

Standalone PSR objection re mitigating role for courier clients

Sentencing Resource Counsel for the Federal Public and Community
Defenders
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This document is very specifically designed and intended for use only in cases involving courier clients where the draft/initial PSR does not ask for any mitigating-role reduction or only asks for a 2-level reduction, although the new special rule at § 2D1.1(e)(2)(B)(i) clearly states that couriers should get the 4-level reduction. Where the PSR already calls for a 4-level reduction, this objection would not be necessary. However, if the government objects to the PSR's call for a 4-level reduction, content in this model objection can be modified, as appropriate, for use in a reply. If you are in this latter situation, SRC would very much appreciate you getting in touch with us about the government's objection so that we can continue to update materials as needed to reflect the strongest arguments in favor of our position and against the government's position.

SRC has produced other materials regarding the new special rule. This new document was created after reports that some district judges are accepting the government's position that § 2D1.1(e)(2)(B)(i)'s reference to "courier" excludes international couriers who transported large quantities of controlled substances. In those cases, our textual argument—which is very strong—did not win the day. This standalone objection still leads with text. But it also provides significant context surrounding the Sentencing Commission's decision to grant couriers (even, or especially, large-quantity couriers) a 4-level reduction, so that judges can better understand the text that the Commission adopted and make the right call.

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Potentially for an introduction

The draft PSR correctly describes **Client** as having performed only the limited function of “drug courier.” The fact that **Client** was a courier triggers a 4-level mitigating-role reduction [if appropriate: “not—as the PSR claims—a 2-level reduction”]. Since November 1, 2025, there has been a new special instruction for applying U.S.S.G. § 3B1.2 in drug-trafficking cases that focuses on “function”—essentially, one’s job within the drug-trafficking market—and it calls for couriers to receive a 4-level reduction. U.S.S.G. § 2D1.1(e)(2) (created via Amendment 833). This changes the guideline calculation for defendants like **Client**, and the draft PSR errs in calculating the guideline range as if there has been no change.

For the section of the objection document focused on this issue

As of November 1, 2025, the mitigating-role adjustment operates differently—and more generously—as applied to individuals convicted of drug-trafficking offenses who served low-level trafficking functions. Specifically, the amended § 2D1.1 has a new “special instruction” at (e)(2), under which a § 3B1.2 role reduction can be triggered solely by a person’s primary *function* in the global drug-trafficking market, and it’s available not only to those “substantially less culpable than the average participant” in the same criminal enterprise. As the Sentencing Commission’s training staff put it recently on the Commission’s official podcast, while § 3B1.2’s traditional

role analysis focuses on “the person’s relationship with other people in the criminal activity,” § 2D1.1(e)(2)’s new function analysis “looks at what is the person *doing*, what type of acts does the person perform in the context of drug trafficking.”¹ For a client sentenced under § 2D1.1, the court first does the traditional § 3B1.2 analysis, then it does “a second analysis, and this is the function analysis. And the goal here is to determine which [analysis] provides a greater reduction.”²

The new special instruction provides that individuals whose primary drug-trafficking function was “plainly among the lowest level of drug trafficking functions” get a 4-level reduction. § 2D1.1(e)(2)(B)(i). And the first example of a function that is “plainly among the lowest level of drug trafficking functions” is a “courier.” *Id.* In this case, there is no doubt that **Client**’s primary function was that of a courier. **[CITE to the PSR]**. The draft PSR’s description of **Client** as a “courier” perfectly exemplifies ordinary usage of that term. *See Perrin v. United States*, 444 U.S. 37, 42 (1979) (“A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning”). **[If/assuming the PSR described the client in this way.]** And it is perfectly consistent with dictionaries, which define “courier” simply

¹ U.S. Sent’g Comm., *Sentencing Practice Talk Episode 36: 2025 Guideline Amendments Miniseries, Part 4 - Mitigating Role and Drug Offenses* 04:25–5:11 (Nov. 18, 2025), <https://www.ussc.gov/education/sentencing-practice-talk-episode-36-part-4>.

