

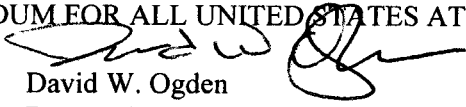


Office of the Deputy Attorney General

Washington, D.C. 20530

December 28, 2009

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM:   
David W. Ogden  
Deputy Attorney General

SUBJECT: Authorization for Certain Early Disposition Programs

Section 401(m)(2)(B) of the 2003 Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act (“PROTECT Act”) instructed the United States Sentencing Commission to promulgate a policy statement authorizing a downward departure of not more than four levels “pursuant to an early disposition program authorized by the Attorney General and the United States Attorney.” Pub.L.No.108-21, § 401(m)(2)(B), 117 Stat. 650, 675 (2003). To that end, the Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization applies by its terms only to early disposition programs that rely on downward departures, Attorney General Ashcroft issued a memorandum entitled “Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing” on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General<sup>1</sup>) for any early disposition program that relies upon “charge bargaining”—*i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

The following early disposition programs are hereby authorized, as such programs relate to the following classes of cases, through December 31, 2010:

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

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

- Western District of Washington — illegal reentry after deportation cases;
- District of Wyoming — illegal reentry after deportation cases;
- District of Arizona — transportation or harboring of alien cases;
- District of Arizona — Phoenix Division transportation or harboring of alien Guide Interdiction of Team cases;
- District of Arizona — alien baby/child smuggling and “bringing in” (*i.e.*, cases involving the defendants who are caught guiding defendants across the border) cases;
- Southern District of California — transportation or harboring of alien cases;
- District of Arizona — drug cases arising along the border;
- District of Arizona — marijuana smuggling cases;
- Southern District of California — drug cases arising along the border;
- District of New Mexico — drug backpacking cases;
- Eastern District of New York — drug courier cases arising out of John F. Kennedy International Airport;
- District of Arizona — aggravated identity theft cases;
- Southern District of California – identification document fraud/identity theft cases; and
- Northern District of Georgia — illegal identification documents at port of entry.

The following early disposition programs will not be re-authorized for 2010:

- Southern District of Texas — transportation or harboring of alien cases; and
- Western District of Texas – transportation or harboring of alien cases.

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

I also note that the Sentencing and Corrections working group established by Attorney General Holder will soon make recommendations to the Attorney General on a range of policy issues, potentially including Fast Track authorizations. If new policies are approved, before the end of 2010, it may be appropriate to renew the decision in this memorandum under those new policies.

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