



U.S. Department of Justice

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February 15, 2012

Chief U.S. District Judge P. K. Holmes, III
Judge Isaac C. Parker Federal Bldg.
30 South 6th Street, Room 317
Fort Smith, AR 72901

RE: Fast Track Program

Dear Chief Judge Holmes:

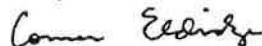
The Attorney General has directed all United States Attorney's Offices to implement what is commonly referred to as a Fast Track Program in certain cases involving illegal re-entry offenses under Title 8 U.S.C. § 1326. We have been directed to put this in place by March 1, 2012. The purpose of this letter is to let the Court know about the Attorney General's directive, provide the Court with a draft of our office's Fast Track Policy, and seek the Court's input as we implement this nationwide program.

The Fast Track Program is designed to reduce unwarranted geographic disparity and to increase efficiency in illegal re-entry cases under Title 8 U.S.C. § 1326. While Fast Track Programs have previously been implemented in some judicial districts, the department is now implementing a uniform nationwide policy. The new policy establishes baseline requirements for any defendant who qualifies for fast track treatment that are consistent across the country.

The basic premise of the Fast Track Program is that, within an expedited time frame, a qualifying defendant in an illegal re-entry case must plead guilty. Under the plea agreement, a defendant will be required to give up certain rights. In exchange, the government will make a motion pursuant to U.S.S.G. § 5K3.1 for a two level downward departure for those in criminal history category VI and a four level downward departure for all others. A defendant's eligibility for the Fast Track Program will depend on certain criteria which are set forth in the Fast Track Program Memo that I am enclosing with this letter. I am also enclosing a sample plea agreement which would be used in Fast Track cases.

Our office is seeking to implement this program, consistent with the Attorney General's directive, in a way that makes sense for our district and with the Court's guidance. Please contact me with any thoughts, questions or concerns on this draft policy.

Sincerely,



CONNER ELDRIDGE
UNITED STATES ATTORNEY

Enclosures

c: All U.S. District Judges for the Western District
All U.S. Magistrate Judges for the Western District



fast track program
Elser, Kenny (USAARW)

to:

Bruce Eddy, jack_schisler@fd.org, James_Pierce@fd.org

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Hide Details

From: "Elser, Kenny (USAARW)" <Kenny.Elser@usdoj.gov>

To: Bruce Eddy <Bruce_Eddy@fd.org>, "jack_schisler@fd.org" <jack_schisler@fd.org>, "James_Pierce@fd.org" <James_Pierce@fd.org>

The finalized version of our Fast Track Program contains two changes from what I have previously sent you all. The revised version is as follows:

I. Defendant Eligibility

In order to be eligible for the Fast Track program, a defendant must meet the following criteria:

A. The defendant is charged with a crime under 8 U.S.C. § 1326 and no other offense.

B. The defendant has not been convicted of a prior violent or serious felony including murder, kidnaping, voluntary manslaughter, forcible sex offenses, child sex offenses, drug trafficking, or other conviction that is of a serious or violent nature. All offenses covered by the enhancement contained in USSG § 2L1.2(b)(1)(A) will be considered to be felonies of a serious or violent nature. Felony offense not included in USSG § 2L1.2(b)(1)(A) may be determined to be of a serious or violent nature depending on the facts and circumstances of the conviction.

C. The defendant does not have a combination of three or more of the following: prior deportations, prior convictions under 8 U.S.C. § 1326, or prior immigration related offenses. However, the nature of the defendant's criminal history and prior immigration offenses will be considered and may form a basis for exclusion from the program in the U.S. Attorney's sole discretion.

D. The defendant is not part of an independent criminal investigation as determined by the United States Attorney's Office in its sole discretion.

E. The defendant will not be eligible if there exist certain circumstances and factors

identified by the US Attorney as to prevent the defendant from being eligible including but not limited to the following:

- defendant has been identified by law enforcement as a member of a gang
- defendant has pending state felony charges or is on parole, probation, or under a suspended sentence for a state felony offense and defendant's participation in the Fast Track program would adversely affect the states interest.

II. Determination of Eligibility

The determination whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney's Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

V. Requirements of the defendant under plea agreement.

A. The defendant must agree to the factual stipulation contained in the plea agreement and stipulate to any prior conviction that is a felony or aggravated felony.

B. The defendant must agree not to file any of the motions described in the Federal Rules of Criminal Procedure 12(b)(3), except discovery.

C. The defendant must agree to waive the right to argue for a variance under 18 U.S.C. § 3553(a).

D. The defendant must agree to waive appeal rights and the right to challenge his or her conviction under 28 U.S.C. § 2255 except on the issue of ineffective assistance of counsel.

E. The defendant must agree to waive a full pre-sentence investigation.

F. **The defendant must consent to the U.S. Magistrate Judge conducting the plea hearing when such a referral is made by the U.S. District Judge.**

Memorandum

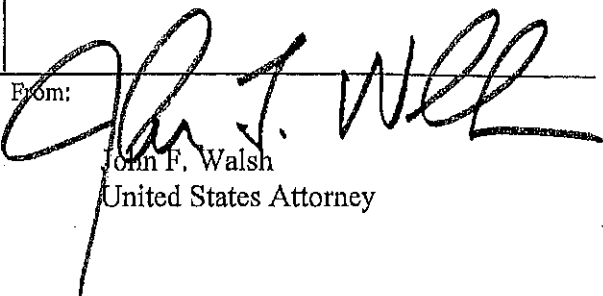


United States Attorney's Office
District of Colorado

Subject: District of Colorado Illegal Reentry
Fast-Track Program

Date: February 29, 2012

To: Criminal Assistant U.S. Attorneys

From: 
John F. Walsh
United States Attorney

INTRODUCTION

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole dated January 31, 2012 relating to the implementation of a new national fast-track program (copy attached), effective immediately defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level ("AOL") found by the District Court (after application of the adjustment for acceptance of responsibility). For purposes of this memorandum, the term "Defendant" or "Defendants" will refer solely to defendants charged under 8 U.S.C. § 1326.

This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney's Office for the District of Colorado. See U.S.A.M. 1-1.00.

Applicability to pending cases: Defendants who have been charged as of the time of this memorandum, but have not yet pleaded guilty or gone to trial are eligible for the fast-track program if they meet the requirements of the program. Defendants who have been charged, have already pleaded guilty, but have not been sentenced as of the time of this memorandum are potentially eligible for the fast-track program if in the assessment of the Assistant U.S. Attorney handling the case, in consultation with a supervisor, they substantially complied with the requirements of the program, including being willing to modify any existing plea agreement to conform to those requirements. Defendants who have already been sentenced as of the time of this memorandum are not eligible for participation.

ELIGIBILITY REQUIREMENTS

Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, as well as certain specified factors that may disqualify a Defendant from participation in

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the fast-track program. Those disqualifiers include various factors, including aggravating considerations at the time of arrest, prior convictions, as well as aggravating factors based on immigration violations.

In order to qualify for either a two or four-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. Absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), within 30 days of being taken into custody on the illegal reentry charge, the defendant must agree to enter into a plea agreement with the government. In order to facilitate a defendant's expeditious determination whether to plead guilty, AUSAs should provide adequate discovery as soon as practicable.

2. The written plea agreement with the government must include the following terms:

a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal;

b. The defendant agrees not to file any of the motions described in Fed.R.Crim.P. 12(b)(3);

c. The defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553;

d. Consistent with the appellate and collateral attack waiver provision in use by this office, the defendant agrees to waive the right to appeal, as well as the opportunity to challenge his or her conviction under 28 U.S.C. § 2255 except on the issue of ineffective assistance of counsel and/or prosecutorial misconduct; and

e. The defendant agrees that credit for pretrial confinement will be determined by BOP.

DISQUALIFIERS

Defendants who might otherwise qualify for a two or four-level downward departure under the specified criteria above may be disqualified from participation in the fast-track program under the following circumstances:

1. The defendant has previously been convicted of a violent felony, including murder, kidnaping, voluntary manslaughter, vehicular homicide, vehicular assault, a sex offense, assault resulting in serious bodily injury or committed by use of a deadly weapon where bodily injury results, committed intentionally, knowingly, with extreme indifference, or by a conscious disregard of a serious and unjustifiable risk that a result will occur. The term "violent felony" as used in this paragraph is intended to be more narrow than the term "crime of violence" as that term is used on page 3 of this policy. The

significant distinction between these terms is that a "violent felony" that will disqualify a defendant from participation in the program includes an actual harm to the victim.

2. The defendant has previously been removed from the United States three or more times following an order of removal, deportation, or exclusion prior to the instant illegal reentry offense;
3. The defendant has previously been convicted under 8 U.S.C. § 1326 for illegal reentry;
4. The defendant previously participated in a fast-track program;
5. The defendant was the subject of an independent federal criminal investigation or was involved in the smuggling of other aliens at or about the time of his/her apprehension;
6. The defendant was under any form of court or correctional post-conviction or guilty plea supervision; or
7. Aggravating circumstances at the time of the defendant's arrest and/or aggravating facts concerning the defendant's history and characteristics warrant disqualification from the fast-track program and a supervisor has approved such disqualification.

For purposes of applying these disqualifiers, Assistant U.S. Attorneys and supervisors will always take into account the paramount importance of ensuring the safety of the public.

PROCEDURES AND DEFINITIONS

The determination whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney's Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

Criminal History considerations: Those Defendants with a criminal history category ("CHC") of V or below and who have no prior felony convictions for a "crime of violence" are potentially eligible for a four-level downward departure from the AOL. Those with a CHC of VI, or with one or more prior felony convictions for crimes of violence are potentially eligible for a two-level downward departure. The term "crime of violence", as used herein to determine the applicability of a two or four-level downward departure for a Defendant in the fast track program, is the definition at U.S.S.G. § 2L1.2, App. Note 1(B)(iii).¹ However, some of the felonies described in this application note will entirely disqualify a defendant from benefitting from this "Fast Track Program", as described above in Disqualifiers, ¶ 1.

¹See Attachment A.

ATTACHMENT A

U.S.S.G. § 2L1.2, Application Note (1)(B)(III):

"Crime of violence" means any of the following offenses under federal, state, or local law: murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses (including where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced), statutory rape, sexual abuse of a minor, robber, arson, extortion, extortionate extension of credit, burglary of a dwelling, or any other offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another.



U.S. Department of Justice

*United States Attorney
District of Connecticut*

**DISTRICT OF CONNECTICUT
ILLEGAL REENTRY FAST-TRACK PROGRAM**

A. Introduction

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in §2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, certain specified disqualifiers, and other relevant procedures and definitions.¹

B. Eligibility Requirements

In order to qualify for either a four-level or a two-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. Agree within 30 days of his initial appearance to enter into a written plea agreement on the illegal reentry charge. To facilitate a defendant’s prompt determination whether to plead guilty, AUSAs should provide expeditiously to the defense any documents that demonstrate the defendant had previously been removed from the United States. Subject to supervisory approval, exceptional circumstances (such as the inadequate assistance of counsel or a substantial delay resulting from necessary administrative procedures) may warrant an extension of this time period.
2. Enter into a written plea agreement with the government, in the form and content attached, that includes the following terms:

¹ **Error! Main Document Only.** This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney’s Office for the District of Connecticut. *See* U.S.A.M. 1-1.00.

- a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal;
- b. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);
- c. The defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553(a);
- d. The defendant agrees to waive the right to appeal and to challenge his or her conviction under 28 U.S.C. § 2255;
- e. If the Court permits, the defendant agrees to waive a full pre-sentence investigation; and
- f. If requested by the Government, the defendant agrees to enter into a sentencing agreement pursuant to Fed. R. Crim. P. 11(c)(1)(B) or (C).

C. Ineligibility for Fast-Track Program Participation

A defendant charged with a violation of 8 U.S.C. § 1326 is ineligible for participation in the fast-track program based on any of the following circumstances or factors:

1. The defendant previously has been convicted of murder, manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or any other offense that reflects a history of serious violent crime;
2. The defendant previously has been convicted of an offense involving possession, distribution, or manufacturing of child pornography or any other child-sex offense;
3. The defendant previously has been convicted of a national security or terrorism offense;
- ✓ 4. The defendant previously has been deported or otherwise removed from the United States two or more times;
5. The defendant has more than one prior conviction under 8 U.S.C. § 1326 for illegal reentry;
6. The defendant previously has been convicted of a drug trafficking offense for which the defendant received a sentence of incarceration of five years or more, regardless of how many years the defendant actually served;
7. The defendant previously has been convicted of any offense for which the defendant received a sentence of incarceration of ten years or more, regardless of how many

years the defendant actually served;

8. The defendant has a criminal history category of VI under Chapter Four of the United States Sentencing Guidelines; or
9. The circumstances at the time of the defendant's arrest, or any other aggravating factors identified by the United States Attorney, render the defendant's participation in the fast-track program inappropriate in the judgment of the United States Attorney or the AUSA's unit supervisor.

D. Departures

If a defendant is eligible for participation in the fast-track program (that is, the defendant meets the requirements set forth in Section B *and* is not disqualified for the any of the reasons set forth in subsection C), then the AUSA shall move at sentencing pursuant to U.S.S.G. § 5K3.1 for a four-level downward departure from the AOL found by the District Court.

Notwithstanding the preceding paragraph, in the discretion of the AUSA and with supervisory approval, an AUSA can move at sentencing pursuant to U.S.S.G. § 5K3.1 for a two-level downward departure from the AOL found by the District Court where:

1. The defendant previously has been convicted of a firearms offense, including but not limited to unlawful possession of weapons, or a crime involving the use of explosives, including any explosive material or destructive device;
2. The defendant previously has been deported one time;
3. The defendant has one prior conviction under 8 U.S.C. § 1326 for illegal reentry;
4. The defendant has one or more prior convictions for other immigration-related offenses;
5. The defendant previously participated in a fast-track program; or
6. The defendant is under any form of court or correctional supervision.

E. Determination of a Defendant's Eligibility

The determination whether a defendant satisfies the eligibility requirements for participation in the fast-track program and, if he does, the extent of the departure, shall be made by the United States Attorney's Office alone. In exercising its discretion, the United States Attorney's Office may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

MIDDLE DISTRICT OF FLORIDA ILLEGAL REENTRY FAST-TRACK PROGRAM

Introduction

In accordance with the directive and guidelines contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having been previously been removed are potentially eligible for a downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in § 2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, certain specified disqualifiers, and other relevant procedures and definitions.¹

Eligibility Requirements

In order to qualify for either a four-level or a two-level offense downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. Absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay in necessary administrative procedures or unresolved competency issues) agree within 30 days from the defendant’s initial appearance on the illegal reentry charge to enter a written plea agreement with the government. In order to facilitate a defendant’s expeditious determination whether to plead guilty, AUSAs should provide adequate discovery as soon as practicable.
2. Enter into a written plea agreement with the government that includes the following terms:
 - a. The defendant agrees to a factual basis that accurately and completely reflects his or her offense conduct and stipulates to the facts related to the prior conviction(s) and removal;

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil or criminal matter or case. In addition, there are no limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney’s Office for the Middle District of Florida. See U.S.A.M. 1-1.00.

- b. The defendant agrees not to file any motions described in Fed. R. Crim. P. 12(b)(3);
- c. The defendant agrees to waive the right to move for a downward departure or argue for a variance under 18 U.S.C. § 3553(a);
- d. The defendant agrees to waive the right to appeal and the opportunity to challenge under 28 U.S.C. § 2255 his or her conviction, except on the issue of ineffective assistance of counsel;
- e. The defendant agrees to waive the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a); and,
- f. The defendant agrees to not re-enter the United States unless the defendant obtains the express consent of the Secretary of the Department of Homeland Security to apply for readmission to the United States.

Disqualifiers

The following defendants are not eligible to participate in the program:

- 1. Defendants who have been previously deported after any of the following convictions:
 - a. A drug trafficking offense for which the sentence imposed exceeded five years, as defined by USSG §2L1.2, comment. (n.1(B)(iv));
 - b. A crime of violence, as defined by USSG §2L1.2, comment. (n.1(B)(iii));

- c. A firearms offense, as defined by USSG § 2L1.2, comment. (n. 1(B)(v));
 - d. A child pornography offense, as defined by USSG §2L1.2, comment. (n.1(B)(ii));
 - e. A national security or terrorism offense, as defined by USSG §2L1.2, comment. (n.1(B)(viii));
 - f. A human trafficking offense, as defined by USSG §2L1.2, comment. (n.1(B)(vi)); or,
 - g. An alien smuggling offense, as defined by USSG §2L1.2, comment. (n.1(B)(i).
2. Defendants who have been previously convicted under 8 U.S.C. § 1326;
 3. Defendants who have been previously deported from the United States three or more times;
 4. Defendants who have previously participated in a fast-track program;
 5. Defendants who are under any form of court or correctional supervision; or,
 6. Any other exceptional circumstances approved by the United States Attorney.

Government's Motion for a Fast Track Departure

As to any defendant who is deemed eligible to participate in the fast-track program, the Assistant United States Attorney shall move at sentencing pursuant to USSG § 5K3.1 for a downward departure from the adjusted offense level determined by the District Court (after application of the adjustment for acceptance of responsibility) as follows:

Four levels for all defendants, except those with a criminal history category VI.
Two levels for defendants with a criminal history category VI.

UNITED STATES ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF FLORIDA ILLEGAL REENTRY FAST-TRACK PROGRAM

Introduction

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. §1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in §2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, certain specified disqualifiers, and other relevant procedures and definitions.¹

Eligibility Requirements

In order to qualify for the United States Attorney's Office for the Southern District of Florida (“this Office”) to recommend either a four-level or a two-level downward departure pursuant to USSG §5K3.1, a defendant charged with a violation of 8 U.S.C. §1326² must:

1. Absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), agree within 30 days of being taken into custody on the illegal reentry charge to enter into a plea agreement with the government³;
2. Enter into a written plea agreement with the government that includes the following terms:
 - a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal;

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney's Office for the Southern District of Florida. *See* U.S.A.M. 1-1.00.

² A defendant is not eligible to participate in this fast-track program if they also are charged with an offense or offenses which have a higher AOL than the illegal reentry charge at issue. If the illegal reentry charge is the sole charge or the “top charge” for purposes of determining the advisory Sentencing Guidelines range, then the defendant's eligibility for the program should be determined pursuant to the standards set out herein.

³ In order to facilitate a defendant's timely decision on whether to plead guilty, AUSAs should provide adequate discovery as soon as practicable.

- b. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);
- c. The defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553;
- d. The defendant agrees to waive the right to appeal his/her sentence; and,
- e. Upon request of this office, the defendant agrees to waive a full pre-sentence investigation.

Disqualifiers

An individual defendant's participation in the fast-track program may be denied or limited based on—

1. The defendant having at least one prior conviction for a “serious violent felony,” as that term is defined below;
2. The defendant having been previously deported two or more times;
3. The defendant having at least one prior conviction under 8 USC §1326 for illegal reentry;
4. The defendant having at least one prior conviction for other immigration-related offenses;
5. The defendant having previously participated in a fast-track program;
6. The defendant being part of an independent federal criminal investigation;
7. The defendant being under any form of court or correctional supervision; or
8. The circumstances at the time of the defendant's arrest or any other aggravating factors identified by this Office.⁴

⁴ Case-specific approval is required from the AUSA's Section Chief to use this particular provision as a disqualifier or a limitation on a defendant's participation in the fast-track program.

Government’s Recommendation for a Fast-Track Departure

As a general rule, a defendant who this Office determines to be eligible for the fast-track program will be entitled to a recommendation for a four-level downward departure. However, for any defendant who has a criminal history category VI **or** a prior felony conviction for a “serious violent offense,” but is still deemed eligible to participate in the fast-track program, the AUSA may recommend no more than a two-level downward departure, irrespective of how high the District Court sets the defendant’s adjusted base offense level.

Procedures and Definitions

The determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by this Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

Despite the presumption of disqualification, in limited circumstances, this Office may decide, when looking at the conduct underlying a prior conviction for a serious violent felony, that a defendant is still eligible to participate in the fast-track program. The decision to allow such participation shall be made within the sole and final discretion of this Office.

