

Fast Track Programs Approved by AG

District	# of AUSAs ¹	Immigration Sentencings FY 2003 ²	Immigration % of Total	Immigration Cases per AUSA	Type of Program ³
Arizona		2,427			5K3.1
C.D. California		325			Charge Bargain
E.D. California		338			5K3.1
N.D. California		135			Charge Bargain
S.D. California		2,019			Charge Bargain
Idaho	24	72	26.77%	3.00	5K3.1
Nebraska	27	80	11.41%	2.96	5K3.1
New Mexico		1,137			5K3.1
North Dakota	17	39	18.75%	2.29	5K3.1
Oregon	50	166	25.42%	3.32	Charge Bargain
S.D. Texas		2,706			5K3.1
W.D. Texas		1,623			5K3.1
W.D. Washington	64	37	5.63%	0.58	Charge Bargain

¹ These numbers come from information submitted by the government United States v. Medrano-Duran, 386 F. Supp.2d 943 (N.D. Ill. 2005). The original source, according to the government's Supplemental Response in Opposition to Defendant's Motion for a Non-Guideline Sentence Based on Fast-Track Programs, is the DOJ Employment Factbook for FY2003, which is on DOJ's Intranet site and not publicly accessible.

² These numbers come from Federal Sentencing Statistics by State, District and Circuit, <http://www.ussc.gov/JUDPACK/JP2003.htm>. The number per district is in Table 5 for that district.

³ The type of program in each approved district is from documents submitted by the government to the courts in United States v. Medrano-Duran, 386 F. Supp.2d 943 (N.D. Ill. 2005) and United States v. Krukowski, 04 cr 1308 (S.D.N.Y. June 10, 2005).

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

AUG - 3 2005 *sq*

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

UNITED STATES OF AMERICA)
) No. 04 CR 884
 v.)
) Judge Matthew F. Kennelly
MIGUEL MEDRANO-DURAN)

NOTICE OF FILING

TO: Imani Chiphe
Federal Defender Program
55 E. Monroe, Suite 2800
Chicago, IL 60603

PLEASE TAKE NOTICE that on August 3, 2005 the undersigned filed with the Clerk of this Court the GOVERNMENT'S SUPPLEMENTAL RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR A NON-GUIDELINE SENTENCE BASED ON FAST-TRACK PROGRAMS service of which is being made upon you.

Respectfully submitted,

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By:

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STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

Cindy Kirksey, being first duly sworn on oath, deposes and says that she is employed in the office of the United States Attorney for the Northern District of Illinois; that on August 3, 2005 she caused a copy of this notice and the above-described motion to be mailed and faxed to the above individual.

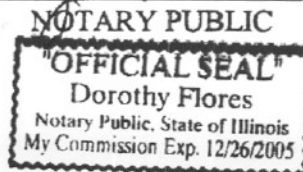
Cindy Kirksey

SUBSCRIBED and SWORN TO before me

this 3rd day of August, 2005

Dorothy Flores-Cuadra

NOTARY PUBLIC



Memorandum of 10/27/2004 at 2-3 (attached as Government Exhibit 2). The Deputy Attorney General found that the proposals met the Attorney General Guidelines set forth in the Principles Memo. *Id.* at 3. Furthermore, the Deputy Attorney General further reminded each district that they must identify fast-track cases in the Case Management System for monitoring purposes. Significantly, the programs were authorized only until September 30, 2005, and re-authorizations of the programs would require another request and information concerning the district's experience with the program. *Id.* at 3. Attached as Appendix A to this Supplemental Response is a listing describing the authorized fast-track programs that relate to illegal re-entry after deportation. *See* Appdx. A (obtained from government filing in *United States v. Krukowski*, 04 Cr. 1308 (S.D.N.Y. June 10, 2005)).

