



U.S. Department of Justice

Federal Bureau of Prisons

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Urgent

MEMORANDUM FOR ALL CHIEF EXECUTIVE OFFICERS

FROM:

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SUBJECT: U.S. v. Booker and U.S. v. Fanfan Talking Points

Bureau of Prisons staff continue to get questions from inmates with respect to the United States v. Booker and United States v. Fanfan cases currently under consolidated review by the U.S. Supreme Court. These cases will decide whether the Court's previous decision in Blakely v. Washington applies to the U.S. Sentencing Guidelines. To address these questions, the Office of General Counsel has provided the following information, which is being communicated to inmates in every Bureau institution. Given that the Supreme Court will likely be issuing a decision soon, we wanted to take this opportunity to review where things stand. Please share this with inmates.

Points:

- You are probably aware that the U.S. Supreme Court heard oral arguments in the Booker and Fanfan cases on October 4, 2004.
- It is not possible to predict how the Court will rule or whether the ruling will result in changes to the prison sentences of inmates already in Bureau custody (i.e., retroactivity). Only individual sentencing courts can assess the impact of Blakely, Booker, and Fanfan on individual inmates' prison sentences.
- But, it is essential that you understand nothing will happen automatically with respect to your case as a result of the Supreme Court's decision. Rather, you would have to petition the Court where you were sentenced, asking for a review of your sentence in light of the Supreme Court's decision.

- The Bureau cannot effect any change to your sentence unless an amended criminal judgment, or other order, is issued by the appropriate Court.
- To summarize:
 - It is possible the court will uphold the Guidelines, in which case nothing will change for you.
 - Even if the Court issues a decision that invalidates the Guidelines, there will be no immediate or automatic benefit to any specific inmate's case.
 - You will have to petition your sentencing Court asking for a review of your sentence in light of the Supreme Court's decision.
- The Bureau continues to closely monitor this situation and will make every effort to communicate timely and accurate information to staff and inmates. We encourage you to stay informed.
- There is likely to be media coverage of the ruling. Do not rely on media reports for an immediate, accurate, or complete analysis of what is likely to be a very complicated decision, since this may be misleading in your particular case.
- On our end, the Bureau is making plans to facilitate your access to the opinion (e.g., by extending law library hours) so you can take appropriate action on your individual case once the decision is handed down. We encourage you to go to the library and familiarize yourself with the decision and potential implications.
- Keep in mind the Bureau has no control over the decision or its implementation. Should there be a change to the Guidelines, the Bureau does not have the authority to interpret the opinion as it relates to your specific case. Again, it will be up to you to petition the Court that sentenced you.
- We expect you to show good judgment with respect to any course of action you choose to follow as this unfolds.

It is our hope this information is useful to you.