



Immigration

Denver, CO



Presenters

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Session Objectives

- Review Criminal History issues
- Review new guideline at §2L1.2
- Apply the new §2L1.2 guideline to scenarios





Criminal History Issues (§2L1.2)

Should I do the criminal history calculations first?



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Criminal History Pointers

- Use sentence imposed, not time served
- Suspended time does not count towards sentence length
- Keep in mind single sentence rule
- Count revocation time in sentence length
- To count a conviction at §2L1.2, it must receive points



Immigration Guideline §2L1.2

- Eliminates the “Categorical Approach”!!!
- Accounts for prior criminal conduct in a broader and more proportionate manner
- New departure provisions



What You Need to Apply the New Guideline Correctly

1. Date of first order of removal or deportation
2. Prior convictions for illegal reentry/entry offenses that received criminal history points
3. Prior felony convictions that predate the first order of deportation/removal that received criminal history points
4. Prior felony convictions committed after the first order of deportation/removal that received criminal history points



Illegal Reentry Amendment - §2L1.2

- Base Offense Level (unchanged) **8**
- Specific Offense Characteristics
 - (b)(1) Considers convictions for illegal reentries **+4 or +2**
 - (b)(2) Considers other convictions before the defendant's first order of deport **+10, +8, +6, +4, or +2**
 - (b)(3) Considers other convictions after the defendant's first order of deportation **+10, +8, +6, +4, or +2**



- (b)(1)– If the defendant committed the instant offense after sustaining:
 - A felony conviction that is an illegal reentry offense **[+4]**
 - 2+ misdemeanor convictions for illegal entry offenses **[+2]**



Statutory Penalties for Illegal Entry

8 U.S.C. § 1325(a)

- Illegal entry – Class B Misdemeanor 6 months
- Second or subsequent § 1325(a) 2 years



Length of Prior Sentence Before First Deportation/Removal

- (b)(2)– If before the first deportation/removal, the defendant sustained:
 - Felony conviction with sentence \geq 5 years imposed **[+10]**
 - Felony conviction with sentence \geq 24 mos. imposed **[+8]**
 - Felony conviction with sentence of $>$ 13 mos. imposed **[+6]**
 - Any other felony conviction **[+4]**
 - 3+ misdemeanor crimes of violence, drug offenses **[+2]**



Length of Prior Sentence After Reentry

- (b)(3)– If after the first deportation/removal, the defendant committed and sustained:
 - Felony conviction with sentence \geq 5 years imposed **[+10]**
 - Felony conviction with sentence \geq 24 mos. imposed **[+8]**
 - Felony conviction with sentence of $>$ 13 mos. imposed **[+6]**
 - Any other felony conviction **[+4]**
 - 3+ misdemeanor crimes of violence or drug offenses **[+2]**



Departure Provisions

- Seriousness of the prior offense not reflected in enhancement
- Time served was substantially less than the sentence imposed for the offense
- Time served in state custody