² *Id.* at 05:18–05:47.

by the action of traveling and transporting something—particularly (and clearly in this context) contraband.³

What’s more, the draft PSR author’s description of **Client** as a “courier” is consistent with how the Commission uses the term “courier.” In its most recent drug-trafficking report (regarding methamphetamine), the Commission defines “courier” as a person who “[t]ransports or carries drugs in or on their person or with the assistance of a vehicle or other equipment” and “does not own the drugs.”⁴ And the Commission’s older reports defined “courier” consistent with this.⁵ Here is a screenshot of the meth report’s definition, as placed within the hierarchy of drug-trafficking functions:

³ *Courier*, Merriam-Webster.com (2025) (defining courier as “a messenger: such as . . . a runner of contraband.”); *Drug Courier*, Black’s Law Dictionary (12th ed. 2024) (“Somebody who has been employed to transport illegal drugs”); *Courier*, Oxford English Dictionary (2025) (“A person employed to transport contraband goods, esp. drugs.”).

⁴ U.S. Sent’g Comm’n, *Methamphetamine Trafficking Offenses in the Federal Criminal Justice System* 37 (tbl. 5) (2024) (“2024 Meth Report”), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2024/202406_Methamphetamine.pdf.

⁵ The Commission used to distinguish between whether the person used a vehicle (“courier”) or the person’s body (“mule”), but that did not alter the relevant action or change where they fell within the hierarchy. *See, e.g.*, U.S. Sent’g Comm’n, *Fentanyl and Fentanyl Analogues: Federal Trends and Trafficking Patterns* 28 (fig. 17) (2021) (“2021 Fentanyl Report”), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210125_Fentanyl-Report.pdf; U.S. Sent’g Comm’n, *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System* 44 (2017) (“2017 Mandatory Minimum Report”), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171025_Drug-Mand-Min.pdf; U.S. Sent’g Comm’n, *2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* App’x at tbl. H-1 (2011), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Appendix_H.pdf.

High Level Supplier 13.9% (n=192) Supplies large quantities of drugs, usually to other drug distributors; is near the top of the distribution chain; and generally, does not deal in retail amounts; may employ no or very few subordinates; owns the drugs.
Organizer/Leader 0.4% (n=6) Organizes, leads, directs, or otherwise runs a drug distribution organization; has the largest share of the profits and the most decision-making authority; owns the drugs.
Wholesaler 36.6% (n=504) Buys and sells more than retail/user-level quantities in a single transaction; sells any amount to another dealer; owns the drugs.
Manager/Supervisor 0.7% (n=9) Serves as a "lieutenant" in a drug organization; manages or supervises a portion of the drug operation (manufacturing, importation, or distribution); takes instructions from a superior and conveys them to subordinates; supervises at least one other co-participant in an organization; does not own the drugs.
Street-Level Dealer 12.3% (n=170) Distributes retail/user quantities directly to the user; owns the drugs.
Broker/Go-Between 4.1% (n=56) Arranges for two parties to buy/sell drugs or directs potential buyers to a potential seller; does not own the drugs.
Courier 23.4% (n=323) Transports or carries drugs in or on their person or with the assistance of a vehicle or other equipment; does not own the drugs.
Renter/Storer 0.9% (n=13) Provides own residence (barns, storage bins, buildings), land, or equipment for use to further the offense in exchange for payment or compensation; does not own the drugs.
Employee 5.6% (n=77) Performs very limited, low-level function in the offense including running errands, answering the telephone, scouting, receiving packages, packaging the drugs, acting as a lookout, or acting as a deckhand or crew member on a vessel or aircraft transporting drugs; does not own the drugs.
Other Function 2.0% (n=28) Performed some other function, such as couriating money for a drug trafficking organization, working as a bodyguard, or financing a drug organization.

Importantly, the Commission used these terms (from the meth report) for a data briefing that accompanied its 2025 drug-trafficking proposals—that is, the proposals that resulted in Amendment 833.⁶

⁶ U.S. Sent’g Comm’n, *Proposed Amendments on Drug Offenses: Public Data Briefing 12–13* (2025), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/data-briefings/2025_Drug-Offenses.pdf.

