

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
515 RUSK AVENUE, ROOM 9136
HOUSTON, TEXAS 77002-2605

CHAMBERS OF
JUDGE EWING WERLEIN, JR.

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March 14, 2001

Office of Public Affairs
United States Sentencing Commission
One Columbus Circle, N.E.
Washington, DC 20002-8002

Attn: Mr. Timothy B. McGrath
Staff Director

In Re: Proposed Amendment to § 2L1.2

Dear Mr. McGrath:

Thank you for your letter and the opportunity to review the proposed amendment to § 2L1.2.

First, I favor the concept of Option One in preference to the alternative Option Two. It is better to have a prescribed tiered sentencing enhancement than to make upward departures frequently a necessary consideration in these cases. Even with the tiered enhancements, the court can always consider an upward departure in the most egregious of circumstances.

Second, in Option One (b)(1)(A)(i)(I), I strongly urge that the 16-level enhancement apply if the defendant actually served a period of imprisonment of at least five years for such conviction, rather than ten years as proposed.

Actually serving a five-year term in state prison reflects the commission of a very serious crime. It is these felons that I believe Congress *really* wants out of this country. If one who has served as many as five years in prison is deported and then illegally reenters, I feel that the full 16-level enhancement is entirely appropriate and, in fact, necessary to help deter further such reentries and to protect the public.

Third, if the preceding recommendation is accepted, § (b)(1)(A)(ii) in Option Two should be deleted.

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Fourth, I would suggest modifying § (b)(1)(A)(iii) to provide a 10-level enhancement, rather than 8 levels, if the defendant actually served a period of imprisonment of at least two years but less than five years. Defendants who reenter illegally after commission of a felony often remark that they did not believe the crime would entail much punishment because they had not had any appreciable incarceration before their first deportation. Those who have served two to five years of actual imprisonment, and still return, will not be deterred in my opinion from further illegal reentry unless there is an effective, incremental amount of punishment.

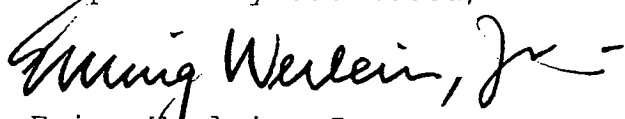
Fifth, in Option Two (B), I suggest deletion of the proposed provision encouraging downward departure if a defendant was not advised, at his previous deportation, of the criminal consequences of reentry after deportation or removal. This would predictably lead to an endless stream of claims by defendants on a subject that I do not believe warrants the considerable judicial time required to make those fact determinations.

Sixth, regarding Option Two, I would not place a limitation upon the time that had passed since commission of the aggravated felony.

Finally, I concur that an automatic 16-level enhancement is too much for some defendants who have been convicted of aggravated felonies, been deported, and then illegally reentered the country. I hope, however, that the Commission will not overreact, especially for serious criminals who have actually been imprisoned for as many as five years for an aggravated felony conviction before their prior deportation. I should prefer to see no change in § 2L1.2 rather than to see this guideline made so lenient as to render it out of proportion to 8 U.S.C. § 1326(b)(2), which prescribes a maximum prison term of 20 years. Congress's principal objective seems to be to deter illegal reentry by alien felons who previously have been convicted of aggravated felonies in our country. I suggest that respect for Congress's treatment of this crime requires a sentencing guideline that is proportionately severe.

I very much appreciate the Sentencing Commission's consideration of my views.

Respectfully submitted,


Ewing Werlein, Jr.

EW/jeh

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