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U.S. Department of Justice

Office of the Deputy Attorney General

APPROVED

2003/2004

FY 2004

The Acting Deputy Attorney General

Washington, D.C. 20530

October 24, 2003

MEMORANDUM

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

FROM: Robert D. McCallum, Jr. *Robert D. McCallum, Jr.*
Acting Deputy Attorney General

SUBJECT: Authorization of Early Disposition Program

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 Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 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 United States Sentencing Commission recently promulgated a policy statement, virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, which likewise requires Attorney General approval (approval which may be accomplished by obtaining the approval of the Deputy Attorney General) 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.

A number of United States Attorney's Offices (USAOs) have requested authorization of new and existing early disposition programs. In accordance with such requests, I hereby authorize the

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

following USAOs to implement early disposition programs as the same relate to the following classes of cases:

- (1) District of Arizona – Illegal Reentry After Deportation cases
- (2) District of Arizona – Transportation or Harboring of Aliens cases
- (3) District of Arizona – Alien Baby/Child Smuggling and "Bringing In" (i.e., cases involving defendants who are caught guiding defendants across the border) cases
- (4) District of Arizona – drug cases arising along the border
- (5) District of Arizona – first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
- (6) Central District of California – Illegal Reentry After Deportation cases
- (7) Eastern District of California – Illegal Reentry After Deportation cases
- (8) Northern District of California – Illegal Reentry After Deportation cases
- (9) Southern District of California – Illegal Reentry After Deportation cases
- (10) Southern District of California – Transportation or Harboring of Alien cases
- (11) Southern District of California – drug cases arising along the border
- (12) Northern District of Georgia – Illegal Reentry After Deportation cases
- (13) District of Idaho – Illegal Reentry After Deportation cases
- (14) District of Nebraska – Illegal Reentry After Deportation cases
- (15) District of New Mexico – Illegal Reentry After Deportation cases
- (16) District of New Mexico – Transportation or Harboring of Alien cases
- (17) District of New Mexico – drug backpacking cases
- (18) District of New Mexico – drug interdiction cases arising at checkpoints, points of entry and along the border
- (19) Eastern District of New York – drug courier cases arising out of John F. Kennedy International Airport
- (20) District of North Dakota – Illegal Reentry After Deportation cases
- (21) District of Oregon – Illegal Reentry After Deportation cases
- (22) Southern District of Texas – Laredo Division drug cases arising along the border
- (23) Southern District of Texas – Illegal Reentry After Deportation cases
- (24) Southern District of Texas – Transportation or Harboring of Alien cases
- (25) Western District of Texas – Illegal Reentry After Deportation cases
- (26) Western District of Texas – Transportation or Harboring of Alien cases
- (27) Western District of Washington – Illegal Reentry After Deportation cases

United States Attorney's Offices with programs authorized herein are reminded that they must identify in the Case Management System any case disposed of pursuant to an approved early disposition program, so that the number of cases and their dispositions may be determined for reporting or other statistical purposes. All programs authorized herein are authorized through September 30, 2004. To continue a program thereafter, USAOs must submit a request for reauthorization to the Executive Office for United States Attorneys by September 1, 2004, which request shall contain all information requested pursuant to the Attorney General's September 22,

(28) WDTX – DRUGS + CARRIER
 (29) DUT – 1326 Reentry

2003 memorandum, in addition to a summary of case data required to be maintained in the Case Management System.

The Executive Office of United States Attorneys, through its Evaluation and Review Staff and otherwise, is directed to implement whatever measures are necessary to ensure that authorized early disposition programs continually comply with the Attorney General's September 22, 2003 memorandum.

cc: The Attorney General
The Associate Attorney General
The Solicitor General

The Assistant Attorney General, Criminal Division
The Director, Executive Office for United States Attorneys
The Chair, Attorney General's Advisory Committee
The Chairman, Sentencing Guidelines Subcommittee of the Attorney General's Advisory Committee
The Assistant Director, Evaluation and Review Staff, Executive Office for U.S. Attorneys
The Director, Office of Policy and Legislation, Criminal Division



9/30/04 --- 10/31/2004

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

September 29, 2004

MEMORANDUM

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

FROM: James B. Comey *JBC/CR*
Deputy Attorney General

SUBJECT: Authorization of Early Disposition Program

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 Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 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 United States Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General¹) for any early disposition program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

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

On October 24, 2003, Acting Deputy Attorney General Robert D. McCallum, Jr., authorized the following United States Attorney's Offices (USAOs) to implement early disposition programs as such programs relate to the following classes of cases:

- (1) District of Arizona – Illegal Reentry After Deportation cases
- (2) District of Arizona – Transportation or Harboring of Aliens cases
- (3) District of Arizona – Alien Baby/Child Smuggling and “Bringing In” (i.e., cases involving defendants who are caught guiding defendants across the border) cases
- (4) District of Arizona – drug cases arising along the border
- (5) District of Arizona – first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
- (6) Central District of California – Illegal Reentry After Deportation cases
- ~~(7) Eastern District of California – Illegal Reentry After Deportation cases~~
- (8) Northern District of California – Illegal Reentry After Deportation cases
- (9) Southern District of California – Illegal Reentry After Deportation cases
- (10) Southern District of California – Transportation or Harboring of Alien cases
- (11) Southern District of California – drug cases arising along the border
- (12) Northern District of Georgia – Illegal Reentry After Deportation cases
- (13) District of Idaho – Illegal Reentry After Deportation cases
- (14) District of Nebraska – Illegal Reentry After Deportation cases
- (15) District of New Mexico – Illegal Reentry After Deportation cases
- (16) District of New Mexico – Transportation or Harboring of Alien cases
- (17) District of New Mexico – drug backpacking cases
- (18) District of New Mexico – drug interdiction cases arising at checkpoints, points of entry and along the border
- (19) Eastern District of New York – drug courier cases arising out of John F. Kennedy International Airport
- (20) District of North Dakota – Illegal Reentry After Deportation cases
- (21) District of Oregon – Illegal Reentry After Deportation cases
- (22) Southern District of Texas – Laredo Division drug cases arising along the border
- (23) Southern District of Texas – Illegal Reentry After Deportation cases
- (24) Southern District of Texas – Transportation or Harboring of Alien cases
- (25) Western District of Texas – Illegal Reentry After Deportation cases
- (26) Western District of Texas – Transportation or Harboring of Alien cases
- (27) Western District of Washington – Illegal Reentry After Deportation cases

All of the early disposition programs identified above were authorized through September 30, 2004. To continue a program thereafter, USAOs were required to submit a request for reauthorization to the Executive Office for United States Attorneys. The Office of the Deputy Attorney General recently received these requests for reauthorization and is in the process of reviewing the same. In order to facilitate this review, I hereby authorize those early disposition programs identified above to continue through October 31, 2004.

