UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA :

- v - : NOTICE OF MOTION

ELVIS SANTANA, et al., :

09 Cr. 1022 (KMK)

Defendants. :

- - - - - - - - - - - - - - - - - - -X

PLEASE TAKE NOTICE that on a date and time to be established by the Court, based on the annexed declaration of Alexander E. Eisemann, executed October 8, 2010, the accompanying memorandum of law dated October 8, 2010, and all the memoranda on this issue previously filed by his codefendants, defendant William Anderson will move this Court, at the United States Court House, 300 Quarropas Street, White Plains, New York 10601, for an order declaring that the provisions of the Fair Sentencing Act of 2010 are applicable to him and granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 8, 2010

Respectfully submitted,

ALEXANDER E. EISEMANN
Counsel for Defendant
William Anderson
20 Vesey Street, Suite 400
New York, New York 10007
(212) 420-8300

TO: HON. PREET BHARARA
United States Attorney
Southern District of New York
300 Quarropas Street
White Plains, New York 10601
Attn: Nicholas L. McQuaid, Esq.
Douglas B. Bloom, Esq.
Assistant U. S. Attorneys

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	DECLARATION OF ALEXANDER E. EISEMANN IN SUPPORT OF MOTION
- v -	:	REGARDING THE FAIR SENTENCING ACT OF 2010
ELVIS SANTANA, et al.,	:	
Defendants.	:	09 Cr. 1022 (KMK)

ALEXANDER E. EISEMANN hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the attorney for defendant William Anderson in this matter. I submit this declaration in support of his motion for an order declaring that the Fair Sentencing Act of 2010 is applicable to the charge against him. I am fully familiar with the matters set forth herein based on discussions with my client, the government, the indictment and my review of documents provided during the discovery process.

2. Mr. Anderson has been charged with a conspiracy to violate 21 U.S.C. § 841(b)(1)(A). Assuming that he were convicted of this offense, I believe that the highest drug weight for which the Court could find him accountable at sentencing, under applicable laws and controlling decisions, would be 112 grams of a mix of crack and powder cocaine. Upon information and belief, the government will contend that at least 50 grams of that mix consists of crack cocaine. All of the conduct for which Mr. Anderson has been indicted occurred prior to the date the President signed the Act into law.

3. Prior to the passage of the Act, a reasonably-foreseeable weight of between 50 and 112 grams of crack would trigger a ten-year mandatory-minimum sentence. Under the Act, it would trigger only a five-year mandatory-minimum sentence.

4. Without conceding in this motion that Mr. Anderson is, in fact, guilty of the charged offense, I can represent on his behalf that if the Court were to find that the Act applied to the charged offense, he would compromise by waiving his right to a trial and would enter a guilty plea to Count One of the indictment. This is because his sentence would not be subject to a ten-year mandatory-minimum sentence.

5. He is not currently willing to enter such a guilty plea without an order declaring the Act applicable to his charged offense because he faces such a ten-year mandatory-minimum sentence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: New York, New York
October 8, 2010

ALEXANDER E. EISEMANN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA :

- v. - :

09 Cr. 1022 (KMK)

ELVIS SANTANA, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - - -X

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT WILLIAM ANDERSON'S MOTION
REGARDING THE FAIR SENTENCING ACT OF 2010

ALEXANDER E. EISEMANN
Counsel for Defendant
William Anderson
20 Vesey Street, Suite 400
New York, New York 10007
(212) 420-8300

Of counsel
James M. Schmitz

TABLE OF CONTENTS

CONGRESS INTENDED THE FAIR SENTENCING ACT TO HAVE RETROSPECTIVE EFFECT 1

General Retroactivity of Criminal Legislation 2

Congress Acknowledged that the 100:1 Ratio Inflicted Grievous, Racially Disparate Harm 4

Congress Enacted the 100:1 Disparity Owing To Misinformation, Causing a Generation to Suffer for No Reason 6

Congress Noted That the 100:1 Ratio Actively Thwarted Law Enforcement Goals and Undermined Respect for the Law . 7