§2L1.2 Scenarios



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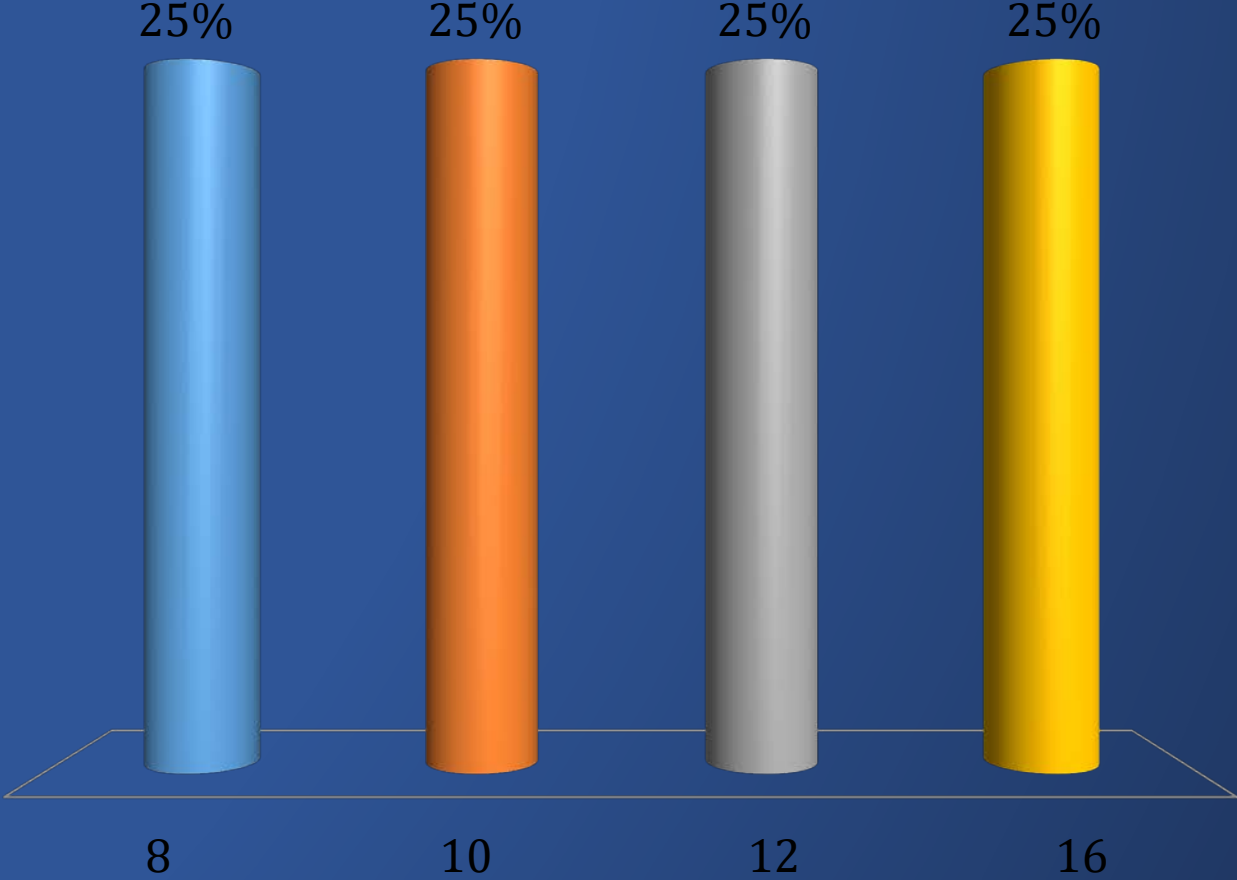
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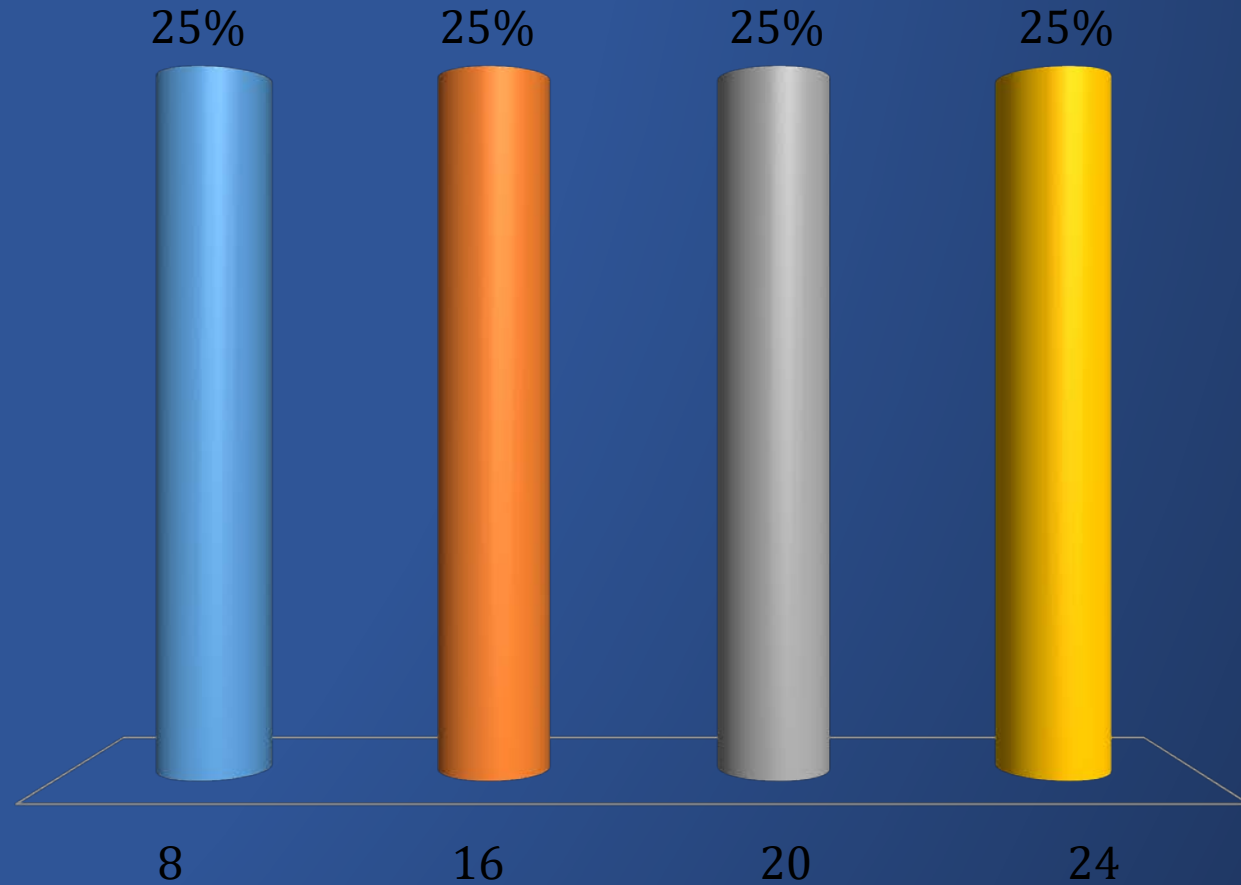
Illegal Reentry Scenario 1: The offense level is.....

