



Practitioners' Advisory Group

A Standing Advisory Group of the United States Sentencing Commission

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:

On June 14 of this year we wrote on behalf of the Practitioners' Advisory Group to suggest priorities that PAG believes the Commission should address in the next amendment cycle. One of the issues we urged upon the Commission was the development of policy guidance for courts considering sentence reduction motions under § 3582(c)(1)(A)(i). This issue has been on the Commission's list of priorities for the past two years, though to our knowledge the Commission has not yet taken action to address it. We were concerned to see that this issue did not appear on the Commission's proposed list of priorities for 2006, and are writing to ask the Commission to reconsider its apparent decision to omit this admittedly sensitive and difficult issue from the priorities list.

The Commission was directed by Congress to promulgate general policy for sentence reduction motions under § 3582(c)(1)(A)(i), as part of its policy-making responsibility under the 1984 Act, if in its judgment this would "further the purposes set forth in § 3553(a)(2)." See 28 U.S.C. §§ 994(a)(2)(C), 994(t). Section 3582(c)(1)(A)(i) specifically provides that in considering whether "extraordinary and compelling" reasons warrant sentence modification in a particular case, the court is required to "consider[] the factors set forth in § 3553(a), to the extent that they are applicable." This seems to establish Congress' intention that a court should apply the same criteria in considering sentence reduction motions under § 3582(c)(1)(A) ("to the extent that they are applicable") as it applies to determine the sentence in the first instance. Thus, for example, if a sentencing court could have taken into account a defendant's serious health problems and exigent family circumstances in determining the sentence in the first instance, it could also properly consider them as a basis for sentence reduction if they were to develop or become aggravated unexpectedly mid-way through a prison term. As a corollary, it would seem reasonable to suggest that Congress intended to provide a

means of bringing these circumstances to the court's attention. This interpretation of the government's responsibility under § 3582(c)(1)(A)(i) would underscore the importance of having the Commission play a role in developing uniform policy for implementing this statute.

PAG hopes that the Commission has not permanently changed its view as to whether it would further the purposes of § 3553(a)(2) to develop a policy statement to implement § 3582(c)(1)(A)(i). As we pointed out in our June 14 letter, the Bureau of Prisons, which is charged with the gate-keeping function of bringing motions under § 3582(c)(1)(A)(i), has interpreted its responsibilities under this statute very narrowly, authorizing sentence reduction motions only in cases where a prisoner is near death. We believe that Congress intended this statute to be used more broadly, for reasons described in our earlier letter. More important for present purposes, we believe that the Commission is in an excellent position to give guidance, both to courts and to BOP, to ensure that the statute can be implemented in a broad range of situations, as intended by Congress, by providing criteria, content, and examples on which the BOP and the courts may rely in exercising its discretion. We recognize that the Commission has been exceptionally busy over the past year, and that to a certain extent it must be judicious in setting priorities. But PAG believes that this issue is an important one which deserves the Commission's attention, and therefore we urge the Commission to continue to work on this equitable and important "safety valve" statute.

Sincerely,



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