

Written Statement of

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and

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at

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Before the

United States Sentencing Commission

Regarding

The proposed amendment that revises the alien smuggling guideline at §2L1.1

(Smuggling, Transporting, or Harboring an Unlawful Alien)

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It is an honor to be invited to present testimony regarding the proposed amendment that revises the alien smuggling guideline before the United States Sentencing Commission. This is an important topic not only for the protection of those who are smuggled but to the security of the United States. In addition, it is clear that the dynamics of alien smuggling has significantly changed over the last decade and is marked by increasingly violent acts towards those individuals being smuggled¹.

My name is Victor M. Manjarrez, Jr., and I am the Project Director for the Center for Law and Human Behavior at the University of Texas at El Paso. Some of the research we have conducted has been centered on the homeland security enterprise to include the studying of the influx of unaccompanied alien children (UAC) entering the United States. Our study primarily focused on the impact of UACs on the organizational capability of the U.S. government to handle this influx. As an auxiliary focus of the study we examined the changing behavior of alien smugglers who were specializing in the smuggling of these children. Additionally, I am the retired Chief Patrol Agent of the Tucson Sector United States Border Patrol. During my career I had been assigned along the southwest border serving in each of the border states as well the Director for Policy and Strategic Planning at U.S. Border Patrol Headquarters. I believe that I bring a perspective to the issue that is uniquely grounded in the foundation of over 20 years of practical experience as an Agent and as someone who has conducted research relevant to the homeland security enterprise.

¹ These violent acts include physical, mental, and often sexual abuse of those being smuggled.

Before I begin discussing the trends and changes to alien smuggling in the last decade, I feel that I must make a distinction. There is a difference between “alien smuggling” and “human trafficking” that most of America simply does not understand. Alien smuggling is characterized by the consent between customer (the individual to be smuggled) and smuggler – an agreement that typically terminates upon arrival at the destination location. However, we often see smuggling situations descend into what can best be described as extreme human rights abuses, exploitation, and even death at the hands of smugglers. Generally speaking, human trafficking involves transporting individuals from one place to another either against their will or under some sort of false pretense. Unfortunately, the differences between the two are now increasingly getting smaller with each involving some form of exploitation or threat of violence. My testimony is focused on those events described as human smuggling in the traditional sense of the term.

As a young Border Patrol Agent in San Diego, California I saw human smuggling as multiple ‘mom & pop’ operations without much organizational structure. These ‘mom & pop’ smuggling organizations were typically not affiliated with each other and would operate within very close proximity to each other with few consequences. Consumers of this type of smuggling organizations rarely saw the smugglers as someone to fear, and in fact saw them as facilitators of their dreams. We have now seen a dynamic shift in paradigm as it relates to the smuggling of humans into the United States. The ‘mom and pop’ operations are nearly nonexistent today. They have been replaced by entities that are more organized, structured enterprises that go beyond the immediate border area, and are typically feared by those using these services. Although the individuals may fear smuggling organizations, they continue every day to make arrangements to be smuggled into the United States as a necessary evil. It is clear that human

smuggling into the United States is now much more like organized crime where the individuals being smuggled are treated more like a commodity than a human. Human smuggling organizations have become very specialized in their trade and territorial of their geographical location. This evolution has been much more pronounced in the last decade.

In addition, I am often asked about the involvement of drug cartels in human smuggling operations. The involvement of drug cartels, to this point, generally has been in the form of guardians of staging and entry points near the U.S.-Mexico border where fees are collected for use of the 'plaza' by human smugglers and those being smuggled. The 'plaza' bosses and gatekeepers play a coordinating role with alien smugglers, dictating when and where they will be allowed to cross the border. Many times the locations dictated by the 'plaza' bosses and gatekeepers are areas that are dangerous and very remote. In addition, past experience has demonstrated that when alien smugglers do not pay attention to the warnings from drug smuggling organizations about where and when they smuggle, they can be targeted for physical violence, including murder. This violence is also often directed towards the individuals being smuggled. The trend of collecting fees for the use of certain 'plazas' is undeniable and will continue to exist due to the high fees charged. Of course, these fees get passed on to the individual being smuggled which has significantly increased smuggling fees in the last 10 years².

