

*United States Sentencing Commission*  
**TRIBAL ISSUES ADVISORY GROUP**

*Honorable Brian Morris, Chair  
One Columbus Circle N.E.  
Suite 2-500, South Lobby  
Washington, D.C. 20002*



*Voting Members  
Charles Addington  
Gina Allery  
Honorable Natasha K. Anderson  
Manny Atwal*

*Neil Fulton  
Jami Johnson  
Honorable Gregory Smith  
Carla R. Stinnett*

March 2, 2025

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

Dear Judge Reeves,

On behalf of the Tribal Issues Advisory Group, we submit the following views, comments, and suggestions in response to the Proposed Amendments to the Federal Sentencing Guidelines, Policy Statements, and Official Commentary approved by the U.S. Sentencing Commission on January 30, 2026, and published in the Federal Register on February 6, 2026. See 91 Fed. Reg. 5556 (February 6, 2026); see also 28 U.S.C. § 994(o).

\*\*\*

#### **Proposed Amendment No. 4—Human Smuggling**

With one exception, noted below, TIAG opposes the proposed changes to the human smuggling amendment, though its vote was not unanimous. The impact of the amendment to Indian Country is likely to be felt mostly by tribes along the southwest border to the United States, including the Tohono O’odham Nation, which has nearly 30,000 members and straddles the U.S.-Mexico border in Southern Arizona, extending more than 80 miles north to approximately 30 miles south of the Phoenix metropolitan area. Because of its geographic location, the reservation has long been used as a smuggling corridor by unscrupulous outsiders. Community members have at times become entangled

in smuggling activities. Our opposition to the amendment is largely based on our experiences of how the investigation and prosecution of these cases has historically worked in these areas.

TIAG opposes the amendment to add more tiers of enhancement based on the number of individuals smuggled because in our experience, outside of the rare tractor-trailer case, at numbers greater than approximately six, numbers are generally based not on the number of individuals actually apprehended crossing the border with the assistance of a smuggler, but on estimations based on relevant conduct or aggregated as part of conspiracy. These estimates are frequently imprecise and difficult to determine with the degree of precision the revised chart appears to envision, and the proposed revision may result in expensive and resource-intensive litigation for only a small benefit.

TIAG opposes the enhancement for concealing persons in a trunk or in excess of rated capacity because in our experience the overwhelming majority of persons who transport people in under these circumstances already receive the existing enhancement under § 2L1.1(b)(6) for creating a substantial risk of death or serious bodily injury. It is unclear why a separate enhancement is necessary to include the very unusual circumstances where transportation in this manner is, for reasons particular to the facts of that offense, not especially dangerous.

TIAG opposes the amendments regarding criminal sexual acts, including the creation of a cross-reference based on its experience with how smuggling prosecutions unfold, as a practical matter. Victims in smuggling cases are people who are themselves breaking the law but who escape prosecution by giving statements about their smugglers. While no doubt many such persons truthfully describe their experience of attempting to illegally enter the United States, there nevertheless are incentives to lie or to exaggerate given their own potential criminal exposure.<sup>8</sup> Individuals who have made statements are in our experience not generally held for trial but are removed from the United States and are therefore unavailable by the time of sentencing. The proposed cross-

---

<sup>8</sup> These incentives may become even more pronounced if passage of this amendment creates a natural tendency among immigration enforcement officers to ask more questions about sexual assault, which may elicit less-than-truthful responses from individuals who wrongly perceive their questioner to be encouraging them to report behavior that did not occur.

reference threatens to expose defendants to extraordinarily high sentences based on a low, mere preponderance, standard where the only evidence available in support of the enhancement is a past allegation by someone who has long since been removed from the country. To be very clear, TIAG supports criminal prosecution of human smugglers for any and all criminal sexual acts that they commit. What gives us pause is the extraordinary size of the enhancement, the low standard of proof, and the lack of witness availability.

TIAG does support Option 1, which provides for an additional increase in offense level if the defendant caused death or injury to more than one person being transported. TIAG views this enhancement as appropriate to correct for an odd and likely unintentional side effect of the grouping rules wherein because multiple convictions under § 2L1.1 group under § 3D1.2(d), multiple convictions for creating injury or even death are treated the same as a single conviction.<sup>9</sup> TIAG agrees that Option 1 appropriately corrects for this phenomenon. Option 2 appears, however, to overcorrect for the grouping problem and would result in application of a larger enhancement for someone who transports two people who both sustained life-threatening bodily injury than it would for someone who intentionally assaults two separate people resulting in life-threatening bodily injury to both.<sup>10</sup> TIAG could not identify a reasoned basis for this disparity and therefore declines to support Option 2.

\* \* \*

Thank you for consideration of our views and for being responsive to our concerns regarding how the Commission’s sentencing priorities may impact defendants who are tribal members. As always, we look forward to working with you during the remainder of this amendment cycle and to continue our collaboration in the future.

---

<sup>9</sup> See, e.g., *United States v. Quevedo-Moncada*, Case No. 23-50029, 2024 WL 3082530 at \*1 (9th Cir. 2024) (unpublished) (“Quevedo pleaded guilty to one count of transportation of aliens resulting in death, and one count of transportation of aliens resulting in serious bodily injury . . . . At sentencing, the district court erred by not grouping Quevedo’s counts of conviction under Guideline § 3D1.2(d) and, in turn, adding one point to its calculation of the total offense level.”)

<sup>10</sup> Under current grouping rules, a person who is convicted of two counts of identical assaults on two people resulting in life-threatening injury to both receives a 2-level increase under § 3D1.4.