To Deny Retroactive Application of the Fair Sentencing Act Would Frustrate Congress's Intent to Remedy a Gross Injustice 10

CONCLUSION 15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA :

- v. - :

09 Cr. 1022 (KMK)

ELVIS SANTANA, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - - -X

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT WILLIAM ANDERSON'S MOTION
REGARDING THE FAIR SENTENCING ACT OF 2010

Defendant William Anderson respectfully submits the following memorandum of law in support of his motion for an order declaring that the Fair Sentencing Act of 2010 ("the Fair Sentencing Act" or "the Act") is applicable to him. Mr. Anderson concurs with the arguments set forth in submissions filed by his codefendants and will not repeat them here. Instead, this memorandum is primarily intended to supplement those other submissions with additional authority.

CONGRESS INTENDED THE FAIR
SENTENCING ACT TO HAVE RETROSPECTIVE EFFECT

As noted in other submissions, Congress did not include a specific provision in the Fair Sentencing Act addressing retrospective application. Nevertheless, as the memoranda filed by other defendants have demonstrated, during debates, Senators and Representatives made plain that the Act was designed with a remedial purpose and it would be utterly inconsistent with that

purpose to apply it only to those individuals who committed offenses after its effective date.[1]

General Retroactivity of Criminal Legislation

As noted in previously-filed memoranda, statutes that alter criminal penalties may or may not apply retroactively to defendants who are facing charges but have not yet pleaded guilty or been sentenced. Certain legislation, such as the Comprehensive Drug Abuse Prevention and Control Act of 1970,

---

[1] This memorandum does not confront whether the Fair Sentencing Act should be applied "retroactively"--to defendants who have already been sentenced under the 100:1 ratio. Instead, it is limited to examining whether it should be applied "retrospectively"--a term we use to cover defendants who committed their offenses prior to the Act's effective date, but who have not yet been sentenced.

There are, of course, a dizzying array of procedurally-distinct subsets of those two categories of defendants who committed offenses prior to the Act's effective date, some or all of whom may also be entitled to retroactive or retrospective relief: (1) sentenced defendants whose convictions have been final for more than one year, (2) sentenced defendants whose convictions have been final for less than one year, (3) sentenced defendants whose convictions are not yet final, (4) not-yet-sentenced defendants who were convicted before the Act's effective date, (5) not-yet-sentenced defendants who were convicted after the Act's effective date, (6) pretrial defendants who were indicted prior to the Act's effective date and (7) pretrial defendants who were indicted after the Act's effective date. There are also going to be a growing number of pretrial defendants whose offenses "straddled" the Act's effective date.

The congressional debates generally discussed "retroactive" relief without getting into these types of distinctions. As a matter of elementary logic and basic fairness, however, if Congress intended for the law to apply retroactively, to those already sentenced, it would seemingly have to apply retrospectively as well. Nevertheless, Mr. Anderson falls in category (6), so to decide his motion, the Court does not need to decide whether defendants in the lower-numbered categories would also be entitled to retroactive or retrospective relief.

contain explicit savings provisions, which preserve prosecutions under old laws that new legislation repeals or replaces. See, e.g., 21 U.S.C. § 171 (codifying savings provision of the Comprehensive Drug Abuse and Prevention and Control Act of 1970). Since the Act contains no such explicit savings provision, other rules of statutory construction must determine the retroactivity issue.

The general savings statute, 1 U.S.C. § 109, commonly used to interpret whether the repeal of criminal penalties has a retroactive effect, provides in pertinent part:

> The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

Id.

As the other defendants have noted, section 109 does not apply to the Fair Sentencing Act, as the Act does not "repeal," but simply recalibrates, the mandatory minimum sentences for those convicted of crack-distribution offenses. See Memorandum of Law on behalf of Fred Cannon, September 22, 2010, at 3-8. Yet even if section 109 applied, other rules of statutory construction would still require the Act to have retrospective, if not retroactive, effect.

