problem rooted in the absence of *all* the people in "We the People" from the halls of government. It is a problem of democracy. And it is a problem the Commission is working to fix.

Just months ago, Chair Reeves recalled, the Commission created the Sentence Impact Advisory Group. It's a committee of formerly incarcerated people and their family members. Their work will be essential in helping to ensure that all our decision-making, including that about retroactivity, fully accounts for the costs of incarceration.

So, to all those who have been tuning into our meetings, Chair Reeves concluded, hoping we would make our past amendments retroactive: your hopes may not be realized today. But he promised that no matter who you are, whether you are someone who has suffered the loss of a loved one to crime or suffered the loss of a loved one to incarceration, your voices have been heard and will be heard.

Vice Chair Mate stated that she shared Chair Reeves' gratitude for each and every one of her colleagues, commissioners, and staff, and the Commission's ability to work conscientiously and collaboratively on important issues. She also shared the Chair's thoughts that many of the

Commission's recent amendments would be appropriate for retroactivity, most clearly the amendment to the mitigating role cap and the drug guidelines. The factors we've looked to in the past, purpose, magnitude, and the ease of applying the amendment retroactively all support retroactive application.

Vice Chair Mate explained that the amendment makes clear that when assessing appropriate punishment, an individual's role in the offense matters. It recalibrates the relative weight the guidelines recommend courts give to role and drug quantity. The Commission's impact analysis estimates an average reduction of 12 months, a full year. That is a meaningful reduction for any person serving any length of sentence.

To be sure, Vice Chair Mate continued, any retroactive amendment requires time and resources from judges, probation officers, prosecutors, and defense counsel, so there would be work. That work must be weighed against the liberty interests of the individuals, who if sentenced today, would have a lower guideline range.

The testimony Vice Chair Mate heard last month confirmed that this amendment would pose a lower administrative burden than most. Eligibility for this amendment would generally be clear from the papers, and most districts already have processes in place to efficiently screen, file, and resolve these motions.

Importantly, she added, retroactive application of this amendment is also consistent with the Commission's duties and purposes set forth in its organic statute. For example, it would ensure similarly situated individuals whether they were sentenced last year, today, or are sentenced after November 1st are not treated dissimilarly and are sentenced pursuant to uniform guidelines.

Additionally, Commission data on recidivism related to the retroactive application of the Drugs Minus Two Amendment assured her that the retroactive application of this mitigating rule cap would not undermine public safety.

The Commission was designed to create guidelines that evolve over time, Vice Chair Mate explained, to regularly amend these guidelines based on new information, research and data, and to make those amendments retroactive when appropriate.

Lastly, Vice Chair Mate wanted to briefly express her concerns about fundamental fairness as a limiting principle. What appears to have started as a justification in support of retroactive application of the Commission's Crack Cocaine Amendments has sometimes been treated as a prerequisite to retroactive application of guideline amendments.

Vice Chair Mate stated that Congress has never required and the Commission has never adopted a threshold requirement for retroactivity that the purpose of an amendment be to address an issue of fundamental fairness. Nor has either Congress or the Commission defined what fundamental fairness might mean in this context.

To be sure, Vice Chair Mate acknowledged, fundamental fairness may weigh in favor of retroactivity as it did with crack cocaine. But to limit retroactive amendments to only those with a purpose of addressing an issue of fundamental fairness, however that term is defined, would be inconsistent with past practice, as well as the Commission's statutory purposes and duties.

To deny someone sentenced yesterday with the benefit afforded someone sentenced today is always unfair. Vice Chair Mate expressed concern that the discussions of fundamental fairness obscured the Commission's need to grapple with that fact when making decisions about retroactivity.

Vice Chair Restrepo stated that he, too, favored retroactivity as a general principle and joined the views expressed by Chair Reeves and Vice Chair Mate, as well as the gratitude for the thoughtful work of his fellow Commissioners and the staff at the United States Sentencing Commission. He would vote in favor of retroactivity for the mitigating role cap which in his view fully satisfies the Commission's established criteria for retroactive application. It advances the purposes of sentencing articulated in Title 18, Section 3553(a), produces meaningful impacts for a broad group of defendants, and presents a limited administrative burden.

Vice Chair Restrepo explained that eligible defendants serving time above the amended mitigated role cap are serving sentences the Commission no longer considers proportionate. Sentencing is not a stagnant exercise, he noted, and retroactivity is a recognition that the guidelines can and should evolve, consistent with data supporting amendments to the guidelines. Whenever the Commission amends the guidelines to correct unwarranted severity, to reduce disparities, or to better align with the statutory purposes of sentencing, it implicitly acknowledges that its previous analysis is no longer supported by the data.

The date a sentence was imposed should not dictate the length of that sentence, Vice Chair Restrepo stated, nor should it reinforce disparity between two similarly situated defendants, to leave earlier sentences intact, to make timing, rather than culpability the decisive factor. Instead, the Commission should continue to promote uniformity, consistency and fairness, core parts of its mission as a Commission.

