

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 a felony 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 trafficking 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 "drug trafficking offense" in the United States Sentencing Guidelines or by statute;
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.