- A. 8
- B. 10
- C. 12
- D. 16



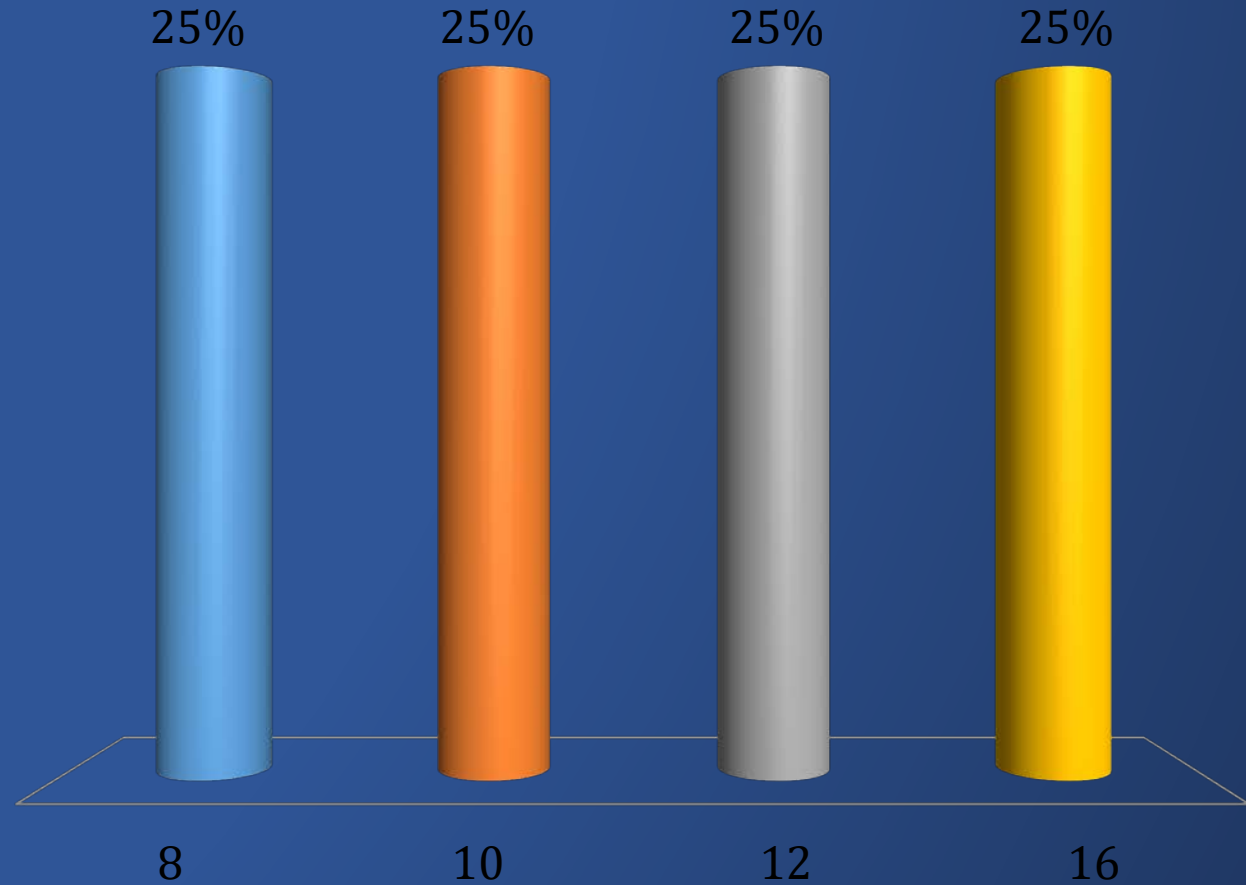
Illegal Reentry Scenario 2: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 24



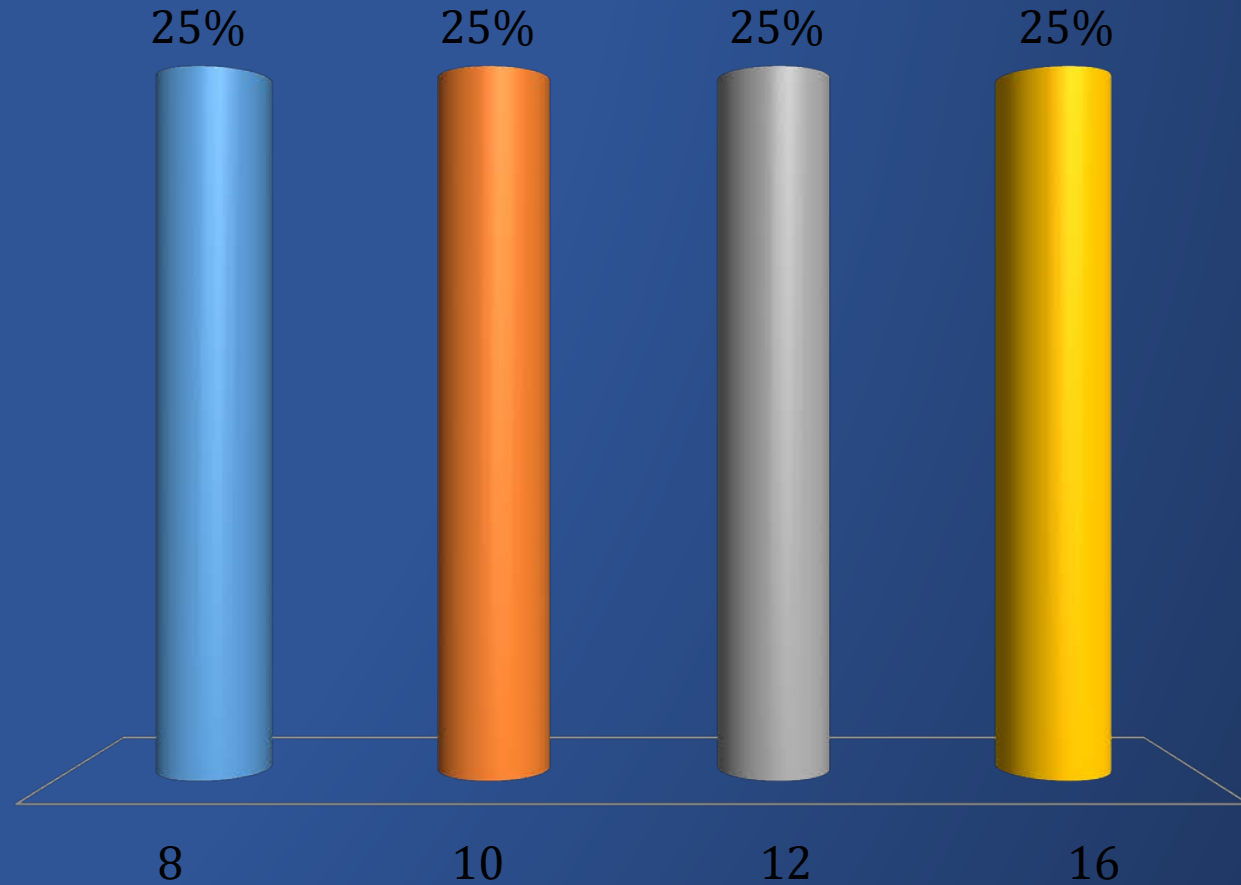
Illegal Reentry Scenario 3: The offense level is.....

