

VICTIMS' RIGHTS ADVISORY GROUP

A Standing Advisory Group of the United States Sentencing Commission



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United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington D.C. 20008-8002

RE: Request for Comment on Proposed Amendments to the Sentencing Guidelines

Dear Chair Reeves, Vice-Chairs, Members of the Commission:

Thank you, once again, for the opportunity for the Victims' Rights Advisory Group (VRAG) to publicly comment on your proposed amendments to the Federal Sentencing Guidelines ("Guidelines"). We are appointed to assist you in considering how victims and survivors, who are key stakeholders in the federal criminal court process, may be affected by important Guidelines decisions that you make. Your decisions, in turn, guide the courts. We provide the following to assist you in fulfilling your responsibilities under 28 U.S.C. § 994(o).

As you each listen to and understand the harm that victims and survivors suffer, the acceptance of responsibility from offenders they want, and how they may be made whole through the sentencing process, your important decisions will be fairer and more just.

The VRAG encourages the Commission to provide a fair and just sentencing process resulting in fair and just outcomes. The VRAG promotes the Commission's respect for and adherence to victim legal rights under the Crime Victim Rights Act (CVRA), 18 U.S.C. § 3771. The VRAG reminds the Commission that retroactive application of approved amendments reopens victim survivor wounds, requires victim notification and the right to be heard, and may undermine victim survivor faith in the fairness, justice, and finality of the federal criminal court process. From this foundation, VRAG respectfully submits the following for your consideration.

PROPOSED AMENDMENT: HUMAN SMUGGLING

The VRAG supports Guidelines that: properly consider and uphold the rights of crime victims under the federal Crime Victims' Rights Act, 18 U.S.C. § 3771; recognize the traumatic impact of crime on victims; and comport with the purposes of sentencing as set forth in 18 U.S.C. § 3553(a)(2)(A)–(D). Those purposes include reflecting the seriousness of the offense, promoting respect for the law, providing just punishment and adequate deterrence, protecting the public, and providing defendants with needed treatment.

The VRAG supports the proposal to increase the guideline range exposures, but we believe that the proposed increases are not sufficient to reflect the seriousness of the offense. The VRAG endorses the view of the Department of Justice (DOJ), as noted in the Commission's

proposal. “The Department opined that the guideline does not reflect a congressional intent ‘to provide increased punishment for each alien smuggled.’”⁷ The DOJ also expressed that §2L1.1 “does not adequately address human smuggling cases in which a victim was sexually abused or otherwise sexually assaulted.”⁸ From the victims’ rights perspective, the VRAG agrees.

Multiple Aliens Smuggled

For crimes involving multiple aliens⁹ smuggled, the VRAG strongly recommends that the offense enhancements be greater than currently proposed to fully reflect the extreme harm caused by the criminal conduct. Transporting undocumented non-citizens is a serious crime that circumvents border protections designed to vet entrants and protect the public from foreign threats. Crimes of this nature exploit the desperation of non-citizens seeking to enter the United States illegally, treating them as commodities and exposing them to harm and abuse. On many occasions, human smuggling operations have resulted in serious injury and death. In an enterprise where human beings — “bodies” — are seen as dollar signs, alien-smuggling coordinators and the drivers who further their agendas are incentivized to transport as much “cargo” as possible. Because the amount of money earned in these transactions is dependent upon the number of people smuggled, so too should the penalty be tantamount to the risk.

Because human smuggling operations involving multiple aliens create greater risks than offenses involving a single individual, the effect on each victim should be judged cumulatively. Each additional person subjected to the smuggling process increases the collective passengers’ potential for injury, sexual abuse, death, and psychological trauma. The current guidelines do not adequately account for this calculus.

⁷ Letter from Scott Meisler, Deputy Chief, Crim. Div., U.S. Dep’t of Just., to the Hon. Carlton W. Reeves, Chair, U.S. Sent’g Comm’n, 14 (July 18, 2025), https://www.usc.gov/sites/default/files/pdf/amendment-process/public-comment/202507/90FR24170_public-comment_R.pdf#page=97.