cc: The Attorney General
The Associate Attorney General
The Solicitor General
The Assistant Attorney General, Criminal Division
The Director, Executive Office for United States Attorneys
The Chair, Attorney General's Advisory Committee
The Chair, Sentencing Guidelines Subcommittee of the Attorney General's Advisory
Committee
The Assistant Director, Evaluation and Review Staff, Executive Office for U.S. Attorneys
The Director, Office of Policy and Legislation, Criminal Division



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

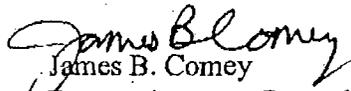
October 29, 2004

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EXECUTIVE
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MEMORANDUM

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

FROM:


James B. Comey
Deputy Attorney General

SUBJECT: Authorization of Early Disposition Programs

Section 401(m)(2)(B) of the 2003 Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act ("PROTECT Act") instructed the Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 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 United States Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003 ("AG Guidelines"), that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General¹) for any early disposition program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

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

On October 24, 2003, Acting Deputy Attorney General Robert D. McCallum, Jr., authorized the following United States Attorney's Offices (USAOs) to implement early disposition programs as such programs relate to the following classes of cases:

- (1) District of Arizona – illegal reentry after deportation cases
- (2) District of Arizona – transportation or harboring of aliens cases
- (3) District of Arizona – alien baby/child smuggling and “bringing in” (i.e., cases involving defendants who are caught guiding defendants across the border) cases
- (4) District of Arizona – drug cases arising along the border
- (5) District of Arizona – first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
- (6) Central District of California – illegal reentry after deportation cases
- (7) Eastern District of California – illegal reentry after deportation cases
- (8) Northern District of California – illegal reentry after deportation cases
- (9) Southern District of California – illegal reentry after deportation cases
- (10) Southern District of California – transportation or harboring of alien cases
- (11) Southern District of California – drug cases arising along the border
- (12) Northern District of Georgia – cases involving aliens using false/fraudulent immigration documents
- (13) District of Idaho – illegal reentry after deportation cases
- (14) District of Nebraska – illegal reentry after deportation cases
- (15) District of New Mexico – illegal reentry after deportation cases
- (16) District of New Mexico – transportation or harboring of alien cases
- (17) District of New Mexico – drug backpacking cases
- (18) Eastern District of New York – drug courier cases arising out of John F. Kennedy International Airport
- (19) District of North Dakota – illegal reentry after deportation cases
- (20) District of Oregon – illegal reentry after deportation cases
- (21) Southern District of Texas – Laredo Division drug cases arising along the border
- (22) Southern District of Texas – illegal reentry after deportation cases
- (23) Southern District of Texas – transportation or harboring of alien cases
- (24) Western District of Texas – illegal reentry after deportation cases
- (25) Western District of Texas – transportation or harboring of alien cases
- (26) Western District of Washington – illegal reentry after deportation cases

All of the early disposition programs identified above were initially authorized through September 30, 2004. To continue thereafter, USAOs were required to submit a request for reauthorization. The Office of the Deputy Attorney General received requests for reauthorization for each of the programs listed above. To facilitate a thorough review of these requests, each early disposition program was temporarily reauthorized through October 31, 2004 by memo executed on September 29, 2004.

Having reviewed each of these requests for reauthorization, and finding that each of the early disposition programs meet the AG Guidelines, I hereby authorize the USAOs to implement the early disposition programs identified above, as well as any expansion of such programs as may have been requested in the requests for reauthorization.

In addition to these requests for reauthorization, the Office of the Deputy Attorney General received two requests to implement for the first-time the following early disposition programs:

- (27) Southern District of Florida – cases involving aliens using false/fraudulent immigration documents
- (28) Western District of Texas – drug cases arising at border ports of entry

Having reviewed these two requests for authorization, and finding that each program meets the AG Guidelines, I hereby authorize these early disposition programs as well.

United States Attorney's Offices with programs authorized herein are reminded that they must identify in the Case Management System any case disposed of pursuant to an approved early disposition program, so that the number of cases and their dispositions may be determined for reporting or other statistical purposes. All programs authorized herein are authorized through September 30, 2005. To continue a program thereafter, USAOs must submit a request for reauthorization to the Executive Office for United States Attorneys by September 1, 2005, which request shall contain all information requested pursuant to the Attorney General's September 22, 2003 memorandum, in addition to a summary of case data required to be maintained in the Case Management System.

cc: The Attorney General
The Associate Attorney General
The Solicitor General
The Assistant Attorney General, Criminal Division
The Director, Executive Office for United States Attorneys
The Chair, Attorney General's Advisory Committee
The Chair, Sentencing Guidelines Subcommittee of the Attorney General's Advisory Committee
The Assistant Director, Evaluation and Review Staff, Executive Office for U.S. Attorneys
The Director, Office of Policy and Legislation, Criminal Division



U.S. Department of Justice
Office of the Deputy Attorney General

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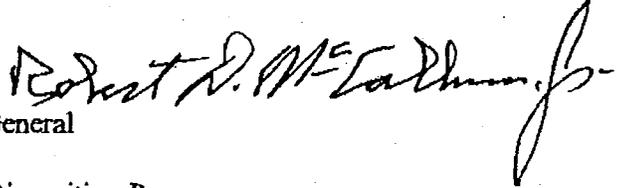
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Washington, D.C. 20530

September 23, 2005

MEMORANDUM

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

FROM: Robert D. McCallum, Jr. 
Acting Deputy Attorney General

SUBJECT: Reauthorization of Early Disposition Program

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 Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 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 United States Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General¹) for any early disposition program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

¹The 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).

On October 29, 2004, Deputy Attorney General James B. Comey authorized the following United States Attorney's Offices (USAOs) to implement early disposition programs as such programs relate to the following classes of cases:

- (1) District of Arizona — illegal reentry after deportation cases
 - (2) District of Arizona — transportation or harboring of aliens cases
 - (3) District of Arizona — alien baby/child smuggling and "bringing in" (i.e., cases involving defendants who are caught guiding defendants across the border) cases
 - (4) District of Arizona — drug cases arising along the border
 - (5) District of Arizona — first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
 - (6) Central District of California — illegal reentry after deportation cases
 - (7) Eastern District of California — illegal reentry after deportation cases
 - (8) Northern District of California — illegal reentry after deportation cases
 - (9) Southern District of California — illegal reentry after deportation cases
 - (10) Southern District of California — transportation or harboring of alien cases
 - (11) Southern District of California — drug cases arising along the border
 - (12) Northern District of Georgia — illegal reentry after deportation cases
 - (13) District of Idaho — illegal reentry after deportation cases
 - (14) District of Nebraska — illegal reentry after deportation cases
 - (15) District of New Mexico — illegal reentry after deportation cases
 - (16) District of New Mexico — transportation or harboring of alien cases
 - (17) District of New Mexico — drug backpacking cases
 - (18) Eastern District of New York — drug courier cases arising out of John F. Kennedy International Airport
 - (19) District of North Dakota — illegal reentry after deportation cases
 - (20) District of Oregon — illegal reentry after deportation cases
 - (21) Southern District of Texas — Laredo Division drug cases arising along the border
 - (22) Southern District of Texas — illegal reentry after deportation cases
 - (23) Southern District of Texas — transportation or harboring of alien cases
 - (24) Western District of Texas — illegal reentry after deportation cases
 - (25) Western District of Texas — transportation or harboring of alien cases
 - (26) Western District of Washington — illegal reentry after deportation cases
 - (27) Southern District of Florida — cases involving aliens using false fraudulent immigration documents
 - (28) Western District of Texas — drug cases arising at border ports of entry.
-