Vice Chair Restrepo concluded by stating that a sentence we would not impose tomorrow is one we should not preserve today.

Commissioner Wong thanked Chair Reeves and her colleagues for their statements. She explained that the subpart of the amendment the commissioners were debating is a fine tuning of the offense level cap applicable to certain high quantity drug traffickers whom a court nonetheless has found to have played a mitigating role in the context of their offenses. She and Vice Chair Murray agreed to support those adjustments as part of our package to Congress, part of the Commission's continued efforts to make each year's Guidelines Manual an improvement on the last.

But, Commissioner Wong continued, she and Vice Chair Murray also do not believe these adjustments merit reopening long closed, otherwise final criminal cases, and they take seriously

the concerns forcefully expressed by the Criminal Law Committee of the United States Judicial Conference, the Probation Officers Advisory Group, and the Victims Advisory Group, as well as the U.S. Department of Justice, all of whom opposed retroactive application here.

Commissioner Wong noted that the Commission's own rules of practice and procedures state unequivocally that generally promulgated amendments will be given prospective application only. That principle inheres in the fabric of the justice system. Finality is essential to our system of determinant, predictable sentencing. Finality, she continued, undergirds public trust in our justice system. It safeguards the rights of victims, including victims of drug trafficking offenses, and conversely, frequent retroactive application of amendments to reopen and often reduce sentences will erode deterrence and strain the finite resources of judges and probation officers. For these reasons, she emphasized, the Commission has always treated retroactivity as the rare exception, not the rule.

Commissioner Wong explained that the mitigating role cap adjustments are not the rare exception to the rule. When examining their purpose, the magnitude of change they affect, and the difficulties of retroactive application, the balance of consideration does not overcome that presumption against retroactivity.

The first consideration Commissioner Wong discussed was purpose. As stated, the purpose of the mitigating role cap adjustments was to refine. In a presumptive, prospective regime, it seems clear that mere guidelines differences pre- and post-amendment do not themselves justify retroactivity. Rather, retroactivity has been reserved for measures regarded by the requisite commission majority as sounding in fundamental fairness. As then-Commissioner, now-Judge Howell explained in 2010 deeming the Commission's elimination of recency points inappropriate for retroactive treatment, that amendment's purpose was not to correct a perceived fundamental unfairness. Then-Commissioner, now-Justice Jackson echoed her emphasis on fairness-type concerns. Here, Commissioner Wong recalled, fine tuning the mitigating role caps was intended to hew more closely to sentencing data on the ground, which showed frequent variances by judges in sentencing this slice of defendants on account of their mitigating roles. This was not redress of fundamental injustice, albeit a worthy refinement of our guidelines to promote greater guidelines utility and consistency in sentencing.

Next, Commissioner Wong stated, was the magnitude of change. A relatively modest number, 650 defendants, could be eligible for reductions and that about 95 percent would see lower base offense levels by merely one or two levels, with over 60 percent receiving a reduction of one year or less. And any assessment of the magnitude of change must further factor in to our driving consideration that judges were already taking seriously and carefully factoring in the mitigating roles played by this slice of defendants, even pre-amendment.

Finally, Commissioner Wong noted, was the consideration of the difficulties of application. Even for the 650 eligible defendants, the difficulties should not be understated. It may be challenging for judges to reconstruct and disentangle the extent to which the then-existing caps anchored, if at all, their original sentence in a manner not already accounted for. And administrability, of course, does not simply come down to the 650 or so eligible defendants. It is

about balancing the potential benefits and burdens on the justice system to be yielded from the many multiples of that figure who will seek relief through motions that will inevitably, as they should, command extraordinary and prompt attention and care by judges and probation officers.

That far-larger universe, Commissioner Wong continued, is particularly difficult to quantify here where discerning who is and is not eligible is no straight-forward matter, where the caps in question are found in a multi-tiered provision which itself is triggered by a separately defined mitigating role adjustment, which itself has seen its parameters just amended by the same Commission and yet whose amended parameters are not being made retroactive.

Under these circumstances, Commissioner Wong concluded, it is her view and that of Vice Chair Murray that retroactive application would be inconsistent with the presumption against retroactivity, the Commission's practice and precedents, and the weight of commentary from our stakeholders.

Vice Chair Murray expressed her appreciation for the opportunity to explain her vote. She started by saying that she was thankful for the Chair and for all of their colleagues and that it was an honor to serve on a body that takes so seriously its weighty responsibility to advance the cause of justice and to keep always in mind the important impact that all of the commissioners' actions can have on their fellow citizens, both in and out of prison.

Vice Chair Murray stated her agreement with Commissioner Wong and that she will be voting against retroactive application of this amendment. The reason she would vote in that way is three-fold. First, as Commissioner Wong said, under the Commission's Rules of Practice and Procedure, there is a presumption against applying amendments retroactively. To her mind, that presumption was not overcome here.

