



United States District Court

Southern District of California
333 W. Broadway, Suite 1580
San Diego, California 92101

Chambers of
Barry Ted Moskowitz
Chief Judge

Phone: (619) 557-5583
Fax: (619) 702-9966

March 9, 2016

To the United States Sentencing Commission:

Thank you for giving me the opportunity to address the proposed amendment to USSG §2L1.2. First, let me commend the Commission for the outstanding video presentation that was prepared and provided to the district judges explaining the proposed amendment.

The amendment justifiably seeks to cure many of the issues with the present §2L1.2. First, it takes into account in the base offense level prior illegal reentry convictions. I think this is appropriate as it builds into the guideline a sanction for continued violations of the same provision of the law.

As you know, the biggest difficulty with the present §2L1.2 is the application of §2L1.2(b)(1). There has been much litigation over what is and is not a “drug trafficking offense” and a “crime of violence.” The amendment seeks to make it more objective by substituting the length of the sentence rather than the nature of the offense as a point of delineation. The problem that I see is that the upper level enhancement for sentences of 24 months or more, e.g., proposed §2L1.2(b)(1)(A) and (b)(2)(A), cover defendants who have been convicted of serious violent felonies such as robbery, rape, child molestation, and murder, equally with a person who committed a nonviolent offense and received 24 months or more. Under 18 U.S.C. § 3553(a)(2)(C) (“to protect the public from further crimes of the defendant”), a greater enhancement would appear to be necessary especially for persons who reenter the United States after deportation and commit a violent felony. One way to do this, and not get back to the litigation over what is a crime of violence, is to have the (b)(1)(A) and (b)(2)(A) enhancements further broken down to add more points for sentences of five years or more, and for sentences of ten years or more. These more lengthy sentences would likely cover violent crimes. The problem with the present proposed amendment is that a nonviolent thief would receive the same increase if he had gotten 24 months or more in jail as a violent rapist, robber, or murderer.

I look forward to seeing you in person and discussing the proposed amendment.

Respectively,

Barry Ted Moskowitz
Chief Judge, Southern District of California