

TESTIMONY OF DAVID H. SAFAVIAN, ESQ
REPRESENTING THE SENTENCE IMPACT ADVISORY GROUP
BEFORE THE UNITED STATES SENTENCING COMMISSION
HEARING ON PROPOSED GUIDELINE AMENDMENTS
MARCH 9, 2026

Chairman Reeves and Members of the Sentencing Commission, my name is David Safavian. I am an attorney and chief operating officer of *Unify.US*, a nonprofit public policy organization. However, I am testifying today in my capacity as a member of the *Sentence Impact Advisory Group*. Thank you for the opportunity.

SIAG is made up of nine individuals who have been directly impacted by the criminal justice system, either by being incarcerated or having a family member who was. I come from the former group, having served a year and a day in federal custody.

Since leaving prison fifteen years ago, I have worked in conservative and grassroots politics, advocating for improvements to our criminal justice system that bring about increased transparency and fairness, enhance public safety, and strengthen public confidence. I have helped pass meaningful legislation at the state and federal levels and was honored to be in the Oval Office when President Trump signed the *First Step Act* into law.

SIAG has submitted written comments for your consideration that go beyond my oral testimony. This morning, I want to focus on the definitional issues of the Career Offender enhancement found in §4B1.1. I will also briefly touch on the proposed amendment on human smuggling.

Proposed Amendments to §4B1.2 Regarding the Career Offender Enhancement

Every parent understands the concept of graduated punishment. Lesser discipline for first time mistakes, with more serious action for repeated conduct. The Career Offender enhancement in §4B1.1 seeks to replicate that strategy by increasing sentences for those who have two prior convictions for crimes of violence or controlled substance offenses.

However, for §4B1.1 to have a deterrent effect, it must be somewhat understandable. Unfortunately, it isn't. To the average layperson, the Career Offender enhancement is the equivalent of a "Magic 8-Ball" for sentencing.

The main problem with §4B1.1 is that state convictions can trigger Career Offender enhancements. But states treat "crimes of violence" and "controlled substance offenses" in different ways, just as the Framers intended.

Thus, breaking into a vending machine in Oklahoma is considered a burglary. It is not in Virginia, but the Old Dominion considers breaking into a boat not only a burglary but a serious felony, as well.

Possessing any marijuana in Idaho is a controlled substance offense, whereas in Oregon, one can have as much as 8 ounces at home.

So how do we ensure that the Career Offender enhancement is applied consistently across jurisdictions? Courts have tried to do this by using the so-called "categorical approach." This requires judges to consider only the statutory elements of the current and predicate offenses and compare them with the definitions of a crime of violence and/or a controlled substance offense to determine whether the sentencing enhancements are triggered. Unfortunately, the categorical approach can lead to arbitrary results, either understating or overstating the need for a sentence enhancement. And it's not easily understandable to defendants, laypeople, or even some practitioners. As such, SIAG urges the Commission to abandon it altogether.

I want to be respectful of the Commission's time limitations. As such, I will rest on the SIAG's written submission as to which language we prefer to replace the categorical approach. Suffice to say, for violent crimes, we prefer limiting the inclusion of state statutes to those which share common elements of specific federal laws. With respect to controlled substance offenses, we strongly support eliminating references to state laws altogether in defining predicate offenses in §4B1.2.

In our discussions, SIAG considered opposing the amendments altogether. Our concern was that amendments might undercut current exceptions and limitations, which have evolved into

meaningful constraints on §4B1.1. Efforts to promote uniformity and clarity should not result in definitional expansions that increase the number of people subject to the enhancement. Safeguards to ensure principles of proportionality must be preserved. And circuit conflicts should be resolved in a manner that promotes national consistency while narrowing—not expanding—the reach of the enhancements. Uniformity should function as a tool for fairness, not as a mechanism for amplifying sentencing severity.

Proposed Amendments to §2L1.1 Related to Human Smuggling

Let me turn briefly to human smuggling, Mr. Chairman.

The dynamics driving amendments to §2L1.1 are beyond the scope of appropriate commentary by the SIAG in terms of Congressional directives. However, proportionality and fairness are the touchstones of much of our work.

While it has not been raised directly by the Department of Justice, we would flag one significant fact in the area of human smuggling. Those who are victimized by traffickers and smugglers often find themselves facing criminal charges, whether for drugs, sex crimes, aiding and abetting, or conspiracy. Often coerced or threatened by their traffickers, these people are harmed a second time when they are indicted.

We urge the Commission to consider future amendments that offer clear guidance in such circumstances, and to provide an analytical framework for downward departures from recommended guidelines ranges.

Mr. Chairman, Members of the Commission, thank you for the opportunity to participate as a member of the Sentence Impact Advisory Group this morning. I am happy to answer any questions you have for me.