



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

March 31, 2009

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: David W. Ogden *DWO*
Deputy Attorney General

SUBJECT: Authorization for Early Disposition Programs

Section 401(m)(2)(B) of the 2003 Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act (“PROTECT Act”) instructed the United States Sentencing Commission to promulgate a policy statement authorizing a downward departure of not more than four levels “pursuant to an early disposition program authorized by the Attorney General and the United States Attorney.” Pub.L.No.108-21, § 401(m)(2)(B), 117 Stat. 650, 675 (2003). To that end, the Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memorandum entitled “Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing” on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General¹) for any early disposition program that relies upon “charge bargaining”—*i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

The following early disposition programs have been previously authorized and are hereby re-authorized through May 30, 2009.

- District of Arizona — illegal reentry after deportation cases;
- Central District of California — illegal reentry after deportation cases;
- Eastern District of California — illegal reentry after deportation cases;
- Northern District of California — illegal reentry after deportation cases;
- Southern District of California — illegal reentry after deportation cases;
- District of Idaho — illegal reentry after deportation cases;
- District of Nebraska — illegal reentry after deportation cases;
- District of New Mexico — illegal reentry after deportation cases;
- District of Oregon — illegal reentry after deportation cases;
- District of Puerto Rico — illegal reentry after deportation cases;
- Southern District of Texas — illegal reentry after deportation cases;
- District of Utah — illegal reentry after deportation cases;

¹ The requirement that a fast-track program be approved by the “Attorney General” under the PROTECT Act or under the sentencing Guidelines may also be satisfied by obtaining the approval of the Deputy Attorney General. *See* 28 U.S.C. § 510, 28 C.F.R. § 0.15(a).

- Eastern District of Washington — illegal reentry after deportation cases;
- Western District of Washington — illegal reentry after deportation cases;
- District of Arizona — transportation or harboring of alien cases;
- District of Arizona — Phoenix Division transportation or harboring of alien Guide Interdiction of Team cases;
- District of Arizona — alien baby/child smuggling and “bringing in” (*i.e.*, cases involving the defendants who are caught guiding defendants across the border) cases;
- Southern District of California — transportation or harboring of alien cases;
- District of New Mexico — transportation or harboring of alien cases;
- Southern District of Texas — transportation or harboring of alien cases;
- District of Arizona — drug cases arising along the border;
- District of Arizona — first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried);
- Southern District of California — drug cases arising along the border;
- District of New Mexico — drug backpacking cases;
- Eastern District of New York — drug courier cases arising out of John F. Kennedy International Airport;
- District of Arizona — aggravated identity theft cases;
- Northern District of Georgia — illegal identification documents at port of entry;
- District of Kansas — fraudulent document use to gain employment; and
- District of Oregon — aggravated identity theft cases;

The sixty day extension will allow for a substantive review of the programs in due course. Previously operating early disposition programs that are not listed above are no longer operational.

cc: The Attorney General
 The Associate Attorney General
 The Solicitor General
 The Acting Assistant Attorney General, Criminal Division
 The Director, Executive Office for United State Attorneys
 The Chair, Attorney General’s Advisory Committee
 The Chair, Sentencing Guidelines Subcommittee of the
 Attorney General’s Advisory Committee