All of the early disposition programs identified above were authorized through September 30, 2005. To continue a program thereafter, USAOs were required to submit a request for reauthorization to the Executive Office for United States Attorneys. The Office of the Deputy Attorney General recently received these requests for reauthorization and is in the process of reviewing the same. In order to facilitate this review, I hereby authorize those early disposition programs identified above to continue through October 31, 2005.

cc: The Attorney General
The Associate Attorney General
The Solicitor General
The Assistant Attorney General, Criminal Division
The Director, Executive Office for United States Attorneys
The Chair, Attorney General's Advisory Committee
The Chair, Sentencing Guidelines Subcommittee of the Attorney General's Advisory Committee
The Assistant Director, Evaluation and Review Staff, Executive Office for U.S. Attorneys
The Director, Office of Policy and Legislation, Criminal Division



U.S. Department of Justice
Office of the Deputy Attorney General

RECEIVED
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Washington, D.C. 20530

October 28, 2005

MEMORANDUM

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

FROM: Robert D. McCallum, Jr. *Robert D. McCallum, Jr.*
Acting Deputy Attorney General

SUBJECT: Reauthorization of Early Disposition Program

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 Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 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 United States Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General¹) for any early disposition program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

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On October 29, 2004, Deputy Attorney General James B. Comey authorized the following United States Attorney's Offices (USAOs) to implement early disposition programs as such programs relate to the following classes of cases:

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- (4) District of Arizona — drug cases arising along the border
- (5) District of Arizona — first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
- (6) Central District of California — illegal reentry after deportation cases
- (7) Eastern District of California — illegal reentry after deportation cases
- (8) Northern District of California — illegal reentry after deportation cases
- (9) Southern District of California — illegal reentry after deportation cases
- (10) Southern District of California — transportation or harboring of alien cases
- (11) Southern District of California — drug cases arising along the border
- (12) Northern District of Georgia — illegal reentry after deportation cases
- (13) District of Idaho — illegal reentry after deportation cases
- (14) District of Nebraska — illegal reentry after deportation cases
- (15) District of New Mexico — illegal reentry after deportation cases
- (16) District of New Mexico — transportation or harboring of alien cases
- (17) District of New Mexico — drug backpacking cases
- (18) Eastern District of New York — drug courier cases arising out of John F. Kennedy International Airport
- (19) District of North Dakota — illegal reentry after deportation cases
- (20) District of Oregon — illegal reentry after deportation cases
- (21) Southern District of Texas — Laredo Division drug cases arising along the border
- (22) Southern District of Texas — illegal reentry after deportation cases
- (23) Southern District of Texas — transportation or harboring of alien cases
- (24) Western District of Texas — illegal reentry after deportation cases
- (25) Western District of Texas — transportation or harboring of alien cases
- (26) Western District of Washington — illegal reentry after deportation cases
- (27) Southern District of Florida — cases involving aliens using false fraudulent immigration documents
- (28) Western District of Texas — drug cases arising at border ports of entry.

All of the early disposition programs identified above were authorized through September 30, 2005. To continue a program thereafter, USAOs were required to submit a request for reauthorization to the Executive Office for United States Attorneys. The Office of the Deputy Attorney General recently received these requests for reauthorization and is in the process of reviewing the same. In order to facilitate this review, on September 23, 2005, I authorized those early disposition programs identified above to continue through October 31, 2005. Because additional time is needed to complete the review, I hereby authorize those programs to continue through December 31, 2005.

cc: The Attorney General
The Associate Attorney General
The Solicitor General
The Assistant Attorney General, Criminal Division
The Director, Executive Office for United States Attorneys
The Chair, Attorney General's Advisory Committee
The Chair, Sentencing Guidelines Subcommittee of the Attorney General's Advisory Committee
The Assistant Director, Evaluation and Review Staff, Executive Office for U.S. Attorneys
The Director, Office of Policy and Legislation, Criminal Division



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

December 28, 2005

MEMORANDUM

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

FROM: Paul J. McNulty *PM*
Acting Deputy Attorney General

SUBJECT: Reauthorization of Early Disposition Program

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 Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 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 United States Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General¹) for any early disposition program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

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- (6) Central District of California — illegal reentry after deportation cases
- (7) Eastern District of California — illegal reentry after deportation cases
- (8) Northern District of California — illegal reentry after deportation cases
- (9) Southern District of California — illegal reentry after deportation cases
- (10) Southern District of California — transportation or harboring of alien cases
- (11) Southern District of California — drug cases arising along the border
- (12) Northern District of Georgia — illegal reentry after deportation cases
- (13) District of Idaho — illegal reentry after deportation cases
- (14) District of Nebraska — illegal reentry after deportation cases
- (15) District of New Mexico — illegal reentry after deportation cases
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- (26) Western District of Washington — illegal reentry after deportation cases
- (27) Southern District of Florida — cases involving aliens using false fraudulent immigration documents
- (28) Western District of Texas — drug cases arising at border ports of entry.



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

January 31, 2006

MEMORANDUM

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

FROM: Paul J. McNulty *RM*
Acting Deputy Attorney General

SUBJECT: Reauthorization of Early Disposition Program

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 Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 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 United States Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General¹) for any early disposition program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

¹The 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).

Received from OAG *2/3/06*

DAG-7

On October 29, 2004, Deputy Attorney General James B. Comey authorized the following United States Attorney's Offices (USAOs) to implement early disposition programs as such programs relate to the following classes of cases:

- (1) District of Arizona — illegal reentry after deportation cases
- (2) District of Arizona — transportation or harboring of aliens cases
- (3) District of Arizona — alien baby/child smuggling and "bringing in" (i.e., cases involving defendants who are caught guiding defendants across the border) cases
- (4) District of Arizona — drug cases arising along the border
- (5) District of Arizona — first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
- (6) Central District of California — illegal reentry after deportation cases
- (7) Eastern District of California — illegal reentry after deportation cases
- (8) Northern District of California — illegal reentry after deportation cases
- (9) Southern District of California — illegal reentry after deportation cases
- (10) Southern District of California — transportation or harboring of alien cases
- (11) Southern District of California — drug cases arising along the border
- (12) Northern District of Georgia — illegal reentry after deportation cases
- (13) District of Idaho — illegal reentry after deportation cases
- (14) District of Nebraska — illegal reentry after deportation cases
- (15) District of New Mexico — illegal reentry after deportation cases
- (16) District of New Mexico — transportation or harboring of alien cases
- (17) District of New Mexico — drug backpacking cases
- (18) Eastern District of New York — drug courier cases arising out of John F. Kennedy International Airport
- (19) District of North Dakota — illegal reentry after deportation cases
- (20) District of Oregon — illegal reentry after deportation cases
- (21) Southern District of Texas — Laredo Division drug cases arising along the border
- (22) Southern District of Texas — illegal reentry after deportation cases
- (23) Southern District of Texas — transportation or harboring of alien cases
- (24) Western District of Texas — illegal reentry after deportation cases
- (25) Western District of Texas — transportation or harboring of alien cases
- (26) Western District of Washington — illegal reentry after deportation cases
- (27) Southern District of Florida — cases involving aliens using false fraudulent immigration documents
- (28) Western District of Texas — drug cases arising at border ports of entry.

