



August 15, 2005

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

Re: 2006 Priorities

Dear Judge Hinojosa:

I write on behalf of the board and members of Families Against Mandatory Minimums to ask that you consider adding two projects to the Commission's proposed priorities for the 2006 amendment cycle: an updated report on mandatory minimum sentencing and guidance for judges considering early release for extraordinary and compelling circumstances under 18 U.S.C. § 3582(c)(1)(A).

The Commission's report on mandatory minimums will be fifteen years old in 2006. It remains simply the best and most comprehensive treatment of the subject. Despite the report's age, we and others routinely rely on its analyses and conclusions to help us understand the effect of mandatory minimums on federal sentencing law and policy. While the report's 15-year anniversary strongly suggests an update is in order, so does the current state of sentencing.

Since the report's release, many new mandatory sentences have been adopted as has the Safety Valve. Their interaction and the simple accumulation of mandatory sentences are important new developments that warrant study. Even more compelling in our opinion is the renewed allure of mandatory sentencing to some on Capitol Hill.

Since the release of the *Booker* opinion, some members of Congress have used mandatory sentencing as a proxy for a "*Booker* fix." For example, every crime bill introduced by Republican members of the House Judiciary Committee includes new or stiffened mandatory minimums. Rep. Randy Forbes (R-VA) introduced H.R. 1279, the Gang Deterrence and Community Protection Act of 2005, which contains numerous new and enhanced mandatory minimums, while Rep. Sensenbrenner's H.R. 1528, Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005, is riddled with them as well. On the Senate side, S. 155, the Gang Prevention and Effective Deterrence Act of 2005, introduced by Sen. Dianne Feinstein (D-CA), includes

a provision that will add simple conspiracy to conduct covered by 18 U.S.C. § 924 (c).¹ raise the minimum sentence to seven years for possession of a gun in furtherance of a drug or violent offense, and penalize every "instance" a gun is possessed or used with a minimum consecutive penalty. It is widely understood that these mandatory penalties are considered by many as necessary in light of the relaxed requirements on judges following *Booker*. Even the Patriot Act was amended on the floor of the House to include a new mandatory minimum penalty of twenty years for "narco-terrorism."

At the same time, new voices are being raised in Congress questioning mandatory minimum sentencing. Rep. Bob Inglis (R-SC) spoke forcefully on the floor of the House during the debate on H.R. 1279 to explain that he would vote against the bill in part because it contains mandatory minimums. Recently, Howard Coble (R-NC), chair of the Subcommittee on Crime, Terrorism and Homeland Security, spoke of his discomfort with mandatory minimums during a Judiciary Committee markup.

These important developments call out for a fresh look by the Commission at the issue of mandatory sentencing. We urge you to do so as we have no doubt that a new Commission report will add considerably to the debate on their use at a critical time.

We also ask once again that you begin the work on a policy statement for judges considering early release for extraordinary and compelling circumstances under 18 U.S.C. § 3582(c)(1)(A). We have written to you repeatedly in the past about the need for help from the Commission on this subject. Putting aside that Congress directed the Commission in the Sentencing Reform Act to do this, it is needed, now, more than ever. The prison population is growing and aging. We believe that your contribution could have a significant impact on how the federal Bureau of Prisons (BOP) treats petitions for compassionate release.

Your failure to speak on this matter of simple compassion is baffling and particularly disturbing because we believe it sends a message that the practice is unimportant. In our experience, so-called compassionate release requests are routinely handled very slowly by the BOP, even in cases where BOP doctors have determined that death is imminent. Your contribution can raise the profile of the issue. Policy guidance would have the collateral benefit of giving background guidance to the BOP which operates in something of a policy vacuum without it.

Finally, we applaud your commitment to continue work on cocaine sentencing policy. The 2002 hearings and report were outstanding and we rely on them in our work

¹ Thus, in light of the common practice of charging conspiracy in addition to the underlying offense, it is possible for a person to be convicted of conspiracy to possess a weapon and possession of a weapon in furtherance of a qualifying crime and receive sentences for the two convictions totaling 32 years (seven years (raised from five) for the conspiracy, which would be the first section 924 (c) conviction and 25 years mandatory consecutive sentence for the possession, because it would be the second conviction under the statute, even though the conduct itself is not separated in time or by a conviction and sentence.

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all the time. You have kept a bright light shining into a dark corner with your determination to address this issue.

Thank you for considering our views. As always, we stand ready to assist you.

Sincerely,


Julie Stewart
President


Mary Price
General Counsel