As used in this fast-track program, the term “serious violent felony” means (1) any of the offenses included within 18 USC §3559(c)(2)(F)(i); (2) any child pornography offense; (3) any national security or terrorism offense; (4) any human trafficking offense; (5) any forcible sex offense; (6) any child exploitation offense; (7) any felony domestic violence offense; (8) any drug trafficking offense included within 18 USC §3559(c)(2)(H); and (9) any felony arson offense.

As used in this fast-track program, the term “serious violent offense” means (1) any offense included within this program’s definition of “serious violent felony;” (2) any other firearms offense; and (3) any of the offenses included within 18 USC §3559(c)(2)(F)(ii).

Introduction

Pursuant to a January 31, 2012, nationwide directive from the Attorney General of the United States, the United States Attorney for the Central District of Illinois has implemented a "Fast-Track" policy for Felony Re-Entry prosecutions under 8 U.S.C. §1326 as part of its overall prosecution policy.

This "Fast Track" policy is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal, nor does it place any limitations on otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney's Office for the Central District of Illinois.

Eligibility

The "Fast Track" policy involves those defendants who are only charged with Felony Re-Entry under 8 U.S.C. §1326.

In order to be eligible for "Fast Track" prosecution for Felony Re-Entry under 8 U.S.C. §1326, the defendant must meet the following criteria:

1. The defendant must have previously been deported, administratively or voluntarily removed or otherwise absented from the United States only *one* previous time.
2. If the defendant was previously convicted of a felony offense, the felony conviction may *not* be an aggravated felony, a crime of violence or a drug trafficking offense.
3. The defendant must *not* be simultaneously charged with another felony offense, including Manufacturing or Use of False Documents in violation of 18 U.S.C. §1028 or §1546, or Aggravated Identity Theft in violation of 18 U.S.C. §1028A.
4. The defendant must not file any motion under Fed.R.Crim.P. 12(b).

Further, within 30 days from the defendant being taken into custody on Felony Re-Entry charges, absent exceptional circumstances such as the denial of adequate assistance of counselor a substantial delay in necessary administrative procedures, the defendant must agree, in writing, to a plea agreement containing the minimum terms described below.

Plea Agreement

A plea agreement under the "Fast Track" policy must contain the following minimum terms:

1. A stipulation of facts that accurately reflects the defendant's offense conduct and the facts related to the prior conviction and removal;
2. The waiver of the right to argue for a variance under 18 U.S.C. § 3553(a), and to waive all appeal rights and the right to contest the conviction and sentence under 28 U.S.C. § 2255 (except on the issue of ineffective assistance of counsel);
3. The waiver of a full pre-sentence investigation prior to imposition of sentence.

Expedited Sentencing and Motion for A Downward Deviation

For any defendant eligible for the "Fast Track" policy, the United States will make a good-faith effort, working with the Court and defense counsel, to expedite the defendant's sentencing to the earliest practical date.

Further, the United States will move at sentencing, pursuant to Sentencing Guidelines Section 5K3.1, for a four-level downward deviation from the applicable adjusted base offense level. The United States will also recommend a sentence at the low end of the applicable Sentencing Guideline range.

**UNITED STATES ATTORNEY'S OFFICE
NORTHERN DISTRICT OF ILLINOIS**

FAST-TRACK PROGRAM FOR ILLEGAL-REENTRY CASES

On January 31, 2012, the United States Deputy Attorney General directed United States Attorney's Offices nationwide to implement fast-track programs for illegal-reentry cases, subject to certain parameters. This memorandum sets out guidelines regarding eligibility for participation the fast-track program in the Northern District of Illinois, and the operation of that program.

In applying the following criteria for fast-track eligibility, it is important to remember that most defendants prosecuted for illegal reentry in the Northern District of Illinois have especially aggravated criminal histories, often involving narcotics trafficking or violence; or have committed other immigration offenses and/or been deported; or have been involved in other serious criminal activity. As a result, many such defendants will not, and should not, be eligible for fast-track treatment. Some defendants prosecuted for illegal reentry in this district will, however, qualify for fast-track treatment, if they meet the criteria set out below.

Also, with respect to eligibility requirements, this memorandum sets out guidelines that we anticipate will fit most cases, rather than rigid rules that must apply to every case. The goal of these guidelines is to promote consistent treatment for similarly situated offenders. In each case, however, the decision to include or exclude a particular defendant from the program is an exercise of independent prosecutorial discretion based on individual circumstances.

This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal, nor does it place any limitations on otherwise lawful litigative prerogatives of the Department of Justice.

A. Defendant Eligibility

A defendant charged with illegal reentry in violation of Title 8, United States Code, Section 1326 generally will be eligible to participate in this district's fast-track program unless one of the following circumstances applies, in which case the United States Attorney may refuse to offer an illegal-reentry defendant the opportunity to participate in this district's program:

1. Defendant has a prior conviction for a violent felony within the meaning of Title 18, United States Code, Section 924(e); a prior felony conviction involving actual violence, a threat of violence, a significant drug offense (excluding drug

convictions that are too old to be counted for criminal history points under Guideline § 4A1.1 and drug convictions for which defendant received a sentence of one year or less), or firearms trafficking; or convictions that otherwise reflect a history of serious violent crime or danger to the public.

2. Defendant has been deported from the United States four or more times.
3. Defendant previously has been convicted for illegal reentry under 8 U.S.C. § 1326.
4. Defendant previously has participated in a district's fast-track program.
5. Defendant is a subject in another federal criminal investigation (other than for illegal reentry).
6. The United States Attorney has identified other aggravating factors that, in the United States Attorney's discretion, preclude defendant's participation in the fast-track program.

B. Government's Offer

If the United States Attorney determines that the government will offer an illegal-reentry defendant the opportunity to participate in this district's fast-track program, then government counsel will send defense counsel a proposed written plea agreement. The government's plea offer will remain in effect for 30 days from the date the defendant was taken into custody on federal criminal charges. If, by that date, defense counsel has not provided the government with written notice that defendant accepts the plea agreement, then the plea offer is withdrawn. Also, if defendant files any pre-trial motions described in Rule 12(b)(3) of the Federal Rules of Criminal Procedure, then the plea offer is withdrawn. If the plea offer is withdrawn, defendant will no longer be eligible to participate in the fast-track program.

The Government also reserves the right to withdraw its offer before entry of the defendant's guilty plea should the government subsequently determine, in its discretion, that a fast-track disposition is not appropriate.

C. Plea Agreement Terms

A plea agreement in a fast-track illegal-reentry case will be in writing and will include the following provisions, in addition to the terms customarily included in illegal-reentry plea agreements in the Northern District of Illinois:

1. The plea agreement will memorialize the government's agreement, pursuant to Guideline § 5K3.1, to make a motion at sentencing for a downward variance pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for this district. The government will move for a four-level downward variance in the offense level, except in two circumstances. If defendant has (1) a criminal history category VI, or (2) at least one felony conviction for what is, in the United States Attorney's discretion, a serious violent offense,¹ then the government will move for a two-level downward variance.
2. The parties will agree that the offense level calculations and government's commitment to seek a two- or four-level fast-track variance are binding on the parties under Rule 11(c)(1)(B), and that it will be a breach of the plea agreement for a party to advocate a Guideline position inconsistent with the agreed calculations.
3. Each party will be free to recommend whatever sentence it deems appropriate within the applicable Guidelines range, as modified by the two- or four-level variance requested by the government. Defendant must agree to waive the right to argue under 18 U.S.C. § 3553(a) or other authority for any sentence outside the applicable Guidelines range, as modified by the government's requested variance. Defendant must agree not to seek or support, directly or indirectly, any variance from or sentence outside of the applicable Guidelines range, as modified by the government's requested variance.
4. Defendant must waive his right to appeal under 18 U.S.C. § 3742, and the right to attack his conviction collaterally under 28 U.S.C. § 2255. The waiver will not apply to a claim of involuntariness or ineffective assistance of counsel that relates directly to the waiver or to its negotiation.

¹As described above, a defendant with a prior conviction for a serious violent offense ordinarily will not be eligible to participate in the fast-track program. If the government nevertheless offers participation in the fast-track program to such a defendant, then the government's motion at sentencing will be for a two-level reduction in the offense level, rather than a four-level reduction.

NDIN Early Disposition or “Fast Track” Policy for Illegal Reentry Cases

Introduction.

In a memorandum dated January 31, 2012, Deputy Attorney General James M. Cole directed USAOs to implement a fast-track policy conforming to requirements set forth in the memorandum. This policy was developed in response to that memorandum

A. Eligible defendants.

An eligible defendant is one who:

1. Within 30 days of being taken into custody on a charge of illegal reentry in violation of 8 U.S.C. § 1326, enters into a written plea agreement, and
2. In the plea agreement the defendant agrees
 - a. To a factual basis that accurately reflects the defendant’s conduct;
 - b. Not to file pre-trial motions under Fed.R.Crim.P. 12(b)(3), that is, motions attacking the prosecution against the defendant, seeking to suppress evidence, or requesting additional discovery;
 - c. To waive the right to argue for a variance under 18 U.S.C. § 3553(a); and
 - d. To the NDIN standard appeal waiver.

B. Fast track sentencing benefit.

1. If an eligible defendant
 - a. Is in criminal history category III or less, and
 - b. Has no felony convictions for a serious violent offense,the government shall agree to move for a 4-level downward departure.
2. If an eligible defendant
 - a. Is in criminal history category IV or higher, or
 - b. Has a felony conviction for a serious violent offense,the government may offer a 2-level downward departure with supervisory approval after considering the interest of public safety, including whether the

defendant has prior violent felony convictions that reflect a history of serious violent crime.

C. Exceptions.

1. With supervisory approval, an AUSA may refuse to offer a fast track sentencing benefit to an eligible defendant.
2. Considerations which justify supervisory approval of such a refusal include, but are not limited to
 - a. The defendant has prior violent felony convictions which reflect a history of violent crime,
 - b. The defendant has multiple prior deportations or convictions for immigration-related offenses, including for illegal reentry under 8 U.S.C. § 1326,
 - c. The defendant has previously participated in a fast track program,
 - d. The defendant is part of an independent federal criminal investigation or is under any form of court or correctional supervision,
 - e. There are aggravating factors in the defendant's history or in the circumstances at the time of the arrest.

Implemented March 2012

Memorandum

United States Attorney
Southern District of Indiana



Subject	Date
SDIN Illegal Reentry Fast Track Policy	March 1, 2012
To	From
All Criminal AUSAs and Criminal Division Staff	Joseph H. Hogsett United States Attorney

SOUTHERN DISTRICT OF INDIANA ILLEGAL REENTRY FAST-TRACK PROGRAM

A. Introduction

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national Fast-Track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level ("AOL") found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in U.S.S.G. §2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this Fast-Track program, certain specified disqualifiers, and other relevant procedures.¹

B. United States Sentencing Guidelines, Section 5K3.1 (Early Disposition Program) (Policy Statement)

United States Sentencing Guidelines, Section 5K3.1 (Early Disposition Program) (Policy Statement) provides as follows:

Upon motion of the Government, the court may depart downward not more than 4 levels pursuant to an early disposition [Fast-Track] program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides.

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney's Office for the Southern District of Indiana. See U.S.A.M. 1-1.00.

C. Eligibility Requirements

In order to qualify for either a four-level or a two-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. At his/her initial appearance:
 - (a) waive his/her right to a preliminary hearing, in accordance with Rule 5.1, Fed.R.Crim.P.; and
 - (b) waive his /her right to a pre-trial detention hearing and agree to the entry of an order that he/she be detained pre-trial on grounds that no condition of combination of conditions will reasonably assure the appearance of the defendant as required, in accordance with 18 U.S.C. § 3142(e).
2. Within 30 days from the defendant being taken into custody on the federal criminal re-entry charge, absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), execute a written plea agreement with the government that includes the following terms:
 - (a) The defendant agrees to waive his/her right to be indicted by a federal grand jury and agrees to be prosecuted by way of an information, pursuant to Rule 7(b), Fed.R.Crim.P.;
 - (b) The defendant agrees to a factual basis that accurately reflects his/her offense conduct and stipulates to the facts related to the prior conviction and removal;
 - (c) The defendant agrees not to file any of the motions described in Fed.R.Crim.P. 12(b)(3);
 - (d) The defendant agrees to waive his/her right to the disclosure of impeachment and exculpatory information;
 - (e) While the district court must consider the factors set forth in 18 U.S.C. § 3553(a) in sentencing the defendant, the defendant agrees to waive the right to argue for a variance under any of the § 3553(a) factors; and
 - (f) The defendant agrees to waive the right to appeal and the opportunity to challenge his /her conviction and sentence under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

D. Disqualifiers

An individual defendant's participation in the Fast-Track program **may be limited or denied** based on—

1. The defendant's prior conviction(s) for any of the following offenses under federal or state law:
 - (a) a violent felony offense (including murder and any offense that resulted in the death of another individual, any offense that resulted in injury to a law enforcement officer, armed robbery, burglary of dwelling, arson, any offense committed with a deadly or dangerous weapon, kidnaping, forcible sex offenses, and child-sex offenses);

- (b) a “controlled substance offense,” as defined by U.S.S.G. § 4B1.2(b);
 - (c) a firearms offense;
 - (d) offenses which reflect a history of serious violent criminal conduct; and
 - (e) an attempt or conspiracy to commit an offense described in this paragraph ((D)(1)).
2. The defendant having been previously deported one (1) or more times.
 3. The defendant having one (1) or more prior convictions under 8 U.S.C. § 1326 for illegal reentry.
 4. The defendant having one (1) or more prior convictions for other immigration-related offenses.
 5. The defendant’s previous participation in a Fast-Track program.
 6. If the defendant is part of an independent federal criminal investigation.
 7. If the defendant is under any form of court or correctional supervision.
 8. With supervisory approval, the circumstances at the time of the defendant’s arrest or any other aggravating factors identified by the United States Attorney.

E. Government’s Motion for a Fast-Track Departure

1. As a general rule, any defendant convicted of an offense described in paragraph D (1), above, is disqualified and is not eligible to participate in the Fast-Track Program.
2. As to any defendant who is deemed eligible to participate in the Fast-Track program, but who has a criminal history category VI **or** a prior felony conviction for an offense not covered in Paragraph D(1), above, the attorney for the Government may move for no more than a two-level downward departure in return for that defendant meeting the conditions of the program, irrespective of how high the District Court sets the defendant’s adjusted base offense level.

F. Procedures

The determination of whether a defendant satisfies the eligibility requirements for participation in the Fast-Track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney’s Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

The United States Attorney may decide, when looking at the conduct underlying a prior felony conviction set forth in Paragraph D(1), above, that a defendant is still eligible in whole or in part to participate in the fast-track program.



U.S. Department of Justice

Barry R. Grissom
United States Attorney
District of Kansas

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April 6, 2012

Kansas Federal Criminal Defense Bar

RE: Policies and Procedures Implementing
DOJ “Fast-Track” Program in Kansas
Re-entry After Deportation Prosecutions

As you know, Attorney General Holder earlier this year announced a national “fast-track” prosecution program for 8 U.S.C. § 1326(a) re-entry after deportation cases. That program vests substantial discretion for implementing the program in respective United States Attorneys. This letter outlines how I have decided to administer the program in the District of Kansas consistent with the Attorney General’s directive.

Most importantly, the ultimate decision about whether a particular defendant may participate in the program rests with me. My hope is that the policies and procedures set out herein eliminate ambiguity as to which defendants qualify, so that when the U.S. Attorney’s office signs off on a “fast-track” plea agreement, it will neither surprise nor disappoint anyone – it will be but a formality.

Who qualifies?

To qualify for “fast track” treatment, a defendant’s lawyer must write, fax or email the AUSA assigned to the case within 30 days of an initial appearance that his or her client wishes to participate and appears to be eligible to do so. Eligibility policies are set out in more detail below, but to be eligible initially the defendant must have (1) waived the detention hearing and (2) never previously received “fast track” treatment in a § 1326(a) case.

That 30-day notice is extended automatically if the defendant has yet to receive routine discovery in the case, including the criminal history information available to the U.S. Attorney’s office. Suffice it to say, AUSAs, working with ICE, will provide discovery in these cases as

early in the process as possible. When in doubt about whether a defendant has met the 30-day deadline, our office will err on the side of allowing defendants to participate if they otherwise qualify.

The following categories more specifically describe the limitations of qualification:

Criminal History: Aliens **do not** qualify for the Kansas fast track program if they have:

1. A prior conviction for murder, kidnapping, voluntary manslaughter, national security or terrorism offense, human trafficking offense, DUI involuntary manslaughter, rape or other forcible sex offenses, sex offenses with children including child pornography, firearms offenses (as defined in U.S.S.G. § 2L1.2, application note 1(B)(v)(I)-(VI)), a drug trafficking offense carrying a penalty under 21 U.S.C. §§ 841(b)(1)(A) or (b)(1)(B), (a defendant with a single drug trafficking conviction carrying a penalty under 21 U.S.C. §§ 841(b)(1)(C) or (b)(1)(D) is limited to a two level reduction), or an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802)), for which a minimum term of imprisonment of five (5) years or more was imposed, (a defendant with a single drug trafficking conviction for which a sentence of less than five (5) years was imposed is limited to a two level reduction).
2. Two or more prior convictions for “crimes of violence” and/or “controlled substance offenses” as those terms are used in the Career Offender provisions of U.S.S.G. § 4B1.1. (In other words, if the defendant would have qualified for Career Offender status under Chapter 4 of the Sentencing Guidelines had this “instant offense of conviction” been a felony “crime of violence” or “controlled substance offense,” then the alien would not qualify for the program);
3. Three or more prior convictions for “violent felonies” and/or “serious drug offenses” as those terms are used in the Armed Career Criminal Act and applied through the provisions of U.S.S.G. § 4B1.4. (In other words, if the defendant would have qualified for criminal history purposes as an Armed Career Criminal had the current offense been a violation of 18 U.S.C. § 922(g), s/he would not qualify for the program);
4. A defendant with 16 or more criminal history points; or
5. A history of serious violent crime as determined solely by the U.S. Attorney’s office.

Aliens qualify for a **reduced** reduction of two levels under the fast track program, if their criminal history score results in Criminal History Category VI.

Deportations/Removals/Voluntary Returns: Aliens’ fast track eligibility is limited as follows:

1. If the alien has a combination of five or more prior deportations, removals, and/or voluntary returns, the departure is limited to two levels.
2. If the alien has a combination of eight or more prior deportations, removals, and/or voluntary returns, he or she is ineligible for the program.
3. If the alien has a combination of three or more prior deportations, removals, and/or voluntary returns within the year preceding his or her being “found in” the United States, the departure is limited to two levels.
4. If the alien has a combination of three or more prior deportations, removals, and/or voluntary returns within the six months preceding his or her being “found in” the United States, he or she is ineligible for the program.

Supervised Release, Probation or Parole Status:

1. A defendant under a “criminal justice sentence” as defined in U.S.S.G. § 4A1.1 limits the departure to two levels, provided the plea agreement includes a promise by the defendant to stipulate to a violation of supervised release, probation, or parole based on the new conviction in this case.
2. A defendant under a “criminal justice sentence” as defined in U.S.S.G. § 4A1.1 is ineligible for the program if on escape status.

Terms of Plea Agreement

All defendants eligible for the fast track program must agree to a factual basis that accurately reflects his or her offense conduct and to admit he or she was the subject of a previous order of removal, deportation, or exclusion from the United States, and agrees to the reinstatement of that previous order. The defendant must admit he or she has no fear of returning to the country designated in the previous order, will submit no argument asserting an application of the Convention Against Torture or any claim for asylum, and he or she will not contest, either directly or by collateral attack, the reinstatement of the prior order of removal, deportation, or exclusion.

The defendant must agree not to file any motions described in Rule 12(b)(3) of the Fed.R.Crim.P. and must further waive the right to argue for a variance under 18 U.S.C. § 3553(e).

Additionally, the defendant must waive any right to appeal or collaterally attack any matter in connection with the prosecution, conviction, or the components of the sentence imposed, including the length and conditions of supervised release, as well as any sentence

Kansas "Fast-Track" Program

imposed upon a revocation of supervised release, except on the issue of ineffective assistance of counsel. This waiver is in accord with what is contained in the standard plea agreements utilized by this District.

