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Honorable Diana E. Murphy
Chair, United States Sentencing Commission
1 Columbus Circle NE, Suite 2-500 South Lobby
Washington, DC 20002-8002

Dear Judge Murphy:

I am writing to express my strong support for the proposed amendment to the illegal reentry guideline. U.S.S.G. § 2L1.2(b)(1)(A) currently requires a 16-level enhancement if a defendant reentered the country after being deported following a conviction for an "aggravated felony." What constitutes an "aggravated felony" is defined by 8 U.S.C. § 1101(a)(42), which was developed for INS exclusion proceedings, not as part of the sentencing guidelines. Thus, although that definition may be appropriate for INS proceedings, the extremely broad definition results in grossly disproportionate sentences when used to determine sentencing ranges within the guideline structure.

The proposed amendment to § 2L1.2 seeks to remedy the unfairness resulting from the fact that the 16-level enhancement applies regardless of the facts or circumstances of the underlying "aggravated felony". The expansive definition of "aggravated" felonies includes relatively minor criminal conduct such as a \$20 drug transaction. Presently, these relatively minor convictions increase the defendant's sentence as much as a conviction for murder or truly serious drug trafficking. Moreover, the enhancement also serves as a "double bite" in that the prior conviction already increases a defendant's sentencing range by adding to the Criminal History Category. The proposed amendment would provide graduated sentencing enhancements based on the seriousness of the prior conviction so that the resulting sentence is more individually tailored to reflect the defendant's history and circumstances.

The 16-level enhancement, raising the base offense level of 8 to 24, is severe and virtually unprecedented in the guidelines. The only other 16-level enhancements found in the guidelines cover far more serious conduct, such as that found in U.S.S.G. § 2F1.1 which increases fraud offenses by 16 levels where the loss exceeded \$ 20,000,000. An offense level of 24 is deemed appropriate for kidnaping (§ 2A4.1), arson creating a substantial risk of death or serious bodily injury (§ 2K1.4), trafficking in 100 Kilograms of marihuana (§ 2D1.1), or when a defendant manufactured over \$10,000,000 in counterfeit currency (§2B5.1). Indeed, an offense level of 24 falls only one offense level short of the offense level for voluntary manslaughter, (U.S.S.G. § 2A1.3).

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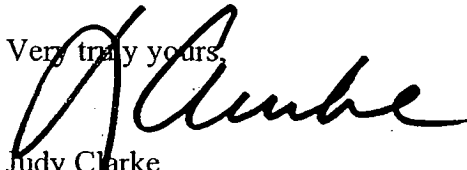
This drastic increase was intended to punish aliens who return to this country to conduct "serious drug trafficking" operations or other sophisticated criminal activity. In reality, the 16-level enhancement most often affects small time offenders who have rarely served any significant time in jail.

The 16-level enhancement was passed in 1991 in the context of congressional amendments to the underlying statute, 8 U.S.C. § 1326, that increased the maximum penalties. See U.S.S.G. Appendix C, amendment 375. Comments offered in the Congressional debates concerning the statutory amendments refer to the need for increased penalties due to the "expansive drug syndicates established and managed by illegal aliens." 133 Cong. Rec. S4992-01. A sponsor of the amendments gave as an example of the individuals who should be prosecuted under these strict penalties "a Columbian ... [who] was deported previously from the United States and according to the Drug Enforcement Administration (DEA) is linked with 50 drug related murders and is currently the subject of 6 drug killings in the New Orleans area and a series of drug killings in California." 133 Cong. Rec. S4992-01. The testimony claimed that "these aliens are not exceptions but rather common among the 100,000 illegal alien felons in the United States." *Id.* This cannot be said, however, for the alien felons prosecuted for illegal reentry and subject to the 16-level enhancement under the guidelines. In our district, many "aggravated" felons prosecuted pursuant to 8 U.S.C. § 1326 are agricultural workers who have prior state convictions for only drug possession rather than trafficking.

Finally, the proposal invites comment as to whether the aggravated felony enhancement should not apply to felonies committed more than fifteen years prior, or not counted under § 4A1.2. This change would be appropriate and consistent with the guidelines application in other contexts, such as the use of prior convictions for the Career Offender guidelines. See U.S.S.G. § 4B1.2(c) (the sentences used to invoke career offender guideline must be counted separately under § 4A1.1).

I strongly urge the Commission to implement the proposed amendment to ameliorate the unfairness of the current sentencing scheme for illegal reentry offenses. Thank you for your consideration of these comments.

Very truly yours,



Judy Clarke

cc: All Commissioners