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Suggestions to Non-Emergency Amendments

Supervised Release for Deportable Aliens

We believe it would be very beneficial to add information in the guidelines to instruct the Courts to not impose a term of supervised release in cases of defendants who are deportable aliens. This would eliminate the time and resources used by the probation office to open the case and follow up with immigration to make sure the illegal alien had been deported. Although the defendant was on inactive supervision, it was still required to complete case reviews every six months, which was a waste of time since the defendant was most likely in another state. In the event the defendant returned to the United States, he was typically arrested and charged with a new Illegal Reentry offense in that district. More often than not, the supervised release was not revoked in our district because of the time and resources. There is no need to supervise these cases when our resources can be better utilized.

This issue has been tracked in our district over numerous years. We discovered only 1 case out of about 300 involved a deported alien who returned to this country and had their supervised release revoked. In all other cases where the alien returned, the term of supervised release was terminated in favor of the new criminal charge. So this supports our position of not imposing a term of supervised release in these cases.

We agree with the proposed amendment.

Fair Sentencing Act Emergency Amendment

Although it may not be fair for those who were sentenced prior to the amendment; the Courts in SD, as well as Courts in other districts, were already giving several defendants this benefit, if not more of a benefit by way of variances. There are not that many cases in SD that would be impacted by this amendment; however, it would greatly impact other districts. It may be confusing when it comes time to determine who is eligible and who is not because of the Courts applying variances regarding the disparities. For the majority of sentences where variances were used, there will not be much of an adjustment; however, there may be a few where there will be a significant adjustment. While there is going to be a cost to re-sentence these individuals, there will be significant cost savings by reducing their terms of imprisonment. Ultimately, any further adjustment will still be guided by the amendment.

We agree with this proposed amendment.

Proposed Amendment to USSG §2L1.2

Regarding 2L1.2, we have to look at the fact that prior bad acts (prior convictions) are driven by statute - 8 U.S.C. § 1326(b). 1326 makes no distinction between prior misdemeanors or felonies that were committed within 10 or 15 years and those that were committed much later. So, the question is whether there should be more weight given to those prior convictions that are "new"

compared to those offenses that are "old." By dropping the total points assigned to the "old" offenses that did not receive any Criminal History points, this amendment allows the Court to weigh those prior bad acts in a fair manner. Since the Courts **have to** factor in all prior criminal convictions, as stated in the statute, this is the fairest way to also consider that some convictions are old. The Career Offender guidelines are driven by 28 U.S.C. § 994(h) which is a directive from Congress for the USSC to "assure that certain "career" offenders receive" a higher sentence of imprisonment. Outside of a conviction for 18 U.S.C. § 924(c) or 929(a), career offender guidelines are not driven by criminal offense statutes.

We agree with the proposed amendments as it provides clarifying weight to criminal history consistent with other guidelines.