UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 3:96-cr-00051
	)	Judge Aleta A. Trauger
MATTHEW OTIS CHARLES	)	

NOTICE OF FILING

On December 29, 2017, the Court requested that the United States Attorney "personally review this case in the context of the *Holloway* case and file a supplement to its briefing that reflects whether the Government's position on resentencing has been modified." (DE# 633.) The supplemental response of the United States Attorney is attached.

Respectfully submitted,

DONALD Q. COCHRAN
United States Attorney for the
Middle District of Tennessee

/s/ Cecil VanDevender
CECIL VANDEVENDER
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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2018, a true and correct copy of the foregoing will be served electronically via the Court's CM/ECF system to Mariah A. Wooten and Michael C. Holley, counsel for defendant Matthew Otis Charles.

/s/ ***Cecil VanDevender***
Cecil VanDevender
Assistant U.S Attorney

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GOVERNMENT'S SUPPLEMENTAL RESPONSE REGARDING *UNITED STATES v. HOLLOWAY*

As requested by the Court in its Order of December 29, 2017 (DE# 633), I have personally reviewed this case in the context of *United States v. Holloway*, 68 F. Supp. 3d 310 (E.D.N.Y. 2014), and file this supplement to the Government's previous brief. For the reasons set out below I respectfully decline to modify the Government's position on resentencing.

In *Holloway*, Judge Gleeson requested that U.S. Attorney Loretta Lynch exercise her discretion to vacate two 18 U.S.C. § 924(c) convictions – convictions that, according to Judge Gleeson, resulted in a 42-year penalty for Holloway's exercise of his right to a trial by jury. *Holloway*, 68 F. Supp. 3d at 313. After initially declining to vacate the charges, Ms. Lynch ultimately agreed that the case was unique and agreed to dismissal of those two otherwise final convictions. This allowed Judge Gleeson to remedy what he believed to be an unjust sentence. The judge recognized, however, that "the authority exercised in this case will be used only as often as the Department of Justice itself chooses to exercise it, which will no doubt be sparingly," *id.* at 316, – presumably in cases that are likewise exceptionally unjust and unique.

I have looked closely at the facts and the law in this case, including reviewing the pleadings, both Sixth Circuit opinions in the case, and all materials provided by Mr. Charles' counsel, including letters and a video from his supporters. Based on this thorough review, I

simply do not find that the facts of Mr. Charles' case make it either unjust or unique in the way that Holloway's case arguably was.[1]

Mr. Charles' sentence is not unjust because he is a Career Offender. In sentencing him to 35 years Judge Higgins explained that "[t]his defendant has a particularly violent history" and "has demonstrated by his actions that he's a danger to society and should simply be off the streets." (DE#96, Sentencing Tr., PageID#: 283) Two panels of the Sixth Circuit unanimously upheld the sentence, with the most recent panel holding that there was no injustice in treating him as a Career Offender: "[c]onsider some of the descriptions of Charles' many prior offenses: kidnapping a woman on two consecutive days 'for the purpose of terrorizing her'; burglarizing a home; and fleeing from a police interrogation, shooting a man in the head, and attempting to run off in the victim's car." *United States v. Charles*, 843 F.3d 1142, 1145 (6th Cir. 2016). Indeed, Charles's 12 felony convictions more than qualified him as a Career Offender.[2]

Nor does Mr. Charles' case appear to be unique. In fact, since the Guidelines for sentencing based on drug quantity were amended in 2011 there have been at least 4,918 similar cases nationwide.[3] Indeed, the only thing that appears to distinguish Mr. Charles from others

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[1] As a district court decision from another jurisdiction *Holloway* has no controlling effect in this circuit. My review of the facts of this case has led me to conclude that even in the event that such relief is warranted in cases of extreme injustice, this is not such a case.

[2] Charles' criminal history includes the following adult felony convictions: two convictions for domestic assault; three convictions for residential burglary; one conviction for first-degree kidnapping; one conviction for second-degree kidnapping; one conviction for assault with a deadly weapon inflicting serious injury; two convictions for larceny; one conviction for attempted larceny; and one conviction for possessing a weapon of mass destruction. (DE# 91, PSR, ¶ 73-77.) In order to qualify as a Career Offender one needs only two prior felony convictions for either a crime of violence or a controlled substance offense. *See* U.S.S.G. §4B1.1.

[3] The Sentencing Commission's Retroactivity Data Reports for Amendment 782 (the drugs-minus-two amendment) and Amendment 750 (the crack-reduction amendment) show that there were more than 60,000 motions for sentence reductions between 2011 and 2017 on the basis of these

who were found to be Career Offenders years ago and who now show evidence of rehabilitation is that the vast majority of these individuals are still incarcerated while Mr. Charles was released from prison and, thus, had the opportunity to interact with society outside of prison. His release was, however, improper – a fact that the Sixth Circuit treated as clearly established. *See Charles*, 843 F.3d at 1145 (holding that the district court erred because "our court has already ruled . . . that the original sentencing court found Charles was a career offender" and "that ruling was binding on the district court in later phases of the case.") An improperly granted release is surely not a valid way to distinguish Mr. Charles from the many other similarly situated individuals who can argue that if given an opportunity to do so, they too could show the outside world that they have changed. Yet that appears to be the difference that makes his case unique.

I do not doubt the sincerity of those who speak on Mr. Charles' behalf. I also do not doubt, however, the judgment of the sentencing judge who found Mr. Charles to be a Career Offender with a particularly violent history who should be off the streets. In looking at all the facts of this case I simply do not see a set of facts so unique or a sentence so unjust that it warrants the

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two amendments. Of these, a total of 4,918 motions were denied nationwide on the grounds that "Career Offender or Armed Career Criminal provisions control sentence." *See* U.S. Sentencing Commission, FINAL CRACK RETROACTIVITY REPORT FAIR SENTENCING ACT, *available at:* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/fair-sentencing-act/Final_USSC_Crack_Retro_Data_Report_FSA.pdf; U.S. Sentencing Commission, 2014 DRUG GUIDELINES AMENDMENT RETROACTIVITY DATA REPORT, *available at:* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20171101-Drug-Retro-Analysis.pdf. That is, there have been thousands of other defendants who, like Charles, were legally ineligible for sentence reductions due to drug quantity because they qualified as Career Offenders or Armed Career Criminals.

kind of exceptional relief that the U.S. Attorney provided in *Holloway*. As a result, I respectfully decline to modify the Government's position on resentencing.

Respectfully submitted,

DONALD Q. COCHRAN
United States Attorney for the
Middle District of Tennessee

CERTIFICATE OF SERVICE

I hereby certify that on 1/31/18 a true and correct copy of the foregoing will be served electronically via the Court's CM/ECF system to Mariah A. Wooten and Michael C. Holley, counsel for defendant Matthew Otis Charles.

/s/ ***Donald Q. Cochran***
DONALD Q. COCHRAN
U.S Attorney