

PRACTITIONERS ADVISORY GROUP

A Standing Advisory Group of the United States Sentencing Commission

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March 2, 2026

Hon. Carlton W. Reeves
Chair, United States Sentencing Commission
Thurgood Marshall Building
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington D.C. 20008-8002

RE: Practitioners Advisory Group Comment on Proposed Amendments to the Sentencing Guidelines, January 30, 2026

Dear Judge Reeves,

The Practitioners Advisory Group (“PAG”) submits these comments to the Commission’s proposed amendments regarding (1) sentencing options, (2) the career offender enhancement, (3) certain circuit splits affecting § 4B1.2, and (4) human smuggling.

With respect to sentencing options, the PAG is grateful to the Commission for proposing the revised introductory language making clear judges’ non-carceral options and the expansion of Zones B and C. The proposals are welcome and would better align the Guidelines with the Sentencing Reform Act and the realities of current sentencing practices. That said, the PAG suggests further refinement to the introductory language and recommends the elimination of zones altogether. The zone-based structure incorrectly suggests non-statutory limits on judicial discretion with respect to sentencing options and is inconsistent with post-*Booker* judicial authority. In the alternative, the PAG recommends further expansions to the zones, including Zone A, and replacing the prefatory term “authorizes” in § 5A1.1(a)(1)-(4) with “recommends” to comport with the Commission’s stated goal of emphasizing the options available to judges and avoid impermissibly narrowing those options.

Regarding the career offender guidelines, the PAG opposes eliminating the categorical approach for crimes of violence. That said, of the options presented for comment, the PAG supports Option 1 for both the crime of violence and controlled substance offenses. Those options provide the best hope for a simplified determination of career offender status and for narrowing the class of people subject to a provision that has been roundly criticized for its overbreadth and unjustified severity. For similar reasons, we recommend Option 1 for both circuit splits regarding the timing and scope of substances covered by § 4B1.2.

Lastly, we oppose the proposed amendments to the human smuggling guidelines as unsupported by empirical evidence or valid policy considerations.

IV. Human Smuggling

The PAG opposes the proposed amendment regarding human smuggling. That proposed amendment runs contrary to the Commission’s stated, and laudatory, goal of simplifying the Guidelines and is not based upon any study or empirical data. The Commission’s increased reliance on empirical data to develop, monitor, and amend the Guidelines is designed to reduce sentencing disparities and ensure that the Guidelines are grounded in penological research. It should not abandon that reliance here.

The DOJ’s reasoning in support of this amendment is disingenuous. It suggests that § 2L1.1 should be amended because Congress clearly intended to provide increased punishment for each individual smuggled, which the Guidelines do not reflect.³⁹ But 8 U.S.C. § 1324 has not been amended since the Illegal Immigration Reform and Responsibility Act was passed on September 30, 1996. Congressional intent is reflected in the statute which authorizes prosecution—and the potential statutory penalty—for each individual smuggled, a fact the DOJ recognizes.⁴⁰ The Guidelines, as they currently exist, contain an enhancement based upon the number of individuals smuggled in § 2L1.1(b)(2). The combination of that

³⁸ See *United States v. Bautista*, 989 F.3d 698, 703 (9th Cir. 2021) (“[I]t would be illogical to conclude that federal sentencing law attaches ‘culpability and dangerousness’ to an act that, at the time of sentencing, Congress has concluded is *not* culpable and dangerous.”); *United States v. Abdulaziz*, 998 F.3d 519, 528 (1st Cir. 2021) (“A guideline’s enhancement for a defendant’s past criminal conduct . . . is reasonably understood to be based in no small part on a judgment about how problematic that past conduct is when viewed as of the time of the sentencing itself.”).

³⁹ Letter from Scott Meisler, Deputy Chief, Crim. Div., U.S. Dep’t of Just., to U.S. Sent’g Comm’n at 14 (July 18, 2025), available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/202507/90FR24170_public-comment_R.pdf#page=97.

⁴⁰ U.S. Dep’t of Just., Criminal Resource Manual § 1907, available at <https://www.justice.gov/archives/jm/criminal-resource-manual-1907-title-8-usc-1324a-offenses>.

potential statutory penalty, extant specific offense characteristics, and 18 U.S.C. § 3553(a) provide ample authority to impose an appropriate sentence, even in outlier cases.

There is also no need to amend the current guideline and change the specific offense characteristic based upon the number of aliens smuggled. The fact that 55% of cases sentenced under § 2L1.1 within the last five fiscal years were sentenced below the advisory guideline range⁴¹ vividly demonstrates that judges think the existing guideline goes too far. In light of that data, it is inadvisable to increase the potential offense level without study and reliance on empirical data.

The PAG also opposes the proposed amendment at § 2L1.1(b)(8) (as renumbered). Again, the combination of the potential statutory penalty, extant specific offense characteristics, and 18 U.S.C. § 3553(a) provide ample authority for courts to impose an appropriate sentence, and it is inappropriate to add enhancements without study and reliance on empirical data.

The PAG further opposes adding an enhancement based upon multiple deaths or injuries. The guideline already authorizes such enhancement and contains a cross reference to the appropriate homicide guideline for cases in which death occurs. Accordingly, there is no need for the additional enhancement proposed—and certainly no need for an enhancement that does not rely on empirical data.

The PAG likewise opposes an enhancement to address a smuggler’s involvement with a transnational criminal organization (“TCO”). There is no empirical data to suggest this is a proper focus for sentencing an individual in the mine run case, and it would likely shift focus away from addressing the culpability of the individual being sentenced. Again, ample statutory authority to impose an appropriate sentence exists. There is no demonstrated need for this additional enhancement. The proposal would also run counter to the Commission’s simplification efforts because it would result in additional litigation around the required connection to a TCO. For example, how attenuated could the TCO connection be? A distant TCO connection is present in many cases even where the connection sheds little light on a person’s culpability. Those are concerns that even a heightened *mens rea* requirement does not address.

To summarize: adding enhancements, without reliance on study and data, to a guideline from which sentencing judges usually depart downwards will not enhance the safety of migrants, and it could result in even greater variation between the sentences given to similarly situated defendants, based on judges’ differing deference to the Guidelines. Thus, the PAG strongly urges the Commission not to enact the proposed amendments to § 2L1.1.

⁴¹ Because of the way that placement relative to guideline range is recorded, it is difficult to determine how many cases receiving a fast-track reduction (35% of these cases) also might have received a variance or departure. But the percentage of within-range sentences rose in fiscal year 2024 to 51.8%, while the percentage of cases receiving fast-track reductions dropped to 26.6%. See U.S. Sent’g Comm’n, *Quick Facts: Alien Smuggling* (2024), available at https://www.uscourts.gov/sites/default/files/pdf/research-and-publications/quick-facts/Alien_Smuggling_FY24.pdf.