All of the early disposition programs identified above were authorized through September 30, 2005. To continue a program thereafter, USAOs were required to submit a request for reauthorization to the Executive Office for United States Attorneys. The Office of the Deputy Attorney General recently received these requests for reauthorization and is in the process of reviewing the same. In order to facilitate this review, on September 23, 2005, Acting Deputy Attorney General Robert D. McCallum, Jr., authorized those early disposition programs identified above to continue through October 31, 2005 and, on October 28, 2005, he further extended this authorization through December 31, 2005. Because additional time was needed to complete the review, on December 28, 2005, I authorized these programs to continue through January 31, 2006. In order to allow further time to complete the review, I am further extending this authorization through March 3, 2006.

cc: The Attorney General
The Associate Attorney General
The Solicitor General
The Assistant Attorney General, Criminal Division
The Director, Executive Office for United States Attorneys
The Chair, Attorney General's Advisory Committee
The Chair, Sentencing Guidelines Subcommittee of the Attorney General's Advisory Committee
The Assistant Director, Evaluation and Review Staff, Executive Office for U.S. Attorneys
The Director, Office of Policy and Legislation, Criminal Division



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 3, 2006

MEMORANDUM FOR THE UNITED STATES ATTORNEYS FOR THE
DISTRICT OF ARIZONA
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DISTRICT OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DISTRICT OF CALIFORNIA
MIDDLE DISTRICT OF FLORIDA
SOUTHERN DISTRICT OF FLORIDA
NORTHERN DISTRICT OF GEORGIA
DISTRICT OF IDAHO
DISTRICT OF KANSAS
DISTRICT OF NEBRASKA
DISTRICT OF NEW MEXICO
EASTERN DISTRICT OF NEW YORK
DISTRICT OF NORTH DAKOTA
DISTRICT OF OREGON
SOUTHERN DISTRICT OF TEXAS
WESTERN DISTRICT OF TEXAS
DISTRICT OF UTAH
EASTERN DISTRICT OF WASHINGTON
WESTERN DISTRICT OF WASHINGTON

FROM: Paul J. McNulty *PJM*
Deputy Attorney General

SUBJECT: Reauthorization of Early Disposition Program

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 Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 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 United States Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely

on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General¹) for any early disposition program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

On October 29, 2004, Deputy Attorney General James B. Comey authorized the following United States Attorney's Offices (USAOs) to implement early disposition programs as such programs relate to the following classes of cases:

- (1) District of Arizona — illegal reentry after deportation cases
- (2) District of Arizona — transportation or harboring of aliens cases
- (3) District of Arizona — alien baby/child smuggling and "bringing in" (*i.e.*, cases involving defendants who are caught guiding defendants across the border) cases
- (4) District of Arizona — drug cases arising along the border
- (5) District of Arizona — first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
- (6) Central District of California — illegal reentry after deportation cases
- (7) Eastern District of California — illegal reentry after deportation cases
- (8) Northern District of California — illegal reentry after deportation cases
- (9) Southern District of California — illegal reentry after deportation cases
- (10) Southern District of California — transportation or harboring of alien cases
- (11) Southern District of California — drug cases arising along the border
- (12) Northern District of Georgia — illegal reentry after deportation cases
- (13) District of Idaho — illegal reentry after deportation cases
- (14) District of Nebraska — illegal reentry after deportation cases
- (15) District of New Mexico — illegal reentry after deportation cases
- (16) District of New Mexico — transportation or harboring of alien cases
- (17) District of New Mexico — drug backpacking cases
- (18) Eastern District of New York — drug courier cases arising out of John F. Kennedy International Airport
- (19) District of North Dakota — illegal reentry after deportation cases
- (20) District of Oregon — illegal reentry after deportation cases

¹The 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).

- (21) Southern District of Texas — Laredo Division drug cases arising along the border
- (22) Southern District of Texas — illegal reentry after deportation cases
- (23) Southern District of Texas — transportation or harboring of alien cases
- (24) Western District of Texas — illegal reentry after deportation cases
- (25) Western District of Texas — transportation or harboring of alien cases
- (26) Western District of Washington — illegal reentry after deportation cases
- (27) Southern District of Florida — cases involving aliens using false fraudulent immigration documents
- (28) Western District of Texas — drug cases arising at border ports of entry.

All of the early disposition programs identified above were authorized through September 30, 2005. To continue a program thereafter, USAOs were required to submit a request for reauthorization to the Executive Office for United States Attorneys. The Office of the Deputy Attorney General received these requests for reauthorization and has reviewed the same. In order to facilitate this review, on September 23, 2005, Acting Deputy Attorney General Robert D. McCallum, Jr., authorized those early disposition programs identified above to continue through October 31, 2005 and, on October 28, 2005, he further extended this authorization through December 31, 2005. Because additional time was needed to complete the review, on December 28, 2005, I authorized these programs to continue through January 31, 2006. On January 31, 2006, I further extended this authorization through March 3, 2006. By this memorandum, I am approving all of the above programs for the period March 3, 2006 through December 31, 2006.

In addition, the following United States Attorney's Offices (USAOs) are authorized through December 31, 2006 to implement or expand early disposition programs as such programs relate to the following classes of cases:

- (29) Southern District of California — illegal reentry after deportation cases (expansion)
- (30) Middle District of Florida — illegal reentry after deportation cases
- (31) District of Utah — illegal reentry after deportation cases
- (32) Eastern District of Washington — illegal reentry after deportation cases
- (33) Southern District of Texas — alien smuggling
- (34) District of Kansas — fraudulent document use to gain employment

All Districts should be aware that continuing re-approval of such programs will depend on demonstrable results establishing that the authorized fast track program is permitting the prosecution of a significantly larger number of defendants than occurred in the absence of the fast track 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 fast track agreement must incorporate, and which memorandum also requires, inter alia, that all fast-track dispositions be identified in the District's Case Management System.