The plea agreement will specify the government will move for the four-level downward departure pursuant to U.S.S.G. § 5K3.1 unless known facts limit the departure to two levels, with the caveat that a Criminal History Category VI will always limit the departure to two levels.

The goal of the program is to move re-entry after deportation cases through the system as efficiently as possible. Those defendants who choose to take advantage of this program are rewarded by a shorter incarceration sentence. Questions about the fast track program and its implementation, whether generally or in specific cases, should be directed to Jared Maag, Criminal Chief, at jared.maag@usdoj.gov or (785) 295-2850. He will bring any disputed matters to my attention or that of First Assistant U.S. Attorney Mike Warner for prompt resolution.

Thank you for your patience as we are plowing new ground in this area.

Sincerely,

/s/ *Barry R. Grissom*

Barry R. Grissom
United States Attorney

Copies:

U.S. District Judges, District of Kansas
U.S. Magistrate Judges, District of Kansas
U.S. Probation Office



U.S. Department of Justice

*United States Attorney
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May 2, 2012

David R. Beneman, Esq.
Federal Defender
P.O. Box 595
Portland, ME 04112-0595

Re: Fast Track Policy

Dear David:

When we met last week, I told you that I would write to you to describe the terms of our new Fast Track Policy. Here they are:

As to any defendant who is charged solely with having illegally re-entered the United States after having been removed, deported, etc., in violation of 8 U.S.C. § 1326, the government will move under Guideline § 5K3.1 for either a four-level or a two-level departure. In order to qualify for any departure, a defendant must be charged solely with a violation of 8 U.S.C. § 1326 and must enter into a written plea agreement with the government within 30 days of being taken into custody on the illegal reentry charge (as you requested, I will urge AUSAs to be flexible on the 30 days). Such plea agreement shall include the following terms:

- The defendant will enter a guilty plea to the charged offense as soon as the case can reasonably be scheduled;
- The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);
- The defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553(a); and
- The defendant agrees to waive the right to appeal his or her sentence and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

The government will move for a four-level departure from the otherwise applicable guideline sentencing range in the case of any eligible defendant except that we will move for only a two-level departure if the defendant:

- has a criminal history category of VI;

David R. Beneman, Esq.
May 2, 2012
Page 2

- has been previously convicted of aggravated assault, arson, a firearms or explosives offense, an immigration-related or a drug trafficking offense; or
- has been previously deported two or more times.

A defendant is ineligible for participation in the fast-track program if:

- The defendant has been previously convicted of murder, voluntary manslaughter, kidnapping, a forcible sex offense, a child-sex offense (including child pornography offenses), or a national security or terrorism offense, regardless of the sentence that was imposed for any such offense, or any other offense for which the defendant received a sentence of incarceration of ten years or more;
- A supervisory Assistant United States Attorney determines that the circumstances at the time of the defendant's arrest or any other aggravating factors render his participation in the fast-track program inappropriate.

We also have the proviso that the determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, and if eligible whether a two or four-level downward departure is appropriate, shall be made by the United States Attorney or his delegate. In so doing, the United States Attorney may consider any information deemed relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

Let me know if you have any questions.

Sincerely,

THOMAS E. DELAHANTY II
UNITED STATES ATTORNEY

/s/ Jonathan R. Chapman

Jonathan R. Chapman
Criminal Chief

Ake, Adam (USAMD)

From: Rosenstein, Rod (USAMD)
Sent: Friday, March 02, 2012 5:29 PM
Subject: Mandatory Policy and Procedures for Fast-Track Illegal Reentry Cases

DATE: March 2, 2012
TO: All Assistant U.S. Attorneys
FROM: Rod J. Rosenstein
United States Attorney
SUBJECT: Fast Track Immigration Program

Consistent with the guidance from the Deputy Attorney General, we have adopted the **below policy** establishing the circumstances under which we will move for a downward departure under U.S.S.G. § 5K3.1 in illegal reentry cases. Such departures are lawful only when the case is resolved "pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides."

The Deputy Attorney General's memorandum, at pages 3-4, establishes mandatory requirements for a fast-track plea, which include that the defendant must file no pretrial motions, sign the plea agreement within 30 days, waive the right to move for a variance under 18 U.S.C. § 3553(a) and waive both appeal and the right to challenge the conviction under 28 U.S.C. § 2255, except for ineffective assistance.

Fast track departures are authorized in Maryland only for cases that satisfy the additional criteria below. It is important for us to be consistent in implementing the policy. (A defendant who does not satisfy the policy is free to enter an expedited guilty plea and ask the judge for a variance.)

We will develop a form to accompany all fast track plea agreements. The completed form in the file will serve as our internal documentation that the criteria are met. When approval is given electronically, the printed email will suffice.

A. ROUTINE FAST-TRACK ILLEGAL REENTRY CASE

A defendant charged with illegal reentry (8 U.S.C. § 1326) is eligible for fast-track treatment and a four-level departure under U.S.S.G. § 5K3.1, with approval of the first-line supervisor, if the AUSA verifies that these criteria are met:

- No prior violent felony conviction
- No pending charge involving a victim
- ~~No prior conviction for an immigration crime~~
- No more than 6 criminal history points
- No other aggravating factor, such as gang affiliation

B. AGGRAVATED FAST-TRACK ILLEGAL REENTRY CASE

A defendant charged with illegal reentry who does not meet all of the routine fast-track criteria may be considered for a two-level departure under U.S.S.G. § 5K3.1, with the written approval of the Criminal Chief or First Assistant U.S. Attorney. Approval generally will be denied for defendants with convictions, or pending charges, that involve violence or significant financial losses. The AUSA's request for approval must include the following:

1. REASON DEFENDANT IS NOT ELIGIBLE FOR ROUTINE FOUR-LEVEL FAST-TRACK:

2. SUMMARY OF DEFENDANT'S CRIMINAL HISTORY AND OTHER PENDING ALLEGATIONS:

3. REASON AUSA RECOMMENDS TWO-LEVEL FAST-TRACK:

RECOMMENDED BY: _____

CONCURRENCE : _____

APPROVAL: _____

FAST-TRACK POLICY FOR ILLEGAL ALIENS CHARGED UNDER 8 U.S.C. 1326

In accordance with the Departmental Policy on Early Disposition of "Fast-Track" Programs issued on January 31, 2012, qualifying defendants* charged with illegal reentry under 8 U.S.C. 1326 agreeing to fast-track dispositions are eligible for motions for departure upon complying with the following conditions:

- a. The defendant must agree to plead guilty within 30 days of his/her initial appearance unless exceptional circumstances, such as denial of adequate assistance of counsel or substantial delay in necessary administrative procedures, can be shown;
- b. The defendant must agree to a factual basis that accurately reflects the relevant offense conduct, including the facts underlying prior conviction(s) and removal(s);
- c. The defendant must agree not to file any motions described in F.R.Crim.P. 12(b)(2); and
- d. The defendant must agree to waive the rights to seek a variance under 18 U.S.C. 3553(a), to appeal the conviction or sentence, and to seek collateral review under 28 U.S.C. 2255, consistent with Office policy.

In exchange, the USAO, pursuant to USSG 5K3.1, shall move for a downward departure from the adjusted offense level of 4 levels for defendants whose criminal history category is V or below and who have no convictions for a serious violent felony offense. Defendants in such categories may be offered a 2-level departure with supervisory approval on a case-by-case basis after considering the interest of public safety.

*Qualifying defendants are those who:

- a. Do not have a prior felony conviction for a crime of violence, including murder, kidnapping, voluntary manslaughter, forcible sex offenses, child-sex offenses, drug trafficking, or firearms offenses; or convictions for any crimes which reflect a history of serious violent conduct;
- b. Have not been removed two or more times; have not been convicted under 8 U.S.C. 1326; have not been convicted of any felony immigration-related offenses; or have not previously participated in or benefitted from a fast-track program in this or any other District;
- c. Are not under any form of court or correctional supervision or a part of an independent federal criminal investigation; or
- d. Did not resist law enforcement or seriously obstruct justice in the course of the investigation, apprehension, or interview, or otherwise engage in aggravating misconduct, relating to the instant offense.

Memorandum



U.S. Department of Justice

United States Attorney
District of Minnesota

Subject	Date
Illegal Reentry Fast-Track Program	March 1, 2012

To
Criminal Division AUSAs and SAUSAs

From
B. Todd Jones
United States Attorney

A handwritten signature in black ink, appearing to read "B. Todd Jones", written over the printed name.

Introduction

In accordance with the requirements set forth below, and as required by the Deputy Attorney General's January 31, 2012, memorandum entitled *Department Policy on Early Disposition or "Fast-Track" Programs*, this memorandum implements an early disposition or "fast-track" program for the disposition of qualifying felony illegal reentry cases in the District of Minnesota.¹ Namely, effective March 1, 2012, for non-final cases, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the applicable guideline range found by the District Court. Qualifying defendants will be eligible under this fast-track program for a downward departure motion from the government pursuant to the United States Sentencing Guidelines Section 5K3.1. Those with a Criminal History Category of V or below and who have no prior convictions for a serious violent felony are potentially eligible for a four-level downward departure from the applicable guideline range; those with a Criminal History Category of VI, or who have at least one conviction for a serious violent felony, are potentially eligible for a two-level downward departure. The USAO will make the various eligibility determinations under this fast-track program, after considering the circumstances of the case and the interest of public safety. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, as well as certain specified disqualifiers.

¹ This memorandum sets forth the fast-track program of the U.S. Attorney's Office for the District of Minnesota (USAO). It does not create any substantive or procedural right enforceable at law by any person or entity against the United States in any administrative, civil, or criminal matter or case. This memorandum also does not impose any limits on the otherwise lawful litigative prerogatives of the United States Department of Justice or the USAO. See USAM 1-1.00.

A. Defendant Eligibility

Only defendants charged with a felony illegal reentry offense, in violation of 8 U.S.C. § 1326, are eligible for participation in the fast-track program, in accordance with the additional requirements set forth in this memorandum.

B. Expedited Disposition

Within 30 days from the defendant's initial appearance in U.S. District Court on the illegal reentry charge, the defendant must agree to enter into a plea agreement consistent with the requirements of Section C. below. The 30 day limit is subject to certain limited exceptions, including where adequate assistance of counsel has been denied or where there has been a substantial delay in necessary administrative procedures.

C. Minimum Requirements for "Fast-Track" Plea Agreements

A defendant who wants to participate in the fast-track program must enter into a written plea agreement that includes at least the following terms and conditions:

1. The defendant stipulates to facts that accurately reflect the defendant's offense conduct, including the facts related to the defendant's prior conviction and removal;
2. The defendant agrees not to file any pretrial motions, including but not limited to those described in Fed. R. Crim. P. 12(b)(3);
3. The defendant waives the right to seek a departure from the sentencing guidelines on any other grounds;
4. The defendant waives the right to argue for a variance, non-guideline sentence or other reduction under 18 U.S.C. § 3553(a);
5. The defendant agrees to waive the right to appeal his or her sentence, including, where appropriate, waiving the right to appeal a sentence that exceeds the top of the guideline range resulting from the fast-track departure, and the defendant also agrees to waive the opportunity to challenge his or her conviction under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel;
6. The defendant agrees to payment in full, prior to sentencing, of any required special assessment, absent exceptional circumstances demonstrating a complete inability to pay; and,

7. Additional terms and conditions may also be required as deemed appropriate by the USAO, including but not limited to requiring that the defendant enter into an agreement pursuant to Fed. R. Crim. P. 11(c)(1)(C).

D. Disqualifiers

The USAO may exclude a defendant from participation in the fast-track program based on any of the following factors:

1. The defendant has a prior conviction for a serious violent felony;
2. The defendant has multiple prior deportations, any prior conviction for illegal reentry under 8 U.S.C. § 1326, any prior conviction for an immigration-related offense, or previously participated in a fast-track program;
3. The defendant is part of an independent criminal investigation, is charged with an offense or offenses other than illegal reentry, or is under any form of court or correctional supervision; or,
4. There are any other aggravating factors identified by the USAO, including the circumstances at the time of the defendant's arrest.

E. Application of U.S.S.G. § 5K3.1

If the defendant meets the above requirements and is not rendered ineligible based on any of the specified disqualifiers, then the government will invoke U.S.S.G. § 5K3.1 and move the District Court at sentencing to depart downward from the applicable guideline range determined by the District Court, as follows:

1. The government will move the District Court to depart downward no more than four levels, if the defendant is in Criminal History Category V or below and does not have at least one conviction for a serious violent felony.
2. The government will move the District Court to depart downward by no more than two levels, if the defendant is in Criminal History Category VI or has at least one conviction for a serious violent felony that did not otherwise disqualify the defendant from participating in the fast-track program under Section D.1. above.
3. Before the USAO will enter into a plea agreement offering either the four-level or two-level fast-track downward departure, the USAO will determine that that the requirements of this policy are met, that the downward departure is appropriate under the circumstances of the case, and that the downward departure will not be contrary to the interest of public safety.

F. Procedures and Definitions

The determination whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on any of the specified disqualifiers, shall be made by the USAO alone. In so doing, the USAO may consider any information that it deems relevant and reliable, without limitation, including court records, criminal history records, law enforcement investigative reports, and law enforcement intelligence information.

The term "serious violent felony" as used herein includes, but is not limited to, national security or terrorism offenses, murder, kidnapping, voluntary manslaughter, forcible sex offenses, child exploitation offenses (including those involving the production, receipt, distribution, transportation, or possession of child pornography and any contact sex offenses with minors), human trafficking offenses, alien smuggling offenses, drug trafficking offenses, firearms offenses, or any other offense which otherwise reflects a history of serious violent crime.

Generally speaking, if a defendant has a felony conviction for a national security or terrorism violation, murder, kidnapping, voluntary manslaughter, a forcible sex offense, and/or a sex offense involving contact with minors, including production of child pornography, that defendant will be rendered ineligible to participate in the fast-track program pursuant to Section D.1. above. A defendant with one or more convictions for any other serious violent felony may be rendered ineligible pursuant to Section D.1. or may be eligible for a two-level downward departure pursuant to Section E.2.

Memorandum



Subject Illegal Reentry Fast-Track Program	Date February 24, 2012
To U.S. District Judges U.S. Probation Officer Federal Public Defender	From <i>RCC</i> Richard C. Callahan United States Attorney

At the direction of the Department of Justice, our office is adopting a Fast-Track Policy Program for the handling of Illegal Reentry Offenses occurring here in the Eastern District of Missouri.

While fast-track programs originated in the southwestern border districts with high numbers of immigration cases, the underlying justification, i.e. voluntary participation by a defendant saves the government significant and scarce resources and deserves some recognition beyond the normal acceptance of responsibility guideline departure, is equally applicable to all districts. The federal courts of appeals have been divided, however, on whether sentencing courts in non-fast-track districts may vary downward from guideline ranges to "match" the discount given to defendants in fast-track districts. In order to eliminate this problem, all U.S. Attorney Offices have been directed to adopt and implement a fast-track policy by March 1, 2012.

Please find attached our Fast-Track Program, which we are implementing immediately. This policy potentially applies to all illegal reentry offenses and establishes baseline requirements for qualification for fast-track treatment. The basic mechanics are that within an expedited time frame, the defendant must plead guilty and waive certain pre-trial and post-convictions rights, and in return defendants will receive a sentencing discount.

If you have any questions regarding this new policy, please call AUSA John Ware at 314/539-6212.

EASTERN DISTRICT OF MISSOURI ILLEGAL REENTRY FAST-TRACK PROGRAM

Introduction

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged in the Eastern District of Missouri under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure consistent with the Guideline Policy Statement, (§5k3.1) that allows for a departure of not more than four (4) levels for a defendant who qualifies for an early disposition program.

The departure, like a §5k1.1 departure, must be upon motion of the government. Set forth below are the eligibility requirements for this district's fast-track program and concomitant governmental motion for departure pursuant to §5k3.1, certain specified disqualifiers, and other relevant procedures and definitions.¹

Eligibility Requirements

A. Defendant Eligibility

Only defendants charged solely with illegal reentry under 8 U.S.C. § 1326 are eligible for participation in this district's fast-track program. A defendant who is charged with any other immigration offense under Title 8, 18 or any other Title is ineligible.

¹This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney's Office for Eastern District of Missouri. See U.S.A.M. 1-1.00.

Any one of the following factors renders a defendant ineligible for participation in the fast-track program:

1. A prior violent felony conviction, including, but not limited to, murder, kidnapping, voluntary manslaughter, forcible sex offenses, child-sex offenses, drug trafficking, firearms offenses, or any other conviction which otherwise reflects serious violent crime;
2. Two (2) or more previous deportations or four (4) or more voluntary removals;
3. Two (2) or more prior convictions under 8 U.S.C. § 1326 for illegal reentry;
4. One (1) or more prior convictions for other immigration-related offenses;
5. Previous participation in a fast-track program;
6. The defendant is part of an independent criminal investigation, is charged with an offense or offenses other than illegal reentry, or is under any form of court of correctional supervision; or
7. With approval of the Immigration Coordinator, the circumstances at the time of the defendant's arrest or any other aggravating factors identified by the United States Attorney.

B. Procedural Requirements

In order to qualify for a four-level or a two-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. Absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), agree within 30 days of being taken into custody on the criminal charge of illegal reentry to enter into a plea agreement with the government.
2. Enter into a written plea agreement with the government that includes the following terms:
 - a. An agreed factual basis that accurately reflects the defendant's offense conduct and stipulates to all of defendant's prior convictions, removals and deportations;

- b. An agreement not to file any pre-trial motions including, but not limited to, those described in Fed. R. Crim. P. 12(b)(3);
- c. An agreement to waive the right to argue for a variance or non-guideline sentence under 18 U.S.C. § 3553(a);
- d. An agreement to waive the right to appeal and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255, except on the issues of ineffective assistance of counsel or prosecutorial misconduct;

Government's Motion for a Fast Track Departure

As to any defendant who is deemed eligible to participate in the fast-track program, but who has a criminal history category VI or a prior aggravated felony, the attorney for the Government may move for no more than a two-level downward departure in return for that defendant meeting the conditions of the program, irrespective of how high the District Court sets the defendant's adjusted base offense level.

Procedures and Definitions

The determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney's Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.



U. S. Department of Justice

Beth Phillips
United States Attorney
Western District of Missouri

Gene Porter
Criminal Division Chief
Gene.Porter@usdoj.gov

Charles Evans Whittaker Courthouse (816) 426-3122
400 East 9th Street, Suite 5510 Fax (816) 426-4210
Kansas City, Missouri 64106-2637

February 27, 2012

Hon. Fernando J. Gaitan, Jr.
Chief United States District Court Judge
Western District of Missouri
7552 Charles Evans Whittaker Courthouse
400 East Ninth Street
Kansas City, Missouri 64106

Re: **“Fast Track” Policy** for Illegal Reentry Prosecutions

Dear Judge Gaitan:

The United States Attorney has adopted a new “Fast Track” policy for the prosecution of illegal reentry cases. This policy is the product of a nationwide Department of Justice effort to ensure that every district has an illegal reentry “Fast Track” policy in place. The Deputy Attorney General issued a publicly available memorandum on January 31, 2012, that explains the rationale for this new policy. <http://www.justice.gov/dag/fast-track-program.pdf>.

Illegal reentry cases that qualify for Fast Track treatment will be disposed of more quickly than normal and the Government will ask the court to impose a lower, non-Guideline sentence.

This new policy will not increase the number of illegal reentry prosecutions filed in the district. Instead, it simply provides a mechanism for expediting the resolution of illegal reentry cases in those instances where the defendant qualifies for Fast Track treatment.

Defendants charged with a felony illegal reentry offense who wish to participate in the Fast Track program must agree to enter into and sign a plea agreement within 30 days from the date the defendant is taken into federal criminal custody on the illegal reentry offense.

