

We appreciate this opportunity to provide testimony regarding the Sentencing Commission's proposed amendments to Guideline §2L1.2, "Unlawfully Entering or Remaining in the United States."

ENCUESTRO strongly disagrees with policy choices that have led to mass prosecutions and incarceration of border-crossers who do not meet any of the Department of Justice's stated prosecutorial interests, namely national security, violent crime, financial fraud, and protection of the most vulnerable members of society. The Commission's report demonstrates that 49.5% of persons sentenced for illegal reentry had at least one child living in the United States, and that those sentenced were an average (and median) age of 17 at the time of initial entry. Given a U.S. deportation regime that tears families apart and provides little in the way of individualized discretion even for U.S. citizen children's needs, criminal prosecutions and punishments for people seeking to reunite with their families should be sharply reduced. Disappointingly, as discussed below, some aspects of the Commission's proposed amendments go in the wrong direction.

ENCUESTRO is particularly concerned regarding the lack of justification for raising the base-offense level for all convicted persons. The Commission's data analysis states that persons with no applicable criminal-conviction enhancements or other upward departures would see their average guideline-minimum sentence increase from 1 to 6 months: an unconscionable 500% increase. The Commission's data from FY 2013 also show that 72.8% of individuals in that sample had no prior illegal-reentry convictions. This proposed amendment would have a starkly disparate impact on districts, like New Mexico, that have a supermajority of cases without enhancements (as the Commission study's Figure 7 shows). The proposed amendment offers no justification for a massive increase in individual and aggregate sentences for migrants prosecuted in New Mexico. For these reasons, the Commission should reject the proposed amendments' base-offense-level increases.

ENCUESTRO is deeply troubled that at a time of national attention to criminal-justice reform and deincarceration the Commission's proposed amendments would increase sentences for most offenders. The current number of individuals prosecuted and sentenced for illegal reentry comes with staggering costs to the criminal justice system, including a diversion of limited prosecutorial and court resources away from serious offenses, as well as prison overcrowding in substandard private facilities. Moreover, these costs are incurred without any assurance that prosecutions for border crossing actually have a deterrent effect. A University of Arizona study tracking 1,200 people deported after prosecution for border-crossing found that when it comes to re-entry there is no statistically significant difference between those who went through Streamline and those who did not. Similarly, the Migration Policy Institute has noted that for border crossers with strong family and/or economic ties to the United States "even . . . high-consequence enforcement strategies [i.e., criminal prosecutions] may not deter them from making future attempts."

We therefore urge the Commission and other implicated government agencies to reexamine comprehensively – and reduce – the deleterious impacts of border-crossing prosecutions and sentences. While we support the Commission's attention to excessive punishment imposed based on currently inflexible escalator enhancements, we also emphatically urge the Commission not to increase the base-offense level from 8 to 10 for persons with no prior illegal-reentry convictions (and to adjust other gradations down accordingly). Finally, we thank the Commission for this opportunity to provide public comment and urge the Commission

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to consider wider reforms to the proposed amendments as put forward in the American Civil Liberties Union written submission to the March 16 public hearing.

Sincerely,
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