Memorandum from the Deputy Attorney General
Subject: Reauthorization of Early Disposition Program

Page 4

cc: The Attorney General
The Associate Attorney General
The Solicitor General
The Assistant Attorney General, Criminal Division
The Director, Executive Office for United States Attorneys
The Chair, Attorney General's Advisory Committee
The Chair, Sentencing Guidelines Subcommittee of the Attorney General's Advisory
Committee
The Assistant Director, Evaluation and Review Staff, Executive Office for U.S. Attorneys
The Director, Office of Policy and Legislation, Criminal Division

3/3/06 - 12/31/06

Dunn, Clara

From: Ronald.Tenpas@usdoj.gov
Sent: Monday, August 07, 2006 4:23 PM
To: David.Nahmlas@usdoj.gov
Cc: Paul.Hahn2@usdoj.gov; Gentry.Shelnutt@usdoj.gov; Wroblewski, Jonathan; Dunn, Clara
Subject: RE: Reauthorization of Early Disposition "Fast Track" Programs through December 31, 2006

This will confirm that there is an error in the August 3, 2006, memo from the Deputy Attorney General related to the Northern District of Georgia's early disposition program. The program for which the District sought approval relates to "illegal identification documents at a port of entry cases" rather than to "illegal reentry after deportation cases." This will confirm that the NDGA has been approved for a program relating to "illegal identification documents at a port of entry cases."

Ronald J. Tenpas
Associate Deputy Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Room 4216
Washington, D.C. 20530
(202) 514-3286 / (202) 305-4343 (fax)



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

December 8, 2006

MEMORANDUM FOR THE DIRECTOR, EXECUTIVE OFFICE FOR
UNITED STATES ATTORNEYS
THE UNITED STATES ATTORNEY, DISTRICT OF MINNESOTA
THE UNITED STATES ATTORNEY, DISTRICT OF COLORADO
THE UNITED STATES ATTORNEY, DISTRICT OF NEBRASKA
THE UNITED STATES ATTORNEY, DISTRICT OF UTAH
THE UNITED STATES ATTORNEY, NORTHERN
DISTRICT OF TEXAS
THE UNITED STATES ATTORNEY, SOUTHERN
DISTRICT OF IOWA

FROM:

Paul J. McNulty *PJM*
Deputy Attorney General

SUBJECT:

Early Disposition Authority for Operation Wagon Train

Early disposition or "fast-track" programs are based on the premise that a defendant who promptly agrees to participate in such a program has saved the government significant and scarce resources that can be used in prosecuting other defendants and has demonstrated an acceptance of responsibility above and beyond what is already taken into account by the adjustments contained in U.S.S.G. § 3E1.1. These programs are properly reserved for exceptional circumstances, such as where the resources of a district would otherwise be significantly strained by the large volume of a particular category of cases. Operation Wagon Train presents an exceptional circumstance making authorization of an Early Disposition program as contemplated in U.S.S.G. § 5K3.1 appropriate. The intent of this authority is to reduce the strain on the districts' prosecutorial resources, ensure that cases involving serious aggravated identity theft offenders are not declined because of limited prosecutorial resources, and to ensure that the courts are not overburdened with a sudden spike in cases and criminal trials.

The Department expects that from the hundreds of aliens that are detained in each district, a subset would be eligible for prosecution for aggravated identity theft under Title 18, United States Code, Section 1028A. This class of cases consists of ones that are highly repetitive and present substantially similar fact scenarios.

To assist the districts in handling their aggravated identity theft prosecutions, the Department of Justice authorizes the following Early Disposition authority, in lieu of pursuing readily provable charges under Title 18, United States Code, Section 1028A:

DAG-10

1. Within a reasonably prompt period after the filing of federal charges, to be determined based on the practice in the district, the Defendant must agree to plead guilty to a violation of Title 18, United States Code, Section 1546(b).
2. The Defendant must enter into a written plea agreement that includes at least the following terms:
 - a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct;
 - b. The defendant agrees not to file any of the motions described in Federal Rule of Criminal Procedure 12(b)(3);
 - c. The defendant agrees to waive appeal;
 - d. The defendant 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; and
 - e. If ICE seeks removal or deportation, the defendant agrees not to contest the removal or deportation proceeding.
3. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the defendant must agree to a sentence of a year and a day imprisonment.

Districts retain the discretion to seek a further reduction in the term of imprisonment pursuant to U.S.S.G. § 5K1.1 if the defendant provides substantial assistance in the investigation or prosecution of another individual.

Districts cannot offer early disposition to a defendant who in the course of the operation or who can be proven to have committed on another occasion an offense that has been designated by the Attorney General as a "crime of violence." *See* 28 C.F.R. § 28.2 (listing offenses designated by the Attorney General as "crimes of violence" for purposes of the DNA collection provisions of the USA PATRIOT Act).

The district must notify EOUSA of any fast-track program it adopts. The district must also identify in the Case Management System any case disposed of pursuant to this approved fast-track program, so that the number of cases and their dispositions may be determined for reporting or other statistical purposes.



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

December 19, 2006

MEMORANDUM FOR THE DIRECTOR, EXECUTIVE OFFICE FOR
UNITED STATES ATTORNEYS
THE UNITED STATES ATTORNEY, DISTRICT OF MINNESOTA
THE UNITED STATES ATTORNEY, DISTRICT OF COLORADO
THE UNITED STATES ATTORNEY, DISTRICT OF NEBRASKA
THE UNITED STATES ATTORNEY, DISTRICT OF UTAH
THE UNITED STATES ATTORNEY, NORTHERN
DISTRICT OF TEXAS
THE UNITED STATES ATTORNEY, SOUTHERN
DISTRICT OF IOWA

FROM:

Paul J. McNulty *PJM*
Deputy Attorney General

SUBJECT:

Revised Early Disposition Authority for Operation Wagon Train

Early disposition or "fast-track" programs are based on the premise that a defendant who promptly agrees to participate in such a program has saved the government significant and scarce resources that can be used in prosecuting other defendants and has demonstrated an acceptance of responsibility above and beyond what is already taken into account by the adjustments contained in U.S.S.G. § 3E1.1. These programs are properly reserved for exceptional circumstances, such as where the resources of a district would otherwise be significantly strained by the large volume of a particular category of cases. Operation Wagon Train presents an exceptional circumstance making authorization of an Early Disposition program as contemplated in U.S.S.G. § 5K3.1 appropriate. The intent of this authority is to reduce the strain on the districts' prosecutorial resources, ensure that cases involving serious aggravated identity theft offenders are not declined because of limited prosecutorial resources, and to ensure that the courts are not overburdened with a sudden spike in cases and criminal trials.

The Department expects that from the hundreds of aliens that are detained in each district, a subset would be eligible for prosecution for aggravated identity theft under Title 18, United States Code, Section 1028A. This class of cases consists of ones that are highly repetitive and present substantially similar fact scenarios.