In Hamm v. City of Rock Hill, 379 U.S. 306, 313-14, 85 S. Ct. 384, 390 (1965), the Supreme Court announced a general principle "of imputing to Congress an intention to avoid

inflicting punishment at a time when it can no longer further any legislative purpose, and would be unnecessarily vindictive." As shown below, the Congressional record makes it very clear that Congress found the 100:1 ratio served no purpose and was exceedingly cruel. In United States v. Rutherford, 442 U.S. 544, 552, 99 S. Ct. 2470, 2475 (1979), the Supreme Court noted that it would read exceptions only into a "clearly delineated" statute to avoid "consequences obviously at variance with the policy of the enactment as a whole."

Congress Acknowledged that the 100:1 Ratio Inflicted Grievous, Racially Disparate Harm

The Fair Sentencing Act is hardly "clearly delineated" on this point because it is completely silent. Yet to deny its retrospective application would do violence to Congress's unmistakable intent to correct twenty-four years of disastrous and inhumane drug policy.

The 100:1 disparity has sorely afflicted African-American communities. Taking all cocaine offenders (including crack offenders) as a whole, African-American drug defendants such as Mr. Anderson have a 20% greater chance of being sentenced to prison than white defendants, and on average crack sentences are three years longer than offenses involving powder. Restoring Fairness to Federal Sentencing: Addressing the Crack-Powder Disparity: Hearing Before the Subcomm. on Crime and Drugs of the S. Comm. on the Judiciary, 111th Cong. at 85, 87 (statement of Nicole Austin-Hillery, Dir., Brennan Center for Justice)

[hereinafter Restoring Fairness to Federal Sentencing Hearing].[2] As a result of the mandatory minimum sentences for crack offenses, African-Americans serve almost as much time in prison for drug offenses as white defendants do for violent offenses. Id.

> The passage of the 100:1 sentencing ratio resulted in the incarceration of thousands of people because of this heavy sentencing disparity and a belief in the African-American community that it was fundamentally unfair. . . . African Americans make up about 30 percent of crack users in America, but they make up more than 80 percent of those who have been convicted of Federal crack offenses.

156 Cong. Rec. S1680-81 (daily ed., Mar. 17, 2010) (statement of Sen. Durbin).

Congress appears to have recognized that the 100:1 crack-sentencing regime had a seriously disparate effect on a suspect racial class, implicating the constitutional guarantee of equal protection. Senator Pat Leahy of Vermont denounced the 100:1 ratio in equal protection terms: "The racial imbalance that has resulted from the cocaine sentencing disparity disparages the Constitution's promise of equal treatment for all Americans." Id. at 1682. In enacting the new law, the Senate was mindful that the crack-powder disparity was "one of the most notorious symbols of racial discrimination in the modern criminal justice system." Restoring Fairness to Federal Sentencing Hearing at 166 (statement John Payton, President, NAACP Legal Defense & Educational Fund).

---

[2] Available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_senate_hearings&docid=f:57626.pdf

As noted above, in evaluating the unanticipated effects of the 100:1 sentencing ratio, Congress made no distinction between those already sentenced, those now facing charges under the old regime, and those yet to be charged. The United States Constitution affords protection to victims of racial discrimination equally. As the unassailable comments during hearings about unfairness establish, Congress certainly regarded those sentenced under the 1986 law to have been victims of a serious legislative injustice.

Congress Enacted the 100:1 Disparity Owing
To Misinformation, Causing a Generation to Suffer for No Reason

The disparate and shockingly unequal application of the 100:1 ratio is all the more unnerving because the lawmakers' concerns were, in hindsight, entirely unfounded, as they themselves now recognize. Congress's assumptions about crack in the mid-1980's has since been completely refuted by later research, as was reflected in statements made in support of the Act. For example, as one Member noted during the House debate:

> Although Congress in the mid-1980s was understandably concerned that the low-cost and potency of crack cocaine would fuel an epidemic of use by minors, the epidemic of crack cocaine use by young people never materialized to the extent feared. In fact, in 2005, the rate of powder cocaine use among young adults was almost 7 times as high as the rate of crack cocaine use. Furthermore, sentencing data suggest that young people do not play a major role in crack cocaine trafficking at the Federal level.

