



August 14, 2020

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Chairman Graham and Ranking Member Feinstein:

On August 12, President Donald Trump announced his intention to nominate several individuals to serve on the U.S. Sentencing Commission. Now more than ever, nominees to that important agency deserve to be vetted thoroughly by your committee and the Senate. Given the dwindling number of days left in this session of Congress, we think it will be impossible to give any nominees the careful consideration these critical positions warrant. For that reason, we urge you to refrain from filling the vacancies on the commission until next year.

FAMM is a nonprofit, nonpartisan organization that seeks to create a fair and effective justice system that keeps our communities safe. For the past three decades, we have worked closely with the U.S. Sentencing Commission. As you know, the U.S. Sentencing Commission has a number of important responsibilities, none more so than promulgating the Sentencing Guidelines, which federal courts consult when determining the appropriate form and severity of punishment for offenders convicted of federal crimes. Roughly 70,000 defendants every year are sentenced pursuant to the guidelines, established and regularly modified by the U.S. Sentencing Commission. The commission is also tasked with collecting, analyzing, researching, and distributing a broad array of data on crime and sentencing issues. This data informs both the commission's work in developing the Sentencing Guidelines, as well as the advice and assistance the commission provides Congress and the executive branch as they develop anti-crime policy.

It is vital, therefore, that individuals appointed to serve on the commission approach their responsibilities with an open mind and a willingness to consider fully all of the data and evidence available. Until March 2018, FAMM had never taken a position on a nominee to the commission. We were compelled to change that policy when President Trump nominated William Otis to be a commissioner. We noted then that, among other problems, Mr. Otis had routinely belittled the Sentencing Commission's concerns about racial disparity in the criminal justice system. For example, Mr. Otis opposed reducing crack cocaine penalties in order to narrow the infamous 100:1 disparity between powder and crack cocaine sentences and called the unanimously passed Fair Sentencing Act of 2010 the "Crack Dealers Relief Act." We were pleased to see that President Trump did not renominate Mr. Otis this year, but that experience is a stark reminder that vigilance is required if we hope to maintain an evidence-driven, forward-looking Sentencing Commission.

The Senate's role in shaping the composition of the U.S. Sentencing Commission has never been more important. The commission will play a vital role in the continued implementation of the First Step Act. The Senate must carefully consider whether nominees will faithfully implement the new reforms passed by Congress or whether they will seek to curtail them. In addition, the commission must address a federal prison system that has been overwhelmed by the spread of COVID-19. The deaths to date of 112 federal prisoners and at least one staff member compel serious reflection about various aspects of the federal prison system, including sentence lengths and early release mechanisms, over which the commission has some authority.

Finally, the committee must ensure that nominees to the Sentencing Commission are dedicated to addressing racial discrimination in our justice system. The commission promulgates guidelines that are used to set prison terms for approximately 70,000 individuals of all races and backgrounds every year. The legitimacy of those guidelines rests, in part, on the reasonable belief that the commissioners' decisions are driven by data and evidence, not bias and ideology. We believe that one important step the Senate can take to promote confidence in the commission's work is to make sure that its members have diverse backgrounds, as well as varied life and work experiences.

Only seven individuals serve on the commission. Each one is important. Given the stakes, especially at this moment, the Senate must thoroughly examine each nominee before that person is awarded a six-year term. Because there is not enough time left in this session to undertake this careful consideration, we strongly urge you to delay filling the commission's vacant seats until January.

Sincerely,



Kevin A. Ring
President
FAMM

cc Senate Majority Leader Mitch McConnell
Senate Minority Leader Chuck Schumer
Members of the U.S. Senate Judiciary Committee