

March 21, 2016

United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002
Attention: Public Affairs.

Submitted electronically through Public_Comment@ussc.gov.

Re: Comments in Response to Proposed Revisions to Sentencing Guidelines for United States Courts, BAC 2210-40

Dear Commissioners:

Please consider the following comments to proposed changes to Sentencing Guideline §2L1.2. Massachusetts Law Reform Institute (MLRI) is a statewide nonprofit poverty law and policy center based in Boston, Massachusetts. Our mission is to advance economic, racial, and social justice on behalf of low-income people through legal initiatives that address the root causes of poverty, remove barriers to opportunity, and create a path to economic stability and mobility for low-income individuals, families, and communities. These initiatives include safeguarding immigrants' ability to obtain legal status as well as reducing racial disparities that diminish the socioeconomic opportunities of many communities of color.

We write in response to your request for comment as to how the Commission should consider amending §2L1.2 regarding illegal reentry offenses. **We encourage the Commission to significantly reduce the base level of this offense and to reduce the multiplier effect of subsequent reentry convictions**, so as to minimize disproportionality in the Latino incarceration rate for these relatively low-level immigration offenses. Given the adverse racialized impact of current sentencing policies on our system of justice, these reductions are warranted.

As research demonstrates, sentencing under the reentry guideline, at least over the last decade, has not only increased the percentage of offenders who are in the federal system for relatively low level immigration crimes but has resulted in dramatically higher rates of incarceration of Latinos in our federal prisons because of these offenses. Pew Hispanic Center, *The Rise of Federal Immigration Crimes*, (March 18, 2014)¹ and *A Rising Share: Hispanics and Federal Crime* (February 18, 2009).² For example, Latinos made up 23% of sentenced offenders in 2009 but 48% in 2012. *Id.* Nearly all those sentenced for unlawful reentry in federal courts received a prison sentence, and Latinos constituted 92% of unlawful reentry offenders. *Id.*

¹ Available at <http://www.pewhispanic.org/2014/03/18/the-rise-of-federal-immigration-crimes>.

² Available at <http://www.pewhispanic.org/2009/02/18/a-rising-share-hispanics-and-federal-crime>.

Although border-crossers may make up the bulk of the federally incarcerated population, this racialized impact extends even to a non-border state like ours, where the share of Latinos incarcerated for federal immigration crimes has also grown disproportionately.³ Thus, just as the crack cocaine sentencing policies of the past resulted in disproportionately incarcerating African Americans throughout the U.S., see *Report of The Sentencing Project to the United Nations Human Rights Committee Regarding Racial Disparities in the United States Criminal Justice System* (August 2013)⁴, immigration offender sentencing policies disproportionately relegate Latinos to the criminal justice system.

Many reentries, furthermore, are propelled by a nearly universal human need to preserve familial bonds and community ties. These humanitarian imperatives should inform the proportionality and fairness of federal sentencing policies too, particularly in view of growing public concern with over-incarceration in this country generally and with the need for criminal justice system reforms.

For these and other reasons detailed in the more comprehensive Comments of the American Civil Liberties Union, which we endorse, we urge you to modify proposed Guideline §2L1.2 as suggested.

Thank you for considering our comments.

Sincerely,



Iris Gomez, Esq.
Director, Immigrants Protection Project
Massachusetts Law Reform Institute

³ See Mark Lopez, *Demographic Information for Immigration Offenses in the District of Massachusetts 2007 and 2008* (Pew Hispanic Center) and U.S. Sentencing Commission, *Federal Sentencing Statistics by State, Circuit, and District and Race of Offenders in Each Primary Offense Category*.

⁴ Available at

http://sentencingproject.org/doc/publications/rd_ICCPR%20Race%20and%20Justice%20Shadow%20Report.pdf.