

TESTIMONY OF THE UNITED STATES DEPARTMENT OF JUSTICE

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PASSPORT FRAUD

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BEFORE THE
UNITED STATES SENTENCING COMMISSION

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Members of the Commission–

The Justice Department’s request to amend §2L2.2 was motivated, in part, by experiences in the District of New Hampshire with passport fraud prosecutions under 18 U.S.C. § 1542. In about the last two years the United States Attorney’s Office in the District of New Hampshire has prosecuted about 43 passport fraud cases arising from fraudulent passport applications filed with the National Passport Center in Portsmouth, New Hampshire. The National Passport Center adjudicates nearly all of the applications for passport renewals filed with the State Department and a significant percentage of the applications for initial passports filed nationwide. More than seven million passports were issued worldwide in fiscal 2003. More than two million of those came from the National Passport Center in New Hampshire.

The passport fraud initiative in New Hampshire was the result of work done by the United States Attorney’s Office as part of its anti-terrorism effort. To better understand and respond to the

problem of passport fraud, we reviewed how fraudulent passport applications that were discovered at the National Passport Center were being handled. We learned that these cases were typically referred to the district from which the passport application was mailed to the State Department and that these cases were often declined by the local United States Attorney's Office. One of the reasons frequently given for these declinations was that the sentencing guidelines do not treat passport fraud as a serious offense for which a period of incarceration was likely.

Events in the last three years, however, have renewed our awareness that those who enter or remain in this country using false documents may pose a serious national security threat. The recent hearings of the National Commission on Terrorists Attacks Upon the United States ("the 9-11 Commission") revealed that some of the terrorists involved in the airline hijackings of September 11th entered the country using fraudulent passports. Although we recognize that most who enter the country illegally are not terrorists, ensuring the security of our borders is critical to protecting the safety of all Americans, and maintaining the integrity of U.S. passports and other immigration documents is absolutely necessary to securing the borders.

The gravity of the passport fraud problem can be assessed by considering the benefits and privileges that an alien can unlawfully obtain by fraudulently procuring a United States passport. These include access to almost every country in the world, and years of unlimited freedom of travel into and out of the United States, unencumbered by immigration laws or any security initiatives that screen and track non-citizen visitors. As prima facie evidence of United States citizenship, a passport can also

enable its holder to vote in United States elections, obtain military and other employment, own and purchase firearms, receive federal benefits and bypass supervision by the Bureau of Immigration and Customs Enforcement. These national security implications distinguish passport crimes from other forms of identity fraud and require a stronger prosecutorial response.

Recognizing these concerns, the United States Attorney's Office in the District of New Hampshire undertook an initiative to aggressively prosecute instances of passport fraud discovered at the National Passport Center. This involved reviewing cases that had been declined in other districts and working with the State Department to refer as many passport fraud cases as possible to the District of New Hampshire. Our experience with these cases has shown that several variants of passport fraud are commonplace.

Passport applicants often file applications using their true names, but fraudulently claim to have been born in the United States. They typically support these fraudulent applications with counterfeit birth certificates that were purchased from document vendors. Applicants may also use misappropriated identities that they have stolen or purchased from illicit vendors to secure a United States passport. These applications are typically supported by facially genuine birth certificates reflecting the date and place of birth of the person whose identity was misappropriated and whose identity is being used by the applicant. The use of a fraudulent social security number is often a common thread in both of these schemes.

Yet another variant of passport fraud involves applications to renew passports. The National Passport Center has uncovered fraudulent applications to renew passports that were issued in error years earlier on the basis of previously filed fraudulent applications. In these cases, the applicant has already enjoyed the use of a United States passport for ten years – the typical term of most passports – and has been able to pass himself off as a United States citizen and leave and reenter the United States without having to submit to any applicable U.S. visa requirements or the scrutiny of immigration authorities. In seeking to renew the passport, the applicant once again attempts to deceive the United States about his true identity and eligibility to receive a passport.

The full panoply of passport fraud offenses is codified at 18 U.S.C. §§ 1541-1547. However, what I have described are perhaps the most common forms of passport fraud and they constitute violations of 18 U.S.C. § 1542. In most cases, which do not involve terrorism or drug trafficking, these crimes are class C felonies punishable by up to 10 years of imprisonment. In such cases, however, the United States Sentencing Guidelines, specifically §2L2.2, set the base offense level at eight. When the defendant's criminal history category is I, this requires courts to impose a sentence within a 0-6 month range. This is the lowest and least consequential sentencing range that can be assigned to any felony in the United States Code. This sentencing range does not adequately reflect the seriousness of passport fraud offenses and is inconsistent with §2B1.1(b)(9)(C)(i), which addresses the unauthorized use of any means of identification to obtain any other means of identification.

A comparison of §2B1.1 with §2L2.2 demonstrates in the starkest terms the inadequacy of the current guideline scheme with respect to passport fraud. Under §2B1.1(b)(9)(C)(i), when a means of identification – that is, the name, social security number, date of birth, etc. of an actual person other than the defendant – is used to obtain another means of identification – like a passport – the minimum offense level is set at level 12. Yet, under §2L2.2, which specifically addresses passport fraud, a crime that often necessarily involves the unauthorized use of one means of identification to obtain another means of identification, the base offense level is eight and there is no adjustment available for the identity deception inherent in the crime.

This conflict becomes manifest when a defendant uses a false social security number on a passport application. That act constitutes social security fraud in violation of 42 U.S.C. § 408(a)(7)(B) as well as passport fraud. The guideline for social security fraud is §2B1.1, which, in this context, sets the minimum offense level at 12. The result is an irreconcilable conflict between the applicable guideline provisions for one of the most common forms of passport fraud. On one hand, the base offense level for passport fraud is set at eight, yet on the other hand, the base offense level for social security fraud, which is a component of most passport fraud cases, is set at 12.

Adopting the proposed amendment, which increases the base offense level under §2L2.2 to 12, will correct this inconsistency and will result in a more appropriate sentencing range than the current guideline provides. The amendment removes passport fraud from the class of violations that poses the least risk of incarceration for offenders. It would also build-in the specific offense characteristic that is

present in all passport fraud cases, so as to bring the penalty for passport fraud into alignment with the penalties for similar crimes under §2B1.1. A base offense level of 12 would not require incarceration in all cases. Defendants with no criminal history who receive credit for accepting responsibility and whose conduct does not implicate any specific offense characteristic, would ultimately be sentenced at level 10, a Zone B offense level that does not preclude a probation sentence. But a higher base offense level would provide a sentencing court with the flexibility to mete out a more severe sentence when merited by the facts of a particular case.

The proposed amendments to the specific offense characteristics sections of the guideline are also designed to adjust §2L2.2 so that it addresses the scope and severity of circumstances that may be attendant to passport fraud. These amendments reflect a reasonable and measured approach to address cases in which a fugitive fraudulently applies for a passport and in which a defendant succeeds in fraudulently obtaining or using a passport. Both of these circumstances reflect more serious conduct than simply filing a fraudulent passport application and should be sentenced accordingly.

Overall, we believe in order to maintain the integrity of U.S. passports, the repercussions of someone fraudulently applying for or obtaining a U.S. passport must be significantly increased from current policy. The proposed amendment accomplishes this and we urge its adoption.