To assist the districts in handling their aggravated identity theft prosecutions, the Department of Justice authorizes the following Early Disposition authority, in lieu of pursuing readily provable charges under Title 18, United States Code, Section 1028A:

DAG-11

11 / 0007

1. Within a reasonably prompt period after the filing of federal charges, to be determined based on the practice in the district, the defendant must agree to plead guilty to a violation of Title 18, United States Code, Section 1546(a), or any other appropriate charge that would make the defendant an "aggravated felon" as defined in Title 8, United States Code, Section 1101(a)(43).
2. The defendant must enter into a written plea agreement that includes at least the following terms:
 - a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct related to the offense of conviction and to any such further factual basis as would be necessary to support a conviction under 1028A.
 - b. The defendant agrees not to file any of the motions described in Federal Rule of Criminal Procedure 12(b)(3).
 - c. The defendant agrees to waive appeal.
 - d. The defendant 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.
 - e. If ICE seeks removal or deportation, the defendant agrees not to contest the removal or deportation proceeding.
3. The defendant and the government must agree to jointly recommend to the court a sentence of a year and a day imprisonment under the following terms:
 - a. The defendant will acknowledge that the government is forgoing charging him or her with a violation of 18 U.S.C. § 1028A, which the government could have proven beyond a reasonable doubt under the facts of this case.
 - b. The defendant must agree that the base sentencing guideline range for a violation of 18 U.S.C. § 1546 does not adequately take into account the fact that the defendant's conduct in using a real person's identity caused or may cause harm to an identifiable victim and an upward departure from the base guideline level is appropriate under U.S.S.G. § 5K2.0. The defendant would not be required to agree to this if the facts of the case do not support it (e.g., where evidence suggests the victim was complicit).
 - c. The defendant will agree that a sentence of a year and a day is a reasonable sentence. The defendant will acknowledge that 1028A carries a mandatory minimum term of imprisonment of 2 years.
 - d. The defendant will agree not to argue for a lower sentence and the government will agree not to seek a higher sentence.

Districts retain the discretion to seek more restrictive terms, such as a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C). Districts retain the discretion to seek a further reduction in the term of imprisonment pursuant to U.S.S.G. § 5K1.1 if the defendant provides substantial assistance in the investigation or prosecution of another individual.

Memorandum for Selected United States Attorneys

Page 3

Subject: Revised Early Disposition Authority for Operation Wagon Train

Districts cannot offer early disposition to a defendant who in the course of the operation or who can be proven to have committed on another occasion an offense that has been designated by the Attorney General as a "crime of violence." *See* 28 C.F.R. § 28.2 (listing offenses designated by the Attorney General as "crimes of violence" for purposes of the DNA collection provisions of the USA PATRIOT Act).

The district must notify EOUSA of any fast-track program it adopts. The district must also identify in the Case Management System any case disposed of pursuant to this approved fast-track program, so that the number of cases and their dispositions may be determined for reporting or other statistical purposes.



U.S. Department of Justice

Office of the Deputy Attorney General

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The Deputy Attorney General

Washington, D.C. 20530

March 19, 2007

RECEIVED
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2007 MAR 19 PM 12:25
EXECUTIVE SECRETARIAT

MEMORANDUM

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

FROM: Paul J. McNulty *PM*
Deputy Attorney General

SUBJECT: Reauthorization of Early Disposition Program

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 Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 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 United States Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General¹) for any early disposition program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

¹The 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).

On October 29, 2004, Deputy Attorney General James B. Comey authorized the following United States Attorney's Offices (USAOs) to implement early disposition programs as such programs relate to the following classes of cases:

- (1) District of Arizona — illegal reentry after deportation cases
- (2) District of Arizona — transportation or harboring of alien cases
- (3) District of Arizona — alien baby/child smuggling and "bringing in" (i.e., cases involving defendants who are caught guiding defendants across the border) cases
- (4) District of Arizona — drug cases arising along the border
- (5) District of Arizona — first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
- (6) Central District of California — illegal reentry after deportation cases
- (7) Eastern District of California — illegal reentry after deportation cases
- (8) Northern District of California — illegal reentry after deportation cases
- (9) Southern District of California — illegal reentry after deportation cases
- (10) Southern District of California — transportation or harboring of alien cases
- (11) Southern District of California — drug cases arising along the border
- (12) Northern District of Georgia — illegal identification documents at port of entry
- (13) District of Idaho — illegal reentry after deportation cases
- (14) District of Nebraska — illegal reentry after deportation cases
- (15) District of New Mexico — illegal reentry after deportation cases
- (16) District of New Mexico — transportation or harboring of alien cases
- (17) District of New Mexico — drug backpacking cases
- (18) Eastern District of New York — drug courier cases arising out of John F. Kennedy International Airport
- (19) District of North Dakota — illegal reentry after deportation cases
- (20) District of Oregon — illegal reentry after deportation cases
- (21) Southern District of Texas — Laredo Division drug cases arising along the border
- (22) Southern District of Texas — illegal reentry after deportation cases
- (23) Southern District of Texas — transportation or harboring of alien cases
- (24) Western District of Texas — illegal reentry after deportation cases
- (25) Western District of Texas — transportation or harboring of alien cases
- (26) Western District of Washington — illegal reentry after deportation cases
- (27) Southern District of Florida — cases involving aliens using false fraudulent immigration documents
- (28) Western District of Texas — drug cases arising at border ports of entry.

All of the early disposition programs identified above were authorized through September 30, 2005. Since that date, the Office of the Deputy Attorney General has extended authorization of these early disposition programs on several occasions. Most recently, on August 3, 2006, I extended authorization of the above early disposition programs through December 31, 2006

In addition, on August 3, 2006, I also authorized through December 31, 2006, the following United States Attorney's Offices (USAOs) to implement or expand early disposition programs as such programs relate to the following classes of cases:

- (29) Southern District of California — illegal reentry after deportation cases (expansion)
- (30) Middle District of Florida — illegal reentry after deportation cases
- (31) District of Utah — illegal reentry after deportation cases
- (32) Eastern District of Washington — illegal reentry after deportation cases
- (33) Southern District of Texas — alien smuggling
- (34) District of Kansas — fraudulent document use to gain employment
- (35) Central District of California — illegal reentry after deportation cases (modification)
- (36) Northern District of California — illegal reentry after deportation cases (modification)

By this memorandum, I am extending authorization of all of the above programs for the period January 1, 2007, through December 31, 2007.

