March 18, 2014

VIA ELECTRONIC MAIL

U.S. Sentencing Commission
Attn: Public Affairs
One Columbus Circle, N.E., Suite 2-500
Washington, DC 20002-8002

Re: Comment on Proposed Amendment 3 of the 2013-14 Amendment Cycle

Dear Judge Saris and Commissioners,

We write, as former federal and state judges and prosecutors, in support of the Commission's proposed amendment to the Drug Quantity Table, which would reduce all drug sentencing guidelines by two levels. Amendment 3 represents a modest and considered approach to addressing the explosive growth of the federal prison population. As the Commission itself recognizes, this change would allow the guidelines to remain consistent with current federal mandatory minimum sentences while reducing the federal prison population by an estimated 6,550 in the first five years.

As we know firsthand, lengthy drug sentences contribute to a federal prison population that is nearly 40 percent above the system's capacity. Federal spending for prisons has increased one hundredfold over the past thirty years, due in large part to the fact that nearly half of federal inmates are serving lengthy drug sentences. The federal prison system now consumes 25 percent of the Department of Justice's budget, with projections that this percentage will only continue to grow unless reforms are undertaken.

Despite exponential growth in the cost of our federal prison system, we have seen few benefits stemming from higher incarceration rates and longer sentences. As the Department of Justice acknowledges, "[I]f . . . we do not reduce the prison population and prison spending, there will continue to be fewer and fewer prosecutors to bring charges, fewer agents to investigate federal crimes, less support to state and local criminal justice partners, less support to treatment, prevention and intervention programs, and cuts along a range of other criminal justice priorities."[1]

Additionally, a study by the Pew Charitable Trust found that inmates serving sentences for nonviolent offenses could be released three months to two years earlier *without any decline in public safety or increased risk of recidivism*.[2] The Commission's proposed amendment, which would reduce applicable sentences by an average of 11 months, would have no negative impact on public safety and is a positive step towards controlling costs that will otherwise drain DOJ resources from other critical law enforcement activities.

[1] Letter from Jonathan J. Wroblewski, Director, Office of Policy and Legislation, Criminal Division, U.S. Department of Justice, to Patti B. Saris, Chair, United States Sentencing Commission (July 11, 2013).

[2] Pew Charitable Trusts, *Time Served: The High Cost, Low Return of Longer Prison Terms*, 36 (June 2012).

Importantly, past reforms to the guidelines provide insight into the beneficial outcomes that will result from the proposed amendment. The amendment the Commission adopted in 2007 to reduced crack cocaine sentencing guidelines by two levels created no statistical difference in recidivism between prisoners who served the pre-2007 crack sentences and those who were sentenced, post-2007, under the revised guidelines. Also, since the guidelines at issue here are advisory, judges across the country have already used their discretion to depart downwards from the current guidelines. Adoption of proposed Amendment 3 would institutionalize a reform that is already occurring piecemeal in courtrooms around the nation.

Many of us who sign this letter have expressed support for the sensible reforms that are coming out of Congress, including the Smarter Sentencing Act (S. 1410/H.R. 3382) and the Justice Safety Valve Act (S. 619/H.R. 1695). We, therefore, support the Commission prioritizing its work with Congress to "reduce the severity and scope of mandatory minimum penalties and consider expanding the 'safety valve' statute." We strongly support, however, the Commission acting within its full authority to do all it can to ameliorate policies that promote excessive sentences, lead to increased costs, and undermine public safety. For these reasons we strongly support adoption of a reduction of all drug sentencing guidelines by two levels.

Thank you for your consideration and for demonstrating leadership on this issue by proposing Amendment 3.

Signatories as of March 18, 2014:

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