In his sentencing memorandum, defendant refers to the establishment of fast-track programs in certain states including non-border states (based on the Deputy Attorney General Memo and Appendix A, those non-Southwestern border states with fast-track programs for re-entry cases are Idaho, Nebraska, North Dakota, Oregon, and the Western District of Washington). Although counsel for the government does not have access to the details of any particular district's application for fast-track participation, nor to the internal deliberations of the Deputy Attorney General, it should be noted that the non-Southwestern border states (with the possible exception of the Western District of Washington) share a number of features in common: they are agricultural districts, they thus likely have a substantial number of migrant alien workers, and they have U.S. Attorney's Offices that are

small relative to the number of immigration cases they prosecute. The following table helps to illustrate these points by showing the district, number of AUSAs, number of immigration sentencings, the percentage of immigration sentencings relative to the total number of sentencings, and the number of immigration prosecutions per AUSA:³

District	AUSAs	Immigration Sentencings	Immigration % of Total	Per AUSA
N.D. Illinois	149	113 ⁴	8.96%	0.76
Idaho	24	72	26.77%	3.00
Nebraska	27	80	11.41%	2.96
North Dakota	17	39	18.75%	2.29
Oregon	50	166	25.42%	3.32
W.D. Wash.	64	37	5.63%	0.58

With the exception of the Western District of Washington, even the non-border districts with fast-track programs are confronted with relatively larger numbers of immigration prosecutions than this district when measured by percentage of cases and on a

³The sentencing data is for Fiscal Year 2003 and available at the United States Sentencing Commission's website under Publications/Federal Sentencing Statistics. See <http://www.ussc.gov/LINKTOJP.HTM>. (tables attached as Group Exhibit 3). The employment data is drawn from the following sources: First, the DOJ Employment Factbook for Fiscal Year 2003 lists the number of AUSAs per state, and thus provides the number for those districts that cover the entire state (Idaho, Nebraska, North Dakota, and Oregon). For the Western District of Washington, the current number of AUSAs is approximately 64. See http://www.usdoj.gov/usao/waw/about_us.htm. For the Northern District of Illinois, the approximate current number of AUSAs is 149. See <http://www.usdoj.gov/usao/iln/aboutus/index.html>.

⁴Indeed, this figure likely overstates, relative to the other districts, the number of § 1326 cases because the Immigration category also includes alien smuggling cases, and there is likely a disproportionate number of such cases in this district because O'Hare International Airport is located here.

APPENDIX A

**FAST-TRACK DISPOSITIONS DISTRICT-BY-DISTRICT
RELATING TO ILLEGAL REENTRY CASES¹**

DISTRICT OF ARIZONA:

Tucson Division

For defendants eligible for fast-track disposition and charged with illegal entry after deportation in violation of 8 U.S.C. § 1326, the Tucson Division of the District of Arizona employs a departure-based program.

The defendant typically pleads guilty to one count of violating Title 8, United States Code, Section 1326, and the Government generally agrees to a reduction pursuant to U.S.S.G. § 5K3.1. The amount of the reduction depends on the defendant's criminal history and on whether or not he/she was on supervised release at the time of his/her offense. If the defendant's offense level under U.S.S.G. § 2L1.2 is level 24, 20, or 16 (meaning, essentially, that the defendant has a prior aggravated felony of some type), the defendant receives a three-level reduction. If the defendant's offense level under § 2L1.2 is level 12 or 8, the defendant receives a four-level reduction if his/her Criminal History Category is not greater than IV, and a three level reduction if his/her Criminal History Category is V or VI.

If the defendant is on supervised release, the amount of the reduction is decreased one level. That is, if a defendant's offense level is 24, 20, or 16, and he/she was on supervised release, he/she gets a two-level reduction. If the defendant's offense level is 12 or 8, he/she gets a three-level reduction if his/her Criminal History Category is not greater than IV, and a two-

¹ As submitted for fiscal year 2005.

level reduction if his/her Criminal History Category is V or VI. In these cases, the Government also pursues the supervised release violation, if it is pending in the District of Arizona. In the supervised release revocations, the Government agrees that the term of imprisonment on the revocation shall not exceed the midpoint of the applicable range determined pursuant to U.S.S.G. § 7B1.4.