All Districts should be aware that continuing re-approval of such programs will depend on demonstrable results establishing that the authorized early disposition program is permitting the prosecution of a significantly larger number of defendants than occurred in the absence of the early disposition program or than would occur if the program were discontinued. Districts are also reminded to review carefully the directives included in Attorney General Ashcroft's authorizing memorandum of September 22, 2003, setting minimum terms 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.

cc: The Attorney General
 The Associate Attorney General
 The Solicitor General
 The Assistant Attorney General, Criminal Division
 The Director, Executive Office for United States Attorneys
 The Chair, Attorney General's Advisory Committee
 The Chair, Sentencing Guidelines Subcommittee of the Attorney General's Advisory Committee
 The Assistant Director, Evaluation and Review Staff, Executive Office for U.S. Attorneys
 The Director, Office of Policy and Legislation, Criminal Division



U.S. Department of Justice

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BW

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

April 30, 2007

RECEIVED
DEPT OF JUSTICE
MAY
2007 APR 1 AM 9:42
EXECUTIVE SECRETARIAT

MEMORANDUM

TO: United States Attorney for the District of Oregon

FROM: Paul J. McNulty *PJM*
Deputy Attorney General

SUBJECT: Authorization of Early Disposition Program

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 Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 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 United States Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General¹) for any early disposition program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

By this memorandum, I am extending authorization of your request for an early disposition program related to the offense of identity theft. This authorization is effective from the date of initial initiation of the program through December 31, 2007.

¹The 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).

Memorandum from the Deputy Attorney General
Subject: Authorization of Early Disposition Program

Page 2

All Districts should be aware that continuing re-approval of such programs will depend on demonstrable results establishing that the authorized early disposition program is permitting the prosecution of a significantly larger number of defendants than occurred in the absence of the early disposition program or than would occur if the program were discontinued. Districts are also reminded to review carefully the directives included in Attorney General Ashcroft's authorizing memorandum of September 22, 2003, setting minimum terms 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.

Attachment

cc: The Attorney General
The Associate Attorney General
The Solicitor General
The Assistant Attorney General, Criminal Division
The Director, Executive Office for United States Attorneys
The Chair, Attorney General's Advisory Committee
The Chair, Sentencing Guidelines Subcommittee of the Attorney General's Advisory Committee
The Assistant Director, Evaluation and Review Staff, Executive Office for U.S. Attorneys
The Director, Office of Policy and Legislation, Criminal Division



U.S. Department of Justice

Office of the Deputy Attorney General

Deputy Attorney General

Washington, D.C. 20530

August 20, 2007

MEMORANDUM FOR THE DIRECTOR, EXECUTIVE OFFICE FOR
UNITED STATES ATTORNEYS
THE UNITED STATES ATTORNEY,
EASTERN DISTRICT OF NORTH CAROLINA

FROM: Craig S. Morford
Acting Deputy Attorney General

CSM 8/20/07

SUBJECT: Early Disposition Authority for Operation Namesake

Early disposition or "fast-track" programs are based on the premise that a defendant who promptly agrees to participate in such a program has saved the government significant and scarce resources that can be used in prosecuting other defendants and has demonstrated an acceptance of responsibility above and beyond what is already taken into account by the adjustments contained in U.S.S.G. § 3E1.1. These programs are properly reserved for exceptional circumstances, such as where the resources of a district would otherwise be significantly strained by the large volume of a particular category of cases. Operation Namesake, which will take place within the Eastern District of North Carolina, presents an exceptional circumstance making authorization of an Early Disposition program as contemplated in U.S.S.G. § 5K3.1 appropriate. The intent of this authority is to reduce the strain on the Eastern District of North Carolina's prosecutorial resources, ensure that cases involving serious aggravated identity theft offenders are not declined because of limited prosecutorial resources, and to ensure that the courts are not overburdened with a sudden spike in cases and criminal trials.

The Department has been advised by the Eastern District of North Carolina that most of the aliens that are detained in connection with Operation Namesake would be eligible for prosecution for aggravated identity theft under Title 18, United States Code, Section 1028A. This class of cases consists of ones that are highly repetitive and present substantially similar fact scenarios.

To assist the Eastern District of North Carolina in handling its aggravated identity theft prosecutions, the Department of Justice authorizes the following Early Disposition authority, in lieu of pursuing readily provable charges under Title 18, United States Code, Section 1028A:

1. Within a reasonably prompt period after the filing of federal charges, to be determined based on the practice in the district, the defendant must agree to plead guilty to a violation of Title 18, United States Code, Section 1546(a), or any other appropriate charge that would make the defendant an "aggravated felon" as defined in Title 8, United States Code, Section 1101(a)(43).

Memorandum for the Executive Director, Executive Office for
United States Attorneys and the United States Attorney
for the Eastern District of North Carolina
Subject: Early Disposition Authority for Operation Namesake

Page 2

2. The defendant must enter into a written plea agreement that includes at least the following terms:
 - a. The defendant agrees to a factual basis that accurately reflects his or her offense conduct related to the offense of conviction and to any such further factual basis as would be necessary to support a conviction under 1028A.
 - b. The defendant agrees not to file any of the motions described in Federal Rule of Criminal Procedure 12(b)(3).
 - c. The defendant agrees to waive appeal.
 - d. The defendant 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.
 - e. If ICE seeks removal or deportation, the defendant agrees not to contest the removal or deportation proceeding.

3. The defendant and the government must agree to jointly recommend to the court a ~~sentence of a year and a day imprisonment~~ under the following terms:
 - a. The defendant will acknowledge that the government is forgoing charging him or her with a violation of 18 U.S.C. § 1028A, which the government could have proven beyond a reasonable doubt under the facts of this case.
 - b. The defendant must agree that the base sentencing guideline range for a violation of 18 U.S.C. § 1546 does not adequately take into account the fact that the defendant's conduct in using a real person's identity caused or may cause harm to an identifiable victim and an upward departure from the base guideline level is appropriate under U.S.S.G. § 5K2.0. The defendant would not be required to agree to this if the facts of the case do not support it (e.g., where evidence suggests the victim was complicit).
 - c. The defendant will agree that a sentence of a year and a day is a reasonable sentence. The defendant will acknowledge that 1028A carries a mandatory minimum term of imprisonment of 2 years.
 - d. The defendant will agree not to argue for a lower sentence and the government will agree not to seek a higher sentence.

The Eastern District of North Carolina will retain the discretion to seek more restrictive terms, such as a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C). The district will retain the discretion to seek a further reduction in the term of imprisonment pursuant to U.S.S.G. § 5K1.1 if the defendant provides substantial assistance in the investigation or prosecution of another individual.

Memorandum for the Executive Director, Executive Office for
United States Attorneys and the United States Attorney
for the Eastern District of North Carolina
Subject: Early Disposition Authority for Operation Namesake

Page 3

The Eastern District of North Carolina cannot offer early disposition to a defendant who in the course of the operation or who can be proven to have committed on another occasion an offense that has been designated by the Attorney General as a "crime of violence." *See* 28 C.F.R. § 28.2 (listing offenses designated by the Attorney General as "crimes of violence" for purposes of the DNA collection provisions of the USA PATRIOT Act).

The Eastern District of North Carolina must notify EOUSA of any fast-track program it adopts. The district must also identify in the Case Management System any case disposed of pursuant to this approved fast-track program, so that the number of cases and their dispositions may be determined for reporting or other statistical purposes.



U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

December 28, 2007

MEMORANDUM

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

FROM: Craig Morford CS 12-28-07
Acting Deputy Attorney General

SUBJECT: Temporary Reauthorization of Early Disposition Programs

The following United States Attorneys' Offices have early disposition programs that are set to expire on December 31, 2007.