The Fast Track plea agreement will require:

- An agreed factual basis that accurately reflects the defendant’s offense conduct, and a stipulation to all prior convictions, removals, and deportations;
- An agreement not to file any pretrial motions, including but not limited to those described in Fed.R.Crim.P. 12(b)(3);

- An agreement to waive the right to argue for a variance or non-guideline sentence under 18 U.S.C. § 3553(a);
- The standard appellate waiver required by the district's model plea agreement, with respect to both direct appeals and post-conviction/collateral challenges;
- The payment in full, prior to sentencing, of any required special assessment, absent exceptional circumstances demonstrating a complete inability to pay; and,
- Any additional requirement deemed appropriate in an individual case.

Defendants with one or more of the following characteristics are not eligible for participation in the United States Attorney's Fast Track program:¹

- A prior serious violent felony conviction (including, but not limited to, murder, kidnapping, voluntary manslaughter, forcible sex offenses, child exploitation offenses (including those involving the possession, receipt, distribution, or production of child pornography, and any contact sex offenses with minors), drug trafficking, firearms offenses, or any other conviction which otherwise reflects a serious violent crime);
- Any prior conviction that generates a twelve-level enhancement or more under U.S.S.G. § 2L1.2(b);
- More than one prior deportation, any prior conviction for illegal reentry under 8 U.S.C. § 1326, any prior conviction for an immigration-related offense, or prior participation in a fast-track program;
- The defendant is part of an independent criminal investigation, is charged with an offense or offenses other than illegal reentry, or is under any form of court or correctional supervision; or,
- Any other aggravating factor or circumstance in an individual case that justifies exclusion from the Fast Track program, as determined in the discretion of the prosecutor on the basis of information the prosecutor deems relevant and reliable.

For defendants who qualify for participation in the Fast Track program, and who sign the required plea agreement within the required time frame, the Government will invoke U.S.S.G. § 5K3.1 and move the District Court at sentencing to depart downward from the adjusted base offense level the District Court determines is applicable (after application of an adjustment for acceptance of responsibility), as follows:

¹ The United States Attorney's Office alone will determine whether a defendant is eligible for participation in the fast-track program, or whether a defendant is not eligible based on one or more of the disqualifiers specified above. In making this determination, the United States Attorney's Office may rely upon and consider any information that it deems relevant and reliable including, but not limited to, court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information. Further, the Fast Track policy is not intended to, does not, and may not be relied upon to create any substantive or procedural right enforceable at law by any person or entity against the United States in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the United States Department of Justice or the United States Attorney's Office for the Western District of Missouri. See USAM 1-1.00.

- The Government will ask the District Court to depart downward four levels, *unless* the defendant is in criminal history category VI or has at least one felony conviction for a serious violent offense.
- If the defendant is in criminal history category VI or has at least one felony conviction for a serious violent offense, and was not excluded from participating in the fast-track program based on the eligibility criteria above, the Government will ask the District Court to depart downward by no more than two levels, provided the United States Attorney's Office determines such a departure is appropriate under the circumstances of the case after considering the interest of public safety.

We hope this new policy will prove to be a benefit to the court and public as we all seek to resolve felony illegal reentry cases in a just, fair, and consistent manner.

Please feel free to contact me if you have any questions about this matter.

Very truly yours,

Beth Phillips
United States Attorney

Gene Porter
Criminal Division Chief

cc w/ enc.: Hon. Robert E. Larson
Chief United States Magistrate Judge

Ray Conrad
Federal Public Defender

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**FAST-TRACK POLICY FOR 8 U.S.C. § 1326
PROSECUTIONS IN THE DISTRICT OF NEVADA**

In accordance with the directives and guidance in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in §2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, certain specified disqualifiers, and other relevant procedures and definitions.¹

To implement the national Fast-Track program for prosecutions under 8 U.S.C. § 1326, Deported Alien Found Unlawfully in the United States, the following policies and rules will be applied in the District of Nevada:

- A. *Defendant Eligibility.* The United States Attorney retains the discretion to limit or deny a defendant’s participation in a fast-track program based on-
- (1) The defendant’s prior violent felony convictions (including murder, kidnaping, voluntary manslaughter, forcible sex offenses, child-sex offenses, drug trafficking, firearms offenses, or convictions, including misdemeanors, which otherwise reflect a history of serious violent crime);
 - (2) The defendant’s number of prior deportations and removals, (voluntary removals and departures will be considered), prior convictions for illegal reentry under 8 U.S.C. § 1326, prior convictions for other immigration-related offenses, or prior participation in a fast-track program;
 - (3) If the defendant is part of an independent federal criminal investigation, or if he or she is under any form of court or correctional supervision; or

¹This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney’s Office for the District of Nevada. See U.S.A.M. 1-100.

- (4) With supervisory approval, circumstances at the time of the defendant's arrest or any other aggravating factors relevant to defendant's criminal and immigration history.
- B. *Expedited Disposition.* Within 30 days from the defendant being taken into custody on federal criminal charges, absent exceptional circumstances such as the denial of adequate assistance of counsel or a substantial delay in necessary administrative procedures, the defendant must sign a written plea agreement consistent with the requirements of Section C below.
- C. *Minimum Requirements for "Fast-Track" Plea Agreement.* The defendant must enter into a written plea agreement that includes at least the following items-
- (1) The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to prior convictions and removals;
 - (2) The defendant agrees not to file any of the motions described in Fed. R. Crim. P. Rule 12(b)(3);
 - (3) The defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553(a) or any downward departure under the Sentencing Guidelines and to waive appeal and the opportunity to challenge his or her conviction or sentence on appeal or under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel;
 - (4) The defendant will agree that the maximum term of Supervised Release applicable should be imposed; and
 - (5) The defendant agrees to enter into a binding sentencing agreement pursuant to Fed. R. Crim. P. Rule 11(c)(1)(C).
- D. *Additional Provisions of a Plea Agreement.* If the above conditions are satisfied-the attorney for the Government shall move at sentencing pursuant to Sentencing Guidelines § 5K3.1 for a downward departure from the adjusted base offense level found by the District Court (after application of the adjustment for acceptance of responsibility) as follows-
- (1) Four levels for all defendants, except those with a criminal history category VI or one felony conviction for a serious violent offense. If defendant has only one such offense, the Government may only offer a two-level departure.
 - (2) The Government will still consider a variance or downward departure based on the defendant's lost opportunity for concurrent time.

DISTRICT OF NEW HAMPSHIRE ILLEGAL REENTRY FAST-TRACK PROGRAM

Introduction

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in U.S.S.G. § 2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the relevant procedures, definitions, and eligibility requirements for a downward departure pursuant to this fast-track program.¹

Procedures and Definitions

The determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of factors listed below, shall be made by the United States Attorney’s Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

At the outset, the United States Attorney may determine that *any* defendant is ineligible to participate in the fast-track program based on the defendant’s prior violent felony convictions. [The list of “violent felony convictions” contained in Section A(1) of the DAG memo is illustrative but not exhaustive of the offenses that may be included in a district policy in the first disqualifier listed above.]

The United States Attorney may also decide, when looking at the conduct underlying a “prior violent felony conviction,” that a defendant is still eligible in whole or in part to participate in the fast-track program. [For example, the United States Attorney may determine that a defendant convicted of a minor drug trafficking offense or a firearms offense similar to simple possession is eligible to participate in the fast-track program.]

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney’s Office for the District of New Hampshire. See U.S.A.M. 1-1.00.

Eligibility Requirements

An individual defendant shall not be eligible to participate in the fast-track program based on—

1. The defendant's prior violent felony convictions, including murder, kidnapping, voluntary manslaughter, forcible sex offenses, child-sex offenses, child pornography offenses, drug trafficking, firearms offenses, or other convictions, including those for domestic violence crimes, that reflect a history of serious violent crime;
2. The defendant having been excluded from the United States under 8 U.S.C. § 1225(c) because he or she was excludable under 8 U.S.C. § 1182(a)(3)(B) (relating to terrorist activities) or subchapter V of Chapter 12 (8 U.S.C. §§ 1531-1537) (relating to an "alien terrorist").
3. The defendant having been previously deported three or more times; or
4. The defendant's previous participation in a fast-track program.
5. With supervisory approval, the circumstances at the time of the defendant's arrest or any other aggravating factors identified by the United States Attorney.

The government may move for a two-level downward departure under U.S.S.G. § 5K3.1 with respect to any defendant who is deemed eligible to participate in the fast-track program and to whom any of the following circumstances or factors is applicable:

1. The defendant's criminal history category is IV or higher;
2. The defendant has one or more prior convictions under 8 U.S.C. § 1326 for illegal reentry, at least of which is countable for purposes of determining the defendant's criminal history category;
3. The defendant has one or more prior felony convictions for other immigration-related offenses, at least one of which is countable for purposes of determining the defendant's criminal history category;
4. The defendant is part of an independent federal criminal investigation;
5. The defendant is under any form of court or correctional supervision; or
6. With supervisory approval, the circumstances at the time of the defendant's arrest or any other aggravating factors identified by the United States Attorney.

If none of the circumstances or factors listed above apply to a defendant who is otherwise deemed eligible to participate in the fast-track program, the government may move for a four-

level downward departure under U.S.S.G. § 5K3.1 in his or her case.

Participation Requirements

In order to participate in the fast-track program to receive either a four-level or a two-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. Absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), agree within 30 days of being taken into custody on the illegal reentry charge to enter into a plea agreement with the government. In order to facilitate a defendant's expeditious determination whether to plead guilty, as soon as practicable, AUSAs should provide the defense with copies of the following: the warrant(s) of deportation, statements of the defendant and report(s) summarizing any admissions by the defendant, and the results of any identification procedures employed.
2. Enter into a written plea agreement with the government that includes the following terms:
 - a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to his or her prior removal(s), any conviction that triggers an increase in the applicable maximum sentence under 8 U.S.C. §§ 1326(b)(1) or (b)(2), and any removal under 8 U.S.C. § 1231(a)(4)(B) that triggers an increase in the maximum sentence under 8 U.S.C. § 1326(b)(4);
 - b. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);
 - c. The defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553(a);
 - d. The defendant agrees to waive the right to appeal as specified in the District's standard Plea Agreement and the opportunity to challenge his or her conviction under 28 U.S.C. §§ 2241 and 2255 as specified in the District's standard Plea Agreement;
 - e. The defendant agrees to enter into a sentencing agreement pursuant to Fed. R. Crim. P. 11(c)(1)(B) or both Rules 11(c)(1)(B) and (C); and
 - f. The defendant agrees to waive a full pre-sentence investigation if necessary to expedite the defendant's sentencing in order to preserve the sentencing court's option to impose a sentence consonant with the goal of the Fast-Track Program.

DISTRICT OF NEW JERSEY ILLEGAL REENTRY FAST-TRACK PROGRAM

Introduction

Effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in §2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, certain specified disqualifiers, and other relevant procedures and definitions.¹

Eligibility Requirements

In order to qualify for either a four-level or a two-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. Absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), agree within 30 days of being taken into custody on the illegal reentry charge to enter into a plea agreement with the government. In order to facilitate a defendant’s expeditious determination whether to plead guilty, AUSAs should provide adequate discovery as soon as practicable.
2. Enter into a written plea agreement with the government that includes the following terms:
 - A. The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal;
 - B. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney’s Office for the District of New Jersey. *See* U.S.A.M. 1-1.00.

18 C. The defendant agrees to waive the right to argue for a variance under
U.S.C. § 3553(a)

to D. The defendant agrees to waive the right to appeal and the opportunity
challenge his or her conviction under 28 U.S.C. § 2255, except on the
issue of ineffective assistance of counsel

E. The defendant agrees to waive a full pre-sentence investigation.

Disqualifiers

An individual defendant's participation in the fast-track program may be limited or denied based on—

1. The defendant's prior violent felony convictions, including murder, kidnapping, voluntary manslaughter, forcible sex offenses, child-sex offenses (which include receipt, possession, or distribution of child pornography), drug trafficking, firearms offenses, or other convictions which reflect a history of serious violent crime;
2. The defendant having been previously deported two (2) or more times;
3. The defendant having one (1) or more prior convictions under 8 U.S.C. § 1326 for illegal reentry;
4. The defendant having two (2) or more prior convictions for other immigration-related offenses;
5. The defendant's previous participation in a fast-track program;
6. If the defendant is part of an independent federal criminal investigation;
7. If the defendant is under any form of court or correctional supervision; or
8. With supervisory approval, the circumstances at the time of the defendant's arrest or any other aggravating factors identified by the United States Attorney.

Government's Motion for a Fast Track Departure

As to any defendant who is deemed eligible to participate in the fast-track program, but who has a criminal history category VI or a prior felony conviction for a "serious violent offense," the attorney for the Government may move for no more than a two-level downward departure in return for that defendant meeting the conditions of the program, irrespective of how high the District Court sets the defendant's adjusted base offense level. A "serious violent offense" includes murder, kidnapping, voluntary manslaughter, forcible sex offenses, and child-sex offenses, including receipt, possession, or distribution of child pornography.

Procedures and Definitions

The determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney's Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

At the outset, the United States Attorney may determine that *any* defendant is ineligible to participate in the fast-track program based on the defendant's prior violent felony convictions.

The United States Attorney may also decide, when looking at the conduct underlying a "prior violent felony conviction," that a defendant is still eligible in whole or in part to participate in the fast-track program.



U.S. Department of Justice

*United States Attorney
District of New Mexico*

*Post Office Box 607
Albuquerque, New Mexico 87103*

*505/346-7274
505/346-7224
FAX 505/346-7296*

February 21, 2012

Honorable Bruce D. Black
Chief United States District Judge
United States District Court
District of New Mexico
106 S. Federal Place, First Floor
Santa Fe, New Mexico 87501

Dear Judge Black:

On March 1, 2012, the Department of Justice, pursuant to USSG § 5K3.1, is implementing a nationwide "Fast Track" program for defendants who are charged with violations of 8 U.S.C. § 1326, Reentry of a Removed Alien. This national policy is designed to avoid sentencing disparities among defendants who are similarly situated.

This **new policy** will modify the current Fast Track program in place in the District of New Mexico. Under the new policy, defendants who are charged with a violation of 8 U.S.C. § 1326 potentially will be eligible for either a four-level or a two-level downward departure pursuant to USSG § 5K3.1 from the adjusted offense level ("AOL") found by the District Court (after application of the adjustment for acceptance of responsibility). Those defendants with a criminal history category ("CHC") of V or below and who have no prior felony convictions for a crime of violence are eligible for a four-level downward departure from the AOL. Those with a CHC of VI, or one or more prior felony convictions for a crime of violence, are potentially eligible for a two-level downward departure from the AOL on a case-by-case basis, after taking into account public safety concerns. However, the United States Attorney's Office retains the right, in the exercise of prosecutorial discretion, to exclude a defendant from participation in the program.

In order to receive the benefit of this new Fast Track program, defendants who are eligible must agree not to seek a further sentencing departure or variance and must waive their right to appeal the sentence imposed by the Court. In addition, defendants must waive their right to a preliminary hearing and agree to a 75-day extension of the 18 U.S.C. § 3161(b) deadline for speedy indictment. Finally, defendants must accept the government's plea offer within 30 days after their initial appearance.

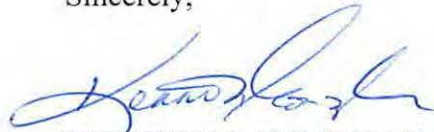
Although this policy's effective date is March 1, 2012, defendants who have not yet been sentenced by that date are potentially eligible for the program. I anticipate that defendants will

request the benefit of the new program because it provides a greater reduction to defendants in most cases. In cases where a defendant has been charged but has not yet pled guilty, I have instructed my AUSAs to review defense counsel requests to enter a guilty plea under this new program.

If a defendant already has entered a guilty plea, defense counsel must file a motion requesting the benefit of the new program. My office will then file a response stating whether the defendant is eligible for the new program. If the government agrees that the defendant is eligible for the program, the government will stipulate in its response that the defendant's plea agreement should be modified to conform to the new policy. Defendants who have been sentenced prior to March 1, 2012, will not be eligible for the new program.

My hope is that transition to this new program will cause minimal disruption. To that end, I've enclosed copies of the revised plea agreements for the Court's review. Please contact my Criminal Chief, Paula G. Burnett, if you have any questions regarding this policy or its implementation.

Sincerely,



KENNETH J. GONZALES
United States Attorney

- cc: United States District Judge M. Christina Armijo
United States District Judge Robert C. Brack
United States District Judge James O. Browning
United States District Judge William P. Johnson
United States District Judge Judith C. Herrera
United States District Judge Martha Vazquez
Senior United States District Judge John E. Conway
Senior United States District Judge C. LeRoy Hansen
Senior United States District Judge James A. Parker
Chief United States Magistrate Judge Karen B. Molzen
United States Magistrate Judge Lorenzo F. Garcia
United States Magistrate Judge Carmen E. Garza
United States Magistrate Judge William P. Lynch
United States Magistrate Judge Lourdes A. Martinez
United States Magistrate Judge W. Daniel Schneider
United States Magistrate Judge Robert H. Scott
United States Magistrate Judge Alan C. Torgerson
United States Magistrate Judge Stephan M. Vidmar
United States Magistrate Judge Gregory B. Wormuth
United States Magistrate Judge Robert W. Ionta
United States Magistrate Judge Kea W. Riggs
Stephen P. McCue, Federal Public Defender
Robert E. Kinney, Supervisory Assistant Federal Public Defender



U.S. Department of Justice

**United States Attorney's Office
Northern District of New York**

Please reply to:
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March 1, 2012

Hon. Gary L. Sharpe, Chief Judge
Federal Building and U.S. Courthouse
445 Broadway, Room 112
Albany, NY 12207

Re: NDNY Illegal Re-entry Fast Track Program

Dear Chief Judge Sharpe:

I am writing to advise you that the Deputy Attorney General has directed all United States Attorney's Offices to develop "fast track" early disposition programs for cases involving illegal re-entry violations under 8 U.S.C. § 1326(a) and that this Office plans to implement its program starting today. The NDNY program is designed to make non-dangerous, non-recidivist offenders potentially eligible for a government downward departure motion of up to four levels pursuant to U.S.S.G. §5K3.1 ("Upon motion of the Government, the court may depart downward not more than 4 levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides.").

Subject to discretionary exceptions, offenders who meet the following requirements will be eligible for such departure motions under the NDNY Illegal Re-entry Fast Track Program:

1. The defendant must be charged with a violation of 8 U.S.C. § 1326(a);
2. The defendant must be subject to the sentencing provisions in 8 U.S.C. § 1326(a); (b)(1); or (b)(4). This excludes cases involving aggravated felonies and offenders excluded from the United States for national security reasons;

3. The defendant's combined offense level under the federal sentencing guidelines, taking into account credit for acceptance of responsibility but before any departure, must be 12 or lower. This limits application to offenders who were not previously convicted of certain aggravated felonies and other serious offenses;
4. The defendant must have no more than one prior conviction for illegal re-entry or another immigration-related felony;
5. The defendant must not have previously been deported or removed (or voluntarily departed after an order of deportation or removal) more than two times; and
6. The defendant must not be charged with or subject to charges for any other readily provable felonies, including, for example, felony violations of 18 U.S.C. § 1028 (possession and use of fraudulent identification documents); 18 U.S.C. § 1546(a) (possession and use of fraudulent immigration documents); and 42 U.S.C. § 408(a)(7)(A) (use of false social security card or number).

In order to receive the benefit of the NDNY program, an offender must do the following:

1. Within 30 days of arrest, enter into the government's standard plea agreement, including special fast-track-specific provisions. The plea agreement must include truthful admissions to the facts supporting the illegal re-entry charge and stipulations to all matters relevant to sentencing, including any prior convictions, deportations, or removals;
2. Agrees not to file any of the motions described in Rule 12(b)(3) of the Federal Rules of Criminal Procedure; and
3. Waive appeal, collateral attack, and the right to seek any additional departure or variance from the applicable sentencing guidelines range.

This program will have no application to and will not alter the way in which this Office handles prosecutions of those offenders who do not qualify or choose not to participate in it.

The Honorable Gary L. Sharpe
Re: NDNY Illegal Re-Entry Fast Track Program
March 1, 2012
Page 3

Please contact me if you have any questions.