In this case, it is unclear why the draft PSR does not apply the 4-level reduction but it may be related to an argument that the government has made in other cases, that § 2D1.1(e)(2)(B)(i)’s reference to “courier” must carry a definition that is far more limited than its ordinary meaning—and more limited than the Commission’s own articulation of its meaning. Specifically, the government has argued elsewhere that § 2D1.1(e)(2)’s reference to “courier” must not include individuals who transport *very large quantities* of drugs. See *United States v. Maciel*, 789 F. Supp. 3d 934, 936–40 (S.D. Cal. 2025) (rejecting this argument and holding that the Commission undoubtedly applied its institutional understanding of “courier” when adopting the 2025 amendment: “someone who transported drugs, even if that person transported drugs across international borders, [and] even if that person was transporting a large quantity of drugs”).⁷

The notion that the word “courier” can be read to exclude high-drug-quantity couriers makes no sense: Amendment 833 specially targeted individuals who served low-level functions but would receive high base

⁷ In the past, some courts have rejected mitigating-role reductions for couriers based upon quantity, frequency, the fact that couriers are critical to drug trafficking, etc. Those cases were about the traditional § 3B1.2 analysis; they have no application to § 2D1.1(e)(2)’s new function-focused analysis. And more to the point, those cases did not use the term “courier” in a manner that excluded largescale drug transporters; rather, they use “courier” to refer to any drug transporter—as has the Sentencing Commission. See, e.g., *United States v. Rodriguez De Varon*, 175 F.3d 930, 943 (11th Cir. 1999) (“Indeed, because the amount of drugs in a courier’s possession—whether very large or very small—may be the best indication of the magnitude of the courier’s participation in the criminal enterprise, we do not foreclose the possibility that amount of drugs may be dispositive—in and of itself—in the extreme case.”); *United States v. Buenrostro*, 868 F.2d 135, 137–38 (5th Cir. 1989) (explaining that the district court had found “that the defendant was a courier” but nevertheless that the mitigating-role reduction was inappropriate due to the very large quantity involved (18 kilograms of heroin)).

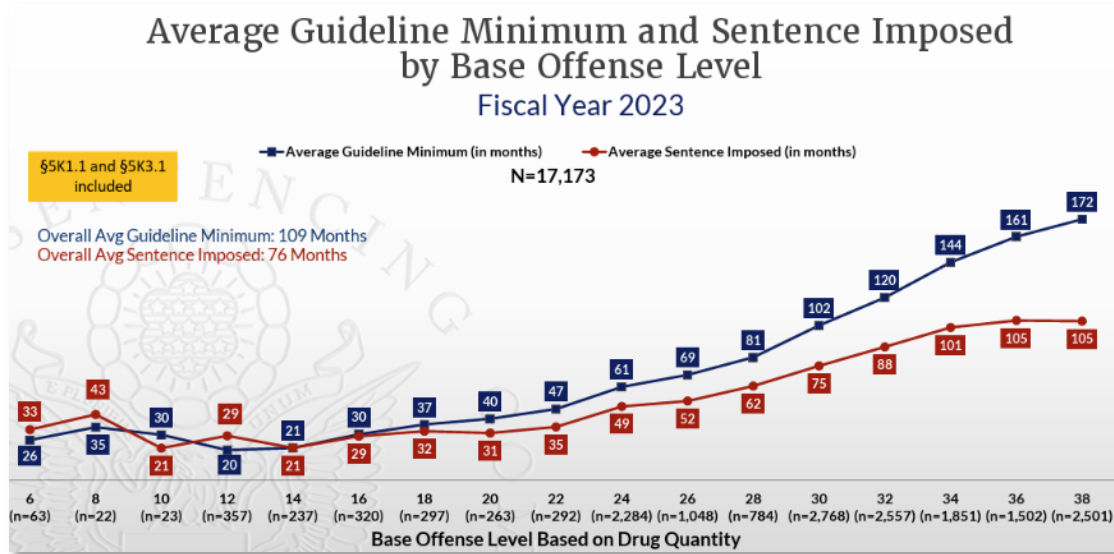
offense levels based on very large quantities of drugs.⁸ Or, as the Commission’s training staff put it on the Commission’s official podcast: “lots and lots of drug quantity.”⁹

As part of the amendment process, and as illustrated below, the Commission presented the public with data revealing that judges varied downward from § 2D1.1’s guideline ranges at a higher rate (and to a much greater extent) in cases where § 2D1.1(c)’s drug quantity table called for the highest base offense levels, indicating that in these cases, the guidelines recommend sentences that are too high to comply with the purposes of sentencing under § 3553(a).¹⁰