1. District of Arizona — illegal reentry after deportation cases
2. District of Arizona — transportation or harboring of alien cases
3. 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
4. District of Arizona — drug cases arising along the border
5. District of Arizona — first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
6. Central District of California — illegal reentry after deportation cases
7. Eastern District of California — illegal reentry after deportation cases
8. Northern District of California — illegal reentry after deportation cases
9. Southern District of California — illegal reentry after deportation cases
10. Southern District of California — transportation or harboring of alien cases
11. Southern District of California — drug cases arising along the border
12. Northern District of Georgia — illegal identification documents at port of entry
13. District of Idaho — illegal reentry after deportation cases
14. District of Nebraska — illegal reentry after deportation cases

DAG-15

15. District of New Mexico — illegal reentry after deportation cases
16. District of New Mexico — transportation or harboring of alien cases
17. District of New Mexico — drug backpacking cases
18. Eastern District of New York — drug courier cases arising out of John F. Kennedy International Airport
19. District of North Dakota — illegal reentry after deportation cases
20. District of Oregon — illegal reentry after deportation cases
21. Southern District of Texas — Laredo Division drug cases arising along the border
22. Southern District of Texas — illegal reentry after deportation cases
23. Southern District of Texas — transportation or harboring of alien cases
24. Western District of Texas — illegal reentry after deportation cases
25. Western District of Texas — transportation or harboring of alien cases
26. Western District of Washington — illegal reentry after deportation cases
27. Southern District of Florida — cases involving aliens using false/fraudulent immigration documents
28. Western District of Texas — drug cases arising at border ports of entry
29. Southern District of California — illegal reentry after deportation cases (expansion)
30. Middle District of Florida — illegal reentry after deportation cases
31. District of Utah — illegal reentry after deportation cases
32. Eastern District of Washington — illegal reentry after deportation cases
33. Southern District of Texas — alien smuggling
34. District of Kansas — fraudulent document use to gain employment
35. Central District of California — illegal reentry after deportation cases (modification)
36. Northern District of California — illegal reentry after deportation cases (modification)
37. District of Oregon — aggravated identity theft cases.

By this memorandum, I am extending authorization for all of the above programs for the period January 1, 2008, through January 31, 2008. This short-term extension is granted so that my office may fully examine the existing programs in light of Departmental policies and statutory requirements regarding Fast Track programs. Reauthorizations for the remainder of the year and authorizations of new programs will be made in due course.

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

The Assistant Director, Evaluation and Review Staff, Executive Office for U.S.
Attorneys
The Director, Office of Policy and Legislation, Criminal Division



U.S. Department of Justice

Office of the Deputy Attorney General

1328833
PS

The Deputy Attorney General

Washington, D.C. 20530

February 1, 2008

MEMORANDUM

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

FROM: Craig Morford
Acting Deputy Attorney General 

SUBJECT: Reauthorization of Early Disposition Programs

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

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

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

- District of Arizona — illegal reentry after deportation cases
- District of Arizona — transportation or harboring of alien cases
- District of Arizona — alien baby/child smuggling and “bringing in” (*i.e.*, cases involving the defendants who are caught guiding defendants across the border) cases
- District of Arizona — drug cases arising along the border
- District of Arizona — first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
- Central District of California — illegal reentry after deportation cases
- Eastern District of California — illegal reentry after deportation cases
- Northern District of California — illegal reentry after deportation cases
- Southern District of California — illegal reentry after deportation cases
- Southern District of California — transportation or harboring of alien cases
- Southern District of California — drug cases arising along the border
- Northern District of Georgia — illegal identification documents at port of entry
- District of Idaho — illegal reentry after deportation cases
- District of Nebraska — illegal reentry after deportation cases
- District of New Mexico — illegal reentry after deportation cases
- District of New Mexico — transportation or harboring of alien cases
- District of New Mexico — drug backpacking cases
- Eastern District of New York — drug courier cases arising out to John F. Kennedy International Airport
- District of Oregon — illegal reentry after deportation cases
- Southern District of Texas — Laredo Division drug cases arising along the border
- Southern District of Texas — illegal reentry after deportation cases
- Southern District of Texas — transportation or harboring of alien cases
- Western District of Texas — illegal reentry after deportation cases
- Western District of Texas — transportation or harboring of alien cases
- Western District of Washington — illegal reentry after deportation cases
- Southern District of Florida — cases involving aliens using false fraudulent immigration documents
- Western District of Texas — drug cases arising at border ports of entry
- Southern District of California — illegal reentry after deportation cases (expansion)
- Middle District of Florida — illegal reentry after deportation cases
- District of Utah — illegal reentry after deportation cases
- Eastern District of Washington — illegal reentry after deportation cases

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

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

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

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

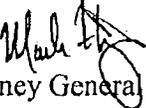
cc: The Attorney General
The Associate Attorney General
The Solicitor General
The Assistant Attorney General, Criminal Division
The Director, Executive Office for United States Attorneys
The Chair, Attorney General's Advisory Committee
The Chair, Sentencing Guidelines Subcommittee of the Attorney General's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



Office of the Attorney General
Washington, D.C.

January 27, 2009

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: Mark Filip 
Acting Attorney General

SUBJECT: Authorization for Early Disposition Programs

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

The following early disposition programs have been previously authorized and are hereby reauthorised through March 31, 2009:

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

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

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

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

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



4/1/09 - 5/30/09
U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

March 31, 2009

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

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

SUBJECT: Authorization for Early Disposition Programs

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

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

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

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

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

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

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



U. S. Department of Justice

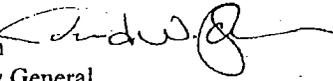
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

May 29, 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 only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memorandum entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General¹) for any early disposition program that relies upon "charge bargaining"—*i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

The following early disposition programs are hereby authorized, as such programs relate to the following classes of cases, through December 31, 2009:

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

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

- District of Utah — illegal reentry after deportation cases;
- Eastern District of Washington — illegal reentry after deportation cases;
- Western District of Washington — illegal reentry after deportation cases;
- District of Arizona — transportation or harboring of alien cases;
- District of Arizona — Phoenix Division transportation or harboring of alien Guide Interdiction of Team cases;
- District of Arizona — alien baby/child smuggling and “bringing in” (*i.e.*, cases involving the defendants who are caught guiding defendants across the border) cases;
- Southern District of California — transportation or harboring of alien cases;
- Southern District of Texas — transportation or harboring of alien cases;
- Western District of Texas — transportation or harboring of alien cases;
- District of Arizona — drug cases arising along the border;
- 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 previously authorized early disposition programs will not be re-authorized for the remainder of this year:

- District of Arizona — first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried);
- District of New Mexico — transportation or harboring of alien cases;
- District of Kansas — fraudulent document use to gain employment; and
- District of Oregon — aggravated identity theft 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.

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