Phoenix and Yuma Divisions

For defendants eligible for fast-track disposition and charged with illegal entry after deportation in violation of Title 8, United States Code, Section 1326, the Phoenix and Yuma Divisions of the District of Arizona employ a departure-based program.

The defendant typically pleads guilty to one count of violating Title 8, United States Code, Section 1326(b)(2), and the Government generally agrees to a reduction pursuant to U.S.S.G. § 5K3.1. The amount of the reduction depends on the defendant's criminal history and on whether or not he/she was on supervised release at the time of his/her offense. If the defendant's offense level under U.S.S.G. § 2L1.2 is level 24, he/she receives a four-level reduction (only three-level if on supervised release). If the defendant's offense level is 20, he/she receives a two-level departure (only one-level if on supervised release). If the defendant's offense level is 16, he/she receives a one-level reduction (no reduction, only low-end recommendation if on supervised release).

CENTRAL DISTRICT OF CALIFORNIA

For defendants who have committed the offense of illegal entry after deportation in violation of Title 8, United States Code, Section 1326, the Central District of California employs

a "fast-track" charge-bargain program.

Under that program, the Government sometimes agrees to forego prosecution under Title 8, United States Code, Section 1326 and to permit such offenders to enter guilty pleas to two counts of Title 8, United States Code, Section 1325 ("fast-track cases") or one count of Title 8, United States Code, Section 1325 ("super-fast-track cases"). The defendant must waive preparation of a full presentence report and accept immediate sentencing to the statutory maximum of 30 months' imprisonment in fast-track cases or 6 months' imprisonment in super-fast-track cases. The decision whether to enable a Section 1326-eligible defendant to plead guilty to either one or two Section 1325 counts, or instead to prosecute the offender under Section 1326, is largely dependent on the severity and age of the offender's earlier crimes, on the sentences received for those crimes, on the offender's Criminal History Category, and on whether the offender has been convicted under Section 1326 in the past. As a general matter, the determination whether earlier convictions are sufficiently severe to warrant prosecution under Section 1326 rather than Section 1325, or for two Section 1325 counts rather than one, is linked to the distinctions between various offenses described in U.S.S.G. § 2L1.2(b)(1).

EASTERN DISTRICT OF CALIFORNIA

For defendants eligible for fast-track disposition and charged with illegal entry after deportation in violation of Title 8, United States Code, Section 1326, the Eastern District of California employs a departure-based program.

The Government typically agrees to pursue only one count of Title 8, United States Code, Section 1326; to dismiss all other counts (usually this is the sole count of the indictment so

dismissal is not applicable); to recommend a three-level reduction in total offense level for acceptance of responsibility and a four-level reduction in offense level pursuant to § 5K3.1; and to stipulate to a sentence within the applicable Sentencing Guidelines range.

NORTHERN DISTRICT OF CALIFORNIA

For defendants eligible for fast-track disposition who have committed the offense of illegal entry after deportation in violation of Title 8, United States Code, Section 1326, the Northern District of California employs a charge-bargain program.

The Government generally agrees to file an information alleging two counts of Title 8, United States Code, Section 1325, and agrees not to bring additional charges arising from the conduct that supports the Title 8, United States Code, Section 1325 charges. The defendant enters pleas of guilty to two counts of Title 8, United States Code, Section 1325. The defendant agrees in the binding plea agreement to a 30-month prison sentence (the statutory maximum sentence for two counts of Title 8, United States Code, Section 1325 running consecutively) followed by a term of supervised release. The defendant must be able to make a factual basis for the guilty pleas to violating Title 8, United States Code, Section 1325.

SOUTHERN DISTRICT OF CALIFORNIA

For defendants eligible for fast-track disposition who have committed the offense of illegal entry after deportation in violation of Title 8, United States Code, Section 1326, the Southern District of California employs a charge-bargain program.