- A. 8
- B. 10
- C. 12
- D. 16



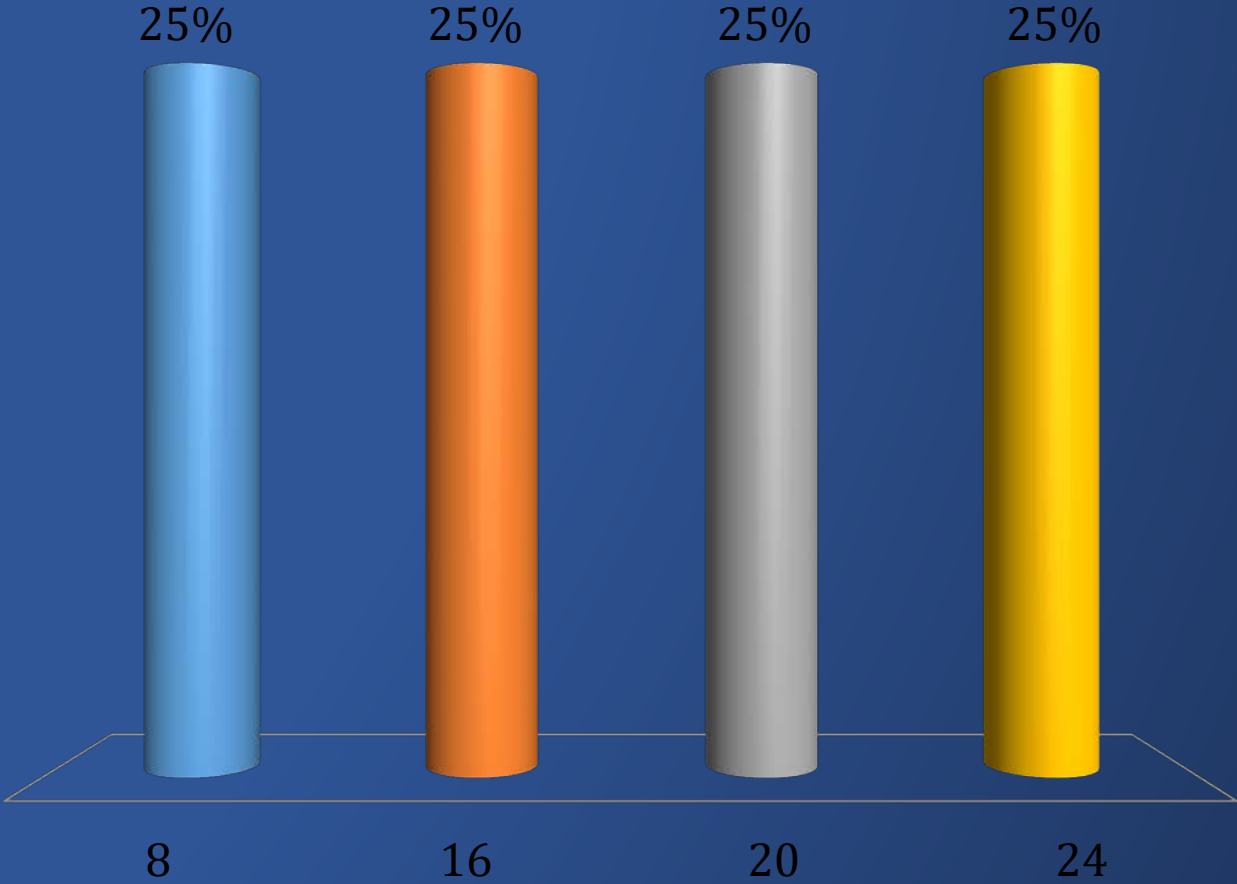
Illegal Reentry Scenario 4: The offense level is.....

- A. 8
- B. 10
- C. 12
- D. 16



Illegal Reentry Scenario 5: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 24



Impact of a “Single Sentence”

§4A1.2(a)(2)

