



RE: Public Comment on Proposed Amendments to §2L1.1 (Human Smuggling) Regarding Criminal Sexual Contact Enhancements

Dear Members of the United States Sentencing Commission:

The America First Policy Institute (AFPI) appreciates the opportunity to submit comments regarding the proposed amendments to the sentencing guideline at U.S.S.G. §2L1.1 addressing sexual abuse and criminal sexual contact during human smuggling offenses. The Commission’s request for comment on whether offenses involving criminal sexual contact under 18 U.S.C. § 2241-18 U.S.C. § 2244 should receive a sentencing enhancement, and what level that enhancement should be, raises a critically important issue involving the protection of vulnerable victims.

AFPI strongly supports the Commission’s recognition that the current guideline structure does not adequately account for cases in which sexual abuse or criminal sexual contact occurs during a human smuggling offense¹. However, AFPI also suggests even greater enhancements than those recommended. Sentencing guidelines already include a two-level enhancement if the offender knows the victim was unusually vulnerable, due to age or physical or mental conditions,² but when a victim also experiences sexual violence during these crimes, the harm is much more severe.

AFPI’s Interest

AFPI is a nonprofit, non-partisan research institute dedicated to advancing policies that prioritize the safety and well-being of the American people. Through its work in criminal justice, national security, and immigration policy, AFPI supports legal frameworks that ensure actual accountability for serious crimes and protect victims of these crimes.

Human smuggling involves the provision of a service, typically transportation or fraudulent documents, to an individual who voluntarily seeks to gain illegal entry into a foreign country.³ However, human smuggling operations can (and often does) involve sexual violence. When sexual violent crimes occur during these offenses, sentencing guidelines must reflect the severity of the crime and the lifelong effects these crimes have on the victims.

Sexual Abuse During Human Smuggling Causes Severe and Lasting Harm

¹ U.S. Sentencing Commission. (2026). *Proposed 2026 amendments to the federal sentencing guidelines published January 2026*. <https://www.ussc.gov/guidelines/amendments/proposed-2026-amendments-federal-sentencing-guidelines-published-january-2026>

² United States Sentencing Commission. (2025). *An overview of the Federal Sentencing Guidelines*. https://www.ussc.gov/sites/default/files/pdf/about/overview/Overview_Federal_Sentencing_Guidelines.pdf

³ U.S. Immigration and Customs. (2017). *Human trafficking vs human smuggling*. <https://www.ice.gov/sites/default/files/documents/Report/2017/CSReport-13-1.pdf>



When sexual violence occurs during smuggling, the harm inflicted is much more serious and traumatic. Some consequences are psychological, such as depression, anxiety, and suicidal thoughts. The consequences may be chronic. Survivors may suffer from post-traumatic stress disorder, and can experience recurring reproductive, gastrointestinal, cardiovascular, and sexual health problems.⁴

Victims of smuggling are uniquely vulnerable to sexual abuse. Many illegal aliens are fearful of admitting that they have been a victim of a crime in part because they believe they will be removed (deported) from the United States if they report the crime⁵. Because of these vulnerabilities, sexual violence during smuggling is an aggravating factor, and it should be treated more severely than the enhancements that are being proposed.

The Commission's recognition that the current guideline under U.S.S.G. §2L1.1 may not adequately address the severity of these crimes is a crucial step toward ensuring that sentencing outcomes reflect the gravity of such crimes. We agree and support the July 18, 2025, letter from Scott Meisler to the Hon. Carlton W. Reeves, which notes that the guideline "does not adequately address human smuggling cases in which a victim was sexually abused or otherwise sexually assaulted," and calls for increased punishment calibrated to the harms inflicted on each smuggled alien.⁶

Current Enhancements Under §2L1.1 Do Not Adequately Reflect the Severity of Sexual Violence

Under the existing guideline structure, the base offense level for human smuggling under U.S.S.G. §2L1.1 begins at level 12 and may increase through a variety of adjustments.⁷ While enhancements do currently exist for bodily injury or serious bodily injury, the resulting offense level does not capture the severity of sexual abuse committed during a smuggling operation. For example, current proposed provisions may increase the offense level by only two levels for bodily injury or criminal sexual contact and four levels for serious bodily injury, including criminal sexual abuse.⁸ These slight proposed increases do not reflect the seriousness of sexual violence, especially when compared with enhancements applied to other aggravating factors, such as the number of individuals being smuggled.

⁴ U.S. Centers for Disease Control and Prevention. (2025). *About sexual violence*. <https://cdc.gov/sexual-violence/about/index.html>

⁵ U.S. Department of Homeland Security. (n.d.). *Immigration options for victims of crime*. <https://www.dhs.gov/immigration-options-victims-crime>

⁶ Meisler, S. (2025). *Public comment*. United States Sentencing Commission. https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/202507/90FR24170_public-comment_R.pdf#page=97

⁷ United States Sentencing Commission. (2025). *Guidelines manual*. https://guidelines.ussc.gov/apex/r/ussc_apex/guidelinesapp/guidelines?app_gl_id=%2L1.1

⁸ U.S. Sentencing Commission. (2026). *Proposed 2026 amendments to the federal sentencing guidelines published January 2026*. <https://www.ussc.gov/guidelines/amendments/proposed-2026-amendments-federal-sentencing-guidelines-published-january-2026>



Sexual assault violations should warrant equal treatment as a significant aggravating factor. While the proposed enhancements may be appropriate for large-scale smuggling operations, the guideline structure as proposed does raise an important question: why should the smuggling of multiple individuals warrant harsher penalties and punishment than the sexual violation of even a single victim? The proposal includes slight enhancements for sexual violent offenses, but these enhancements are not enough for such heinous crimes. For that reason, AFPI believes that stronger enhancements are critical and necessary to ensure that penalties appropriately reflect the severity of the crimes committed.

