



March 3, 2026

Dear Judge Reeves and Members of the United States Sentencing Commission:

Thank you for seeking additional public comment on proposed amendments for the U.S. Sentencing Commission’s (“Commission”) amendment cycle. On behalf of Right On Crime—a national criminal justice campaign of the Texas Public Policy Foundation focused on conservative, data-driven solutions resulting in less crime, fewer victims, and safer communities—I am pleased to submit the following comments and recommendations.

The Commission proposed additional amendments on January 30, 2026.¹ Right On Crime appreciates this Commission’s consistent and comprehensive comment process in seeking feedback from a diverse array of stakeholders. To that end, Right On Crime respectfully submits to the Commission the below select comments and further recommendations to the proposed amendments.

(1) Sentencing Options

The Commission has proposed an amendment that seeks to move beyond a prison-first mentality and expand the availability of non-custodial sentencing options. Specifically, the proposed amendment on Sentencing Options would add new introductory commentary and a guideline change to emphasize that determining the *type* of sentence (probation, fine, or imprisonment) is a critical threshold decision.

Part A’s introductory commentary is uniquely helpful for litigators and judges to reference when recommending and issuing federal sentences which, as the Commission notes, would “further underscore the importance of this critical decision.”² And it is similarly encouraging to see the introductory commentary highlight the need for judicial discretion in tailoring the type of sentences, namely by stating that “[a]s the criminal justice system continues to develop more advanced tools to assess and respond to individual defendants’ unique risks and needs, the court should consider the resources available to address the defendant’s needs, and the setting in which those resources can be provided, in determining the appropriate sentencing option.”³

The Commission also proposes possible changes to §5A1.1. These suggestions are overall positive and could be instructive for practitioners in ensuring the appropriate length and type of sentence is handed down. This is particularly true where the proposed amendment urges courts to “consider which option(s) will best meet the purposes of sentencing and the needs of the

¹ U.S. Sentencing Comm’n, Proposed Amendments to the Sentencing Guidelines (Jan. 30, 2026), available at: https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202602_rf-proposed.pdf.

² *Id.* at p. 5.

³ *Id.* at p. 6.



individual defendant.”⁴ Right On Crime’s only suggestion in this proposal is to simultaneously pay reverence to the victim in sentencing decisions. This very well could be covered by the courts’ consideration of the applicable factors in 18 U.S.C. § 3553(a) – which the Commission explicitly notes are still relevant.⁵ However, an explicit instruction to courts and litigants to choose sentences based on the defendant’s risks and needs alone begs the question: does this encompass any particular needs of the victim?

The Commission asks whether the introductory commentary and Guideline amendments should both be adopted.⁶ Based on the aggregate positive impact, Right On Crime would support adoption of both parts of the Part A amendment.

Part B of the proposed amendment considers expansion of Zones B and C of the Sentencing Table to increase the number of defendants eligible for split sentences, or probation with conditions of confinement. Right On Crime supports the Commission’s amendment to expand non-custodial sentencing options where appropriate. Judges are best positioned to evaluate the unique risks and needs of individual defendants and the specific circumstances of a case. To that end, courts need to move away from the assumption that incarceration is the only and most meaningful response to crime. Alternative punitive measures – like home confinement, probation, and deferred prosecution – can support non-violent offenders maintain normalcy while serving a sentence. This targeted rehabilitation is a sensible crime management policy that can reduce recidivism and costs to the Bureau of Prisons, all while maintaining public safety.⁷

This proposed amendment is a step towards realigning the Guidelines with the original intent of the Sentencing Reform Act – supporting the “full exercise of informed discretion.”⁸ This proposal makes clear that the Commission recognizes that many low-to-moderate risk defendants can be effectively punished and supervised without the destabilizing effects of long-term imprisonment.

(2) Career Offender

The Commission has proposed an amendment to address the “recurrent criticism of the categorical approach” for career offender sentencing enhancements.⁹ Right On Crime is providing comment on part of this proposal: the elimination of the use of the categorical

⁴ *Id.* at p. 7.

⁵ *Id.*

⁶ *Id.* at p. 9.