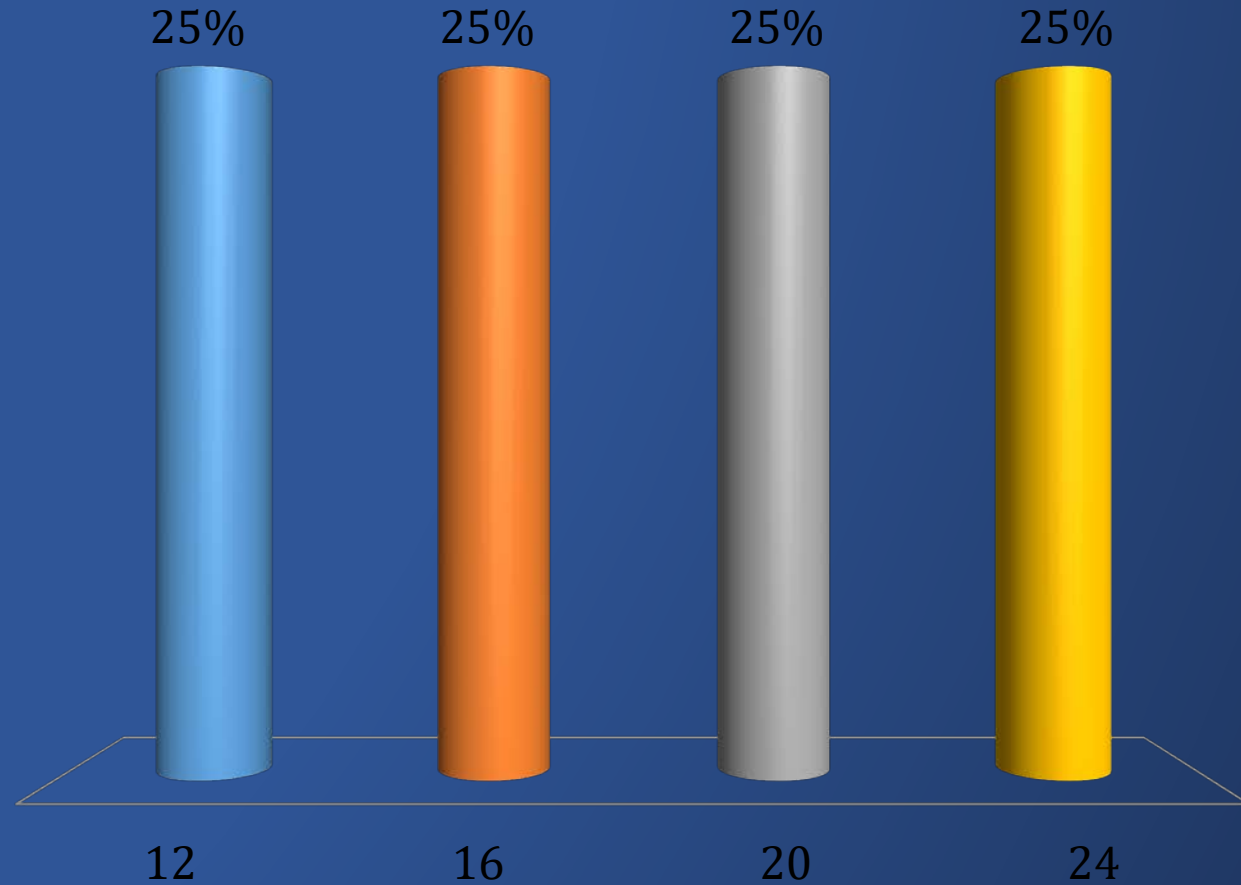
Rather than add points for each prior sentence:

- If concurrent sentences
 - Use the longest sentence
- If consecutive sentences
 - Use the aggregate length of the sentences



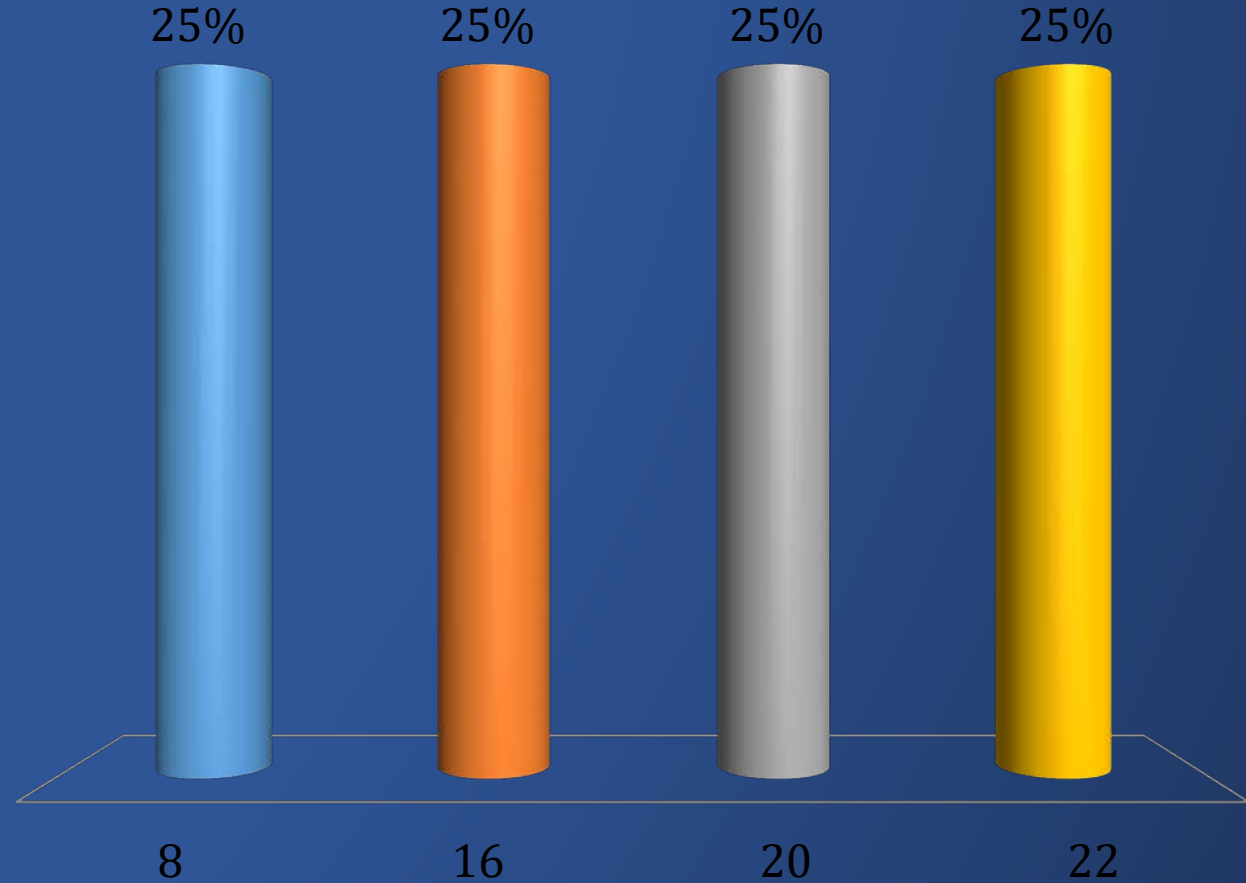
Illegal Reentry Scenario 6: The offense level is.....