⁸ See U.S.S.G. App’x C (vol. IV) at 296 (explaining that Amendment 833 arose out of a process in which the Commission “analyzed a range of drug trafficking sentencing data, including data on sentences imposed at the highest base offense levels”). Under Part A of the amendment, a person who gets a mitigating-role reduction also gets their base offense level capped under § 2D1.1(a)(5)—but only if their offense involved the highest quantity of drugs possible (calling for a base offense level under § 2D1.1(c) between 32 and 38). See *id.* at 294, 296. And the text of § 2D1.1(a)(5) expressly notes that individuals who qualify for the mitigating-role adjustment under the special instruction at (e)(2) get the base-offense-level cap the same as a person who gets the adjustment under the ordinary § 3B1.2 rules. So, we know that the Commission contemplated the special instruction at least occasionally applying to individuals whose offenses involved not just *large* quantities of drugs but indeed the *largest* drug quantities.

⁹ Sentencing Practice Talk Episode 36, *supra* note 1, at 03:42–04:04 (explaining that “to account for people who have mitigating roles or have a lower-level function that have lots and lots of drug quantity, [the Commission] tried to reduce the base offense level for the least culpable individuals to hopefully bring sort of the guideline minimum closer to the sentences that judges around the country are actually imposing”).

¹⁰ *Id.*; see also *Public Data Briefing*, *supra* note 6, at 6–7.



The Commission sought to address that problem through Amendment 833. So, the notion that the Commission might have silently intended the special instruction at § 2D1.1(e)(2)(B)(i) to exclude couriers with the highest quantities of drugs not only contradicts guideline text, it also contradicts the Commission’s clear and stated intent.

Further, this background helps to illuminate why the Commission included “courier” (without limitation) in the category of functions that would generally trigger the maximum, 4-level reduction. Commission data show couriers are associated with the *largest* quantities of drugs—larger even than far more culpable individuals.¹¹ According to the recent meth report—again,

¹¹ 2024 Meth Report, *supra* note 5, at 39 (noting that couriers are often caught with double the quantity of methamphetamine as compared to high level suppliers); *see also id.* at 12 (“Couriers import kilo-sized quantities, often concealing the methamphetamine in tires or the doors of vehicles.”). Older Commission reports also recognized that couriers are associated with especially high drug quantities. *See, e.g.,* U.S. Sent’g Comm’n, *Report to the Congress: Cocaine and Federal Sentencing Policy* 46 (2002), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200205-rtc-cocaine-sentencing-policy/200205_Cocaine_Federal_Sentencing_Policy.pdf. (“Despite their relatively lower levels of culpability in the overall drug conspiracy, as defined

the one that the Commission expressly referred to when it was considering Amendment 833—individuals categorized as “couriers” transported an average of 21 kilograms of methamphetamine although the Commission considered them among the lowest level of drug-trafficking functions.¹²

by function, powder cocaine couriers/mules are generally accountable for fairly large quantities of drugs. This anomaly occurs because couriers/mules typically have significant quantities of drugs in their possession at the time of arrest.”); *cf.* U.S. Sent’g Comm., *2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* Chapter 8, 168 (2011), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_08.pdf, (noting that “the quantity of drugs involved in an offense is not closely related to the offender’s function in the offense”).