Very truly yours,

RICHARD S. HARTUNIAN
United States Attorney

A handwritten signature in black ink, appearing to read 'S. Clymer', with a stylized flourish at the end.

STEVEN D. CLYMER
Assistant United States Attorney
Chief, Criminal Division

cc: Matthew L. Brown, Chief Probation Officer
Lisa Peebles, Interim Federal Public Defender

**United States Attorney's Office
Southern District of New York
Fast-Track Policy for Felony Illegal Reentry Offenses**

Introduction

In accordance with the January 31, 2012, Memorandum of the Deputy Attorney General concerning expansion of the early disposition (or "fast-track") program for felony illegal reentry cases brought pursuant to Title 8, United States Code, Section 1326, outlined below is the program that has been developed for cases prosecuted in the Southern District of New York. In particular, set forth below are the conditions under which the Government will seek a four-level downward departure at sentencing, pursuant to Section 5K3.1 of the United States Sentencing Guidelines (the "Guidelines" or "U.S.S.G."), for eligible illegal reentry defendants.

This policy may be disclosed to defense counsel to facilitate discussion regarding its applicability to a particular case. Notwithstanding the foregoing, this policy is not intended to, does not, and may not be relied upon, to create any rights, privileges or benefits, substantive or procedural, enforceable at law by any party, person or entity in any matter, civil or criminal, nor does it place any limitations on otherwise lawful litigative prerogatives of the Department of Justice. Further, this policy is subject to modification without notice. *See United States v. Caceres*, 440 U.S. 741 (1979).

Baseline Eligibility Requirements

In order to participate in the SDNY fast-track program, a defendant must be charged solely with illegal reentry under 8 U.S.C. § 1326. Defendants charged in multiple counts, of which only one is illegal reentry, are not eligible for fast-track disposition. In addition, a defendant is ineligible to participate in the SDNY fast-track program if:

- The defendant has a prior conviction for a “serious violent felony,” as the term is defined in 18 U.S.C. § 3559(c)(2)(F)(i),¹ or a “serious drug offense” as the term is defined in 18 U.S.C. § 3559(c)(2)(H);²
- The defendant has seven (7) or more criminal history points;
- The defendant has a prior conviction for illegal reentry under 8 U.S.C. § 1326;
- The defendant has two (2) or more prior deportations, exclusions, and/or removals from the United States; or
- The defendant was subject to a previous prosecution for an immigration offense that was resolved, in whole or in part, with the use of a fast-track program.

In addition, the Office retains the discretion to limit or deny a defendant’s participation in the SDNY fast-track program in the following circumstances:

- The defendant is the subject of an independent federal criminal investigation;
- The defendant committed the instant illegal reentry offense while under any form of judicial or correctional supervision; and
- Other aspects of the defendant’s criminal history, any pending state or federal charges against the defendant, and/or the circumstances of the defendant’s arrest in the instant

¹ Section 3559(c)(2)(F)(i) defines “serious violent felony” as “a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in sections 2244(a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; firearms possession (as described in section 924(c)); or attempt, conspiracy, or solicitation to commit any of the above offenses.”

² Section 3559(c)(2)(H) defines “serious drug offense” as “an offense that is punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)); or . . . an offense under State law that, had the offense been prosecuted in a court of the United States, would have been punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)).”

case suggest that the defendant should not receive any sentencing benefit that might result from the use of a fast-track program.

The Fast-Track Program

Within 30 days of the earlier of the defendant's presentment or arraignment on the illegal reentry charge—absent exceptional circumstances, such as the denial of adequate assistance of counsel or a substantial delay in necessary administrative procedures—the defendant must enter into a written plea agreement with the Government that includes the following items:

- If the defendant was initially arrested pursuant to a criminal complaint, and no indictment has yet been filed, the defendant agrees to waive his or her right to a preliminary hearing and/or to be prosecuted by indictment, and instead agrees to proceed by information.
- The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and the prior deportation, removal, or exclusion from the United States, including the date(s) of the defendant's illegal reentry into the United States.
- The defendant agrees not to file any of the motions listed in Rule 12(b)(3) of the Federal Rules of Criminal Procedure.
- The defendant agrees to waive all rights to discovery other than receiving a copy of his or her prior criminal record.
- The defendant and the Government enter into factual stipulations concerning the defendant's offense level and criminal history calculations under the Guidelines, including the anticipated downward departure pursuant to U.S.S.G. § 5K3.1 for the defendant's participation in the fast-track program. The parties also stipulate to the resulting Guidelines sentencing range (which will be referred to in the plea agreement and here as the "Stipulated Guidelines Range").
- The defendant agrees not to move for a downward departure under the Guidelines from the Stipulated Guidelines Range. The defendant shall not be prohibited from moving for a downward variance from the Stipulated Guidelines Range pursuant to Title 18, United States Code, Section 3553(a). The Government agrees not to move for an upward departure from the Stipulated Guidelines Range under the Guidelines. The Government shall not be prohibited from moving for an upward variance from the Stipulated Guidelines Range pursuant to Section 3553(a).
- The defendant agrees to waive his or her right to appeal; to collaterally attack pursuant to Title 28, United States Code, Section 2255 and/or Section 2241; and/or

to seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence of imprisonment within or below the Stipulated Guidelines Range, as well as any term of supervised release that is at or below the statutory maximum. The Government agrees not to appeal any sentence of imprisonment within or above the Stipulated Guidelines Range.

- The defendant will agree to the entry of a stipulated judicial order of removal, if sought by the Government, and will not challenge or seek relief or protection from removal, and will assist U.S. Immigration and Customs Enforcement in the execution of his or her removal order.

As noted, if the defendant has complied with the conditions outlined above and otherwise demonstrated acceptance of responsibility to the satisfaction of the Government, the Government will move the sentencing court for a four-level downward departure from the resulting adjusted offense level, pursuant to U.S.S.G. § 5K3.1.

Pending Cases

Illegal reentry defendants who have been charged, but have not yet pleaded guilty as of March 1, 2012, can obtain the benefit of the new fast-track policy if (i) the defendant would otherwise be eligible to participate in the fast-track program described above, and (ii) within 30 days from March 1, 2012, the defendant enters into a plea agreement with the Government containing the provisions set forth above.

Similarly, illegal reentry defendants who have pleaded guilty, but have not been sentenced as of March 1, 2012, can obtain the benefit of the new fast-track policy if (i) the defendant would otherwise be eligible to participate in the fast-track program described above, and (ii) within 30 days from March 1, 2012, the defendant enters into a revised plea agreement with the Government (or, at the Government's request, a sentencing agreement with stipulations and an appellate waiver) containing the provisions set forth above.

Illegal reentry defendants who were sentenced prior to March 1, 2012, are not eligible to participate in the new program. In particular, because the Government's adoption of a new fast-track policy does not call into question the validity of any illegal reentry sentences imposed prior to its implementation, the Government will oppose motions seeking resentencings or sentence reductions pursuant to Rule 35(a) of the Federal Rules of Criminal Procedure, Rule 60(b) of the Federal Rules of Civil Procedure, 18 U.S.C. § 3582(c), and 28 U.S.C. § 2255 and/or 2241.

* * *

**WESTERN DISTRICT OF NEW YORK
ILLEGAL REENTRY FAST-TRACK PROGRAM**

Introduction

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in §2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, certain specified disqualifiers, and other relevant procedures and definitions.¹

Eligibility Requirements

In order to qualify for either a four-level or a two-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326:

1. The defendant must only be charged with a violation of § 1326 and the defendant’s anticipated sentencing range under the Sentencing Guidelines must be other than 0 to 6 months imprisonment.

2. Absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), agree within 30 days of being taken into custody on the illegal reentry charge to enter into a plea agreement with the government. In order to facilitate a defendant’s expeditious determination whether to plead guilty, AUSAs should provide adequate discovery as soon as practicable.

3. Enter into a written plea agreement with the government that includes the following terms:

- a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal;

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney’s Office for the Western District of New York. See U.S.A.M. 1-1.00.

- b. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);
- c. The defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553(a) .

Disqualifiers

An individual defendant's participation in the fast-track program will be denied based on—

1. The defendant's prior violent felony convictions, including murder, kidnapping, voluntary manslaughter, forcible sex offenses, child-sex offenses, drug trafficking, firearms offenses, or other convictions which qualify as crimes of violence under the Sentencing Guidelines or as a "violent felony" under 18 U.S.C. § 924(e)(2)(B).
2. The defendant having been previously deported 2 or more times;
3. The defendant having 1 or more prior convictions under 8 U.S.C. § 1326 for illegal reentry;
4. The defendant having 2 or more prior convictions for other immigration-related offenses;
5. The defendant's previous participation in a fast-track program;
6. If the defendant is part of an independent federal criminal investigation;
7. If the defendant is under any form of court or correctional supervision; or
8. With supervisory approval, the circumstances at the time of the defendant's arrest or any other aggravating factors identified by the United States Attorney.

Government's Motion for a Fast Track Departure

As to any defendant who is deemed eligible to participate in the fast-track program, the attorney for the Government will move for a four-level downward departure pursuant to Sentencing Guidelines § 5K3.1 in return for that defendant meeting the conditions of the program, irrespective of how high the District Court sets the defendant's adjusted base offense level.

As to any defendant who is deemed eligible to participate in the fast-track program, but who has a criminal history category VI, or although having a prior conviction for a violent felony is deemed eligible for the fast-track program, the attorney for the Government will move for a two-level downward departure pursuant to Sentencing Guidelines § 5K3.1 in return for that defendant meeting the conditions of the program, irrespective of how high the District Court sets the defendant's adjusted base offense level.

Procedures and Definitions

The determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney's Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

The United States Attorney may also decide, when looking at the conduct underlying a "prior violent felony conviction," that a defendant is still eligible in whole or in part to participate in the fast-track program. For example, the United States Attorney may determine that a defendant convicted of a minor drug trafficking offense or a firearms offense similar to simple possession is eligible to participate in the fast-track program.

DISTRICT OF NORTH DAKOTA
ILLEGAL REENTRY FAST-TRACK PROGRAM
2/27/12

Introduction

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in §2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, certain specified disqualifiers, and other relevant procedures and definitions.¹

A. Eligibility Requirements

In order to qualify for either a four-level or a two-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. Absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), agree within 30 days of being taken into custody on the illegal reentry charge to enter into a plea agreement with the government. In order to facilitate a defendant’s expeditious determination whether to plead guilty, AUSAs should provide adequate discovery as soon as practicable.
2. Enter into a written plea agreement with the government that includes the following terms:
 - a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal;
 - b. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney’s Office for the District of North Dakota. *See* U.S.A.M. 1-1.00.

- c. The defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553(a);
- d. The defendant agrees to waive the right to appeal and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel;
- e. The United States Attorney shall retain discretion to impose additional procedural requirements for fast-track plea agreements; specifically, the United States Attorney has discretion to require that the defendant agree to enter into a sentencing agreement pursuant to Fed.R.Crim.P. 11(c)(1)(C), and/or to waive a full pre-sentence investigation as conditions of participation; and
- f. If the defendant possessed \$500 or more at the time of his apprehension, with respect to the amount exceeding \$500, the defendant agrees not to contest actions by the United States to seize or otherwise take the funds necessary to satisfy: (1) the defendant's special assessment obligation for the present conviction(s); (2) a restitution order for the present conviction or any prior restitution order in this federal district; and (3) any court-ordered reimbursement for defense expenses and costs that were provided at public expense.

B. Disqualifiers

An individual defendant's participation in the fast-track program may be limited or denied based on—

1. Any prior violent felony convictions, including murder, kidnapping, voluntary manslaughter, forcible sex offenses, child-sex offenses, drug trafficking, firearms offenses, or other convictions which reflect a history of serious violent crime [see definition below];
2. The defendant having more than one prior conviction under 8 U.S.C. § 1326 for illegal reentry; having more than one prior conviction for other immigration-related offenses; or having participated in a fast-track program before;
3. If the defendant is part of an independent federal criminal investigation;
4. If the defendant is under any form of court or correctional supervision; or

5. With supervisory approval, the circumstances at the time of the defendant's arrest or any other aggravating factors identified by the United States Attorney.

C. Government's Motion for a Fast Track Departure

If the above conditions are satisfied, including any additional or special condition required by the circumstances of a particular case, then the Government will invoke U.S.S.G. § 5K3.1 and move the District Court at sentencing to depart downward from the adjusted base offense level the District Court determines is applicable (after application of an adjustment for acceptance of responsibility), as follows:

1. The Government will ask the District Court to depart downward four levels, *unless* the defendant is in criminal history category VI or has at least one felony conviction for a serious violent offense.
2. If the defendant is in criminal history category VI or has at least one felony conviction for a serious violent offense, and was not excluded from participating in the fast-track program under Section A(1) above, the Government will ask the District Court to depart downward by no more than two levels, provided the case AUSA obtains prior written approval from their immediate supervisor for such a downward departure motion, and such a departure is appropriate under the circumstances of the case after considering the interest of public safety.

D. Procedures and Definitions

The determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney's Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

At the outset, the United States Attorney may determine that *any* defendant is ineligible to participate in the fast-track program based on the defendant's prior violent felony convictions. The list of "violent felony convictions" contained in Section A(1) of the DAG memo is illustrative but not exhaustive of the offenses that may be included in a district policy in the first disqualifier listed above.

The United States Attorney may also decide, when looking at the conduct underlying a "prior violent felony conviction," that a defendant is still eligible in whole or in part to participate in the fast-track program. For example, the United States Attorney may determine that a defendant convicted of a minor drug trafficking offense or a firearms offense similar to simple possession is eligible to participate in the fast-track program.

SOUTHERN DISTRICT OF OHIO
ILLEGAL REENTRY FAST-TRACK PROGRAM

A. Introduction

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in §2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, certain specified disqualifiers, and other relevant procedures and definitions.¹

B. Eligibility Requirements

In order to qualify for either a four-level or a two-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. At his/her initial appearance:
 - a. waive his/her right to a preliminary hearing, in accordance with Fed.R.Crim.P. 5.1.; and
 - b. waive his /her right to a pre-trial detention hearing and agree to the entry of an order that he/she be detained pre-trial on grounds that no condition of combination of conditions will reasonably assure the appearance of the defendant as required, in accordance with 18 U.S.C. § 3142(e).
2. Within 30 days from the defendant being taken into custody on the federal criminal reentry charge, absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), execute a written plea agreement with the government.

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney’s Office for the Southern District of Ohio. See U.S.A.M. 1-1.00.

- a. The defendant agrees to waive his/her right to be indicted by a federal grand jury and agrees to be prosecuted by way of an information, pursuant to Fed.R.Crim.P. 7(b).
- b. The defendant agrees to a factual basis that accurately reflects his/her offense conduct and stipulates to the facts related to the prior conviction and removal;
- c. The defendant agrees not to file any of the motions described in Fed.R.Crim.P. 12(b)(3);
- d. The defendant agrees to waive his/her right to the disclosure of impeachment and exculpatory information;
- e. While the district court must consider the facts set forth in 18 U.S.C. § 3353 (a) in sentencing the defendant, the defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553(a);
- f. The defendant agrees to waive the right to appeal and the opportunity to challenge his/her conviction and sentence under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel;
- g. The defendant, subject to the discretion of the United States Attorney, agrees to enter into a sentencing agreement pursuant to Fed.R.Crim.P. 11(c)(1)(C); and
- h. The defendant agrees to waive a full presentence investigation and issuance of a full presentence investigation report by the United States Probation Department.²

² The United States Probation Department will provide a modified PSR approximately 3 weeks after receiving the information, plea agreement, and statement of facts from the assigned Assistant United States Attorney.

C. Disqualifiers

An individual defendant's participation in the fast-track program may be limited or denied based on—

1. The defendant's prior conviction(s) for a violent felony offense, (including murder, voluntary manslaughter, any offense that resulted in the death of another individual or injury to a law enforcement officer, armed robbery, residential burglary, arson, any offense committed with a deadly or dangerous weapon, kidnapping, forcible sex offenses, and child-sex offenses), a "drug trafficking offense," as defined by U.S.S.G. § 2L1.2 Application Note 1(B)(iv), and the sentence exceeded 13 months as indicated in U.S.S.G. § 2L1.2(b)(1)(A), a firearms offense, or convictions for offenses which reflect a history of serious violent criminal conduct, such as domestic violence;
2. The defendant having been previously removed five (5) or more times;
3. The defendant having two (2) or more prior convictions under 8 U.S.C. § 1326 for illegal reentry;
4. The defendant having two (2) or more prior convictions for other immigration-related offenses;
5. The defendant's previous participation in a fast-track program;
6. If the defendant is part of an independent federal criminal investigation;
7. If the defendant is under any form of court or correctional supervision; or
8. With supervisory approval, the circumstances at the time of the defendant's arrest or any other aggravating factors identified by the United States Attorney.

D. Government's Motion for a Fast Track Departure

As to any defendant who is deemed eligible to participate in the fast-track program, but who has a criminal history category VI or a prior felony conviction for an offense not covered in Section C(1), the attorney for the Government may move for no more than a two-level downward departure in return for that defendant meeting the conditions of the program, irrespective of how high the District Court sets the defendant's adjusted base offense level.

Procedures and Definitions

The determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney's Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

At the outset, the United States Attorney may determine that *any* defendant is ineligible to participate in the fast-track program based on the defendant's prior felony convictions set forth in Section C(1).

The United States Attorney may also decide, when looking at the conduct underlying a prior felony conviction set forth in Section C(1), that a defendant is still eligible in whole or in part to participate in the fast-track program.



MEMORANDUM

To: All Probation Officers

From: John S. Dierna, Chief U.S. Probation Officer *JD*
Phelps L. Jones, Deputy Chief U.S. Probation Officer *PJ*

Re: Fast Track/Early Disposition Cases Policy

Date: March 15, 2012

Introduction

The Department of Justice has issued a mandate, requiring all U.S. Attorney's Offices to implement an early disposition/fast track program by March 1, 2012, to handle the increasing number of criminal immigration cases across the country. Historically, fast track programs have predominantly been utilized by districts in states along the southwestern border. In 2003, the sentencing commission implemented a policy statement at § 5K3.1, authorizing a departure of up to four levels upon motion by the government for defendants in an early disposition program. This policy statement followed the directive of the PROTECT Act to provide consistency among districts utilizing such a program. Since then, different districts have implemented a fast track program with varying criteria. The Department of Justice's mandate provides requirements to the U.S. Attorney's Office to follow to gain consistency across the country. The cases authorized under this directive include felony reentry cases (8 U.S.C. § 1326).

An early disposition/fast track program is based on the premise that defendants who agree to resolve their cases via this program have demonstrated a level of acceptance of responsibility above and beyond what is already considered by the sentencing guidelines. Accordingly, the government will move for defendants accepted for fast track to receive an additional reduction of up to four levels off the total offense level which, in turn, reduces the potential sentence to which these individuals would be subject. Furthermore, a fast track program allows the U.S. Attorney's Office and Court to more efficiently allocate its resources, thus resulting in additional cost savings to the government.

U.S. Attorney's Requirements and Responsibilities

The U.S. Attorney retains the discretion to limit, or deny a defendant's participation in fast track. Pertinent considerations for appropriateness include but are not limited to: 1. Certain prior violent felony convictions; 2. Number of past deportations; 3. Defendant being part of an independent investigation, or under court supervision; or 4. Special circumstances at time of arrest, or any other aggravating factors determined by government.

The defendant must agree to enter into a plea agreement in accordance with the provisions of the fast track program within 30 days of being taken into custody, absent exceptional circumstances. The defendant must concur with the factual basis that accurately outlines the offense conduct and stipulate to information related to the prior conviction and removal. In addition, the defendant shall waive various rights under Rule 32, and agree not to motion the court for further variance inconsistent with the fast track program. The government retains discretion to require the defendant to enter into a plea agreement pursuant to Rule 11(c)(1)(C) and to waive a full presentence investigation.

If the above conditions are met, the U.S. Attorney will recommend to the court at sentencing that a departure downward from the offense level be awarded, pursuant to § 5K3.1. The departure shall be four levels for all defendants, except those in criminal history category VI, or those defendants who have at least one conviction for a non disqualifying violent felony offense. In the latter circumstances, the government will motion the court for a two level downward departure.

