

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

October 16, 2022

The Honorable Carlton W. Reeves, Chair
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Dear Judge Reeves:

I am writing in support of the U.S. Department of Justice's (DOJ) proposed amendments to the federal sentencing guidelines for human smuggling.

In Fiscal Year (FY) 2022, the frontline personnel of the Department of Homeland Security (DHS) processed more than two million migrant encounters at the southwest border and recorded more migrant deaths along the southwest border (557) than in any other year since the agency began collecting data on migrant deaths in 1998. This surge in migration has been driven, in large part, by transnational criminal organizations (TCOs) that put migrants' lives at risk for profit. These highly coordinated and increasingly sophisticated organizations facilitate the movement of migrants under dangerous conditions, using global networks that reach into the United States. The trailer truck accident that killed 55 migrants in Chiapas, Mexico last December, and the July 2022 incident in San Antonio, Texas, in which 53 migrants died of the heat in appalling conditions, are just two examples of many in which TCOs engaged in human smuggling prioritize profit over safety, often with tragic consequences.

Disrupting human smuggling is a top priority for our Department, and we have invested significant time and resources in the effort to disrupt and dismantle the TCOs that support human smuggling. In June 2021, Attorney General Merrick Garland and I created Joint Task Force Alpha (JTFA), a law enforcement task force composed of agents and personnel from DHS and DOJ, in order to strengthen our joint efforts to combat the most prolific human smuggling organizations operating in Mexico, Guatemala, Honduras, and El Salvador. JTFA seeks to identify, disrupt, and dismantle the human smuggling networks that endanger, abuse, or exploit migrants and engage in other types of transnational organized crime. Countering human smuggling is a law enforcement and national security priority. It is also a moral imperative.

Following an extensive JTFA investigation, an indictment of thirteen alleged human smugglers was unsealed last month. The facts highlight the imperative of action. As described in the indictment, the smugglers allegedly used drivers to pick up migrants near the U.S.-Mexico border and transport them further into the interior of the United States. The drivers allegedly

crammed migrants into suitcases, the back of tractor-trailers, covered beds of pickup trucks, and repurposed water tankers and wooden crates strapped to flatbed trailers. Migrants were transported in spaces with little ventilation, no temperature control, and other conditions that placed them at great risk. Other investigations have revealed the ways in which migrants also are often held hostage by their smugglers to extort additional money from their families in the United States, subjected to sexual assault and physical attack, and sometimes even murdered.

Changes to the current guidelines are necessary to address such egregious conduct, deter smugglers, and disrupt these human smuggling networks. According to U.S. Sentencing Commission data, during Fiscal Year 2021 the average sentence for human smuggling was fifteen months. In contrast, the average sentence for drug trafficking offenses during the same time period was 74 months. Critically, lower average sentences negatively affect prosecutors' ability to negotiate plea agreements and obtain cooperation in the prosecution of other co-conspirators. As a result, human smuggling organizations and networks often survive and thrive, as their key members are rarely severely penalized for engaging in these heinous crimes.

Even in cases in which dozens, if not hundreds, of vulnerable migrants are transported and subjected to dangerous and inhumane conditions, the resulting sentences belie the seriousness of the offense. In October 2017, for example, a Pakistani citizen who was sentenced for his role as the primary organizer in a large-scale smuggling scheme admitted to subjecting migrants to harsh conditions that caused a substantial risk of serious bodily injury or death. Migrants paid as much as \$15,000 USD to travel the dangerous routes. The defendant was sentenced to only 31 months' imprisonment. Similarly, in October 2019, a Canadian national was interdicted by Turks and Caicos Islands authorities on a barely seaworthy vessel carrying more than 150 migrants. Despite the dangerous conditions in which he put the migrants, and despite two prior felony convictions for smuggling offenses, he was sentenced to only 32 months' imprisonment. Both of these sentences were issued in accordance with the guidelines, resulting in sentences of less than three years.

In 2016, then-Director of U.S. Immigration and Customs Enforcement Sarah R. Saldaña asked the Commission to revise the human smuggling guidelines, describing human smuggling as involving "countless incidents of sexual assault, injuries, and deaths as a result of the actions of human smugglers, all at the hands of interconnected groups of smugglers first exposing migrants to increasing risks along each stage of their journey, and then preying upon migrants to extract from them more money, sex, and forced labor." Since then, the Commission has made only narrow changes to the smuggling guidelines. Unfortunately, the problem has not gone away since that 2016 plea. It has only worsened.

The need for smuggling guidelines that reflect the seriousness of the offense and affords adequate deterrence has never been greater. We agree with DOJ that the Commission should, among other things, consider enhancements to the guidelines to account for the offenses in which migrants were sexually abused or sexually assaulted; instances in which migrants were physically assaulted; and instances in which a minor was subject to serious risk of injury or death, whether or not accompanied by a parent or legal guardian. We further urge provisions to better account for, and impose meaningful consequences on, repeat offenders; and we urge a general increase of the relevant base offense level to account for the seriousness of the human

smuggling offenses. These changes will enable us to better deter and disrupt the TCOs that exploit and victimize migrants.

The time to act is now. I thank you for your attention to this matter and will make myself available to discuss these concerns, as appropriate.

Sincerely,

A handwritten signature in blue ink, reading "Alejandro N. Mayorkas". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alejandro N. Mayorkas
Secretary