¹² 2024 Meth Report, *supra* note 5, at 39. This helps to explain why the Commission decided that “couriers” generally should get the 4-level reduction while street dealers who are not profit-motivated generally should get only a 2-level reduction. *Compare* § 2D1.1(e)(2)(B)(i) with § 2D1.1(e)(2)(B)(ii). Street dealers do not present the same mismatch: they typically own and control their product and they made a choice to sell a particular type and quantity of drugs, which affects their culpability. This contrasts with couriers, who transport drugs but do not sell them to users, and are typically given a car or boat or pack containing drugs that they do not own and have no control over, often without any knowledge of quantity or other information about the drug trafficking scheme. *See, e.g.*, 2017 Mandatory Minimum Report, *supra* note 5, at 7 (identifying couriers and mules as individuals who perform low-level functions in the drug trade and noting that they are less likely to receive relief for providing substantial assistance to authorities than individuals who perform higher-level functions, such as brokers, street dealers, and organizers, “reflecting the fact that low-level offenders often do not have valuable information to provide due to their more limited role in the offense”). Perhaps more importantly, street-level dealers—who, by definition, sell only user-level quantities at any one time—are not as impacted as couriers by the drug quantity table’s overreliance on drug weight to set sentencing ranges. Thus, there is a far more tenuous relationship between quantity and culpability for couriers, and couriers need a particularly large reduction to counter-balance the impact that high drug quantity has on guideline ranges. This line of reasoning is apparent in the meth report chart that is reproduced on page 5 (above), where the Commission separated out drug-trafficking functions, and earlier reports. With functions where the person “owns the drugs,” it is largely quantity that determines where their function falls on the culpability hierarchy. *See* 2024 Meth Report, *supra* note 5, at 37 tbl. 5 (in which a “Street-Level Dealer” is a lower-level function where a person who “owns the drugs” distributes “retail/user quantities”; a “Wholesaler” is a higher-level function where a person who owns the drugs “[b]uys and sells more than retail/user-level quantities in a single transaction” and “sells any amount to another dealer”; and a “High Level Supplier” is a highest-level function where a person who owns the drugs “[s]upplies large quantities of drugs, usually to other drug distributors”). With functions where the person does *not* own the drugs, including courier, placement on the hierarchy depends on whether the person has decision-making authority or at least significant knowledge of the drug-trafficking scheme (versus performing a discrete task for

This mismatch between drug quantity and culpability has been the subject of heated debate for decades, with many judges and others advocating for a realignment of guideline ranges *as applied specifically to couriers*.¹³ By adopting § 2D1.1(e)(2)(B)(i), the Commission took a meaningful step to address this mismatch.

The dictionary and the Commission-authored definitions of “courier” should be sufficient to establish that the new special instruction does not contain any limitation on the meaning of “courier” based on quantity, value, route, frequency, or otherwise, particularly in light of the amendment’s intent and larger context. But there are several *additional* points refuting the

money) and does not relate to quantity at all. *See id.*; *see also* 2021 *Fentanyl Report*, *supra* note 5, at 28 (fig. 17); 2017 Mandatory Minimum Report, *supra*, note 5, at 44.

¹³ *See, e.g.*, U.S. Sent’g Comm., *Fifteen Years of Guidelines Sentencing* 50 (2004), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/15-year-study/15_year_study_full.pdf (explaining that “[d]rug quantity has been called a particularly poor proxy for the culpability of low-level offenders, who may have contact with significant amounts of drugs, but who do not share in the profits or decision-making,” with citation in part to Steven B. Wasserman, *Toward Sentencing Reform for Drug Couriers*, 61 Brook. L. Rev. 643 (1995)); U.S. Sent’g Comm’n, *Mem. Re Initial Report of the Working Group on Drugs and Role in the Offense* 10 (1991), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/working-group-reports/drugs/111991_Drugs_Role.pdf (“Certain categories of defendants — typically, steerers, couriers, loaders, lookouts — have been proposed as offenders whose offense level should be determined by methods other than by relying primarily on the calculation of drug quantity.”); *cf.* Adam B. Weber, *The Courier Conundrum: The High Costs of Prosecuting Low-Level Drug Couriers and What We Can Do About Them*, 87 Fordham L. Rev. 1749, 1783 (2019); Hon. Patti B. Saris, *A Generational Shift For Federal Drug Sentences*, 52 Am. Crim. L. Rev. 1, 12–13 (2015) (former chair of the Sentencing Commission explaining that the Commission had found that mandatory minimums applied “in large numbers to every function in a drug organization, from couriers and mules who transport drugs often at the lowest levels of a drug organization all the way up to high-level suppliers and importers who bring large quantities of drugs into the United States”); Deborah Young, *Rethinking the Commission’s Drug Guidelines: Courier Cases Where Quantity Overstates Culpability*, 3 Fed. Sent. Rep. 63 (Vera Inst. Just. 1990); Kevin Lerman, *Couriers, Not Kingpins: Toward a More Just Federal Sentencing Regime for Defendants Who Deliver Drugs*, 7 U.C. Irvine L. Rev. 679 (2017).

