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June 7, 2011

Honorable Patti B. Saris  
Chair  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, DC 2002-8002

Re: Supplement to Public Comment on Retroactivity

Dear Judge Saris:

After we sent our public comment yesterday, the following further information about Percy Dillon's case was brought to our attention. His case is described at pp. 12-13 of the comments sent yesterday as one illustration of why excluding offenders with weapon enhancements would be unnecessary and unfair.

As noted, Mr. Dillon was convicted of using a firearm during and in relation to a drug trafficking crime. He received a mandatory consecutive 60-month sentence under 18 U.S.C. § 924(c) for this conviction. He was, however, never accused of using, carrying or possessing the gun and was neither present nor implicated in the incident described in the presentence report involving the gun.<sup>1</sup> Jerron Lollis supplied the gun, Eric Williams stored the gun, and Malik Wade instructed Williams to bring the gun to Michelle Donahue's house, where Wade used the gun to threaten Donahue. Mr. Dillon was not present during or otherwise involved in this incident or even in the city when the gun was used. He was convicted of the § 924(c) solely under a *Pinkerton* theory, as the government acknowledged. See *United States v. Dillon*, Case No. 93-84 (W.D. Pa.), Docket # 143, Government's Response to Motion to Review Sentence at 6-7.

Thank you for considering this additional information.

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<sup>1</sup> Per Mr. Dillon's lawyer, Lisa Freeland, that incident is described in paragraphs 14-17 of the presentence report.

Very truly yours,  
/s/ Marjorie Meyers  
Marjorie Meyers  
Federal Public Defender  
Chair, Federal Defender Sentencing  
Guidelines Committee

cc (w/encl.): William B. Carr, Jr., Vice Chair  
Ketanji Brown Jackson, Vice Chair  
Hon. Ricardo H. Hinojosa, Commissioner  
Dabney Friedrich, Commissioner  
Hon. Beryl A. Howell, Commissioner  
Isaac Fulwood, Jr., Commissioner *Ex Officio*  
Jonathan J. Wroblewski, Commissioner *Ex Officio*  
Judith M. Sheon, Staff Director  
Kenneth Cohen, General Counsel