⁷ *See, e.g., Home Confinement Under the CARES Act*, 88 Fed. Reg. 19830 (Apr. 4, 2023) (codified at 28 C.F.R. § 0.96c), noting that the expansion of home confinement served as a sensible crime management policy by prioritizing targeted rehabilitation; this transition allowed the Bureau of Prisons to significantly reduce institutional costs and lower recidivism rates through stabilized community reentry, all while maintaining a rigorous standard of public safety via electronic monitoring and strict supervision.

⁸ S. Rep. No. 225, 98th Cong., 1st Sess. 91 (1983).

⁹ *Supra n. 1* at p. 17.



approach for purposes of determining whether a federal offense is a “crime of violence” by listing federal offenses that would qualify as a “crime of violence.”

Generally speaking, imprecise language surrounding what constitutes a crime of violence has been struck down as unconstitutionally vague.¹⁰ And statutory questions on this issue continue to clog the federal court dockets.¹¹ The categorical approach, despite its frequent appearances before the Supreme Court of the United States,¹² is still “difficult to apply and can yield dramatically different sentences depending on where [the crime] occurred[.]”¹³

While well intentioned and intended to “correct some of the ‘odd’ and ‘arbitrary’ results that the categorical approach has produced relating to the ‘crime of violence’ definition,”¹⁴ there are some well-worn criticisms and valid hesitations towards outlining the specific offenses that would qualify as “crimes of violence,” as proposed in this amendment.

For example, in listing out specific statutes of “crimes of violence,” sentencing judges may have to ignore the facts of the case. A person may commit one of the newly defined “crimes of violence” without criminal intent or perhaps without any harm caused. Also, once a list of “crimes of violence” is crafted and accepted by the Commission, it would be slow to change.¹⁵ However, social standards, technology, and criminal enterprises move fast. A list from 2026 may not account for how certain crimes are viewed in the future. And conversely, it could take years for the Commission to once again add new, warranted, and genuinely dangerous behavior to a formal list.

To that end, the Commission’s proposal to address the inequities of the categorical approach is laudable. However, as it identified in the proposal itself, the revision – listing out specific offenses by reference to the U.S. Code – will identify “crime of violence” offenses as presumptively violent and in an overbroad way.¹⁶ The list of qualifying offenses is not only overinclusive, but simultaneously underinclusive. It could have the adverse effect of failing to capture certain crimes where violence is associated with the crime but not an element of the offense to where Congress would have made it clear in its statutory definition.¹⁷

¹⁰ *Johnson v. United States*, 135 S. Ct. 2551, 2557 (2015); *see id.* at 2555–56 (quoting 18 U.S.C. § 924(e)(2)(B)(ii)). The Court last term similarly struck down the residual clause in 18 U.S.C. § 924(c)(3)(B), *see United States v. Davis*, 139 S. Ct. 2319, 2336 (2019), and did the same to the residual clause in 18 U.S.C. § 16(b) during the 2017 Term in *Sessions v. Dimaya*, 138 S. Ct. 1204, 1216 (2018).

¹¹ *See, e.g.*, summary outlined by Rachel Barkow in <https://harvardlawreview.org/print/vol-133/the-flawed-framework-of-the-armed-career-criminal-act-and-mandatory-minimum-sentencing/#footnote-11>.

¹² *United States v. Aguila-Montes de Oca*, 655 F.3d 915, 917 (9th Cir. 2011) (“Indeed, over the past decade, perhaps no other area of law has demanded more of our resources.”).

¹³ *Mathis v. United States*, 136 S. Ct. 2243, 2269-70 (2016).

¹⁴ *Supra n. 1* at p. 17.

¹⁵ It would certainly be even slower with Congress.

¹⁶ *Supra n. 1* at p. 17.

¹⁷ Compare, for example, those offenses listed out in the proposed amendment for a “crime of violence” and those that are not qualifying for earned time credits in the First Step Act. First Step Act (FSA) of 2018 (P.L. 115- 391).



