

AUG 18 2010



U.S. Immigration  
and Customs  
Enforcement

United States Sentencing Commission  
One Columbus Circle, NE  
Suite 2-500, South Lobby  
Washington, D.C. 20002-8002

Attention: Public Affairs - Priorities Comment

The Department of Homeland Security is pleased that the U.S. Sentencing Commission has included the possibility of a reduction in the offense level for certain deportable aliens who agree to stipulated judicial orders of deportation as a priority in the next amendment cycle.

In a world of limited resources, U.S. Immigration and Customs Enforcement, U.S. Attorney's Offices, the Executive Office for Immigration Review (EOIR), the United States Marshals Service (USMS), the Federal Bureau of Prisons (BOP), and the federal judiciary would benefit from a sensible tool to manage the high volume of immigration cases while promoting sound results. The Sentencing Commission's proposal does just that.

The proposed 1-point reduction would effectively and efficiently marshal government resources by encouraging guilty defendants to plead guilty and spare the time of investigators and prosecutors in preparing for trial. It would also spare the Department of Homeland Security the expense and effort of detaining alien-defendants and bringing immigration proceedings before EOIR upon completion of the criminal case and allow EOIR to expend docket space on other cases. The reduced time in federal custody in the criminal case would spare the time and expense of USMS and BOP.

The proposed provision also reflects that not all alien-defendants appropriately qualify for judicial stipulated orders of removal. For instance, certain recidivist immigration violators would not be eligible. The proposal acknowledges that flexibility is a critical component of the sentencing process.

Although we are pleased that the Commission is considering the proposed reduction, we urge the Commission also to consider associated proposals that would better protect our immigration system. Other changes are needed to account for the number of highly sophisticated alien smuggling, immigration document and benefit frauds such as visa fraud, marriage fraud, and asylum fraud. Many people are earning substantial fees to orchestrate operations that facilitate travel, procure documents, and provide immigration benefits to aliens across the globe. The existing guidelines do not adequately acknowledge the damage caused by large international networks and organizations. Schemes frequently involve recruiters, brokers, document providers, guides, transporters, stash-out operators, and corrupt port officials. Changes to the

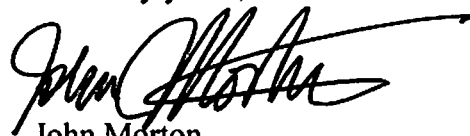
guidelines are needed both to reflect the severity of the crimes and to provide incentive for the increasingly organized and sophisticated criminals to cooperate with the government.

I previously proposed changes that would address these issues, including when I spoke at the U.S. Sentencing Commission's Public Hearing held in Phoenix, Arizona, on January 20, 2010. As noted then, the existing guidelines for alien smuggling (USSG § 2L1.1) and immigration fraud (USSG § 2L2.1) do not adequately account for the type of large-scale alien smuggling organizations that we encounter. I therefore propose that the Commission consider increasing the base offense level for alien smuggling and immigration fraud. Similarly, because the base offense level for immigration fraud is disproportionately low compared to the base offense level for alien smuggling, I ask that the Commission consider increasing the base offense level for immigration fraud.

Organized alien smuggling is a serious problem that undermines border security. The table for USSG § 2L1.1 does not adequately account for schemes that involve more than 100 aliens. Although an application note allows an upward increase for schemes involving substantially more than 100 aliens, the Guidelines should better reflect the frequency of schemes that involve thousands of smuggled aliens. Similarly, the table for USSG § 2L2.1 stops at 100 documents or passports, and does not adequately deal with defendants responsible for thousands of fraudulent documents. The table could be augmented to acknowledge that the government is investigating sophisticated organizations that commit crime on a grand scale. One hundred is not nearly high enough to reflect the true nature and expanse of organized immigration fraud and alien smuggling.

The Department of Homeland Security looks forward to working with you, through the *ex-officio* member of the Sentencing Commission from the U.S. Department of Justice, on all of these proposals. Thank you for the opportunity to comment.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Morton", with a long horizontal flourish extending to the right.

John Morton  
Director