- A. 12
- B. 16
- C. 20
- D. 24



Illegal Reentry Scenario 7: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 22



Revocation and Sentence Length

Application Note 2

- The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release



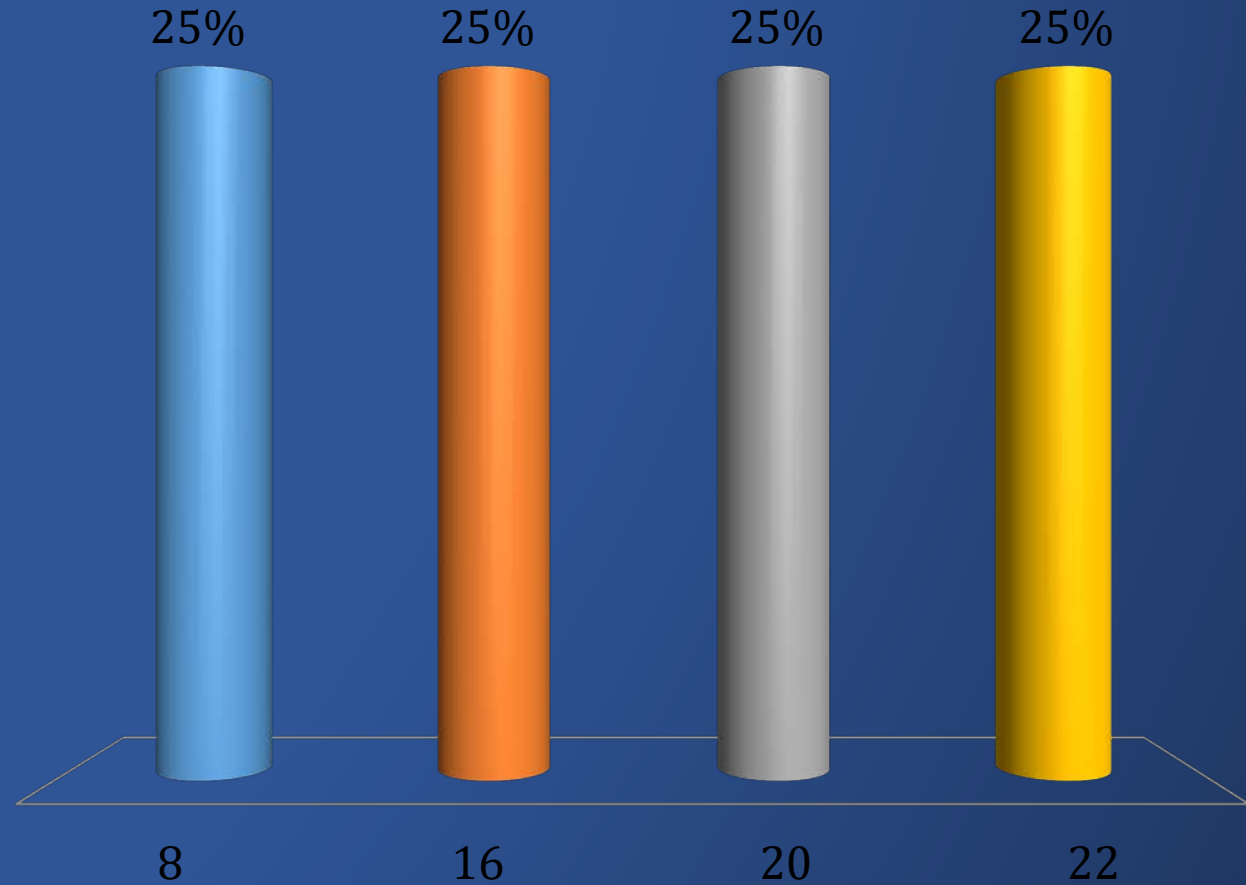
§2L1.2

- *U.S. v. Franco-Galvan*, 864 F.3d 338 (5th Cir. 2017)
 - Section 2L1.2(b)(2), as amended in 2016, does not allow a court to consider any sentence length that was imposed after a defendant's first order of removal. Relying on circuit precedent, the court held that because the defendant's 15-year sentence was imposed upon revocation of probation after the first order of removal, it could not be used to determine sentence length.



