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July 10, 2014

Chair Patti Saris
U.S. Sentencing Commission
One Columbus Circle NE, Suite 2-500
Washington, DC 20002-8002

Attn: Public Affairs-Retroactivity Public Comment

Dear Chair Saris:

I write to echo the sentiments of my colleagues, Reps. John Conyers and Bobby Scott, to amend U.S.S.G. § 1B1.10 to make Amendment 3, the "drugs minus two" amendment submitted by the U.S. Sentencing Commission to Congress on April 30, 2014, retroactive.

The "drugs minus two" amendment should be made retroactive without restriction or limitation, as a matter of equity and fundamental fairness. Retroactive application of this amendment will save billions of dollars, ease overcrowding in federal prisons, and lessen the disproportionate impact that drug sentences have had on tens of thousands of people and communities of color.

I have long been a vocal critic of prison overcrowding and unfair sentencing practices, and was a cosponsor of the Fair Sentencing Act of 2010 which reduced the 100-to-1 sentencing disparity between crack and powder cocaine. Prior to President Obama signing this bill into law, those arrested for crack offenses—mostly young, African American men—were subject to far harsher penalties than those arrested for powder cocaine offenses, who are more likely to be Caucasian. According to a 2013 ACLU report, more than 83% of those arrested in 2010 for marijuana possession in my district were African American—and African Americans were more than four times more likely to be arrested there for marijuana offenses than Caucasians.

I am pleased that this fix will go into effect on November 1, 2014 and apply automatically to everyone sentenced after that date, but the truly critical and significant benefit is in giving this amendment retroactive effect. We can no longer continue hoping that imprisoning the most number of people for the longest amount of time will keep our streets safe or help rehabilitate non-violent offenders. We already know that this doesn't work, and we know that our current policies unfairly harm African American and minority communities. Applied retroactively, this amendment would make those 51,000 currently incarcerated federal drug offenders---70% of which are African American or Hispanic---eligible for sentence reductions averaging 23 months.

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The Commission's own analysis estimates that making the "drugs minus two" fix retroactive will save 83,525 prison bed years over the period of more than 30 years. Assuming an average sentence reduction of 23 months for those eligible and then applying the current annual cost of federal incarceration of approximately $29,000, making the "drugs minus two" fix retroactive equates to $2.42 billion in savings.

For these reasons, I agree with my colleagues that the Commission should make Amendment 3 fully retroactive, without limitation or restriction as a matter of equity and fundamental fairness. I thank you for your leadership and commitment to repairing the flaws in our sentencing guidelines and appreciate your continued record of ensuring equal justice under the law.

Sincerely,

Steve Cohen

Steve Cohen
Ranking Member, Subcommittee
on the Constitution and Civil Justice

cc: The Honorable Bob Goodlatte, Chairman, House Committee on the Judiciary