When a defendant has agreed to enter the fast track program, and following receipt of a signed plea agreement, including a consent for the probation department to commence a modified presentence investigation and disclose the contents prior to entering a guilty plea, the Assistant U.S. Attorney shall promptly send to the probation office copies of the signed plea agreement, signed consent form, charging document (Information), and statement of facts.

Probation Office's Responsibilities

Consistent with Rule 32 of the Federal Rules of Criminal Procedure, 18 U.S.C. § 3553(a) and the Guide to Judicial Policy, Vol. 8, Part D (Monograph 107), the probation office will complete modified and expedited presentence investigations and reports on defendants participating in the fast track program. The presentence investigation will commence upon receipt of the signed plea agreement and related documents from the Assistant U.S. Attorney. (Note that this will typically occur in advance of the plea agreement being filed with the Court.)

A defendant will be interviewed during the modified investigation. However, the level of detail will be less than required for a standard guideline presentence report. The investigation into the defendant's personal history will be limited to the preceding five years, except when significant issues arise, requiring more extensive investigation. Form 14s may be used to verify portions of the defendant's background, since a modified investigation under this policy is geared for the

illegal alien defendant with little or no ties to the United States and is facing imminent deportation.

The offense conduct will incorporate the statement of facts. No additional investigation into the offense will be conducted with the exception of contacting ICE to verify alien status and determining the number of past deportations. The guidelines will be calculated as is typically done. Criminal history will be prepared similarly to standard presentence reports. Collateral requests will be employed as needed to secure pertinent criminal history. Under Part C., Offender Characteristics, relevant detail gathered and reported shall be incorporated under one subheading, Personal Data. The officer will report the statutory and guideline provisions under Part D. Sentencing Options.

In Parts E and F, grounds for departure and variance, respectively, the officer should identify any unique factors that potentially support a sentence outside the applicable guideline range, in addition to outlining the downward departure, pursuant to § 5K3.1, anticipated by the fast track plea agreement. Lastly, the recommendation is similar to standard presentence format and objections, if any, would be outlined in an addendum, consistent with present practices.

A description of a modified presentence investigation, along with examples of these types of reports, can be found in the Guide to Judicial Policy, Vol. 8, Part D, Ch. 1, Appx. 1C.

Time Line and Disclosure

The time line for conducting and preparing a modified presentence investigation and report for fast track cases commences when the probation office receives the signed plea agreement, consent form, charging document, and statement of facts from the U.S. Attorney's Office. The investigation and report shall be completed, reviewed and disclosed within four weeks of receipt of the pertinent documents from the government. Within seven days of disclosure, objections may be filed. If no objections are filed, the officer shall immediately transmit the final presentence report to court, indicating no objections have been filed. This informs the court that the case is ripe to proceed.

When objections are filed, the probation officer shall have up to seven additional days to conduct any further inquiry as needed and report back to the parties with the officer's response to the objections.

Within three days of the officer's response to the contested issues, the final presentence report shall be transmitted to the court along with an addendum, outlining any unresolved objections. (Given the criteria for entrance into the fast track program, it is anticipated that the filing of objections will be in the exceptional case.)

The time line for preparation, disclosure and receipt of any objections, along with final transmission of the modified report to the court can take up to 45 days under these procedures. However, in cases where no objections have been filed, the modified report should be transmitted to the Court immediately.

Should the Court reject the fast track plea agreement, the defendant's participation in fast track ends. The government, defendant and defense counsel would resume plea negotiations, or proceed to trial. In this circumstance, no other action is expected of the probation office until such time as the Court would refer the case for a full presentence investigation and report.

Should you have any questions concerning this policy, please contact supervising probation officers Tracy Gearon, Beth Harris, or Bob Frommeyer, or us.

UNITED STATES ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF OKLAHOMA ILLEGAL REENTRY FAST-TRACK PROGRAM¹

Introduction

Effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a four-level downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in §2L1.2(b) and for acceptance of responsibility).

Eligibility Requirements

In order to qualify for a downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

Within 14 days of initial appearance or arraignment to enter into a written plea agreement with the government that includes the following terms:

- a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal/deportation;
- b. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);
- c. In the event of a pre-indictment plea, the defendant agrees to waive indictment pursuant to Fed. R. Crim. P. 7;
- d. The defendant agrees to waive the right to argue for a downward departure from the AOL or a variance under 18 U.S.C. § 3553(a);
- e. The defendant agrees to waive the right to appeal and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel challenging the validity of the guilty plea; and
- f. The defendant agrees to an abbreviated presentence investigation and to waive the right to a full pre-sentence investigation under Fed. R. Crim. P. 32.

¹ This fast-track policy is implemented in accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program. This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney's Office for Eastern District of Oklahoma. *See* U.S.A.M. 1-1.00.

Disqualifiers

A defendant who might otherwise qualify for a four-level downward departure under this policy shall be disqualified from participation in the fast-track program based on the following:

1. The defendant having previously been convicted of a “crime of violence” or “controlled substance offense” as defined in U.S.S.G. § 4B1.2;
2. The defendant having been previously convicted of a “child pornography” offense, human trafficking” offense or “terrorism” offense as defined in the application notes to U.S.S.G. § 2L1.2;
3. The defendant falling in criminal history category VI;
4. The defendant having been previously removed or deported 3 or more times;
5. The defendant having been previously convicted of a felony immigration offense or 2 or more convictions for misdemeanor immigration offenses;
6. The defendant having previous participation in a fast-track program;
7. The defendant being the subject or target of an independent federal criminal investigation;
8. The defendant being charged with an offense or offenses other than a violation of 8 U.S.C. § 1326;
9. If the defendant is under any form of court or correctional supervision; or
10. With supervisory approval, the circumstances at the time of the defendant’s arrest or any other aggravating factors identified by the United States Attorney.

Procedures

The determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney’s Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

DATED THIS 1ST DAY OF MARCH, 2012.

MARK F. GREEN
UNITED STATES ATTORNEY

**NORTHERN DISTRICT OF OKLAHOMA PROSECUTIVE
GUIDELINES FOR THE ILLEGAL REENTRY FAST-TRACK PROGRAM**

Introduction

Per the January 31, 2012 memorandum from Deputy Attorney General James Cole, the United States Attorney's Office for the Northern District of Oklahoma will implement the illegal reentry fast-track program described below.

Effective March 1, 2012, defendants charged with illegal reentry under 8 U.S.C. § 1326 may be eligible for a downward departure from the Adjusted Offense Level ("AOL") found by the District Court (after application of other Sentencing Guidelines adjustments, including acceptance of responsibility).

An eligible defendant may receive a four-level departure from his or her AOL.

The United States Attorney's Office alone determines whether a defendant meets the eligibility requirements and whether any of the disqualifying circumstances described below exist.¹ In so doing, it may consider any information that it deems relevant and reliable without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

Eligibility Requirements

To qualify for a four-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. Within 14 days of arraignment, enter into a written plea agreement with the United States, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), that includes the following:
 - a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal;
 - b. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney's Office for the Northern District of Oklahoma. *See* U.S.A.M. 1-1.00.

- c. The defendant agrees to waive the right to argue for a downward departure on other grounds or any variance under 18 U.S.C. § 3553(a), *United States v. Booker*, 543 U.S. 220 (2005), or otherwise;
- d. The defendant agrees to waive the right to appeal and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255, except for claims of ineffective assistance of counsel that challenge the validity of his or her guilty plea; and
- e. The defendant agrees to an abbreviated presentence investigation and to waive his or her right to a full presentence investigation under Fed. R. Crim. P. 32 and N.D. Okla. Local Crim. R. 32.1, 32.4, and 32.9.

4-level Departure

An eligible defendant will receive a 4-level AOL downward departure unless he or she is disqualified as set forth below.

Disqualification

An otherwise eligible defendant will be disqualified and receive no AOL downward departure under any of the following circumstances:

1. The defendant has sustained a conviction² for one or more of the following offenses:
 - a. As defined in the 2011 Federal Sentencing Guidelines Manual Section 4B1.2(a) and (b), one or more convictions for:
 - i. a crime of violence; or
 - ii. a controlled substance offense;
 - b. As defined in the 2011 Federal Sentencing Guidelines Manual Section 2L1.2, one or more convictions for:
 - i. a child pornography offense;
 - ii. a national security or terrorism offense;
 - iii. a human trafficking offense; or

² The term “conviction” as used throughout this document means a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

- iv. an alien smuggling offense;
 - c. Kidnapping, voluntary manslaughter, an offense where a minor child is the victim, or any other convictions that otherwise reflect a history of serious violent crime; or
 - d. Aggravated identity theft under 18 U.S.C. § 1028A or a corresponding state law;
2. The defendant has been deported three or more times;
 3. The defendant has sustained one or more convictions for a felony immigration offense;
 4. The defendant has sustained two or more convictions for misdemeanor immigration offenses;
 5. The defendant has previously participated in a fast-track program;
 6. The defendant is charged with another federal crime;
 7. The defendant is a subject or target in another federal criminal investigation;
 8. On the offense date alleged in the charging document, the defendant was under any form of court or correctional supervision following a felony conviction;
 9. The defendant falls in criminal history category VI; or
 10. With supervisory approval, the circumstances at the time of the defendant's arrest or other aggravating factors warrant disqualification.



THOMAS SCOTT WOODWARD
United States Attorney

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Date

Eligibility Requirements

In order to qualify for a four-level downward departure, defendants charged with a violation of 8 U.S.C. § 1326 must, within 14 days of initial appearance or arraignment enter into a written plea agreement with the United States that includes the following terms:

1. the defendant agrees not to file any motion described in Fed. R. Crim. P. 12(b)(3);
2. the defendant agrees to waive the right to argue for a downward departure on other grounds or variance pursuant to 18 U.S.C. § 3553(a) or *United States v. Booker*, 543 U.S. 220 (2005);
3. the defendant agrees to waive their right to appeal and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel; and
4. the defendant agrees to waive a full presentence investigation report pursuant to Fed. R. Crim. P. 32.

Disqualifiers

Defendants who might otherwise qualify for a four-level downward departure under this policy shall be disqualified from participation in the fast-track program under the following circumstances:

1. the defendant has previously been convicted of a “crime of violence” or “controlled substance offense” as defined in USSG § 4B1.2, kidnaping, voluntary manslaughter, escape, an offense where a minor child is a victim, or any other offense that otherwise reflects a history of violence;
2. the defendant falls within criminal history category VI;
3. the defendant has previously been removed or deported three or more times;
4. the defendant has previously been convicted of a felony immigration offense or two or more misdemeanor immigration offenses;
5. the defendant previously participated in a fast-track program in this or any other federal district;

6. the defendant is charged with, or is the target of, a non-immigration federal crime;

7. the defendant is under any form of court or correctional supervision based on a felony conviction;

8. the defendant has previous been convicted of a “child pornography” offense, “national security or terrorism” offense, or “human trafficking” offense as defined by USSG § 2L1.2; or

9. the circumstances at the time of the defendant’s arrest warrant disqualification from the fast-track program and a supervisory AUSA approves such disqualification.

Sentencing Guidelines

7. The parties acknowledge that 18 U.S.C. § 3553(a), directs the Court to consider certain factors in imposing sentence, including the Sentencing Guidelines promulgated by the United States Sentencing Commission. Consequently, although the parties recognize that the Sentencing Guidelines are only advisory, they have entered into certain stipulations and agreements with respect to the Guidelines. Based upon the information that is known to the parties on the date this agreement is executed, they expect to take, but are not limited to, the following positions at sentencing:

The parties agree defendant should receive a 2-level downward adjustment for acceptance of responsibility pursuant to USSG § 3E1.1(a), if he commits no further crimes, does not falsely deny or frivolously contest relevant conduct, and fully complies with all of the other terms of this agreement. Further, to the extent the Court finds defendant qualifies for that 2-level downward adjustment and USSG § 3E1.1(b) is applicable, the government agrees to move for the additional 1-level downward adjustment of § 3E1.1(b), if defendant accepts the terms of this plea agreement by the deadline established in Paragraph 1. **The government further agrees to move for an additional 4-level downward adjustment pursuant to USSG § 5K3.1 based on the defendant's eligibility for "early disposition" (fast-track) relief. In exchange for this motion, the defendant agrees not to argue for a downward departure or variance based on other grounds, including the factors set forth in 18 U.S.C. § 3553(a), and agrees to waive his/her right under Fed. R. Crim. P. 32 to have a full presentence investigation report.**

U.S. Department of Justice

United States Attorney

Eastern District of Pennsylvania



Memorandum

Subject	Eligibility Requirements for the Illegal Reentry Fast-Track Program	Date	March 13, 2012
To	United States Attorney's Office	From	Zane David Memeger United States Attorney

I. Introduction

This memorandum sets out the eligibility requirements for the illegal reentry Fast-Track program in this district. The Deputy Attorney General's Memorandum of January 31, 2012, provides that each United States Attorney retains discretion to implement the fast-track program within certain guidelines. These general guidelines provide an outline within which each office retains discretion in its implementation of the program. Under this policy, the United States Attorney retains discretion to limit or deny a defendant's participation in a fast-track program based on the following criteria:

A. Prior violent felony convictions (including murder, kidnaping, voluntary manslaughter, forcible sexual offenses, child-sex offenses, drug trafficking, firearms offenses, or convictions which otherwise reflect a history of serious violent crime);

B. The number of prior deportations, prior convictions for illegal reentry under 8 U.S.C. § 1326, prior convictions for other immigration related offenses, or prior participation in a fast-track program;

C. If the defendant is part of an independent federal criminal investigation, or if he or she is under any form of court or correctional supervision; or

D. With supervisory approval, circumstances at the time of the defendant's arrest or any other aggravating factors identified by the United States Attorney.

II. Eligibility Requirements for this District

A. Prior Convictions

1. A defendant will not qualify for participation in the fast-track program if he or she has a prior violent felony conviction (including murder, kidnaping, voluntary manslaughter, aggravated assault, forcible sex offense, child-sex offense, drug trafficking, firearms offense, or a conviction which otherwise reflects a history of serious violent crime).

2. Generally drug trafficking convictions involving substantial drug quantities will be disqualifying. Drug trafficking convictions involving small amounts of marijuana, or involving drug

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amounts below federal mandatory levels, will not be automatically disqualifying but will be reviewed on a case-by-case basis to determine eligibility.

3. Firearms convictions that involve simple possession will not generally disqualify a defendant's participation in the fast-track program, but will be reviewed on a case-by-case basis to determine eligibility. However, those firearms convictions that involve the use or brandishing of a firearm will disqualify a defendant from participation. A conviction for a "firearms offense" as defined in Commentary Application Note (1)(B)(v)(I)-(VI) of § 2L1.2 of the Sentencing Guidelines will disqualify a defendant from participating in the fast-track program.

4. A defendant who has at least two prior simple assault convictions will generally be disqualified from participating in a fast-track program unless the assaults did not result in injury, in which case, the defendant may, with supervisory approval, receive a two-level departure, rather than a four-level departure.

* * *

With regard to the prior convictions described in paragraphs 2 through 4, the Office will consider the age of any prior conviction when making its determination regarding eligibility. Where a conviction is at least 15 years old, a defendant may not be automatically disqualified when his criminal history does not include any intervening convictions for violent crimes, or otherwise demonstrate a risk of recidivism.

B. Prior Removals and Immigration Offenses

The following will be disqualified from participation in the fast-track program:

1. A defendant with two or more deportations/removals prior to the charged reentry.
2. A defendant who has been previously convicted of illegal reentry under 8 U.S.C. § 1326.
3. A defendant who has two or more prior convictions for illegal entry under 8 U.S.C. § 1325.
4. A defendant who has been convicted of immigration-related offenses involving visa/document fraud, or passport fraud which he or she committed on behalf of others, including the manufacturing and sale of fraudulent documents for others.

With respect to the immigration-related offenses described above, the Office will take the age of any conviction into consideration when making this determination. Where a conviction is at least 15 years old, a defendant may not be automatically disqualified when his criminal history does not include any intervening convictions, or otherwise demonstrate a risk of recidivism.

C. Independent Federal Criminal Investigation, or Court or Correctional Supervision.

The Office will review each case on an individual basis to determine whether the defendant should be disqualified in light of an independent investigation or the pendency of supervision. For example, with respect to defendants subject to an independent federal criminal

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investigation, we will consider the nature of the possible offenses and whether they constitute violent offenses, the extent of the defendant's participation in the criminal activity, and the likelihood of charges.

A defendant who committed the present illegal reentry offense while on supervised release, probation, or parole should not be disqualified unless the underlying offense is disqualifying as set forth in parts A and B above.

D. Aggravating or Mitigating Factors, including Circumstances at the Time of the Defendant's Arrest.

A defendant with an extensive criminal record who is not otherwise precluded by the criteria noted above will be reviewed for eligibility. A defendant with 13 or more criminal history points, or whose criminal record demonstrates a serious risk of recidivism, will not qualify for the fast-track program.

A defendant who presents mitigating circumstances may, in exceptional circumstances and with supervisory approval, be accepted into the fast-track program notwithstanding a disqualifying prior conviction as set forth above.

III. Expedited Disposition and Minimum Requirements for "Fast-Track" Plea Agreement

If the Office deems a defendant eligible for participation in the fast-track program, the defendant, in order to participate, must, within 30 days of arraignment, agree to enter into a plea agreement incorporating the following provisions:

(1) the defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal;

(2) the defendant agrees not to file any of the motions described in Federal Rule of Criminal Procedure 12(b)(3); and

(3) the defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553(a), and to waive appeal and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255 pursuant to the standard terms of the appellate waiver provision employed in this district.

IV. Departure under Sentencing Guideline Section 5K3.1

If the required conditions are satisfied, the attorney for the government will move at sentencing pursuant to Sentencing Guidelines Section 5K3.1 for a downward departure from the adjusted base offense level found by the district court, after application of the adjustment for acceptance of responsibility. The intended departure will be included in the plea agreement entered into by the parties. The government, at its discretion, will move for a four-level departure for all defendants, except those with a criminal history category VI, with two prior assault convictions, or with at least one felony conviction for a serious violent offense. In those

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cases, the government may offer a two-level departure, with supervisory approval, on a case-by-case basis.



U.S. Department of Justice

*United States Attorney
District of Rhode Island*

Fleet Center
50 Kennedy Plaza, 8th Floor
Providence, Rhode Island 02903

(401) 709-5000
FAX (401) 709-5001

March 8, 2012

RECEIVED MAR - 8 2012

Mary S. McElroy, Esq.
Federal Defender
10 Weybossett Street, Suite 300
Providence, Rhode Island 02903

RE: New Fast-Track Program

Dear Ms. McElroy:

Here is the relevant information on the new illegal re-entry case fast-track program in this District. The program calls for the Government to move at sentencing for either a four offense level reduction from the adjusted offense level found by the court or a two offense level reduction from the adjusted offense level found by the court depending on the criteria described below. The decision about whether to make such a motion is made by the United States Attorney.

A. Ineligibility For Fast Track Program Participation

The United States Attorney retains the discretion to deny defendant's participation in the fast track program where any one or more of the following factors exist:

1. The defendant has been previously convicted of a crime of violence as that term is defined in U.S.S.G. § 4B1.2(a) and Commentary thereto;
2. Defendant has been previously convicted of an offense involving possession, distribution, or manufacturing child pornography or any other child-sex offense;

3. Defendant has been previously convicted of a national security or terrorism offense, regardless of the sentence that was imposed for any such offense;
4. Defendant has been previously convicted of any offense for which the defendant received a sentence of incarceration of ten years or more;
5. The defendant has a criminal history category of VI under Chapter Four of the United States Sentencing Guidelines; and,
6. The circumstances at the time of the defendant's arrest, defendant's criminal history, or any other aggravating factors identified by the United States Attorney render his participation in the fast-track program inappropriate in the judgment of the United States Attorney.