The Government typically agrees to prosecute the defendant under Title 8, United States Code, Section 1325 (or some alternative charge, e.g., Title 18, United States Code, Sections 911,

1001, or 1546) and not seek an indictment under Title 8, United States Code, Section 1326. The District employs a "two-tier" charge-bargain for defendants with a +16 aggravated felony conviction under U.S.S.G. § 2L1.2. Assuming a total offense level of 21 (8 + 16 - 3), this system provides a 30-month offer for defendants in Criminal History Category (CHC) I, II, III and IV, and a 48-month offer for defendants in CHC V and VI. The 30-month sentence is based on guilty pleas to two counts of violating 8 Title 8, United States Code, Section 1325 (two felony counts to run consecutively—if they have a prior Section 1325 misdemeanor conviction—or one misdemeanor count and one felony count with the felony count to run consecutively to the misdemeanor count). The 48-month sentence is based on guilty pleas to two or three counts of violating Title 8, United States Code, Section 1325 (two felony counts to run consecutively—if they have a prior Section 1325 misdemeanor conviction—or one misdemeanor count and two felony counts with the felony counts to run consecutively and the misdemeanor count to run concurrently).

Certain defendants whose prior record yields a Sentencing Guidelines range of less than 30 months are permitted to plead to Title 18, United States Code, Sections 911, 1001, or 1546 if they agree to the fast-track requirements. In addition, "coyote" or "recidivist" deported aliens, who have no prior criminal history but who have extensive immigration contacts, are prosecuted under Title 8, United States Code, Section 1326 with a zero to 6 month Sentencing Guidelines range and a joint recommendation for a 60-day sentence. The defendant must be able to make a factual basis for the guilty pleas to violating Title 8, United States Code, Section 1325.

DISTRICT OF IDAHO

For defendants eligible for fast-track disposition and charged with illegal entry after deportation in violation of Title 8, United States Code, Section 1326, the District of Idaho employs a departure-based program.

Where a defendant has a Criminal History Category of not greater than IV or has three or fewer deportations, the Government agrees to recommend a two-level downward departure from the Sentencing Guidelines range that the district court finds to be applicable pursuant to U.S.S.G. § 5K3.1.

DISTRICT OF NEBRASKA

For defendants eligible for fast-track disposition and charged with illegal entry after deportation in violation of Title 8, United States Code, Section 1326, the District of Nebraska employs a departure-based program.

The defendant enters a plea of guilty to one count of Title 8, United States Code, Section 1326. The Government agrees to recommend a two-level downward departure from the Sentencing Guidelines range that the court finds to be applicable pursuant to U.S.S.G. § 5K3.1.

DISTRICT OF NEW MEXICO

For defendants eligible for fast-track disposition and charged with illegal entry after deportation in violation of Title 8, United States Code, Section 1326, the District of New Mexico employs a departure-based program.

If the defendant has a prior felony conviction that is: (1) a drug trafficking offense for which the sentence imposed exceeded 13 months; (2) a firearms offense; (3) a human trafficking

offense; or (4) an alien smuggling offense committed for profit, the Government extends a fast-track plea that is a Fed. R. Crim. P. 11 (c)(1)(C) offer to a total offense level of 19, which represents a two-level downward departure from an adjusted offense level of 21. If the illegal alien defendant has a felony narcotics conviction, but was sentenced to less than 13 months, the Government extends a fast-track plea offer that is a Rule 11 (c)(1)(C) offer to a total offense level of 15, which represents a two-level departure from an adjusted offense level of 17. For all other aggravated felonies, as defined by Title 8, United States Code, Section 1101(a)(43), the fast-track plea offer is a Rule 11 (c)(1)(C) offer to an offense level of 12, which represents a one-level downward departure from an adjusted offense level of 13. All other non-aggravated felonies are offered a fast-track plea offer to a Rule 11 (c)(1)(C) offense level of 9, which represents a one-level downward departure from an adjusted offense level of 10. The ultimate sentencing range is determined by reference to the defendant's actual Criminal History Category as determined by the district court after the preparation of a Presentence Report.

