

PROBATION OFFICERS ADVISORY GROUP

An Advisory Group of the United States Sentencing Commission

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March 2, 2026

The Honorable Carlton W. Reeves
United States Sentencing Commission
Thurgood Marshall Building
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Judge Reeves,

The Probation Officers Advisory Group (POAG) submits the following written testimony to the United States Sentencing Commission (the Commission) regarding the proposed amendments issued on January 30, 2026.

Human Smuggling

POAG observed that the current guideline structure does not always sufficiently differentiate between scale and activity in human smuggling cases. A low-level courier transporting a small number of individuals under less aggravated circumstances may fall within a framework that does not meaningfully distinguish the conduct from organized operations involving several individuals and extreme risk. While POAG recognizes that this is a significant issue, only a handful of districts have regular experience handling these cases. While we received feedback about these amendments, the feedback is based on a limited number of districts' experience.

POAG is unanimously in favor of the new structure at §2L1.1(b)(2) which creates more tiers based on the number of individuals smuggled, transported or harbored. POAG recognizes that this new structure increases a defendant's overall exposure, but this also reflects an understanding that the volume of individuals smuggled is itself a meaningful proxy for an organization's scope, profit motivation, and risk. By lowering the numerical thresholds and increasing the corresponding offense levels, the amendments more accurately capture the seriousness of larger-scale conduct and better differentiate it from lower-level activity.

POAG was nearly split with a slight majority supporting a recommendation that the table should capture fewer than six unlawful aliens (i.e., 2-5) with the supporters stating each additional alien is significant while those opposed are of the opinion the guideline as written adequately accounts for such a low number.

POAG was also unanimously in support of the new proposed amendment at §2L1.1(b)(6), which addresses dangerous transportation conditions. POAG recognizes that this language was derived from the current Application Note 3 but suggests clarity regarding the terms "trunk or engine compartment" and "substantially more passengers than the rated capacity."

Regarding the first phrase, probation officers frequently encounter cases in which individuals are transported in other areas of vehicles including the beds of pickup trucks, in cargo areas of SUVs, or in tractor-trailers with no ventilation. Likewise, individuals traveling via panga-type boats are often concealed in small areas covered by tarps. Therefore, we suggest using language such as "in a trunk or other non-passenger area of a vehicle or vessel (such as a bed of a truck, behind the rearmost upright seat of a vehicle, in a tractor-trailer, or in a non-passenger compartment)." Alternatively, POAG suggests that these terms be presented as a non-exhaustive list of examples and not the only way to trigger the enhancement.

Similarly, the word "substantial" is vague and could be measured in different ways in different courts. Without clear guidance, similarly situated defendants may receive materially different treatment across districts. As most modern vehicles and vessels are marked with their maximum recommended capacity, an enhancement for simply having "more passengers than the rated capacity" may be appropriate.

POAG believes that the proposed §2L1.1(b)(7), addresses a separate, serious harm from the proposed (b)(6) and reflects some of the most tragic cases prosecuted in border districts. Law enforcement officers trained to recognize smuggling patterns often attempt vehicle stops that result in high-speed flights. Drivers frequently flee at excessive speeds, veer in multiple directions, or attempt to evade capture on rural roads. These pursuits too often end in rollover crashes, gruesome fatalities, and catastrophic injuries requiring surgery or resulting in permanent impairment. When traveling by sea, boats usually only travel at night, and during the day, the passengers in the boats are covered with a tarp to avoid detection. While sitting under the tarp in the hot sun, passengers

are forced to sit in their excrement. In other circumstances, individuals transported from Canada to the Midwest in winter conditions, have been left in freezing temperatures.

POAG was unanimously in favor of including an increase for defendants who engage in criminal sexual abuse or criminal sexual contact with those they are trafficking at §§2L1.1(b)(7) and (b)(8). Unlawful sexual conduct presents a distinct and serious concern in smuggling operations. Migrants are often isolated, unfamiliar with the language, and dependent on smugglers while being held in stash houses or transported between locations. Accounts of unlawful sexual conduct during these stages are common. Currently, courts may consider this additional harm differently through variances. By including this into the body of the guideline, this conduct is accounted for more consistently. We also suggest the Commission consider how this enhancement may interact with Vulnerable Victim enhancement at §3A1.1 as many of the victims of these smuggling operations are vulnerable due to immigration status, language barrier, and lack of resources. These conditions may make them more susceptible to abuse and less likely to report the abuse to law enforcement officers.

POAG was also in favor of including these enhancements as offense-based specific offense characteristics while limiting the cross-reference regarding sexual conduct to being defendant-based. Enhancements addressing the nature of the conduct—such as overcrowded transport or resulting injury—are appropriately offense-based. Cross-references, on the other hand, generally redirect to guidelines that result in significantly higher offense levels. POAG believes that the significantly increased penalties should remain grounded in defendant-specific findings to better reflect the defendant’s culpability.

Regarding the options for subpart (8)(B), the majority of POAG was in support of Option 2 which provides for a greater increase when additional individuals suffered permanent or life-threatening injuries or death. The initial enhancement under subsection (8)(A) already accounts for the severity of injury to a victim. POAG believes that additional stacking should be reserved for situations where the magnitude of the harm dramatically increases the seriousness of the offense. Multiple permanent or life-threatening injuries alter the nature of the crime. Multiple minor injuries, while serious, do not necessarily warrant the same exponential increase.

Option 1 includes the same increase based on the number of victims, regardless of the degree of injury. Option 1 does not appear to differentiate between vastly different levels of harm.

Nevertheless, when additional injuries are present, POAG believes there should be some incremental increase in punishment. Therefore, POAG suggests a hybrid approach to better capture this additional harm. This hybrid approach would reflect gradations of harm while avoiding an overly binary structure. POAG has provided an example of this hybrid approach:

(B) Additional injuries (Apply the Greatest):

(1) if subsection (b)(8)(A) applies and the offense resulted in additional bodily injury or criminal sexual contact described in (8)(A)(i), or serious bodily injury including criminal sexual abuse described in (8)(A)(ii) -

(a) to one or two additional people, increase by 1 level; or

(b) to three or more additional people, increase by 2 levels.

(2) if subsection (b)(8)(A) applies and the offense resulted in permanent or life-threatening injuries described in (8)(A)(iii) or death in (8)(A)(iv) –

(a) to one or two additional people, increase by 3 levels; or

(b) to three or more additional people, increase by 6 levels.

The Commission has also considered enhancements related to transnational criminal organizations. In certain districts, particularly along the southern border, law enforcement encounters large-scale smuggling enterprises moving hundreds of individuals with substantial logistical coordination. These operations may involve recruitment networks, staging locations, coordinated transportation, and significant financial gain. When such organized activity is present, the risks to migrants often increase.

Determining what constitutes a “transnational criminal organization” and proving a defendant was knowingly involved can be difficult, particularly where the defendant is a lower-level courier rather than a leader or organizer. If the Commission adopts such an enhancement, POAG suggests that the definition align with existing statutory definitions to help promote clarity and consistency. A definition that diverges from established statutory language risks underuse due to evidentiary uncertainty or inconsistent application across districts. Further, POAG notes that proof challenges are substantial. Just like any other case, obtaining proof is contingent upon the quality of the investigation and, thus, can result in this enhancement being applied disparately.

In conclusion, POAG would like to sincerely thank the United States Sentencing Commission for the opportunity to submit written testimony and will provide further written comment on these important amendments by March 18, 2026.

Respectfully,

Probation Officers Advisory Group
March 2026