When Vice Chair Murray voted for this amendment, she thought of it as a refinement of the existing regime that was made to track sentencing trends, not as a fundamental change. And she thinks the Commission's precedents provide support for that view.

In 2002, Vice Chair Murray recounted, the Commission first amended the guidelines to establish the mitigating role cap. That was, she believed, a more fundamental change than this amendment—which merely tweaks the existing cap—but the Commission nonetheless chose not to make the 2002 amendment retroactive. She was unable to come up with a reason why the current amendment would overcome the presumption if that one did not.

Second, Vice Chair Murray continued, she was persuaded by the testimony of our Article III stakeholders in particular. In that group, she included the Criminal Law Committee of the Judicial Conference (or the "CLC"), which represents the judges, and the Commission's Probation Officers Advisory Group (or the "POAG"), both of whom have a history of supporting retroactivity in other contexts. Both the CLC and the POAG have asked the Commission not to make this amendment retroactive. They have pointed to the significant number of motions filed by ineligible defendants when we made our status- and zero-point amendments retroactive. The numbers there were striking. Fully 78 percent of zero-point applicants and 70 percent of status



point applicants were completely ineligible under the retroactive amendment even before application of the section 3553(a) factors.

Over the past two years, Vice Chair Murray stated, the Commission has heard from many judges, probation officers, and prosecutors, both formally and informally, that those motions consumed scarce resources and crowded out other vital functions that keep our communities safe and support the administration of justice. That's not to say that they did not have benefit, of course, but there's also a cost to those motions—a more than monetary cost in some cases.

Finally, Vice Chair Murray continued, she was persuaded by the comments of judges who asked the Commission to not make amendments retroactive where they, “address matters that I would routinely consider anyway.” To Vice Chair Murray, this is an example of that kind of amendment. Some of the Commission's past amendments implemented surprising or counterintuitive research that a judge wouldn't have known about and been able to take into account at a defendant's initial sentencing.

Vice Chair Murray noted that the status points amendment was such an amendment. The Commission largely eliminated the status point enhancement because of new research showing that committing a crime while on probation or supervision does not correlate with a higher risk of recidivism. That research was sufficiently counterintuitive, at least to her, that before it emerged judges could not have been expected to take it into account when sentencing defendants whose calculations incorporated status points.

This amendment, Vice Chair Murray believed, is the opposite. A defendant's role in the offense is something every judge necessarily already considers when applying the section 3553(a) factors in every case. To quote one of the recent judicial commenters, “I gave the sentence that I thought was fair and just based on the facts and circumstances of the offense and the personal characteristics of the defendant and considering the 3553(a) factors. The retroactive change leads to very little relief to the offender and creates tremendous work for the probation offices and the courts.” For that reason, she agrees with the CLC that, “the data shows that judges are already addressing, at least in part, any perceived unfairness issues by varying downward as appropriate in individual cases.”

Vice Chair Murray stated that she had been thinking about this particular point quite a bit. We already know with respect to this particular amendment that 60 percent of those whose base offense levels would be changed by this amendment are ineligible for relief because—under the new amendment, because of their original sentencing—the original sentence already fell below what their new amended guidelines range would be. Those people are already not included in the Commission's retroactivity impact analysis.

But even of the remaining 650 defendants who could potentially be impacted by retroactive application of this amendment if the Commission were to make it retroactive, she continued—so these are either people that our retroactivity impact analysis assumes may receive relief—an additional 52 percent (337 out of 650), had already received a smaller variance of sentence at their initial sentencing, such that their initial sentence was already within what would be their

new amended guidelines range. We don't for sure know why that happened, but she thought it's very likely that at least in some cases it was because their original sentencing judge took into account their minor or minimal role and varied downward. Those variances further limit the amount of a further adjustment that these defendants would be eligible for.

Vice Chair Murray stated that this decision was not something she took lightly and that she spent a lot of time thinking about it. She appreciated the process that the Commission went through, but that she was convinced that a faithful application of the Commission's precedents and of the principles guiding its retroactivity decisions militate against retroactivity in this case.

Hearing no further discussion, Chair Reeves called for a voice vote. Chair Reeves, and Vice Chairs Mate and Restrepo voted in favor of adopting the motion, and Vice Chair Murray and Commissioner Wong voted against adopting the motion. The motion failed because fewer than four commissioners had voted in favor of the motion.

Chair Reeves encouraged the public to keep up with the work that the Commission staff does every day and asked the public, practitioners, stakeholders, and everyone to keep up with the Commission's work at [www.ussc.gov](http://www.ussc.gov) and the treasure trove of information there.

Chair Reeves asked if there was any further business before the Commission and, hearing none, asked if there was a motion to adjourn the meeting. Vice Chair Murray moved to adjourn, with Vice Chair Restrepo seconding. The Chair called for a vote on the motion, and the motion was adopted by voice vote. Chair Reeves thanked everyone, and the meeting was adjourned at 3:45 p.m.