Recommended Enhancement Levels for Criminal Sexual Contact and Sexual Abuse

AFPI recommends that the Commission adopt stronger enhancements when sexual crimes occur during smuggling offenses. Specifically, when a sexual offense under 18 U.S.C. §§ 2241-2244 occurs in connection with a human smuggling offense, the following enhancements should apply:

For bodily injury or criminal sexual contact:

- Increase the offense level by 4 levels, or
- If the resulting offense level is less than level 25, increase the offense level to level 25.

For serious bodily injury, including criminal sexual abuse:

- Increase the offense level by 6 levels, or
- If the resulting offense level is less than level 38, increase the offense level to level 38.

These proposed enhancements align with the seriousness reflected in the sexual abuse guidelines in U.S.S.G. Chapter Two, Part A, Subpart 3, and ensure that the punishment more accurately reflects the seriousness of the crime.

The Importance of a Cross-Reference to the Sexual Abuse Guidelines

AFPI supports the proposed cross-reference directing courts to apply the sexual abuse guideline in U.S.S.G. Chapter Two, Part A, Subpart 3 when the offense involves conduct described in 18 U.S.C. §§ 2241–2244.

Under the current guideline structure, the base offense level under §2A3.1 is significantly higher than the base offense level under §2L1.1. For example, the base offense level under §2A3.1 is 38 for aggravated sexual abuse involving a child under 12 under 18 U.S.C. § 2241(c). Otherwise, the base offense level under §2A3.1 is 30, with further increases possible.⁹ The base offense level under §2L1.1 can be as low as 12, and with adjustment and enhancements, it may increase to 25.

⁹ United States Sentencing Commission. (2025) Guidelines Manual.
https://guidelines.uscc.gov/apex/r/uscc_apex/guidelinesapp/guidelines?APP_GL_ID=§2A3.1



When a smuggling offense involves conduct in 18 U.S.C. §§ 2241–2244, applying appropriate guidelines within U.S.S.G. Chapter Two, Part A, Subpart 3 ensures that the sentencing appropriately reflects the severity of the sexual conduct involved. In many cases, the cross-reference will increase the offense level significantly compared to the base smuggling guideline, thereby ensuring that offenders who commit sexual violence are punished severely and justly. Therefore, AFPI strongly favors adopting the broader bracketed option under proposed §2L1.1(c)(2) that applies when “the offense involved such conduct.”

Real-World Cases Demonstrate the Limitations of Current Guidelines

A recent case is a prime example of how the current guideline framework may be under-punishing sexual violence that occurs during smuggling offenses. In *United States v. Ballesteros-Moreno*, a smuggler transporting an undocumented migrant sexually assaulted an 18-year-old woman.¹⁰ The case was sentenced under the smuggling guidelines in §2L1.1 rather than the sexual abuse guidelines in §2A3.1. The court imposed a sentence of 72 months’ imprisonment. Under this sentencing guideline, the punishment was significantly lower than it would have been if the conduct had been charged or sentenced under the appropriate sexual abuse guideline. Cases like this demonstrate why stronger enhancements and a clear cross-reference to sexual abuse guidelines under U.S.S.G. Chapter Two, Part A, Subpart 3 are vital.

Conclusion

Human smuggling is already a serious offense, but when sexual violence occurs during these crimes, the harm inflicted on victims becomes far more severe, as sexual assault can cause lifelong trauma to victims of these types of crimes. The America First Policy Institute commends the United States Sentencing Commission for recognizing the need to strengthen the sentencing framework for such cases.

To ensure that federal sentencing policy appropriately reflects the seriousness of sexual abuse during smuggling offenses, AFPI respectfully recommends that the Commission:

1. Adopt stronger sentencing enhancements for criminal sexual contact and sexual abuse occurring during smuggling offenses.
2. Implement the proposed cross-reference directing courts to apply the sexual abuse guideline at U.S.S.G. Chapter Two, Part A, Subpart 3 when conduct described in 18 U.S.C. §§ 2241–2244 occurs.
3. Adopt the broader cross-reference language applying when “the offense involved such conduct.”

These changes would ensure that federal sentencing guidelines better reflect the gravity of sexual violence that is committed in the process of human smuggling.

¹⁰ United States Attorney’s Office, District of Arizona. (2024). U.S. Department of Justice. <https://www.justice.gov/usao-az/pr/smuggler-sentenced-72-months>



AFPI appreciates the Commission's consideration of these comments and its continued work to improve the effectiveness of the federal sentencing system.

Respectfully submitted,

America First Policy Institute

