

April 10, 2008

Honorable Ricardo H. Hinojosa  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, D.C. 20002-8002

RE: Proposed Solution to Crack Equivalency Table

Dear Judge Hinojosa:

We write on behalf of Families Against Mandatory Minimums (FAMM) regarding the staff proposal for correcting the problem with Note 10(D) to USSG § 2D1.1. Pending review of final language, especially that regarding upward departures, we support the conclusion of the Federal Public Defender letter dated April 9, 2008 and the staff proposal.<sup>1</sup>

The proposal resolves anomalies created by the conversion of cocaine base to its marijuana equivalency which, in certain cases, eliminates the reduction the Commission intended these offenders to receive. The Commission predicts that the staff proposed amendment to the crack guideline will affect an average of 850 crack cocaine poly-drug offenders annually.<sup>2</sup>

The Commission has the authority under 28 U.S.C. § 994(u) to make the technical fix retroactive. We urge you to apply the technical fix retroactively so that all currently incarcerated poly-drug prisoners who would be entitled to the benefit were they sentenced after the effective date may move the court for a reduced sentence. It is particularly important that the change be made retroactive because, given that the anomaly only operates for poly-drug crack defendants at certain guideline levels, all other poly-drug crack prisoners at the unaffected levels are currently entitled to seek reduced sentences pursuant to Amendment 706 as amended by Amendment 711. The only difference between the two groups, for retroactivity purposes, is not substantive but a result of the Drug Equivalency Table that was not anticipated or intended. Not extending the benefit to prisoners currently denied retroactivity based on an anomaly the Commission did not intend and now will correct would result in unwarranted disparity.

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<sup>1</sup> Jon Sands, Federal Public Defender, Re: Proposed Solution to Crack Equivalency Table, April 9, 2008.

<sup>2</sup> Overview of the U.S. Sentencing Commission's Proposed Technical Amendment to USSG § 2D1.1 for Crack Cocaine Offenses ("Overview"), 2.

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An estimated 842 individuals would be eligible for a reduced sentence if the fix were made retroactive.<sup>3</sup> The estimated release date of the potential cases would be spread out over many years.<sup>4</sup>

We commend the Commission for strongly supporting reform in crack cocaine sentencing and for its willingness to correct problems with the Amendment as they become apparent. Thank you for the opportunity to provide our thoughts. We are happy to provide additional information as the Commission sees fit.

Sincerely,

Julie Stewart  
President

Mary Price  
Vice President and General Counsel

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<sup>3</sup> Overview at 3

<sup>4</sup> Overview at 3