



UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

MARTHA VÁZQUEZ
JUDGE

April 4, 2001

(BY FAX)

Timothy B. McGrath
Office of Public Affairs
United States Sentencing Commission
One Columbus Circle, NE
Washington, DC 20002-8002

Dear Mr. McGrath:

I am responding to the request for comments on proposed amendment 18. I have just returned from a tour of duty in Las Cruces, New Mexico, which included days of sentencings, the majority of them on illegal reentry cases. One of these cases especially demonstrates the harsh and tragic consequences to individuals who have been life-long residents of the United States.

Mr. Bernardino Barrientos is 20 years old. He entered the United States as a very young child with his mother and ten siblings. They have lived in the United States for many years since. The mother left Mexico to protect her children from an abusive husband and father. She has raised her children on her own in the United States.

When Mr. Barrientos was 19 years old, he was arrested because he was running and yelling through the streets causing vehicles to swerve to miss him, yelling gibberish. When officers tried to arrest him for his own safety, he tore up a fence and threw it at them. He was caught, arrested and prosecuted.

The police officers felt he "was not in the right frame of mind and had the intention of inflicting harm to himself." He was convicted of resisting detention, reckless conduct, and Assault on a Police Officer – all misdemeanors. His sentence was one year custody on each count; concurrent. All of it was suspended to one year probation. At the age of 19, to his horror, he was deported. The following year he reentered and was arrested. For the misdemeanor conviction of Assault on a Police Officer, he received an enhancement of 16 levels.

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This young man has no one in Mexico, except his abusive father who now abuses his new wife and children. When he tried to make a life in a foreign country, he had no one to help him get settled, and he missed his mother and his ten siblings. He returned to the country he has known most of his life and to his brothers and sisters and mother and was promptly arrested for reentry of a deported alien.

When he came before me on the reentry, not only was he facing a prison sentence, he was facing a life sentence of banishment from the United States. At the time that he was convicted on the misdemeanor offense, he received no legal advice as to the immigration consequences of his plea. He thought he was getting probation because the officers were sympathetic to his emotional state and he accepted what he thought was a good deal.

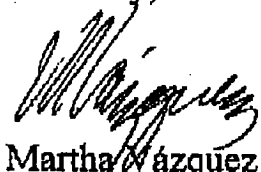
I wholeheartedly support an amendment that would change the definition of an aggravated felony and that of a simple felony and that would permit more flexibility to examine the seriousness of the underlying conduct and circumstances of the offense. This would permit a meaningful evaluation of the seriousness of the

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The population of deportable aliens is typically a very poor and uneducated population. Access to immigration lawyers is very limited. Some of these people had legal residency but because they never became naturalized citizens face deportation for minor misdemeanor offenses. Some of these people plead to offenses that at the time perhaps did not carry deportation consequences. These are collateral consequences that constitute very serious punishment beyond what is imposed in the criminal proceedings. It is in this context that we are adding 16 levels to a reentry sentence. The combination of consequences for what may be a minor violation of the law in the first instance results in a gross sentencing disparity.

I appreciate the opportunity to share my concerns with you.

Sincerely,



Martha Wázquez
United States District Judge

MV:mlm