B. Two Level Reduction Eligibility

Notwithstanding the preceding paragraph, in the discretion of the United States Attorney a defendant may only be eligible for a two-level departure under this program, where:

1. The defendant has been previously convicted of a firearms or explosives offense, including but not limited to unlawful possession of firearms;
2. The defendant has been previously convicted of a controlled substance offense as that term is defined in U.S.S.G. § 4b1.2(b) and Commentary thereto;
3. The defendant has been previously deported two or more times;
4. The defendant has one or more prior convictions under 8 U.S.C. § 1326 for illegal reentry;
5. The defendant has one or more prior convictions for other immigration-related offenses.
6. The defendant previously participated in a fast-track program; or,
7. The defendant is under any form of court or correctional supervision.

C. Plea Agreement Requirement

In order to qualify for a departure motion from the government, the defendant must enter into a written plea agreement that includes the following terms:

1. The defendant agrees not to file any of the motions described in Fed.R. Crim.P. 12(b)(3);
2. The defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553(a); and
3. The defendant agrees to waive the right to appeal the sentence and conviction.

N.B. The government reserves the right to argue for a sentence anywhere within the departure Guideline range unless it agrees otherwise. The defendant must make a decision about whether to seek fast track consideration within thirty days of arraignment and so inform the government.

D. Discovery

Either at arraignment or shortly thereafter the government will provide a copy of the defendant's ICE Alien file. The defendant's criminal record will be provided by Pretrial Services at arraignment.

Sincerely,

PETER F. NERONHA
United States Attorney



ZECHARIAH CHAFEE
Assistant U.S. Attorney

DISTRICT OF SOUTH DAKOTA
ILLEGAL REENTRY FAST-TRACK PROGRAM
2/24/12

Introduction

In accordance with the requirements set forth below, and as required by the Deputy Attorney General's January 31, 2012, memorandum entitled *Department Policy on Early Disposition or "Fast-Track" Programs*, this memorandum implements an early disposition or "fast-track" program for the disposition of qualifying felony illegal reentry cases in the District of South Dakota.¹

Effective March 1, 2012, defendants who are charged with illegal reentry into the United States after having previously been removed under 8 U.S.C. § 1326 are potentially eligible for a downward departure from the adjusted offense level found by the District Court after application of the adjustment for acceptance of responsibility.

Eligible defendants may receive either a four-level or a two-level departure from the adjusted offense level. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, as well as certain specified disqualifiers.

Eligibility Requirements

In order to qualify for either a four-level or two-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must, absent exceptional circumstances, agree within 30 days of being taken into custody on the illegal reentry charge to enter into a plea agreement with the United States Attorney's Office, which plea agreement shall include the following terms:

1. the defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to all prior convictions, removals and deportations;
2. the defendant agrees not to file any of the motions described in Fed.R.Crim.P. 12(b)(3);

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural right enforceable at law by any person or entity against the United States in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the United States Department of Justice or the United States Attorney's Office for the District of South Dakota. See USAM 1-1.00.

3. the defendant agrees to waive the right to argue for a variance or non-guideline sentence under 18 U.S.C. § 3553(a);
4. the defendant agrees to the standard appellate waiver required by the district's model plea agreement;
5. the defendant agrees to waive a full pre-sentence investigation; and
6. the defendant agrees to any additional requirement deemed appropriate by the case AUSA, provided the case AUSA obtains prior written approval from his or her immediate supervisor for imposition of the additional requirement.

Disqualifiers

An individual defendant's participation in the fast-track program may be limited or denied (see Procedure section below) based on:

1. the defendant has previously been convicted of a serious violent felony,² human trafficking, alien smuggling, or the defendant has any prior conviction that generates a twelve-level enhancement or more under U.S.S.G. §2L1.2(b);
2. the defendant is in criminal history category VI;
3. the defendant has previously been removed from the United States three or more times prior to the instant illegal reentry offense;
4. the defendant has two or more prior conviction for illegal reentry under 8 U.S.C. § 1326, or for other immigration-related offenses;
5. the defendant previously participated in a fast-track program;

² The term "serious violent felony" as used herein includes, but is not limited to, murder, kidnaping, voluntary manslaughter, forcible sex offenses, child exploitation offenses (including those involving the possession, receipt, distribution or production of child pornography and any contact sex offenses with minors), drug trafficking offenses, firearms offenses, or any other offenses which otherwise reflect a history of serious violent crime.

6. the defendant is part of an independent federal criminal investigation or is charged with an offense or offenses other than illegal reentry ;
7. the defendant is under any form of court or correctional supervision; or
8. the circumstances at the time of the defendant's arrest warrant disqualification from the fast-track program or any other aggravating factor identified by the AUSA assigned to the case, which merits disqualification, provided the AUSA obtains prior written approval from his/her immediate supervisor.

Procedure

If the above conditions are satisfied, including any additional or special condition required by the circumstances of a particular case, then the AUSA will invoke U.S.S.G. § 5K3.1 and move the District Court at sentencing to depart downward four levels from the adjusted base offense level the District Court determines is applicable (after application of an adjustment for acceptance of responsibility).

As to any defendant who is otherwise deemed eligible to participate in the fast-track program, but who has a criminal history category of VI; or the defendant has previously been convicted of a serious violent felony, human trafficking, or alien smuggling; or the defendant has any prior conviction that generates a twelve-level enhancement or more under U.S.S.G. §2L1.2(b), the AUSA may move for no more than a two-level downward departure provided the AUSA obtains prior written approval from his/her immediate supervisor.

Determination by U.S. Attorney's Office

The determination whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney's Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)
)
 v.) Case No.
)
[Defendant],)
)
 Defendant.)

PLEA AGREEMENT

Neil H. MacBride, United States Attorney for the Eastern District of Virginia;
[AUSA/SAUSA], Assistant United States Attorney; the defendant, [Defendant]; and [defense
counsel], the defendant’s counsel, have entered into an agreement pursuant to Rule 11 of the
Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. Offense and Maximum Penalties

The defendant agrees to waive indictment and plead guilty to a single-count criminal
information charging the defendant with illegal reentry by an alien previously removed **[add any
additional description of offense]**, in violation of Title 18, United States Code, Section 1326
[add relevant paragraph for offense charged]. The maximum penalties for this offense are a
term of **XX** years of imprisonment, a fine of **\$XX**, full restitution, a special assessment, and **XX**
years of supervised release. The defendant understands that this supervised release term is in
addition to any prison term the defendant may receive, and that a violation of a term of
supervised release could result in the defendant being returned to prison for the full term of
supervised release.

2. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

3. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

4. Role of the Court and the Probation Office

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above, but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing

range under the U.S. Sentencing Commission’s Sentencing Guidelines Manual the defendant may have received from the defendant’s counsel, the United States, or the Probation Office is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005), the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

5. Fast Track Program (Early Disposition)

The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast Track) program authorized by the Attorney General of the United States and the United States Attorney for the Eastern District of Virginia.

Although the parties understand that the Sentencing Guidelines are advisory and just one of the factors the Court will consider under 18 U.S.C. § 3553(a), in accordance with Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure and U.S.S.G. § 5K3.1, the United States and the defendant stipulate and agree that the following is an appropriate disposition of this case:

A. Offense Level

- a. The defendant’s base offense level is 8, pursuant to U.S.S.G. § 2L1.2(a).
- b. The defendant’s offense level is increased by **XX** levels, pursuant to U.S.S.G. § 2L1.2(b)[**insert citation to applicable specific offense characteristic**], for the defendant’s most serious prior conviction—namely, the defendant’s **XXXX** [**insert year**] conviction for **XXXX**.

[insert conviction] (If applicable: If the defendant has multiple convictions that fall under more than one specific offense classification in U.S.S.G. § 2L1.2(b), the highest specific offense classification will be used in calculating the sentence that will be imposed upon the defendant.)

- c. The defendant's final adjusted offense level will be the base offense level, plus the above-noted enhancement for specific offense characteristics **[if applicable]**, minus the appropriate downward adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1, and
 - i. A two level downward departure for any defendant with a criminal history category VI or with at least one felony conviction for a serious violent offense; and
 - ii. A four level downward departure for all other defendants.
- d. Based on the calculations specified above, the parties stipulate and agree to recommend to the Court that the defendant's final adjusted offense level is **XX**.

With respect to the adjustment for acceptance of responsibility, the United States will not recommend any adjustment for acceptance of responsibility if the defendant:

- a. Fails to admit a complete factual basis for the plea at the time it is entered;
- b. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the Court or Probation Office;
- c. Fails to appear in court;
- d. Engages in additional criminal conduct;
- e. Attempts to withdraw the plea; or

f. Refuses to abide by any lawful court order.

B. Criminal History Category

a. The precise Sentencing Guidelines range applicable to the defendant will be determined by the defendant's offense level and the defendant's criminal history category, as calculated pursuant to U.S.S.G. §§ 4A1.1 and 4A1.2.

b. The parties stipulate and agree to recommend to the Court that the defendant's criminal history category is **XX**, based upon the following:

[insert table of prior convictions]

Date of Imposition	Offense	Sentence	Guideline Section	Criminal History Pts.

Based on the above-calculated offense level and criminal history category, the parties agree to recommend to the Court that the following Sentencing Guidelines range applies to the defendant: **XX** to **XX** months of imprisonment, followed by **XX** years of supervised release. The defendant understands that the Court may not follow the recommendations or requests made by the parties at the time of sentencing. The defendant cannot withdraw from this plea agreement or the guilty plea, regardless of the Court's actions.

6. Waiver of Sentencing, Appeal, and Other Rights

The defendant waives the preparation of a presentence report in this case and consents to sentencing by this Court immediately after the defendant has entered a plea of guilty pursuant to this plea agreement. The defendant understands and agrees that this plea agreement contains all

the terms, conditions, and stipulations regarding sentencing. If the Court orders that a presentence report be prepared by the Probation Office, notwithstanding the parties' recommendations in this plea agreement, the defendant may not withdraw from the plea agreement. Whether or not the Court orders a presentence report, if the government or the defendant requests (a) any upward or downward departure or variance not contemplated under this plea agreement; (b) any reduction of criminal history category that differs from that set forth in this agreement (or the presentence report, if applicable); or (c) any other reduction or adjustment of sentence not specifically agreed to in writing by the parties, the government or the defendant may withdraw from the plea agreement. The parties will not seek any adjustments, variances, reductions, or departures, including reductions under 18 U.S.C. § 3553.

The defendant waives any and all motions, defenses, probable cause determinations, and objections that the defendant could assert to the information, indictment, or petition to revoke, or to the Court's entry of judgment against the defendant and imposition of sentence. The defendant also understands that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in 18 U.S.C. § 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b).

The defendant acknowledges that these waivers shall result in the dismissal of any appeal the defendant might file challenging the defendant's conviction or sentence in this case. If the defendant files a notice of appeal, notwithstanding this agreement, defendant agrees that this case

shall, upon motion of the government, be remanded to the district court to determine whether defendant is in breach of this agreement and, if so, to permit the government to withdraw from the plea agreement.

The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

7. Special Assessment

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

8. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to 18 U.S.C. § 3613, whatever monetary penalties are imposed by the Court will be due immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, within 14 days of a request, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination and/or complete a financial statement under penalty of perjury. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to voluntarily participate in the Bureau of Prisons' Inmate Financial

Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

9. Immunity from Further Prosecution in This District

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the information or statement of facts.

10. Impact of Guilty Plea on Immigration Status

The defendant recognizes that pleading guilty may have consequences with respect to defendant's immigration status if defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense to which defendant is pleading guilty. Because removal and other immigration consequences are the subjects of a separate proceeding, the defendant understands that no one, including defendant's attorney or the District Court, can predict to a certainty the effect of the defendant's conviction on defendant's immigration status. Defendant nevertheless affirms that defendant wants to plead guilty regardless of any immigration consequences that defendant's plea may entail, even if the consequence is the defendant's automatic removal from the United States.

11. Consent Given for Removal from the United States

The defendant acknowledges that the defendant is removable from the United States and agrees not to contest any removal proceedings brought against the defendant by the Department of Homeland Security (DHS). If the DHS files a Notice to Appear or other administrative charging document against the defendant, the defendant agrees to request an expedited removal hearing and to consent to removal. The defendant acknowledges that by consenting to removal, the defendant will be immediately removed from the United States upon the completion of any

period of incarceration. The defendant knowingly waives any and all rights to appeal, reopen, reconsider, or otherwise challenge this removal.

12. Waiver of Rights Related to Removal from the United States

Except as provided in paragraph 12 below, the defendant agrees to waive the defendant's rights to apply for any and all forms of relief or protection from removal, deportation, or exclusion under the Immigration and Nationality Act (as amended) and related federal regulations. These rights include, but are not limited to, the ability to apply for the following forms of relief or protection from removal: (a) voluntary departure, (b) asylum, (c) withholding of deportation or removal, (d) cancellation of removal, (e) suspension of deportation, (f) adjustment of status, and (g) protection under Article 3 of the Convention Against Torture. As part of this agreement, the defendant specifically acknowledges and states that the defendant has not been persecuted in, and has no present fear of persecution in, [insert country of return] on account of race, religion, nationality, membership in a particular social group or political opinion. Similarly, the defendant further acknowledges and states that the defendant has not been tortured in, and has no present fear of torture in [insert country of return].

13. Exception for Changed Circumstances Arising After Plea

Nothing in this plea agreement shall prohibit the defendant from applying for asylum, withholding of removal, or protection under Article 3 of the Convention Against Torture, provided the application is based solely on changed circumstances arising after the entry of this plea but before the defendant's removal.

14. Abandonment of Pending Applications for Relief from Removal

The defendant agrees that upon entry of this plea agreement, the defendant abandons (1) any existing immigration benefit the defendant may hold and (2) any application for relief

from removal, deportation, or exclusion the defendant may have filed prior to the completion of this plea agreement. The defendant further agrees not to file or prosecute any application for relief from removal, deportation, or exclusion, either written or oral, before any federal court, the Board of Immigration Appeals, an immigration judge, or the Department of Homeland Security (DHS), prior to the defendant's removal from the United States, except that the defendant may apply for asylum, withholding of removal, or protection under Article 3 of the Convention Against Torture as provided in paragraph 12 of this plea agreement.

15. The Defendant's Cooperation in the Defendant's Removal

The defendant agrees to assist the DHS in the execution of the defendant's removal. Specifically, the defendant agrees to assist the DHS in the procurement of any travel or other documents necessary for the defendant's removal; to meet with and to cooperate with representatives of the country or countries to which the defendant's removal is directed; and to execute those forms, applications, or waivers needed to execute or expedite the defendant's removal. The defendant further understands that the defendant's failure or refusal to assist the DHS in the execution of the defendant's removal shall breach this plea agreement and may subject the defendant to criminal penalties under 8 U.S.C. § 1253.

16. Plea Agreement Binding for Purposes of Removal Proceedings

The defendant agrees that the defendant intends the agreements contained in this plea agreement to be binding upon the defendant during any removal proceeding that may be instituted against the defendant as a result of this plea agreement. In particular, the defendant acknowledges and agrees that the agreements concerning removal contained in the plea agreement were entered into by the defendant and the United States with the express understanding that the agreements are binding for purposes of any future removal proceeding before the Board of Immigration Appeals, an immigration judge, or the DHS.

17. Breach of the Plea Agreement and Remedies

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state, or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date

this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and

- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence.

18. Nature of the Agreement and Modifications

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any

modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Neil H. MacBride
United States Attorney

By: _____
[AUSA/SAUSA]
[Special] Assistant United States Attorney

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: _____

[Name]
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____

[Name]
Counsel for the Defendant

U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIM. ACTION NO.:	[Case No]
DEFENDANT'S NAME:	[Defendant]
PAY THIS AMOUNT:	

INSTRUCTIONS:

1. **MAKE CHECK OR MONEY ORDER PAYABLE TO:**
CLERK, U.S. DISTRICT COURT
2. **PAYMENT MUST REACH THE CLERK'S OFFICE BEFORE YOUR SENTENCING DATE**
3. **PAYMENT SHOULD BE SENT TO:**

	In person (9 AM to 4 PM)	By mail:
Alexandria cases:	Clerk, U.S. District Court 401 Courthouse Square Alexandria, VA 22314	
Richmond cases:	Clerk, U.S. District Court 701 East Broad Street, Suite 3000 Richmond, VA 23219	
Newport News cases:	Clerk, U.S. District Court 2400 West Ave, Ste 100 Newport News, VA 23607	
Norfolk cases:	Clerk, U.S. District Court 600 Granby Street Norfolk, VA 23510	

4. **INCLUDE DEFENDANT'S NAME ON CHECK OR MONEY ORDER**
5. **ENCLOSE THIS COUPON TO ENSURE PROPER and PROMPT APPLICATION OF PAYMENT**

**WESTERN DISTRICT OF TENNESSEE
ILLEGAL REENTRY FAST-TRACK PROGRAM**

Introduction

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in §2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, certain specified disqualifiers, and other relevant procedures and definitions.¹

Eligibility Requirements

In order to qualify for either a four-level or a two-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. Absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), agree within 30 days of being taken into custody on the illegal reentry charge to enter into a plea agreement with the government. In order to facilitate a defendant’s expeditious determination whether to plead guilty, AUSAs should provide adequate discovery as soon as practicable.
2. Enter into a written plea agreement with the government that includes the following terms:
 - a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal;
 - b. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);
 - c. The defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553(a)
 - d. The defendant agrees to waive the right to appeal and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel or prosecutorial misconduct.

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney’s Office for WDTN. See U.S.A.M. 1-1.00.

- e. The defendant agrees to enter into a sentencing agreement pursuant to Fed. R. Crim. P. 11(c)(1)(C).

Disqualifiers

An individual defendant's participation in the fast-track program may be limited or denied based on—

1. The defendant's prior violent felony convictions, including murder, kidnapping, voluntary manslaughter, aggravated or other serious felonious assault, forcible sex offenses, child-sex offenses, drug trafficking, firearm offenses, or other convictions which reflect a history of serious violent crime [see definition below];
2. The defendant having been previously deported two or more times;
3. The defendant having one or more prior convictions under 8 U.S.C. § 1326 for illegal reentry;
4. The defendant having one or more prior convictions for other immigration-related offenses;
5. The defendant having two or more prior convictions for Driving Under the Influence or Driving While Intoxicated offenses.
6. The defendant's previous participation in a fast-track program;
7. If the defendant is part of an independent federal criminal investigation;
8. If the defendant is under any form of court or correctional supervision; or
9. With supervisory approval, the circumstances at the time of the defendant's arrest or any other aggravating factors identified by the United States Attorney.

Government's Motion for a Fast Track Departure

As to any defendant who is deemed eligible to participate in the fast-track program, but who has a criminal history category VI **or** a prior felony conviction for a "serious violent offense," the attorney for the Government may move for no more than a two-level downward departure in return for that defendant meeting the conditions of the program, irrespective of how high the District Court sets the defendant's adjusted base offense level.

Procedures and Definitions

The determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney's Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

At the outset, the United States Attorney may determine that *any* defendant is ineligible to participate in the fast-track program based on the defendant's prior violent felony convictions.

The United States Attorney may also decide, when looking at the conduct underlying a "prior violent felony conviction," that a defendant is still eligible in whole or in part to participate in the fast-track program.

A "serious violent offense" includes murder, kidnapping, voluntary manslaughter, aggravated or other serious felonious assault, forcible sex offenses, and child-sex offenses.

EASTERN DISTRICT OF TEXAS ILLEGAL REENTRY FAST-TRACK PROGRAM

Introduction

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level (“AOL”) found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in §2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, certain specified disqualifiers, and other relevant procedures and definitions.¹

Eligibility Requirements

In order to qualify for either a four-level or a two-level downward departure, a defendant charged with a violation of 8 U.S.C. § 1326 must:

1. Absent exceptional circumstances (such as the denial of adequate assistance of counsel, a substantial delay resulting from necessary administrative procedures, or unresolved competency issues), agree within 30 days of being taken into custody on the illegal reentry charge to enter into a plea agreement with the government. In order to facilitate a defendant’s expeditious determination whether to plead guilty, AUSAs should provide adequate discovery as soon as practicable.
2. Enter into a written plea agreement with the government that includes the following terms:
 - a. The defendant agrees to a factual basis that accurately reflects his offense conduct and stipulates to the facts related to the prior conviction and removal;

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney’s Office for the Eastern District of Texas. *See* U.S.A.M. 1-1.00.