The last ten years smugglers have become much more violent towards the individuals being smuggled, in most cases, to extort additional funds. Law enforcement officials in Phoenix, Arizona have reported significant increases in individuals held against their will until the fees are

² In the El Paso, TX region a Mexican national was typically charged about \$1,100 in 2005 to be smuggled, and the cost has risen to about \$3,500 - \$7,500. Other Than Mexican (OTMs) nationals from the Americas were charged about \$3,500 in 2005 can be charged from \$6,000 to \$19,000.

paid. This often resembles a kidnapping offense³. Although I cite Phoenix, these occurrences are not uncommon in cities such as Houston, Texas or McAllen, Texas and other cities around the nation. This trend will continue in the foreseeable future due to the lucrative profits, the fear of family members reporting these exploitation attempts, and the notion that alien smuggling is often looked upon as a victimless crime. Most if not all researchers who have recorded oral histories of smuggled individuals will tell you that they have witnessed an unmistakable trend of increasing sexual violence towards the individuals.

The nature of smuggled aliens has changed significantly over the recent years along the U.S. - Mexico border. It had been routinely recognized that 97.5% of those arrested along the southern border of the United States were Mexican nationals, 2% from three Central American countries (Honduras, Guatemala, and El Salvador), and the remaining .5% from the rest of the world. This is clearly not the case now along the U.S. - Mexico border. For example, the last three years U.S. Customs and Border Protection's figures indicate 55% of all those arrested on the southern border of the United States were Mexican nationals, 44% were from Central American countries (Honduras, Guatemala, and El Salvador)⁴. What is astonishing is that for the first time in nearly 90 years more Other Than Mexican nationals were arrested than Mexican nationals in fiscal year 2014. There is no one reason why this is occurring but many point to the worsening of social-economic conditions in Central America and others claim that the U.S. Government policies towards arriving individuals from foreign countries as the issue.

³ This information was first reported by Immigration & Customs Enforcement, Homeland Security Investigations "Operation ICE Storm" and by DHS' Arizona Border Control Initiative (ABCI) in 2005.

⁴ Statistical information was obtained from CBP.gov "U.S. Border Patrol Apprehensions from Mexico and Other Than Mexico FY2000 – FY2015"

Regardless, the trend of Other Than Mexican nationals counting as a large portion of those encountered by the U.S. Border Patrol will continue.

In addition, the U.S. Department of Homeland Security has reported large increases in the number of unaccompanied minors being smuggled into the United States since fiscal 2013. The University of Texas at El Paso reported in March of 2014 that this trend would continue in the foreseeable future⁵. It is interesting to note that smugglers of these minors soon found out that the U.S. federal government did not have the organizational capacity to address this significant increase. The smugglers learned that once these minors were apprehended and processed by Department of Homeland Security officers they would soon be released to a family member or guardian in the United States to await for the Executive Office Immigration Review hearing. It is clear that they understood that this process could be exploited and profits to be made⁶.

Alien smugglers quickly understood that there was no need to smuggle unaccompanied minors through a complex means to interior destinations of the United States. Smugglers simply led, and in some cases drove, unaccompanied minors to Border Patrol stations and were told to ring the doorbell⁷. Although this would seem like a rather odd arrangement for an alien smuggler, they found out that they could guarantee the safe passage of the individual to the final destination while significantly increasing the smuggling fee⁸. The trend of unaccompanied minors has ebbed and flowed since 2013 and continues today. Unfortunately, we do not completely understand the long term impacts to these unaccompanied minors as they are exposed

⁵ The University of Texas at El Paso - *Unaccompanied Alien Children (UAC) Project*, March 20, 2014.

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to human smugglers and their abuses. But we do know that these minors are often subjected to various sexual and physical abuses throughout their smuggling ordeal.

Although the infrastructure for the smuggling of any individual to include potential terrorists exists, there is no evidence to suggest that this is occurring. Unfortunately, the media and certain groups have often confused and used interchangeably the terms “terrorist” and “Special Interest Aliens” incorrectly. A “Special Interest Alien” is simply an individual from a country that has been placed on some form of watch list and does not necessarily mean they have terrorist ties. Unfortunately, the fear of terrorists and human smugglers in Mexico forging alliance causes a great deal of anxiety for both United States and Mexican law enforcement organizations. Given the previous information, as the Chief Patrol Agent of the Tucson Sector Border Patrol my biggest fear was the establishment of an ‘unholy alliance’ between alien smuggling organizations and/or drug cartels with individuals having terrorist ties. My experience tells me that it did not occur back then and that it is not occurring now, but I know that it continues to be a fear by those who are responsible for our border security.

I understand that our sentencing system should promote public trust and confidence in the fairness of our criminal justice system. I believe the policy change that is being suggested strikes an appropriate balance but yet confronts what is increasingly become a complex, under-reported, and unfathomable crime. The idea of simply walking across the border or arriving at a pre-entry location along the U.S. – Mexico border unaided by a smuggler simply no longer exists. Human smuggling is a big organized business with risks to those being smuggled higher than ever before. As a career homeland security practitioner and now someone who conducts research into these topical areas thank you for the opportunity to share my views on this important topic.