Illegal Reentry Scenario 8: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 22



Illegal Reentry and Another Felony Offense

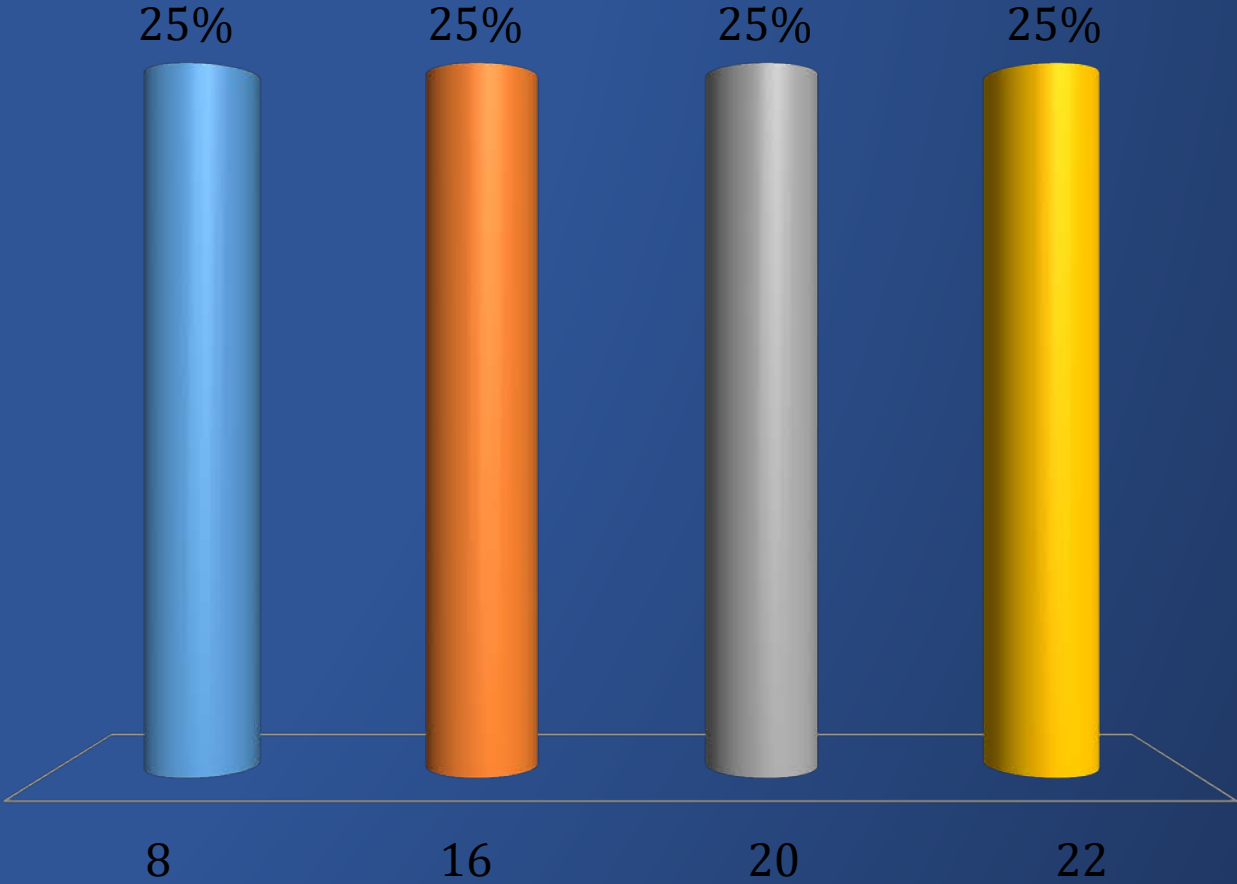
Application Note 4

- If a defendant has an illegal reentry conviction and another felony conviction treated as a single sentence, both §2L1.2(b)(1) and (b)(3) can apply.



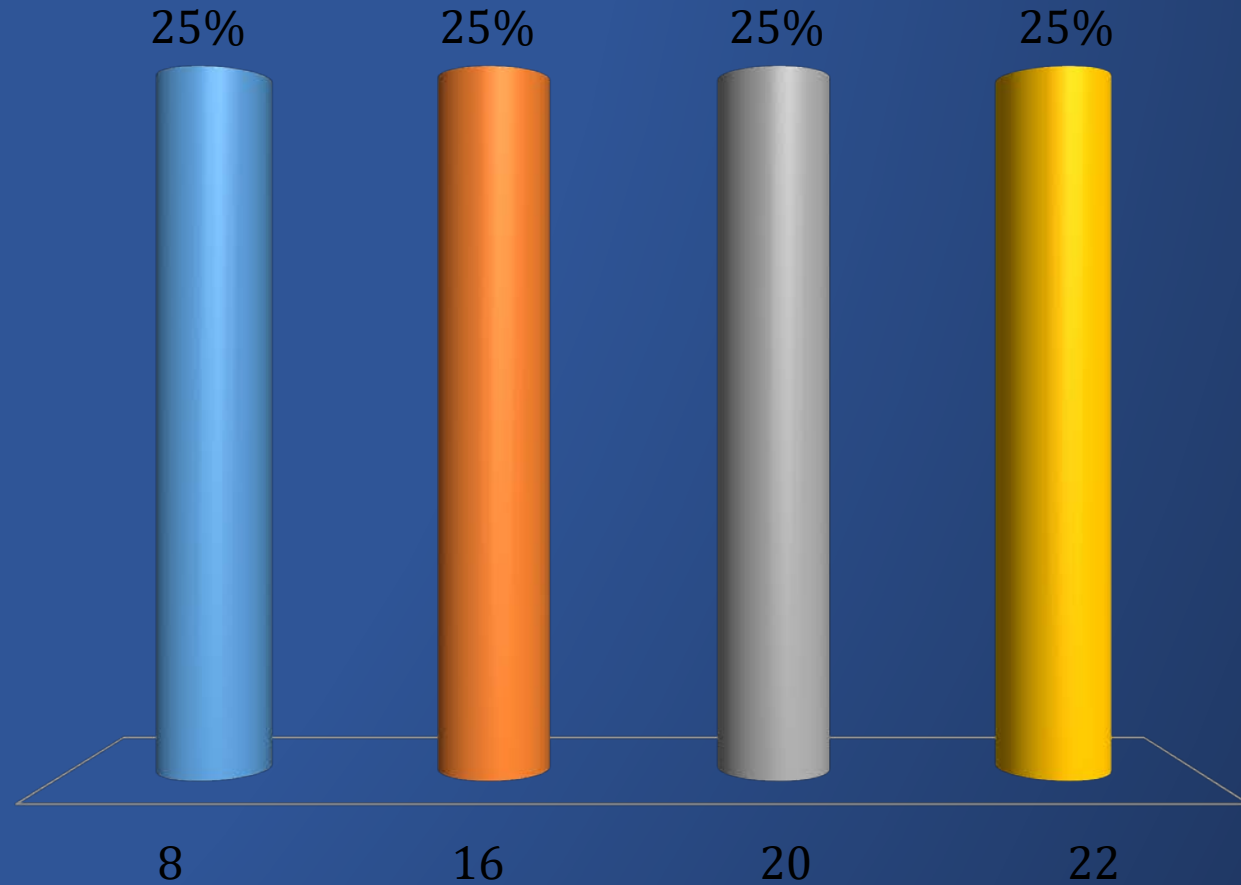
Illegal Reentry Scenario 9: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 22