156 Cong. Rec. H6196, 6199 (daily ed. Jul. 28, 2010) (statement of Rep. Lee). Senator Durbin was even more forceful when sponsored the Senate legislation in 2009:

> We now know the assumptions that led us to create this disparity were wrong. . . . We were told [crack] is different; it is more addictive. It is not. We were also told it was going to create conduct which was much more violent than those who were selling powder cocaine and their activities. It did not.

155 Cong. Rec. S10488, 1491 (daily ed. Oct. 15, 2009) (statement of Sen. Durbin).

Regardless of the intentions of lawmakers in 1986, Congress today recognizes that the 100:1 sentencing ratio was a hugely disproportionate response bordering on hysteria and intended the Act to rectify its earlier action. "We are not blaming anybody for what happened in 1986, but we have had years of experience and have determined that there is no justification for the 100-to-1 ratio. . . [W]e are fixing what we have learned through years of experience." 156 Cong. Rec. H6196, 6202 (daily ed. Jul. 28, 2010) (statement of Rep. Scott) (emphasis added).

Whatever the legitimate state purpose in controlling the spread of a dangerous drug, Congress has now acknowledged that punishing crack offenders at levels one hundred times more serious than powder cocaine offenders was not based on fact and bears no rational relationship to the actual circumstances in the fight against drugs.

Congress Noted That the 100:1 Ratio Actively Thwarted Law Enforcement Goals and Undermined Respect for the Law

Written in response to sensationalized news stories about crack in the mid-1980's, the 100:1 disparity has not simply amplified racial inequality; it has also undermined law enforcement, suggesting that the longstanding disparity was not

rationally related to any legitimate government purpose. Congress heard the ratio denounced as "counterproductive and unjust" by the Judicial Conference of the United States, the National District Attorney's Association, the National Association of Police Organizations, the Federal Law Enforcement Officers Association, the International Union of Police Associations, and dozens of former Federal judges and prosecutors. 156 Cong Rec. H6196, 6203 (daily ed. Jul. 28, 2010) (statement of Rep. Hoyer reflecting consensus of law enforcement organizations).

Congress recognized that several of these law enforcement organizations opposed the 100:1 sentencing ratio because it consumes so many resources prosecuting minor offenders.

> The primary goal underlying the crack sentence structure was to punish the major traffickers and drug kingpins who were bringing crack into our neighborhoods. . . . [J]ust the opposite has happened. The Sentencing Commission has reported for many years that more than half of Federal crack cocaine offenders are low-level street dealers and users, not the major traffickers Congress intended to target.

156 Cong. Rec. S1680, 1683 (daily ed. Mar. 17, 2010) (statement of Sen. Leahy). "Data collected by the U.S. Sentencing Commission show that Federal resources have been targeted at offenders who are subject to the mandatory minimum sentences, which sweep in low-level crack cocaine users and dealers." 156 Cong. Rec. H6196, 6199 (daily ed. July 28, 2010) (statement of Rep. Lee). In other words, the 100:1 ratio <u>frustrated</u> Congress's

original goal of deterring crime, by draining law enforcement resources away from attacking high level dealers.

Congress further recognized that the 100:1 crack-powder ratio did not simply hinder effective law enforcement, but actually increased crime levels.

> [I]t is important that this 1-to-18 [ratio] be put in place in response to the 1980s when we thought this devastating act of using drugs was the underpinnings of crime, but what we have seen and what the U.S. Sentencing Commission has seen is that we're creating crime by throwing these individuals in jail instead of rehabilitation and by keeping this oppressive sentencing structure.

156 Cong. Rec. H6196, 6198 (daily ed. Jul. 28, 2010) (statement of Rep. Lee).

Even worse, the 100:1 ratio corroded citizens' faith in the judicial process. The Honorable Reggie Walton, United States District Judge for the District of Columbia, testified to the Senate Subcommittee on Crime and Drugs that he observed this cynicism in his jury pool, as many refused to serve in drug cases by citing the injustice of the crack-powder disparity. Restoring Fairness to Federal Sentencing Hearing at 8. Even when the jurors did serve, they frequently disagreed so passionately with the existing law's racially disparate cruelty that they refused to convict even in the face of overwhelming evidence. Id. As Judge Walton explained, "it is very unfortunate in America that we have a sizable portion of our population who feel that the system is unfair and feel that race underlies what is being done in reference to how we prosecute and how we sentence certain offenders." Id. The 100:1 ratio was so broken that jurors

disregarded plain evidence in violation of their civil obligations, because they did not trust the federal courts to deliver justice under the law.