- b. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);
- c. The defendant agrees to waive the right to argue for a variance under 18 U.S.C. § 3553(a);
- d. The defendant agrees to waive the right to appeal and the opportunity to challenge his conviction under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

Disqualifiers

An individual defendant's participation in the fast-track program may be limited or denied based on—

1. With supervisory approval, the defendant's prior violent felony convictions, including those offenses set forth at U.S.S.G. § 2L1.2, n. 1(B)(iii), or other convictions which reflect a history of serious violent crime as hereinafter defined;
2. The defendant having one or more prior convictions under 8 U.S.C. § 1326 for illegal reentry;
3. The defendant having one or more prior convictions for other immigration-related offenses;
4. The defendant's previous participation in a fast-track program;
5. The defendant's status as a subject or target in an independent federal criminal investigation;
6. The defendant's status as under any form of court or correctional supervision; or
7. With supervisory approval, the circumstances at the time of the defendant's arrest or any other aggravating factors identified by the United States Attorney.

Government's Motion for a Fast Track Departure

In return for a defendant meeting the conditions of the program, the attorney for the Government shall:

1. Except as specified in paragraph 2, below, move for a four-level downward departure from the total offense level;
2. As to any defendant who has a criminal history category VI **or** a prior felony conviction for a “serious violent offense” that was not deemed by the office to be disqualifying, move for a two-level downward departure, irrespective of the defendant’s adjusted offense level. In addition to those felonies identified under paragraph 1 of “Disqualifiers,” above, “serious violent offense,” for purposes of this paragraph, includes drug-trafficking offenses, as defined in U.S.S.G. § 2L1.2, n. 1(B)(iv), and firearms offenses other than simple possession of a firearm by a prohibited person.

Procedures and Definitions

The determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, shall be made by the United States Attorney’s Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

A supervisor may determine that *any* particular defendant is ineligible to participate in the fast-track program based on the defendant’s prior violent felony convictions. A supervisor may also decide, when looking at the conduct underlying a “prior violent felony conviction,” that a defendant is still eligible to participate in the fast-track program.

Assuming that the conditions in the plea agreement are met, the government will file a motion, following issuance of the presentence report, seeking a downward departure for the appropriate level reduction.

WESTERN DISTRICT OF TEXAS
ILLEGAL REENTRY FAST-TRACK PROGRAM

Introduction

In accordance with the January 31, 2012, Memorandum from Deputy Attorney General James Cole, the United States Attorney's Office for the Western District of Texas, establishes the following Fast-Track program for handling prosecutions brought under 8 U.S.C. § 1326, Illegal Reentry After Deportation, effective March 1, 2012.

Under this program, defendants charged with Illegal Reentry After Deportation under 8 U.S.C. § 1326, may receive a four-level downward departure, provided that they comply with the eligibility requirements and are not otherwise disqualified from the program, as set forth below:

Eligibility Requirements

In order to qualify for a four-level downward departure, defendants who have been charged with a violation of 8 U.S.C. § 1326, who are not disqualified from participating in the program pursuant to the provisions set forth below must:

Absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), enter into a written plea agreement with the government, within 30 days of the appointment of defense counsel or the entry of appearance of retained defense counsel on the Illegal Reentry charge, which plea agreement shall include the following terms:

- a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal;
- b. The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);
- c. The defendant agrees to waive the right to argue for any other downward departure under the United States Sentencing Guidelines or any sentencing variance under 18 U.S.C. § 3553(a);
- d. The defendant agrees to waive the right to appeal and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255;

- e. The defendant agrees to waive a full pre-sentence investigation, and in lieu thereof, will request a modified or expedited pre-sentence investigation report; however, the court retains the discretion to require a full pre-sentence investigation report, notwithstanding the defendant's waiver; and
- f. The defendant agrees to and will execute, in open court, after the court has imposed sentence, a written waiver of the right to appeal.

Disqualifiers

Defendants will be disqualified from participating in this Fast-Track program under the following circumstances:

1. The defendant has previously been convicted of an offense that, during its commission, involved the use, attempted use, threatened use, or potential use of force or violence, whether or not such conduct was an element of the offense; a determination of whether a defendant's prior conviction falls within the coverage of this paragraph will not be limited by the definition of "crime of violence" under 18 U.S.C. § 16 or the United States Sentencing Guidelines;
2. The defendant has been previously convicted of a child sex or exploitation offense;
3. The defendant has been previously convicted of a felony drug offense;
4. The defendant has been previously convicted of any felony firearms offense;
5. The defendant has previously been convicted under 8 U.S.C. § 1326 or any other felony immigration offense, including but not limited to: alien smuggling, immigration document fraud, or a false claim to U.S. citizenship.
6. The defendant previously participated in a fast-track program and thereunder received a downward departure from the applicable sentencing guidelines;
7. The defendant is under federal criminal investigation for any other federal offense;
8. The defendant is currently charged with additional federal or state offenses;
9. The defendant is under any form of court or correctional supervision;
10. The defendant's Criminal History Category under the United States Sentencing Guidelines is a Category VI;

11. With supervisory approval, a defendant may be disqualified as a result of aggravating factors not otherwise described herein

Notwithstanding the foregoing, a defendant may be deemed qualified to participate in this Fast-Track program where extenuating or other mitigating circumstances not contemplated herein arise, with the approval of a supervisor.

Procedures and Definitions

This policy is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor does it place any limitations on the prosecutorial discretion of the U.S. Attorney's Office.

This policy will be applied to all eligible defendants in which the 30 day period after the appointment of defense counsel or the entry of appearance by retained counsel has not expired as of March 1, 2012. This policy WILL NOT apply to any defendant pending sentencing or any defendant in which this 30 day period has expired, as of March 1, 2012.

The determination of whether a defendant satisfies the eligibility requirements for participation in this fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified disqualifiers, is and remains in the sole discretion of and shall be made by the United States Attorney's Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

Any defendant initially disqualified for the program, but who is later deemed qualified to participate, may and should be afforded an opportunity to participate in the program, and the time period for a defendant to enter into a plea agreement will be extended until the expiration of 30 days after notification to defense counsel of the defendant's qualification to participate.

If it is determined, at any time, after the defendant has been deemed qualified to participate, that the defendant has prior convictions which would disqualify him from participating in the program, the government must notify defense counsel and will no longer be obligated to move for the downward departure. Under these circumstances, the government will not oppose a defendant's request to withdraw his or her plea of guilty. Where the defendant does not withdraw his or her plea of guilty after being notified that the government will no longer move for a downward departure, the defendant will not be bound by and the government will not seek enforcement of the defendant's waiver of appeal.

EASTERN DISTRICT OF WASHINGTON FAST TRACK PROGRAM SUPPLEMENT

1. OVERVIEW OF THE TO THE FAST-TRACK PROSECUTION PROGRAM

1.1 Offenses or categories of offenses covered by this Fast Track Program:

This Fast Track Program will only be offered to defendants who have been charged with a violation of 8 U.S.C. § 1326. ~~(a) and are subject to the penalty provisions of 8 U.S.C. § 1326(b).~~

1.2 Eligibility Criteria for Defendants :

Generally, all defendants charged with a violation of 8 U.S.C. § 1326 ~~(a) and subject to the penalties imposed pursuant to 8 U.S.C. § 1326(b)~~ shall be provided a plea offer under this Fast Track Program ~~except~~ . However, the United States Attorney retains the discretion to limit or deny the defendant's participation in this Fast Track Program based on the following exceptions:

- 1.2.1 The defendant's prior serious violent felony conviction(s), meaning a conviction(s) that is countable under the Guidelines criminal history computation and that relates to the use or threatened use of bodily harm (including, for example, kidnapping, bank robbery, voluntary manslaughter, forcible sex offenses, child-sex offenses, and the like);
- 1.2.2 The defendant's prior participation in a fast track program by way of a prosecution for illegal reentry under 8 U.S.C. § 1326;

~~1.2.1 Any defendant who has previously been prosecuted for a Section 1326 violation and been given the advantage of a fast track program in this district or any other district;~~

1.2.3 The defendant is still serving a term of supervised release following a prosecution for illegal reentry under 8 U.S.C. § 1326 or is under any form of court or correctional supervision; or

~~1.2.2 Any defendant who is apprehended and charged while still serving a term of supervised release following a prior Section 1326 conviction.~~

~~1.2.3~~

1.2.4 ~~An~~ The AUSA assigned to prosecute the 8 U.S.C. § 1326 case ~~a Section 1326 case who~~ believes the defendant either should or should not be given an opportunity to take advantage of this Fast Track Program based upon multiple § 1326 convictions, significant criminal history (or the lack thereof), the circumstances at the time of the defendant's arrest, the defendant's connection to any independent Federal criminal investigation, or other mitigating or aggravating circumstances the assigned AUSA may deem relevant.¹

¹ In such an instance, the assigned AUSA shall request an exception to this policy to the Criminal Chief, with the recommendation of that AUSA's Team Leader, whether or not the Team Leader concurs with the AUSA's recommendation. The request may be part of the prosecution memorandum,

~~shall request an exception to this policy to the Criminal Chief with the recommendation of that AUSA's team leader, whether or not the team leader concurs with the AUSA's recommendation.² Exceptions to this program may be based upon multiple Section 1326 convictions, significant criminal history, or the lack of significant criminal history, as well as any other factor the assigned AUSA may deem relevant to an exception.~~

2. GOVERNMENT'S OBLIGATION UNDER THE FAST TRACK PROGRAM

2.1 Provide notice to the defendant through defense counsel no later than arraignment that the defendant appears to qualify for resolution of his or her case using this Fast Track Program and provide notice to the U.S. Probation Office so it may commence preparation of an abbreviated presentence investigation report;

~~2.3~~ 2.2 Provide no later than arraignment a discovery package which shall include the agency prosecution report and photocopies of significant documents

separate memorandum or email message. The request, recommendation of the team leader, and ultimate decision to offer or not offer the Fast Track Program will be maintained in the file.

² ~~The request may be part of the prosecution memorandum, separate memorandum or email message. The request, recommendation of the team leader, and decision to offer or not offer the Fast Track Program will be maintained in the file.~~

- 2.6.1 Recommend a ~~three (3)~~ four (4) level downward variance from the adjusted base offense level, reduction in the total adjusted offense level as computed by the or
- 2.6.2 Recommend a two (2) level downward variance if the defendant has a criminal history category VI or has at least at least one felony conviction for a serious violent offense.
- 2.7 Recommend any sentence within the resulting applicable Guideline sentencing range as calculated by the U.S. Probation Office in the abbreviated presentence investigation report in the U.S. Probation Office's ~~abbreviated presentence investigation report with~~ after the ~~three (3)~~ a four (4) or two (2) level downward variance departure.
- 3 DEFENDANT'S OBLIGATION UNDER THE FAST TRACK PROGRAM.**
- 3.1 In those cases in which the defendant is first charged by criminal complaint and is offered the Fast Track Program at his or her initial appearance, the defendant must agree to waive the probable cause hearing;
- 3.2 Waive any detention hearing and join with the government in requesting the magistrate judge to order the preparation of a post-hearing pretrial services report;
- 3.3 File no any pretrial motions;

- 3.4 Enter a written plea agreement no later than thirty (30) days after arraignment, which agreement provides that the defendant pleads guilty to one count of a violation of 8 U.S.C. § 1326, incorporates the Sentencing Guideline calculations contained in the abbreviated presentence investigation report prepared by the U.S. Probation Office and is substantially in the same form as the *attached form plea agreement*;
- 3.5 Absent consent of the government: seek no additional downward variance departure from the Guidelines; file no objection to any matter or assertions contained in the abbreviated presentence investigation report which would affect the sentencing Guidelines calculations; and otherwise recommend no sentence outside within the applicable Guidelines sentencing range as set forth in the abbreviated presentence investigation report prepared by the U.S. Probation Office, including the four (4) level or two (2) level variance departure under this Program;
- 3.6 Agree to be sentenced on the same day as the change of plea hearing; and
- 3.7 Waive direct review by appeal as well as any collateral challenge to the conviction and sentence under 28 U.S.C. § 2255, or any other procedure, except when based upon alleged ineffective assistance of counsel.

Memorandum



The Office of the United States Attorney
The Eastern District of Wisconsin

Subject	Date
<i>Fast Track Program for Illegal Reentry Cases</i>	March 1, 2012

To:
All Criminal Division Attorneys
All Criminal Division Professional Staff

From:

James L. Santelle
United States Attorney

On January 31, 2012, Deputy Attorney General James M. Cole issued a memorandum relating to the nationwide implementation of Fast Track Programs for defendants charged with violating 8 U.S.C. § 1326 (illegal reentry). Pursuant to that memorandum, I am today establishing the Fast Track Program for the Eastern District of Wisconsin, as set forth below.

I. Eligibility Requirements

Subject to the exclusions set forth below, defendants with a Criminal History Category (CHC) of V or below are potentially eligible for a four-level departure from the otherwise applicable adjusted offense. Defendants with a CHC of VI are not eligible for any departure.

To qualify for fast-track consideration, a defendant must comply with the following requirements:

(A) Within 30 days of being taken into custody on the illegal reentry charge, absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay in necessary administrative procedures), the defendant must agree to enter into a written plea agreement as outlined below. To facilitate the defendant's determination in this regard, Assistant United States Attorneys (AUSAs) should provide full discovery as soon as possible and in full compliance with the Local Rules of the United States District Court for the Eastern District of Wisconsin.

(B) In the plea agreement, the defendant must:

(1) Agree to a factual basis that accurately reflects his or her offense conduct and describes the facts related to the prior conviction and removal;

(2) Agree not to file any of the motions described in Federal Rule of Criminal Procedure 12(b)(3); and

(3) Agree to waive the right to appeal and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

II. Disqualifications

Regardless of the eligibility requirements set forth above, any defendant who falls in any of the following categories shall be excluded from participation in the Fast Track Program:

- (A) The defendant previously has been convicted of a serious violent felony. For purposes of this policy, the term "serious violent felony" includes, but is not limited to, murder, manslaughter, kidnaping, forcible sex offenses, child sex offenses, drug-trafficking offenses that involved firearms, and any other felony that could be considered a crime of violence under 18 U.S.C. § 16.
- (B) The defendant has been removed from the United States two or more times prior to the instant illegal reentry offense;
- (C) The defendant previously has been convicted under 8 U.S.C. § 1326;
- (D) The defendant previously participated in a Fast Track Program;
- (E) The defendant is part of an independent federal criminal investigation;
- (F) The defendant is under any form of court or correctional supervision;
- (G) The circumstances at the time of the defendant's arrest warrant disqualification from the fast-track program;** or
- (H) The defendant has a prior misdemeanor conviction that in any way involved domestic or physical violence.**

****Note:** *Ad hoc* exclusions under Categories G & H require supervisory approval within the Office of the United States Attorney for the Eastern District of Wisconsin.

III. Procedures

The United States Attorney for the Eastern District of Wisconsin retains sole discretion to determine whether a defendant satisfies the eligibility requirements for this program and/or whether a defendant is rendered ineligible based on one or more of the disqualification categories. In making these determinations, the United States Attorney is free to consider, without limitation, any information that he deems relevant and reliable, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

Upon determining that a defendant is eligible for and should not be denied participation in the Fast Track Program, the United States will move, at the time of sentencing, for a four-level departure from the established Sentencing Guideline Range pursuant to U.S.S.G. § 5K3.1.

FAST-TRACK PROGRAM - Western District of Wisconsin

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole, dated January 31, 2012, relating to the implementation of a new national fast-track program, effective March 1, 2012, defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the adjusted offense level ("AOL") found by the District Court (after application of the adjustment for any prior criminal conviction(s) as described in §2L1.2(b) and for acceptance of responsibility).

Eligible defendants may receive either a four-level or a two-level departure from the AOL. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program and other relevant procedures and definitions.¹

A. Eligibility Determination

A defendant's eligibility to participate in a fast-track program depends on a number of factors related to that defendant's prior criminal history, deportation history, and current criminal involvement.

1. Not Eligible

A defendant is not eligible to participate in the fast-track program if: (a) the defendant has a prior violent felony conviction for murder, kidnapping, voluntary manslaughter, a forcible sex offense, or an offense involving child pornography; (b) the defendant has a prior conviction for illegal reentry; or (c) the defendant has previously participated in a fast-track program.

2. Not Eligible - Rebuttable Presumption

There is a rebuttable presumption that a defendant will not be eligible to participate in the fast-track program if the defendant has a prior violent felony conviction for a non-forcible sex offense, drug trafficking, firearms offense, or convictions that otherwise reflect a history of serious crime.

¹ This policy provides only internal guidance for prosecutors in this district. It is not intended to, does not, and may not be relied upon to create any substantive or procedural rights enforceable at law by any party in any administrative, civil, or criminal matter or case. Nor are any limitations hereby placed on the otherwise lawful litigative prerogatives of the Department of Justice or the United States Attorney's Office for the Western District of Wisconsin. *See* U.S.A.M. 1-1.00.

3. Eligible - Rebuttable Presumption

Defendants who do not fall into the categories of the two immediately preceding paragraphs are presumptively eligible to participate in the fast-track program. However, factors other than those listed above that will impact eligibility and may preclude a defendant's participation in the fast-track program include: number of prior deportations; the fact that the defendant is part of an independent state or federal criminal investigation; the fact that the defendant is under any form of court or correctional supervision; circumstances surrounding the defendant's arrest.

B. Requirements for Fast-Track Participation

Once a defendant is determined to be eligible for participation in the fast-track program, the following requirements must be met for participation.

1. Absent exceptional circumstances (such as the denial of adequate assistance of counsel or a substantial delay resulting from necessary administrative procedures or unresolved competency issues), agree within 30 days of being taken into custody on the illegal reentry charge to enter into a plea agreement with the government. In order to facilitate a defendant's expeditious determination whether to plead guilty, AUSAs should provide adequate discovery as soon as practicable.

2. Enter into a written plea agreement with the government that includes the following terms:

(a) The defendant agrees to a factual basis that accurately reflects his or her offense conduct and stipulates to the facts related to the prior conviction and removal;

(b) The defendant agrees not to file any of the motions described in Fed. R. Crim. P. 12(b)(3);

(c) The defendant agrees that the only downward departure the defendant may seek is a departure related to criminal history pursuant to USSG §4A1.3 (which the government is free to oppose), and specifically waives the right to seek any further adjustments, variances, reductions or departures, including reductions under 18 U.S.C. § 3553; and

(d) The defendant agrees to waive the right to appeal and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

C. United States' Motion for a Fast Track Departure

If the defendant is eligible to participate in the fast-track program and meets all of the requirements necessary for participation, the United States will file a motion pursuant to USSG § 5K3.1 for a downward departure. As to any defendant who is deemed eligible to participate in the fast-track program, but who has a criminal history category VI or a prior felony conviction for a "serious violent offense," the United States will move for only a two-level downward departure in return for that defendant meeting the conditions of the program. A "serious violent offense" includes murder, kidnapping, voluntary manslaughter, forcible sex offenses, and child-sex offenses. In all other cases, the United States will move for a four-level downward departure.

D. Procedures and Definitions

The determination of whether a defendant satisfies the eligibility requirements for participation in the fast-track program, or whether a defendant is rendered ineligible based on one or more of the specified eligibility factors, shall be made by the United States Attorney's Office alone. In so doing, it may consider any information that it deems relevant and reliable, without limitation, including court records, criminal records, law enforcement investigative reports, and law enforcement intelligence information.

At the outset, the United States Attorney may determine that any defendant is ineligible to participate in the fast-track program based on the defendant's prior violent felony convictions and the other factors listed in Section A. 1. above.

The United States Attorney may also decide, when looking at the conduct underlying a "prior violent felony conviction" listed in Section A. 2. that a defendant is still eligible in whole or in part to participate in the fast-track program. For example, the United States Attorney may determine that a defendant convicted of a minor drug trafficking offense or a firearms offense similar to simple possession is eligible to participate in the fast-track program.

Finally, the United States Attorney will determine eligibility on a case by case basis when the factors listed in Section A. 3. above are present.

March 1, 2012