

FEDERAL PUBLIC DEFENDER

WESTERN DISTRICT OF TEXAS

FEDERAL BUILDING • HEMISFAIR PARK
727 E. DURANGO BOULEVARD, SUITE B-207
SAN ANTONIO, TEXAS 78206-1278

HENRY J. BEMPORAD
FEDERAL PUBLIC DEFENDER

MAUREEN T. FRANCO
DEPUTY DEFENDER

ELIZABETH ROGERS
WILLIAM R. MAYNARD
WILLIAM D. FRY
WILLIAM H. IBBOTSON
MANUEL PACHECO
DARREN LIGON
SUPERVISORY ASSISTANTS

TELEPHONE
(210) 472-6700
FACSIMILE
(210) 472-4454

ALPINE
AUSTIN
DEL RIO
EL PASO
SAN ANTONIO

January 22, 2010

Honorable William K. Sessions III
Chief Judge
United States District Court
Post Office Box 928
Burlington, VT 05402-0928

Dear Chief Judge Sessions:

Thank you and the Sentencing Commission for inviting me to testify at the regional hearing in Phoenix, Arizona. I greatly enjoyed the experience, and I very much appreciate the Commission's consideration of the sentencing issues that we face in the Western District of Texas.

I would like to take this opportunity to comment briefly on an interesting question about the Western District of Texas that was posed by Commissioner Wroblewski to Professor Alison Siegler. The Commissioner asked why the Western District apparently had so few downward variances in illegal-reentry cases, a fact that did not jibe with the professor's experience in Chicago, where variances are common. Contrary to the Commissioner's suggestion, I do not believe the difference is due to geographical disparity in the treatment of these cases. Instead, I think the explanation is that the great majority of illegal-reentry cases in my district are low-guideline cases.

Commission statistics show that, for FY 2008, the median immigration sentence in the Western District of Texas was 10 months, 28 percent below the national median. *Statistical Information Packet, Fiscal Year 2008, District of Western Texas*, tbl. 7, at 10. Almost 75 percent of the immigration defendants in the district receive sentences of two years or less. *2008 Sourcebook of Sentencing Statistics* at 255 (Texas, Western data). This reflects a recent change in

Chief Judge William K. Sessions, II
January 22, 2010
Page 2

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prosecution trends. As I noted in my written testimony (see page 16), over the past few years our local U.S. Attorney's office has prosecuted many more illegal-reentry defendants with little or no criminal history. In such cases, variances are not as common, because the guideline range is already so low. I believe this largely accounts for any perceived disparity in variance practice.

Thank you again for your consideration of my remarks. It was a pleasure seeing you again.

Very truly yours,

A handwritten signature in black ink, appearing to read "Henry J. Bemporad". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

HENRY J. BEMPORAD
Federal Public Defender

HJB/wrb

cc: Professor Alison Siegler,
University of Chicago School of Law