⁸ *Id.*

⁹ The term “alien” does not appear to be defined in the Guidelines. Relevant to the Guidelines, however, “Alien” is a term of law defined by the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(3): “The term “alien” means any person not a citizen or national of the United States.” For the purposes of VRAG’s comment to the proposed amendments to § 2L1.1, the VRAG emphasizes that “aliens” are persons, humans, men, women and children.

It also further dehumanizes the aliens by failing to account for their numbers in sentencing. Each human being smuggled should give rise to a higher guideline-range exposure, just as the Guidelines currently account for the difference in drug weights, punishing defendants who transported greater quantities of drugs more harshly than those with lighter loads. But here, unlike in drug trafficking cases, the defendants are aware of the number of humans in their charge—and they knowingly place these people at risk. Defendants acting as load drivers for drug trafficking organizations are often unaware of the quantity of drugs they are transporting—but still they are held responsible for those amounts. That is because the Commission, in tune with Congress, recognizes that the punishment must account for the harm. The greater the drug quantity, the greater the risk of harm to the community, the more lives ravaged, the more minds and souls destroyed. So too here. The human smuggling realm involves a conscious dismissal of the value of human life and should therefore follow the drug trafficking model and provide harsher punishments for greater number of smuggled aliens.

The conditions in which aliens are transported are often dangerous, inhumane, and unsanitary. They are often ordered to crouch inside car trunks or lay supine on the floor of a van; they seldom have seatbelts. They are sometimes crowded in the beds of tractor trailers, driven at high speeds through arid desert conditions, trapped in rollover accidents, or marched onto unseaworthy vessels crossing oceans or the Great Lakes. Each of these circumstances dramatically heightens the risk of serious injury or death—to the drivers, the passengers, and the public. The criminal conduct in these instances must not be treated as equivalent to an isolated offense. The loss of a single human life is tragic; the potential loss of hundreds of lives is catastrophic.

Increasing the offense level in these cases would ensure that the sentencing framework appropriately reflects both the scale of human suffering and the elevated public safety risks posed by large-scale smuggling operations. It would send a clear message that organized exploitation of multiple vulnerable individuals will be met with commensurate punishment.

Criminal Sexual Contact

The VRAG supports an enhancement for criminal sexual contact, but that enhancement should be much higher than the ones proposed. Human beings smuggled into the United States

are often subjected to sexual abuse and exploitation, even from other smuggled aliens. The victims, including unaccompanied minors and vulnerable adults who may not be attempting to enter the United States on their own volition, suffer intense trauma that includes post-traumatic stress, anxiety, depression, and long-lasting emotional and psychological harm.¹⁰ The coercion inherent in sexual offenses compounds the already dangerous smuggling process. When human beings become victims of a sexual offense, the harm created extends far beyond the immediate journey.

Sexual offenses devastate individual victims and have lasting consequences for families and communities, highlighting the urgent need for sentencing enhancements that reflect the severity of both the physical and psychological risks involved in transnational human smuggling operations. The deterrent effect of these sentences, both general and specific, needs to be telegraphed in clear and unequivocal statements at sentencing.

Multiple Deaths or Injuries

The VRAG supports enhancements for multiple deaths or injuries but recommends a combination of Options 1 and 2. The VRAG further recommends that the enhancements should be higher to remain consistent with the purposes of sentencing, as specified above. The VRAG recommends that the multiple-alien enhancement begins at 3 instead of 6. This would more clearly respect the direction that a penalty should be added for each alien smuggled. Each proposed new level should be increased by at least 2 more than proposed and at the two highest levels by at least 5 more than proposed. And, while such increases account for the harm on victims and the vulnerable population of aliens smuggled, higher guideline ranges do not preclude courts from using their discretion to grant downward variances in appropriate cases.