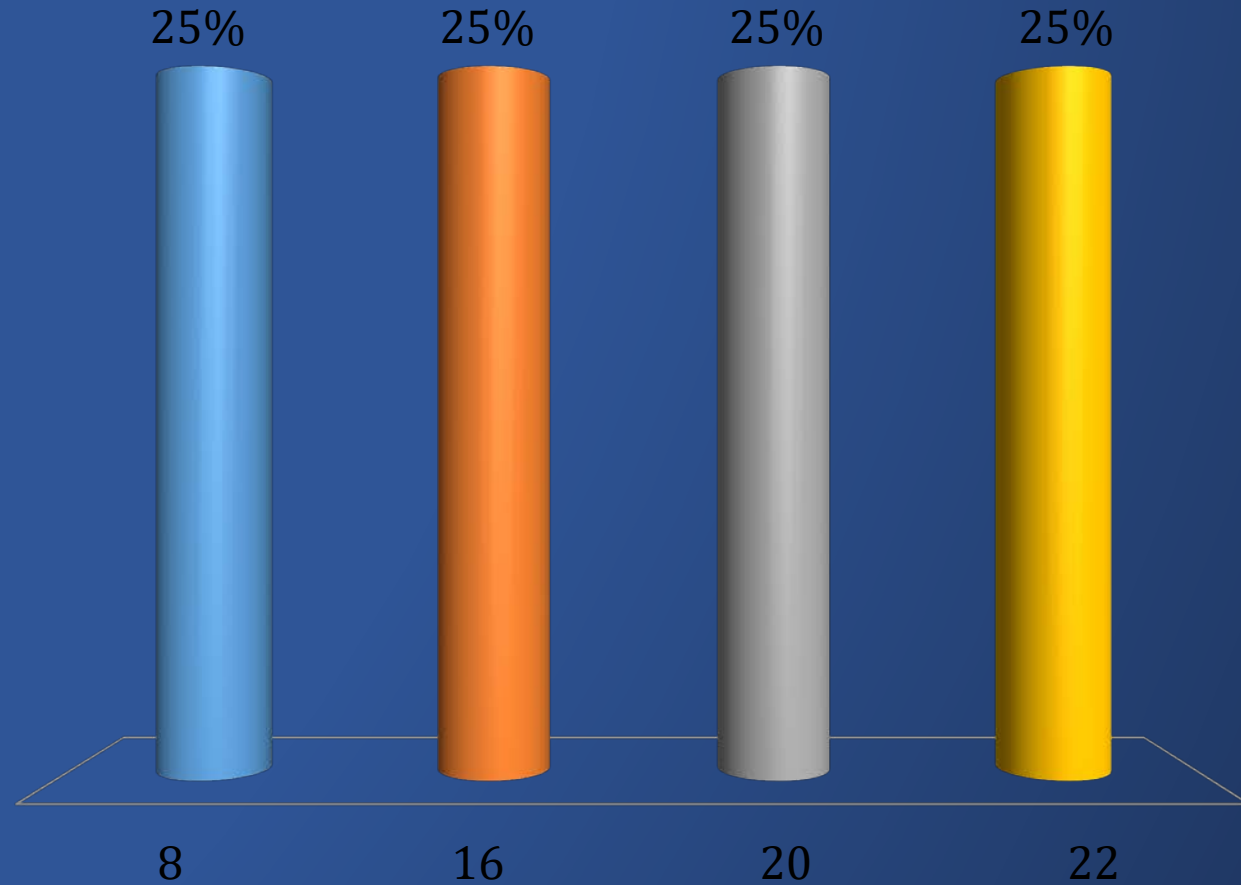
Illegal Reentry Scenario 10: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 22



Illegal Reentry Scenario 11: The offense level is.....

- A. 8
- B. 16
- C. 20
- D. 22





Thank you



Questions?



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