To be sure, the criminal justice system would be much improved if it distinguished more between chronic offenders who are truly dangerous and those who are low-level repeaters. Narrowing this helps prioritize resources on violent threats. Therefore, limiting the scope of the Career Offender guideline could be a positive improvement so long as it prevents non-violent drug offenders or those with technical violent priors (where no actual force was used) from receiving massive sentence enhancements.

Overall, Right On Crime is cautiously supportive of the Commission's decision to seek clarity and improve the career offender guideline as it pertains to defining a "crime of violence." Any clarity and efficiency gained by moving away from the categorical approach is a win. However, the Commission must remain vigilant to ensure that the definition remains robust enough to protect the public from truly violent recidivists while ensuring that non-violent offenders are not caught in the Career Offender net. This is a delicate balance that the Commission clearly seeks and further discussion on the merits of the current list, definition, and the offenses' impacts on public safety will be helpful in informing the Commission on how to best proceed.

(3) Human Smuggling

The Commission has also proposed an amendment addressing specific factors for consideration in human smuggling crimes, such as the number of aliens smuggled and whether the offense involved bodily injury or sexual assault.¹⁸ It appears that the proposal is largely influenced by the Department of Justice's comment submitted to the Commission last year.¹⁹ The Justice Department is right to point out that "[t]he human cost of smuggling operations is enormous."²⁰ And generally speaking, Right On Crime is incredibly sympathetic to holding dangerous human smugglers accountable.

However, the structure of the proposed amendment may not be the most effective way to protect victims of human smuggling equally. Much of the proposed amendment focuses on issuing sentencing enhancements through a tiered system based on the number of aliens involved and decreasing the number of aliens in each tier. This tiered system may originally have been intended to reflect the intent of Congress to punish the offender for each individual alien affected.²¹ However, it has set up an overreliance on arbitrary numerical thresholds for enhancements. The current and proposed tiered enhancements (i.e., 6 – 24 aliens vs. 25 – 99) suggest that a crime is only significantly more serious if a certain random number of victims is reached. However, nothing suggests that a particular threshold for number of victims has a deterrent effect of future crime. And similarly, nothing suggests that just because fewer victims

While these lists are written for different purposes, to be sure, it illustrates that the applicability of certain enhancements, restrictions, and interpretations of rehabilitation vary significantly.

¹⁸ *Supra n.* 1 at p. 51.

¹⁹ https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/202507/90FR24170_public-comment_R.pdf#page=97.

²⁰ *Id.*

²¹ 8 U.S.C. § 1324(a)(1)(B).



are impacted that the crime itself is any less heinous. Rather, a crime committed against *one* person is a violation of human dignity and is a threat to public safety. Headcount alone does not necessarily redress the harms to individual victims. Increasing penalties and having arbitrary enhancements may be penalizing just for penalizing's sake.

Further, the Commission's own data reveals a disconnect: the majority (59%) of smuggling cases involve an average of three aliens and receive no enhancement.²² Yet, the current proposal continues to ignore this most frequent category.

If the goal is to deter and punish the most common forms of this crime, the Commission should consider options to apply enhancement based on the *type* of victim as opposed to the number. Basing enhancements on the presence of vulnerable victims, such as abandoned children, pregnant women, or the elderly could be more reflective of the heinous nature of the crime. The Commission could also alternatively focus on the base offense level to reflect the inherent danger of the crime rather than stacking tiers based on volume. A more victim-centered approach could also include addressing role-based activity. The current proposal appears to overlook whether a defendant was a leader of a transnational organization or a low-level participant, which is critical for just sentencing. Better yet, the Commission should highlight through research, data collection, or Guidelines commentary how enhancements and severity of sentences are not actually the most effective measure of crime deterrence. Instead, as described by the Department of Justice itself, it is the certainty of punishment itself that prevents future crime.²³

Right On Crime greatly appreciate the Commission's thoughtful and thorough review of these comments and looks forward to continuing to work with the Commission to improve our criminal justice system.

Sincerely,

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Right On Crime

²² *Supra n. 1* at p. 51.

²³ U.S. Dep't of Justice, Office of Justice Programs, National Institute of Justice, "Five Things About Deterrence," (May 2016), available at <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.