Along those same lines, the VRAG also recommends that enhancements be offense-based to accurately reflect the nature, scope, and harm caused by the criminal conduct rather than the characteristics of the offender. Each additional alien smuggled, each death or injury, and each instance of sexual abuse or exploitation represents a discrete harm directly caused by the offense. Enhancements should thus be tied to the aforementioned factors to ensure that

¹⁰ See Emily R. Dworkin, et al.; *Sexual Assault victimization and Psychopathology: A Review and Meta-Analysis*, 56 CLINICAL PSYCHOLOGY REVIEW 65 (2017).

sentences are proportional to the severity of conduct. Unlike offender-based enhancements, offense-based adjustments directly address the harm caused by the crime itself and align with the purposes of sentencing under 18 U.S.C. § 3553(a)(2)(A)-(D). The offender's history and characteristics are always at play, and any mitigators would already be accounted for appropriately by the sentencing court.

Human smuggling is inherently dangerous and may result in serious injury or death to human beings who become victims. As explained earlier, that risk arises directly from the inhumane methods smugglers use to transport migrants, including overcrowded vehicles, unventilated compartments, unsafe vessels, desert crossings, and high-speed motor vehicle transport. These conditions create a high probability of tragic outcomes, including mass fatalities, severe trauma, and permanent disability. When multiple victims are harmed or killed in a single smuggling operation, the societal and individual harms are increased.

Each additional life represents a separate and measurable injury. Enhancements for multiple deaths or injuries signal that the law treats organized endangerment of multiple individuals as especially serious and would provide accountability proportionate to the harm caused.

Transnational Criminal Organizations

The VRAG supports the addition of a specific offense characteristic to §2L.1.1 that would address the risks associated with human smuggling offenses committed by members of "Transnational Criminal Organizations" (TCO). The current enhancements under §2L.1.1 do not adequately address the harm, both societal and to individual victims, caused by TCO activity. TCOs operate, wholly or in part, through illegal means and are a threat to the national and economic security of the United States.¹¹ TCO activity includes migrant smuggling, human trafficking, money laundering, firearms trafficking, illegal gambling, extortion, creation/sale of counterfeit goods, wildlife and cultural property smuggling, and cybercrime.¹² Additionally,

¹¹ See <https://www.fbi.gov/investigate/transnational-organized-crime> (last accessed February 14, 2026).

¹² *Id.*

TCOs pose ongoing and continuously evolving threats to the public, especially near border communities.¹³ When public safety is at risk, the likelihood of serious injury or death increases.

The VRAG recommends that the enhancement should be tiered. An enhancement would be consistent with this purpose as it would differentiate organized criminal conduct from crimes of opportunity, recognize the risk to public safety posed by TCOs, promote sentencing proportionate to the offense committed, and deter cross-border networks.

Along those lines, the VRAG supports a broad definition of a TCO. While 21 U.S.C. § 2341(5) expressly identifies certain TCOs, it is limited and does not carefully consider splinter factions, affiliated networks, or newly formed organizations that engage in similar criminal conduct. TCOs constantly evolve; thus, a definition tied to a static statutory list would undermine the deterrent and proportional sentencing purposes of the enhancement. By contrast, 31 C.F.R. § 590 addresses TCOs and is inclusive of successor organizations and affiliates. It is adaptable to evolving threats posed by TCOs.

The VRAG supports the application of the enhancement to all participants working with or for a TCO, regardless of their formal role or status within the organization. TCOs rely not only on leaders and organizers, but on participants who perform lower-level tasks. Each participant in the TCO contributes to the ability to conduct large-scale, coordinated, criminal activity across borders that often results in violence and creates a risk of serious physical injury or death.

Thank you for this opportunity to address the Commission's proposed Sentencing Guideline amendments for the 2025-2026 cycle.

Respectfully yours,

Christopher Quasebarth

The Victims' Rights Advisory Group
Christopher Quasebarth, Chair

cc: Victims' Rights Advisory Group Members

¹³ *Id.*