

CRT. 63/91

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
UNITED STATES COURTHOUSE
515 RUSK STREET
HOUSTON, TEXAS 77002

CHAMBERS OF
JUDGE SIM LAKE

October 17, 1990

United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

ATTENTION: Communications Director

Gentlemen:

Pursuant to Judge Wilkins' letter of September 21, 1990, I recommend the following changes to the Sentencing Guidelines:

- (1) Add a new § 2L1.1(b)(4), which would state:

If the offense involved smuggling, transportation or harboring of multiple unlawful aliens, increase by one level for each 2 additional aliens involved.

The current Guidelines are too lenient toward professional alien smugglers. With a base offense level of 9 a defendant rarely faces more than a year in prison, even if his total offense level is increased for his role in the offense and even if he has a prior smuggling conviction resulting in a two-level increase under § 2L1.1(b)(2). Professional alien smuggling is a serious crime in this part of the country and should be treated as such for sentencing purposes.

- (2) Delete the word "dwelling" from § 4B1.2(1)(ii) and Application Note 2 and substitute instead the words "building or structure."

This would bring the definition of a crime of violence into harmony with the definition of a "violent felony"

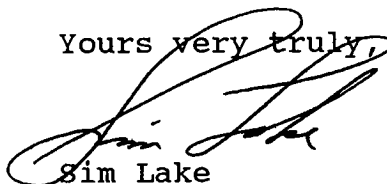
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found in 18 U.S.C. § 924(e)(2)(B)(ii) as construed in Taylor v. United States, 110 S.Ct. 2143, 2158-2160 (1990).

- (3) Expand the sentencing table to include two or three more criminal history categories with commensurate increases in the range of imprisonment for each category. Category VI currently includes defendants with an offense level of 13 or more. It is not unusual to see defendants with an offense level of more than 15. To fairly sentence these defendants I must either use the level VI sentencing range or depart upward on the basis that the criminal history category inadequately represents the true offense level. Departures require greater elaboration and are more likely to prompt an appeal. Increasing the number of criminal history categories avoids these problems and would probably prompt more pleas since a defendant and his lawyer would be able to calculate more accurately the defendant's guideline sentence.

Thank you for giving me the opportunity to comment on the proposed revisions to the Guidelines. If you have any questions about these suggested revisions, please do not hesitate to call me at (713) 226-4177.

Yours very truly,



Jim Lake

SL/bma
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cc: Honorable William W. Wilkins, Jr.