In short, the 100:1 ratio worked a shameful injustice on defendants and proved itself an unmitigated disaster for law enforcement and the federal courts and this continues to be true for those with pending cases and even those who have not yet been charged. In promulgating the Fair Sentencing Act, Congress appears to regard the last twenty-four years of sentencing with revulsion and profound regret, and it is reasonable to conclude that it, therefore, intended to afford relief to those afflicted by its mistake.

To Deny Retroactive Application of the Fair Sentencing Act Would Frustrate Congress's Intent to Remedy a Gross Injustice

In reviewing the legacy of the 100:1 ratio, lawmakers made clear that the Fair Sentencing Act was intended to correct a massive and long-standing injustice and to stop it in its tracks before any other individuals are subject to its inhumane impact. Senator Durbin, addressing the Senate, called for urgent action: "We have talked about the need to address the crack-powder disparity for too long. Every day that passes without taking action to solve this problem is another day that people are being sentenced under a law that virtually everyone agrees is unjust." 156 Cong. Rec. S1680, 1681 (daily ed. Mar. 17, 2010).

As can be seen in remarks during the floor debates, Congress found the 100:1 disparity a grave and unconscionable threat to equal protection. It would strain the imagination to

hold that in so finding, Congress intended to ensure equal protection and fundamental fairness only to future defendants while denying any relief to those, like Mr. Anderson, still facing charges based on the unjust sentencing regime.

Representative Keith Ellison of Minnesota, a former public defender, offered personal reflections on the fundamental injustice of the 100:1 ratio:

> I think what disgusted me the most is the human potential that would just be thrown away, as I would have to tell a young person who was caught with crack that if they'd had cocaine they would have a chance at probation, they would be able to really take advantages of treatment and perhaps reconstruct their lives. But because they had crack, their lives were going to be basically over at a pretty young age, thrown away in a cell to have really no real opportunity, be in prison for 10, 5 years for what another person would get probation for. And this made it incredibly difficult to argue that our system of law was fair.

156 Cong. Rec. H6196, 6202 (daily ed. July 28, 2010). This argument is not simply prospective, but retrospective as well, since those currently facing charges under the 100:1 ratio are also potential victims of Congress's misguided lawmaking almost twenty-five years ago. This year, Congress was moved to take action in response to a generation of African-American defendants' unjust suffering; Congress cannot have intended for that suffering to remain ongoing, like some living monument to heedless actions in 1986.

Testimony before the Senate Subcommittee on Crime and Drugs on April 29, 2009, lends further evidence that Congress intended the Fair Sentencing Act to have retroactive (and thus presumably retrospective) application. During hearings, several

senators appeared to endorse the view that the Fair Sentencing Act should apply retroactively. Senator Feinstein noted her position is that "any change has to have retroactive consideration," and Senator Durbin agreed. Restoring Fairness to Federal Sentencing Hearing at 19. Asa Hutchinson, a former federal prosecutor and Member of the House, testified, "whatever changes you make, I do believe have to be applied retroactively" because, "[a]s Judge Reggie Walton, who previously testified, has said, 'I do not see how it is fair that someone sentenced on October 30th gets a certain sentence when someone sentenced on November 1 gets another sentence.'" Id. at 27.[3]

The subcommittee members and witnesses seemed to agree that, in broad terms, applying the new law to those who had already been sentenced was a highly desirable goal; presumably, the far more modest goal of applying the new regime to those defendants who, like Mr. Anderson, were charged under the 100:1 ratio but have not yet been convicted or sentenced would have enjoyed even greater support.

