

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,	:	CRIM. ACTION
	:	
VS.	:	NO. _____
	:	
[DEFENDANT]	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2009, upon consideration of Petitioner's Motion for continuance of sentencing, it is hereby **ORDERED** that the Motion is **GRANTED**, and Petitioner's sentencing is continued to

_____.

BY THE COURT:

United States District Court Judge

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UNITED STATES OF AMERICA,	:	CRIM. ACTION
	:	
VS.	:	NO. _____
	:	
[DEFENDANT]	:	
Defendant.	:	

**[UNOPPOSED?] MOTION FOR CONTINUANCE OF SENTENCING
IN VIEW OF PENDING LEGISLATION TO REDUCE
MANDATORY PENALTIES FOR CRACK COCAINE**

[Defendant], by and through his/her attorney, [Attorney], moves that the sentencing in this matter, currently scheduled for _____ [date], be continued to _____ [date], in view of the pending legislation to reduce the mandatory penalties for crack cocaine. In support thereof, counsel represents as follows:

1. [Defendant] pleaded guilty on [date] to [mandatory crack and other offenses].

Sentencing is currently scheduled for [date].

2. Under 21 U.S.C. § 841(b)(1)(A) [or (B)], a mandatory minimum sentence of [five, ten, etc] years is applicable to the crack cocaine offense because the quantity of crack cocaine was [5 grams, 50 grams] or greater. The exact amount of crack cocaine was [amount]. The Guidelines range applicable to this amount is currently [range].¹ If defendant instead were being sentenced for the equivalent amount of cocaine powder, the range would be [range].²

3. Legislation is currently pending before Congress that would delete all references

¹ [Brief footnote explaining Guidelines calculations]

² [Guidelines calculations for lower range]

to the crack form of cocaine in the criminal code. This legislation would effectively eliminate the 100-to-1 ratio of crack to powder cocaine on which the current mandatory minimum penalties are based, and would instead treat crack cocaine as being equivalent to powder cocaine. This legislation, H.R. 3245, was approved on July 29, 2009 by the House Judiciary Committee, and will be considered by the full House in the fall. *See* Appendix “A” (Memorandum from Administrative Office of the United States Courts, July 30, 2009); Appendix “B” (H.R.3245: “Fairness in Cocaine Sentencing Act of 2009”). The Congressional Quarterly reports that similar legislation is expected to be introduced in the Senate and is expected to receive bipartisan support from Senate Judiciary Committee members.³

4. There is now widespread agreement in the Judiciary, the Department of Justice, and the United States Sentencing Commission, that the disparity in penalties for crack and powder cocaine offenses is unwarranted, profoundly unfair, and has a severe disparate impact on African Americans. Speaking on behalf of the Judicial Conference of the United States, Judge Reggie B. Walton (D.D.C) noted that the Criminal Law Committee of the Conference had “concluded that this disparity between sentences was unsupportable, and undermined public confidence in the criminal justice system.”⁴ Relying on the conclusions of the U.S. Sentencing Commission, Judge Walton observed that the premises underlying the disparity between crack

³ *See* Sentencing Project News, “House Judiciary Committee Passes Crack Cocaine Sentencing Reform” July 29, 2009. (Available at: http://www.sentencingproject.org/detail/news.cfm?news_id=761)

⁴ Statement of Judge Reggie B. Walton, United States District Court for the District of Columbia, before the Subcommittee on Crime and Drugs, Committee on the Judiciary, United States Senate, on “Restoring Fairness to Federal Sentencing: Addressing the Crack-Powder Disparity,” [hereinafter “Statement of Judge Walton”] at 1, April 29, 2009. (Available at: http://jnet.ao.dcn/Legislation/Cocaine_Sentencing/Judge_Reggie_B_Walton_testimony.html).

and powder cocaine penalties have proven to be false, and the disparity actually frustrates the goals of the Sentencing Reform Act.⁵ Judge Walton in addition noted that some citizens today believe that federal statutes and the federal courts that enforce them have “racial underpinnings” because of the disparate impact of the crack penalties on African Americans.⁶ Although African Americans comprise only 27 percent of federal cocaine powder offenders, they comprise 81.8 percent of the federal crack cocaine offenders.⁷ Since the penalties for crack cocaine are so much more severe than for cocaine powder, this disparity has contributed significantly to the over-incarceration of African Americans and to the perception that our justice system is “influenced by racial considerations.”⁸

