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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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April 19, 2016

Chief Judge Patti B. Saris
Chair
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Chief Judge Saris:

As you are no doubt aware, criminals are constantly preying upon the American public through fraudulent scams designed to deprive law abiding individuals of their money, property, and even identities. These fraudsters often target senior citizens in particular due to their amassed savings, strong credit, home ownership, use of land line telephones, and their general willingness to help others. These “senior” frauds include, but are not limited to, Internal Revenue Service (“IRS”) impersonation scams, sweepstakes or lottery winning frauds, robo-call and telemarketing scams, identity theft, and so-called “grandparent scams.” Given their malicious and pervasive nature, these scams, and those who perpetuate them, can be difficult to detect, let alone apprehend and prosecute.

When individuals who commit these crimes are actually caught and federally prosecuted, it is imperative that the United States Sentencing Guidelines (“Guidelines”) adequately reflect *all* aspects of their nefarious conduct. Under the current Guidelines, however, a defendant convicted of a fraud offense who is subject to an enhancement pursuant to Guidelines’ §§2B1.1(b)(2)(B) & (C) for causing substantial financial hardship to more than twenty-five victims is “shielded” from also receiving an enhancement for defrauding a large number of vulnerable victims.

Vulnerable victims, pursuant to §3A1.1, include those victims who are “vulnerable due to age, physical or mental condition, or who [are] otherwise particularly susceptible to the criminal conduct.” Where criminal defendants target multiple seniors, at least some of whom qualify as “vulnerable,” the convicted criminals’ adjusted offense levels should account for the exploitation of both multiple individuals *and* multiple vulnerable individuals. It is important that criminals convicted of these offenses involving vulnerable victims face just punishment, and it is equally important that such potential sentencing enhancements serve as a strong deterrent against future criminal behavior.

Under the current Guidelines' rubric, a defendant who defrauded more than twenty-five victims, which included vulnerable victims, would not receive an additional enhancement for defrauding "a large number of vulnerable victims." This failure to assign additional offense levels where a large number of vulnerable victims were defrauded results in Guidelines' calculations that are lower than justice demands. These lower Guidelines' calculations result in inequitable sentences, diminished deterrence, and create unnecessary prosecutorial burdens at sentencing. We should be doing all we can to protect vulnerable victims like seniors; we should not be protecting the fraudsters from greater exposure at sentencing.

Given the multitude of frauds being leveled at the American people generally, and seniors specifically, I respectfully request that you provide me with answers to the following questions no later than May 10, 2016:

1. Please explain why a convicted felon should not be held accountable, to the fullest extent possible under the Guidelines, for simultaneously causing substantial financial hardship to multiple victims and for targeting a large number of vulnerable victims.
2. Please provide data on the application of the Guidelines in prosecutions where a defendant was shielded from receiving the §3A1.1.(b)(2) enhancement for defrauding a large number of vulnerable victims.
 - a. How many times did the sentencing judge impose a sentence within the Guidelines' range?
 - b. How many times did the sentencing judge depart upward and impose a sentence above the Guidelines range?
 - c. How many times did the sentencing judge depart downward and impose a sentence below the Guidelines range?

Defendants who prey upon multiple, vulnerable victims must be held accountable for the *entirety* of their conduct.

I appreciate your prompt attention to this matter. If you have any questions, please contact Fred Ansell of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
U.S. Senate Committee on the Judiciary