



**U.S. Immigration
and Customs
Enforcement**

March 15, 2012

The Honorable Patti B. Saris
Chair, United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Judge Saris:

On behalf of U.S. Immigration and Customs Enforcement (ICE) of the U.S. Department of Homeland Security (DHS), I submit the following comments in support of the proposed human rights violation amendments to the federal sentencing guidelines and issues for comment published in the Federal Register on January 19, 2012.

As the primary criminal investigative component in DHS, ICE remains firmly committed to the mission of ensuring that the United States does not become a safe haven for human rights abusers. ICE dedicates staff from many of its programs to advancing this mission, including special agents in the Office of Homeland Security Investigations and the Office of International Affairs, attorneys from the Office of the Principal Legal Advisor, and officers from the Office of Enforcement and Removal Operations.

Today, ICE is handling more than 1,000 human rights removal cases. These removal cases are at various stages of investigation and litigation and involve suspects from approximately 95 different countries, primarily those in Central and South America, the Balkans, and Africa. In addition, ICE currently has more than 180 active human rights investigations that could ultimately support criminal charges or administrative removal proceedings.

ICE has had considerable success in bringing human rights abusers to justice. For example, ICE played a significant role in the investigation, prosecution, and conviction of Chuckie Taylor, who was known for the brutal abuse of people in Liberia. ICE agents have led the investigations into cases involving perpetrators of the Rwandan genocide; members of the Special Police Company involved in the murder of more than 7,000 Bosnian Muslim men and boys at Srebrenica in July 1995; and two lieutenants in the Peruvian army who were principal perpetrators in a crime now known as the "Accomarca Massacre." These men and their associates slaughtered 67 men, women, and children.

While we have enjoyed some success, in partnership with the Department of Justice, in obtaining sentences commensurate with the gravity of the crimes these offenders committed abroad, we are still confronted with the fact that most of the offenses that can be charged relate to visa fraud, false statements, and naturalization fraud, which fall at the extreme low end of sentencing guidelines. Not infrequently, individuals who have been convicted of these offenses receive minimal sentences of zero to six months, and then are placed into removal proceedings. These minimal sentences have almost no deterrent effect on future offenders and can be particularly frustrating to victims and survivors—particularly in cases where the offender is removed to a country that has pardoned, amnestied, or otherwise granted impunity to those who have committed such grievous acts. Respectfully, when we are dealing with human rights abusers, including those who commit the most heinous crimes, the burden should be on the human rights violator to argue for a lesser sentence, as opposed to being on the government to argue for a greater one. A graduated scale of increases in sentencing guidelines related to the underlying conduct would ensure justice in these cases and provide for sentencing that reflects the seriousness of these crimes. For these reasons, ICE supports the Department of Justice’s proposal to provide a three-tiered approach to these adjustments: one enhancement for those who lie about their own involvement in committing human rights violations; an enhancement for those involved in human rights violations involving a large number of victims; and an increase for those who lied about their membership in a military, paramilitary, or police organization that committed human rights violations (when the evidence does not prove they were personally involved in those violations). This three-tiered approach would account for the main types of human rights cases prosecuted as naturalization fraud or visa fraud.

Furthermore, ICE fully supports an amendment to address serious human rights offenses. The crimes of genocide, torture, war crimes, and the recruitment or use of child soldiers are offenses that do not easily fit under current guidelines and, in some cases, are wholly undervalued by the current guidelines. Because there can be a significant range of conduct that would qualify as a human rights violation, ICE supports the Sentencing Commission’s Option 1. Although a Chapter 3 adjustment is better than nothing, it is not well suited to account for the range of specific offense characteristics potentially present in these crimes.

Judges have wrestled with the inadequacy of the Guidelines in these cases. One example is the case of Marko Boskic, who participated in the mass murder of Bosnian Muslims while serving in a Bosnian-Serb military unit in 1995 and who was convicted in July 2006 of two counts of immigration document fraud for lying about his military service in order to gain entry to the United States. Although the court imposed a comparatively long sentence on Boskic—63 months—during the sentencing hearing in the District of Massachusetts on November 20, 2006, Judge Woodlock complained, “[T]he Guidelines themselves are in this context a procrustean bed on which to attempt to tailor some meaningful sentence. They have formalities and rigidities and difficulties that don’t begin to capture the culpability involved here, both on the upside and the downside. And, so, it really is necessary to go outside of the Guidelines to construct the sentence.” It is worth noting that the existing Guidelines already provide for adjustments based on the underlying nature of other types of lies to U.S. officials, such as when false statements made in violation of 18 U.S.C. § 1001 pertain to international or domestic terrorism or to sex trafficking.

Over the past 25 years, the United States has sheltered over a million refugees fleeing armed conflict, ethnic cleansing, persecution, and torture. Each of these refugees bears the burden of a personal ordeal that often reflects the loss of possessions, homes, family members, or even entire communities. They arrive with little more than the hope of rebuilding their shattered lives. Invariably, most choose to remain here. They and their children add another thread to the tapestry of our diverse, yet shared, immigrant history as a nation. As the Director of ICE, I recognize the unique responsibility my agency bears in protecting those who came to our shores seeking to escape those who perpetrated such atrocities. With our partners within DHS and in the Departments of Justice and State, we use every tool at our disposal to ensure that those who have committed such acts abroad never evade justice and accountability for their crimes by hiding among their victims here. We ask the Sentencing Commission to join our historic fight in ensuring that the perpetrators of these abuses are held accountable for their crimes.

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