5. Assistant Attorney General Lanny A. Breuer, testifying on behalf of the Department of Justice, echoed these concerns in his testimony before the Senate Judiciary Committee. He noted “that the current cocaine sentencing disparity is difficult to justify based on the facts and science, including evidence that crack is not an inherently more addictive substance than powder cocaine,” and that [t]he impact of these [crack cocaine] laws has fueled

⁵ *Id.* at 6 (citing U.S. Sentencing Comm’n, 2007 Report to the Congress: Cocaine and Federal Sentencing Policy (May 2007) [hereinafter U.S. Sentencing Comm’n, 2007 Report] at 8 ([T]he Commission maintains its consistently held position that the 100-to-1 drug quantity ratio significantly undermines the various congressional objectives set forth in the Sentencing Reform Act.”)

⁶ *Id.* at 7.

⁷ *Id.* (citing U.S. Sentencing Comm’n, 2007 Report at 15).

⁸ *Id.* at 8.

the belief across the country that federal cocaine laws are unjust.”⁹ The Administration has thus concluded that “Congress’s goal should be to completely eliminate the sentencing disparity between crack cocaine and powder cocaine.”¹⁰

6. Likewise, the U.S. Sentencing Commission, which is the institutional expert in the field of federal sentencing, has issued four reports over the last 14 years, all consistently concluding that the 100-to-1 crack/powder ratio is unwarranted, that the penalties for crack cocaine overstate the seriousness of the offense, and that the penalties have a severe disparate impact on minorities.¹¹

7. The pending legislation, the “Fairness in Cocaine Sentencing Act of 2009,” is silent regarding its effective date and the issue of retroactivity. As a result, it is unclear at this time whether the legislation, if passed, will apply to all sentences for crack cocaine offenses, or only to sentences that take place after a certain date.

8. It is in the interests of fundamental fairness to continue the instant sentencing until a date late in the fall to allow time for passage of the pending cocaine sentencing legislation. As

⁹ Statement of Lanny A. Breuer, Assistant Attorney General, Criminal Division, United States Department of Justice, Before the United States Senate, Committee on the Judiciary, Subcommittee on Crime and Drugs, “Restoring Fairness to Federal Sentencing: Addressing the Crack-Powder Disparity,” at 9 (April 29, 2009) (Available at: <http://judiciary.senate.gov/pdf/09-04-29BreuerTestimony.pdf>).

¹⁰ *Id.* at 10.

¹¹ U.S. Sentencing Comm’n, 2007 Report at 8; *see also* United States Sentencing Commission [hereinafter USSC], 2002 Report to Congress: Cocaine and Federal Sentencing Policy (May 2002); USSC, 1997 Special Report to Congress: Cocaine and Federal Sentencing Policy (April 1997); USSC, 1995 Special Report to Congress: Cocaine and Federal Sentencing Policy (February 1995). These reports are available on the Sentencing Commission web site: www.ussc.gov

noted above, the overwhelming consensus in the Judiciary, the Department of Justice and the Sentencing Commission is that the current crack/powder disparity is unwarranted , unfair, and contrary to the goals of the Sentencing Reform Act, 18 U.S.C. § 3553(a). Thus, any sentence imposed under the current mandatory sentencing scheme for crack cocaine will reflect this fundamental unfairness and be inconsistent with the mandate of § 3553(a). Since a continuance of the sentencing could allow for the passage of the pending legislation and the imposition of a fair sentence in compliance with § 3553(a), this continuance is plainly in the interests of justice.

9. This continuance request is also in the interests of judicial economy. It is possible that the cocaine sentencing legislation will be made fully retroactive, like the recent amendments to the crack cocaine guidelines. *See* USSG Amendments 706 (effective Nov. 1, 2007) & 713 (effective March 3, 2008). If so, it would be a waste of judicial resources to conduct the sentencing now, only to have to conduct a resentencing after the cocaine sentencing legislation has passed.

10. The government will suffer no prejudice by virtue of this continuance. And since the defendant is currently in prison, the continuance will not delay punishment.

11. The Assigned Assistant United States Attorney, _____ [name], does not object to this request for a continuance.

WHEREFORE, for the foregoing reasons, it is respectfully requested that the instant motion for continuance of sentencing be granted.

Respectfully submitted,