government’s claim that the term “courier” as used in § 2D1.1(e)(2) is more limited than its plain and ordinary meaning:

- First, Amendment 833’s text expressly references quantity when it *is* pertinent to the analysis. Specifically, § 2D1.1(e)(2)(B)(ii), which addresses the 2-level reduction, provides as a qualifying example a person whose “primary function was . . . distributing controlled substances *in user-level quantities*” The reference to quantity for one function example and silence as to another indicates that quantity is irrelevant where not so mentioned. *Cf. Dean v. United States*, 556 U.S. 568, 573 (2009) (“[i]t is generally presumed that Congress acts intentionally when including particular language in one section of a statute but not in another.”).
- Second, the amendment’s promulgation history demonstrates that the Commission knowingly chose not to provide quantity or frequency limitations. During the 2025 notice-and-comment period, the Department of Justice urged the Commission not to promulgate a function-based reduction because “the proposal ma[de] no distinction based on quantity or frequency [and did] not distinguish between an individual who [serves as a courier] once and another who does so dozens of times, regardless of the quantities involved.”¹⁴ The Commission chose not to take the DOJ’s advice.
- Third, § 2D1.1(e)(2)’s silence regarding quantity and frequency is notable because § 3B1.2 itself used to expressly reference those factors in determining whether a courier received a reduction—before the Commission eliminated those factors. Specifically, prior to 2001, commentary regarding the four-level minimal role reduction both encouraged courts to use the reduction “infrequently” and provided examples of who should receive the reduction.¹⁵ One example was that of a person who was “a courier for a single smuggling transaction involving a small amount of drugs.” In 2001, the Commission removed that example (and the

¹⁴ See U.S. Sent’g Comm’n, *Public Comments on Proposed Amendments for Supervised Release & Drug Offenses* 257–58 (2025) (letter from DOJ), https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/202503/90FR8968_public-comment_R.pdf.

¹⁵ See, e.g., U.S.S.G. § 3B1.2 app. n.2 (U.S. Sent’g Comm’n 2000) (“It is intended that the downward adjustment for a minimal participant will be used infrequently. It would be appropriate, for example, for someone who played no other role in a very large drug smuggling operation than to offload part of a single marihuana shipment, or in a case where an individual was recruited as a courier for a single smuggling transaction involving a small amount of drugs.”).

language calling for “infrequently” granting reductions).¹⁶ Having once included language distinguishing among couriers based on quantity and frequency, it is noteworthy for the Commission to provide new, courier-focused language with no limitations or distinctions.¹⁷

This is not to say that a judge can’t find that drug quantity or trip frequency or myriad other factors are relevant to its ultimate sentencing decision under § 3553(a). But at the first step in the sentencing analysis—accurately calculating the guideline range—the fact that a defendant’s primary function was that of a courier is sufficient to apply § 2D1.1(e)(2). And at bottom, it is important to keep in mind the actual job that couriers perform. An Amazon or UPS delivery driver is a kind of courier—whether transporting millions in goods or a single package; whether on their first hour or twentieth year; or whether full-time or contract employees. If that courier quits or is arrested, he is replaced immediately with negligible impact on operations. The same is true in drug trafficking: arresting a courier (regardless of quantity) has minimal market impact on drug operations because those participants lack ownership and control and are easily

¹⁶ See U.S.S.G. App’x C (vol. II) 224–28 (removing the example via Amendment 635); see also *id.* App’x C (vol. III) 406 (striking prior language calling for minimal role to “be used infrequently” via Amendment 755). The old reference to a courier who smuggled a small quantity of drugs had been the subject of criticism from the start, with probation officers noting back in the early 1990s that it “automatically exclude[d] most couriers” because couriers generally did not carry “small amounts.” U.S. Sent’g Comm’n, *Mem. Re Initial Report of the Working Group on Drugs and Role in the Offense* 8 n.9 (1991), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/working-group-reports/drugs/111991_Drugs_Role.pdf.

¹⁷ That prior language itself demonstrated that, absent modification, the term “courier” does not carry any quantity or frequency limitations. Had it done so, the examples would not have had to specify that the courier at issue should have been infrequently involved.

replaced. This is highly relevant to multiple purposes of sentencing. *See* § 3553(a) (enumerating as purposes of sentencing protection of the public and deterrence).