DISTRICT OF NORTH DAKOTA

For defendants eligible for fast-track disposition and charged with illegal entry after deportation in violation of Title 8, United States Code, Section 1326, the District of North Dakota employs a departure-based program.

The defendant enters a plea of guilty to one count of Title 8, United States Code, Section 1326. The Government agrees to recommend an additional four-level reduction in the total offense level pursuant to U.S.S.G. § 5K3.1, regardless of the extent of any enhancement, but with no further recommendation as to a sentence within the applicable Sentencing Guidelines range.

offense level of 8, with specific offense characteristic enhancements determined by the defendant's criminal history: (A) 16 levels if the defendant has a prior conviction for a serious drug offense or a crime of violence; (B) 12 levels for less serious drug crimes; and (C) 8 levels for all other aggravated felonies. Defendants are required to plead guilty to either one or two counts of illegal entry without inspection, in violation of Title 8, United States Code, Section 1325. The first conviction of that charge carries a maximum penalty of six months' imprisonment, and the second carries a maximum term of 24 months. Defendants who would be subject to category "A" enhancements are required to agree to a 30 month sentence, the statutory maximum for two Section 1325 counts run consecutively. Defendants in the "B" category also plead guilty to two counts, but their sentences are to run concurrently, resulting in a 24 month sentence. Finally, the least serious offenders, those in the "C" category, are permitted to plead guilty to a single Section 1325 charge, and receive a six-month sentence. Defendants must be able to make a factual basis for their guilty pleas to violating Title 8, United States Code, Section 1325.

SOUTHERN DISTRICT OF TEXAS

For defendants eligible for fast-track disposition and charged with illegal entry after deportation in violation of Title 8, United States Code, Section 1326, the Southern District of Texas employs a departure-based program.

The defendant enters a plea of guilty to violating Title 8, United States Code, Section 1326. The Government recommends a two-level reduction in offense level pursuant to § 5K3.1 for an early plea and a two-level reduction in total offense level for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a).

WESTERN DISTRICT OF TEXAS

For defendants eligible for fast-track disposition and charged with illegal entry after deportation in violation of Title 8, United States Code, Section 1326, the Pecos, Del Rio, and El Paso Divisions of the Western District of Texas employ a departure-based program.

The fast-track adjustments do not apply in the San Antonio, Austin, Waco and Midland Divisions. The defendant enters a plea of guilty to violating Title 8, United States Code, Section 1326. The Government agrees to recommend a one-level reduction in offense level pursuant to § 5K3.1 for an early plea and a two-level reduction in total offense level for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a).

WESTERN DISTRICT OF WASHINGTON

For defendants eligible for fast-track disposition who have committed the offense of illegal entry after deportation in violation of Title 8, United States Code, Section 1326 and who

have a Criminal History Category (CHC) of II through V, the Western District of Washington employs a charge-bargain program.

Instead of being prosecuted for a violation of Title 8, United States Code, Section 1326, the defendant is offered a plea to two counts of violating Title 8, United States Code, Section 1325(a)(2) (eluding examination at entry). If the 16-level enhancement under U.S.S.G. § 2L1.2(b) (1)(A) is applicable, the defendant will plead to a two-count Section 1325(a)(2) Information and will stipulate to a sentence (consecutive) of 30 months. If the 16-level is not applicable, the defendant will plead to a two-count Section 1325(a)(2) Information with a sentence (concurrent) of 24 months.

If the defendant qualifies for fast-track disposition, but has a Criminal History Category of VI, the Western District of Washington employs a departure-based program. The Government will recommend a two-level reduction—if the total offense level is based on U.S.S.G. § 2L1.2(b)(1)(A)—and a sentence at the low end of the applicable Sentencing Guidelines range. The defendant must be able to make a factual basis for his/her guilty pleas to violating Title 8, United States Code, Section 1325.