



UNITED STATES DISTRICT COURT

District of New Mexico  
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Albuquerque, New Mexico 87102

**M. CHRISTINA ARMIJO**  
Chief Judge

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April 5, 2016

United States Sentencing Commission  
Attention: Brent Newton

Re: Comments on the Proposed Amendment, U.S.S.G. § 2L1.2

I wish to thank the United States Sentencing Commission (USSC) for the opportunity to comment on the proposed amendment to U.S.S.G. § 2L1.2.

In the District of New Mexico, we utilize U.S.S.G. § 2L1.2 more than any other guideline as approximately 70% of our caseload is made up of immigration offenses. As such, we support the proposed revisions to USSG §2L1.2 (Unlawfully Entering or Remaining in the United States) promulgated by the USSC.

I believe our district would welcome eliminating the need to employ the categorical and/or modified categorical approaches when applying this guideline. I have consulted with our probation office, and this is a much needed change. The probation officers have expressed concern that employing the categorical approach is a time consuming, cumbersome processes that requires a legal analysis of court documents that are often either not available or difficult to obtain.

We support the proposed tiered system to determine the Base Offense Level (BOL), as it distinguishes defendants who have no prior convictions for illegal reentry from defendants who have one or more prior convictions for illegal reentry, thereby taking into account the aggravating factor of recidivism. Additionally, I

concur that the BOL should be determined without regard to the applicable time period for criminal history scoring in Chapter 4.

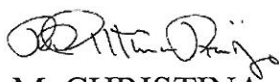
We support the proposed Specific Offense Characteristic (SOC) structure and its ability to capture criminal activity before the defendant's first deportation/removal and after the defendant's first deportation/removal, and we believe it will be easier to apply than the current SOC structure. Relying on the date of the defendant's first deportation/removal provides a clean line of separation and relies on information that is generally available at the time the presentence report is prepared.

We encourage and agree with the proposed tiered enhancements under (b)(1) and (b)(2), including the recommended number of months for the sentence imposed and the corresponding increase to the offense level for each subsection. I believe the sentence imposed will serve as a measure of the seriousness of the defendant's prior criminal record in most cases. In those cases where the proposed structure of (b)(1) and (b)(2) is greater than necessary, or not sufficient, a departure is an available option.

I recommend the USSC clarify the definition of "sentence imposed." As it is currently written, (b)(1)(A), (b)(1)(B), (b)(2)(A), and (b)(2)(B) seem to use the term "sentence imposed" in reference to a term of imprisonment. As such, the term "sentence imposed" under (b)(1)(C) and (b)(2)(C) could be interpreted to only apply to sentences where a term of actual imprisonment is imposed. Therefore, it is recommended that Application Note 2 be amended to clarify that "sentence imposed" includes sentences of probation, fines, and other non-custodial sentences for purposes of applying (b)(1)(C) and (b)(2)(C).

In conclusion, I sincerely thank the United States Sentencing Commission for the opportunity to provide feedback on this proposed amendment. I support the new amendment and believe it would be a positive change.

Very truly yours,



M. CHRISTINA ARMIÑO  
Chief Judge