Congress of the United States
House of Representatives
Washington, DC 20515

March 21, 2014

The Honorable Patti B. Saris
Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Washington, D.C. 20002-8002

Dear Chief Judge Saris,

As Members of the House and Senate Judiciary Committees, we write to express significant concerns with the Commission's proposed amendments to the Drug Quantity Table. Specifically, we are concerned with the Commission's proposal to amend the table to reduce the base offense level for all drug trafficking and distribution offenses by two levels, including those drug trafficking offenses that involve such substantial quantities as to trigger statutory minimum penalties.[1] Though perhaps unintended, the effect of this proposal would be to reduce sentences for some of the most egregious drug traffickers and distributors.

In addition, we note that efforts are underway in both the House of Representatives, via the House Judiciary Committee's Over-Criminalization Task Force, and the Senate to examine penalties for federal crimes and whether and to what extent they should be modified. These proceedings show Congressional interest in examining federal criminal penalties, and we believe significant amendments to federal sentencing such as those described herein are premature.

We understand that the Commission's objective is to lower sentences for so-called "low-level, non-violent" drug offenders who have nevertheless triggered a mandatory minimum sentence by trafficking in a large quantity of drugs. However, this amendment would reduce the base offense level and corresponding guideline range for <u>all</u> drug defendants. The result of the Sentencing Commission's proposal will be to reward drug traffickers and distributors who possessed a firearm, committed a crime of violence, or had prior convictions. This result would directly contradict the Department of Justice's expressed desire "to ensure tough penalties for violent criminals, career criminals, or those who used weapons when committing drug crimes."[2]

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[1] 21 U.S.C. §§ 841(b)(1) and 960(b).

[2] *See* U.S. Department of Justice, Office of Public Affairs, "Attorney General Holder Urges Changes in Federal Sentencing Guidelines to Reserve Harshest Penalties for Most Serious Drug Traffickers," March 13, 2014, *available at* http://www.justice.gov/opa/pr/2014/March/14-ag-263.html.

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We are perplexed that the Commission is choosing to fulfill its mandate to "minimize the likelihood that the federal prison population will exceed the capacity of the federal prisons,"[3] by reducing sentences for violent drug traffickers. Additionally, the Commission's own justification – that the Guidelines must account for the "safety valve"[4] in calculating the appropriate sentence – counsels against such a move.

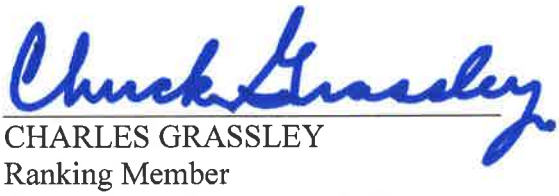
The "safety valve," enacted by Congress subsequent to the Sentencing Guidelines, already provides traffickers who have trafficked in such "substantial quantit[ies] of a controlled substance" as to trigger a mandatory penalty (e.g., 100 grams or more of heroin, 500 grams or more of cocaine or 100 kilograms or more of marijuana) with a mechanism by which they must be sentenced below the statutory minimum, provided that the trafficker meets certain mitigating criteria.[5] Additionally, the Commission's data show that in Fiscal Year 2012, nearly 15 percent of drug defendants received the "safety valve" via §5C1.2, despite not being subject to a mandatory minimum in the first place.[6] Therefore, the proposed amendment is unnecessary since Federal judges clearly have no difficulty acknowledging defendants who are deserving of a sentencing reduction.

This nation is currently in the midst of a heroin epidemic. We believe this amendment, which will reduce drug sentences across the board, will provide the greatest benefit to some of the most serious and dangerous offenders in the federal system. Such an initiative strikes us as profoundly irresponsible.

We therefore urge you <u>not</u> to pursue this amendment. Thank you for your attention to this important matter.

Sincerely,

BOB GOODLATTE
Chairman
House Committee on the Judiciary



CHARLES GRASSLEY
Ranking Member
Senate Committee on the Judiciary

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[3] 28 U.S.C. § 994(g).
[4] 18 U.S.C. § 3553(f).
[5] *Id.*
[6] *See* U.S. Sentencing Commission, 2012 Datafile, USSCFY12, Table 44, *available at* http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2012/Table44.pdf.

cc: The Honorable John Conyers, Jr.
The Honorable Patrick J. Leahy
The Honorable Eric H. Holder, Jr.
The Honorable Ricardo H. Hinojosa
The Honorable Ketanji Brown Jackson
The Honorable Charles R. Breyer
The Honorable Dabney Friedrich
The Honorable Rachel Barkow
The Honorable William H. Pryor, Jr.
The Honorable Isaac Fulwood, Jr.
Mr. Jonathan J. Wroblewski, Esq.