While some members of the Subcommittee wondered that applying the new law retroactively (and, by implication, retrospectively) might overwhelm the federal court system with litigation, id. at 12 (statement of Sen. Durbin), the Honorable

---

[3] Mr. Hutchinson was quoting Judge Walton's testimony before the United States Sentencing Commission in 2007 with regard to applying the 2007 crack guidelines adjustments retroactively. See United States Sentencing Commission, Public Hearing on Retroactivity at 16 (2007) (available at http://www.ussc.gov/hearings/11_13_07/Transcript111307.pdf).

Ricardo H. Hinjosa, Acting Chair of the United States Sentencing Commission, assured the senators that the courts had proven able to deal with the retroactive 2007 Sentencing Guidelines adjustment to crack offenses without any great difficulty, though he admitted he did not know exactly how many would be eligible to have their sentences reviewed if the new law were retroactive. Id. at 12-13, 17. Judge Walton responded,

> Has [the 2007 crack guidelines amendment] placed a burden on the courts? Yes, it has. But I do not think we can let that burden impair us from doing what fundamentally has to be done to make our process fair. So if it means my probation department and as individual judges we have to work a little harder in order to address the problem, we are prepared to roll up our sleeves and do it.

Id. at 12.[4]

When introducing the legislation in October 2009, Senator Durbin recalled testimony before the subcommittee and his passionate speech about the human costs of the 100:1 disparity. It lends further support to the notion that the Act must be applied retroactively and, therefore, retrospectively:

---

[4] There were some concerns raised during the Senate hearing about how retroactive application might affect the sentences of defendants whose high crack sentences had led prosecutors to drop other charges, such as otherwise applicable weapons offenses. See Restoring Fairness to Federal Sentencing Hearing at 20 (remarks of Senator Klobuchar). Applying the new law retroactively might lead to inappropriately low sentences for some of those defendants. See id. That type of concern would not apply to defendants like Mr. Anderson, however, who have not yet been sentenced because courts would be free to fashion non-guideline sentences with such factors in mind. Moreover, proposed changes in the crack guidelines would appear to address those types of concerns as well. See Proposed Emergency Amendment to the Sentencing Guidelines, September 2, 2010, at 5-7.

> At the hearing I held in the Judiciary Committee, we heard testimony from Cedric Parker, who is from Alton in my home State of Illinois. In 2000, Mr. Parker's sister, Eugenia Jennings, was sentenced to 22 years in prison for selling 14 grams of crack cocaine. Mr. Parker told us that Eugenia was physically and sexually abused from a young age. She was addicted to crack by the time she was 15.
>
> Eugenia has three children, Radley, Radeisha, and Cardez. They are now 11, 14, and 15. These children were 2, 5, and 6 when their mother went to prison for selling the equivalent of 6 sugar cubes of crack. They have seen their mother once in the last 9 years. They will be 21, 24, and 25 when she is released in 2019.
>
> At Eugenia's sentencing, Judge Patrick Murphy said this: Mrs. Jennings, nobody has ever been there for you when you needed it. When you were a child and you were being abused, the Government wasn't there. But when you had a little bit of crack, the government was there. And it is an awful thing, an awful thing to separate a mother from her children. That's what the Government has done for Eugenia Jennings. It is time to right this wrong. We have talked about the need to address the crack-powder disparity for long enough. Now, it's time to act.

155 Cong. Rec. S10488, 10491-92 (daily ed. Oct. 15, 2009) (emphasis added); see also Restoring Fairness to Federal Sentencing Hearing at 28-31 (statement of Cedric Parker). It is difficult to imagine that after citing the human wreckage left in the passage of the 100:1 disparity, Senator Durbin, the bill's co-sponsor and its most vocal champion, intended to offer Ms. Jennings no relief.

CONCLUSION

For the above reasons and those set forth in the memoranda submitted by other moving defendants, Mr. Anderson respectfully submits Congress intended the Act to apply retrospectively and he respectfully requests that the Court declare that it applies to his offense.

Dated: New York, New York
October 8, 2010

ALEXANDER E. EISEMANN
Counsel for Defendant
William Anderson
20 Vesey Street, Suite 400
New York, New York 10007
(212) 420-8300

Of counsel
James M. Schmitz