



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

February 1, 2008

MEMORANDUM

TO: United States Attorneys for the following districts: Arizona, Central District of California, Eastern District of California, Northern District of California, Southern District of California, Middle District of Florida, Southern District of Florida, Northern District of Georgia, Idaho, Kansas, Nebraska, New Mexico, Eastern District of New York, North Dakota, Oregon, Puerto Rico, Southern District of Texas, Western District of Texas, Utah, Eastern District of Washington, and the Western District of Washington

FROM: Craig Morford
Acting Deputy Attorney General

SUBJECT: Reauthorization of 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 a charge less than the most serious, readily provable offense.

The following early disposition programs have been previously authorized and are hereby reauthorized through January 31, 2009.

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).

- District of Arizona — illegal reentry after deportation cases
- District of Arizona — transportation or harboring of alien 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
- 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)
- 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
- Southern District of California — transportation or harboring of alien cases
- Southern District of California — drug cases arising along the border
- Northern District of Georgia — illegal identification documents at port of entry
- 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 New Mexico — transportation or harboring of alien cases
- District of New Mexico — drug backpacking cases
- Eastern District of New York — drug courier cases arising out to John F. Kennedy International Airport
- District of Oregon — illegal reentry after deportation cases
- Southern District of Texas — Laredo Division drug cases arising along the border
- Southern District of Texas — illegal reentry after deportation cases
- Southern District of Texas — transportation or harboring of alien cases
- Western District of Texas — illegal reentry after deportation cases
- Western District of Texas — transportation or harboring of alien cases
- Western District of Washington — illegal reentry after deportation cases
- Southern District of Florida — cases involving aliens using false fraudulent immigration documents
- Western District of Texas — drug cases arising at border ports of entry
- Southern District of California — illegal reentry after deportation cases (expansion)
- Middle District of Florida — illegal reentry after deportation cases
- District of Utah — illegal reentry after deportation cases
- Eastern District of Washington — illegal reentry after deportation cases

- Southern District of Texas — alien smuggling
- District of Kansas — fraudulent document use to gain employment
- Central District of California — illegal reentry after deportation cases (modification)
- Northern District of California — illegal reentry after deportation cases (modification)
- District of Oregon — aggravated identity theft cases.

Previously operating early disposition programs that are not listed above are either no longer operational or have not been reauthorized. I am also authorizing through January 31, 2009, the following USAOs to implement early disposition programs as such programs relate to the following classes of cases:

- District of Arizona — Phoenix Division transportation or harboring of alien Guide Interdiction Team cases
- District of Arizona — aggravated identity theft cases
- District of Puerto Rico — illegal reentry after deportation cases.

All Districts should be aware that continuing re-approval of such programs will depend on demonstrable results establishing that the authorized early disposition program is permitting the prosecution of a significantly larger number of defendants than occurred in the absence of the early disposition program or than would occur if the program were discontinued. Districts are also reminded to review carefully the directives included in Attorney General Ashcroft's authorizing memorandum of September 22, 2003, setting minimum terms that any early disposition agreement must incorporate, and which memorandum also requires, *inter alia*, that all early dispositions be identified in the District's Case Management System.

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