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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

GENERAL ORDER NO. 2012 -18

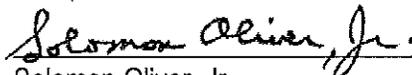
**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

APPROVAL OF THE ILLEGAL REENTRY)
FAST-TRACK PROGRAM AND POLICY FOR) ORDER NO. 2012 -18
THE NORTHERN DISTRICT OF OHIO)
)

A majority of the judges of this Court, by mail vote taken pursuant to Sixth Amended Administrative Order No. 95-22, approved the Illegal Reentry Fast-Track Program Policy and Procedures for the Northern District of Ohio.

IT IS SO ORDERED.

For the Court


Solomon Oliver, Jr.
Chief Judge
United States District Court

NORTHERN DISTRICT OF OHIO ILLEGAL REENTRY FAST-TRACK PROGRAM

POLICY AND PROCEDURES

Effective March 1, 2012

[Revised 8-28-12]

Introduction

In accordance with the directives and guidance contained in the memorandum from Deputy Attorney General James Cole dated January 31, 2012 relating to the implementation of a new national fast-track program, effective March 1, 2012 defendants who are charged under 8 U.S.C. § 1326 with illegal reentry into the United States after having previously been removed are potentially eligible for a downward departure from the total offense level (TOL) found by the District Court (after application of the adjustment for acceptance of responsibility). Those with a criminal history category (CHC) of V or below and who have no prior felony convictions for a serious violent offense and are otherwise not disqualified are potentially eligible for a four-level downward departure from the TOL; those with a CHC of VI who otherwise are not disqualified are potentially eligible for a two-level downward departure, with supervisory approval and on a case-by-case basis, after considering the interest of public safety. Set forth below are the eligibility requirements for a downward departure pursuant to this fast-track program, as well as certain specified disqualifiers.

Eligibility Requirements

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

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

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

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

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

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

d. the defendant agrees to waive the right to appeal and the opportunity to challenge his or her conviction under 28 U.S.C. § 2255, except on the claims of ineffective assistance of counsel or prosecutorial misconduct;

e. the defendant agrees not to contest detention or request a preliminary hearing until a decision has been made that the defendant will not participate in, or is not eligible for, the fast track program; and

f. the defendant agrees to waive the timeline requirements set out in local rule 32.2 regarding presentence reports and sentencing proceedings. Additionally, the defendant agrees to waive the objection period and agrees to handle all objections at sentencing.

g. the defendant, based upon his own knowledge of the facts associated with the prosecution, does not require full disclosure and examination of the A-File or otherwise extensive additional discovery.

Disqualifiers

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

1. the defendant previously has been convicted of a serious violent felony, an offense related to firearms, or a narcotics offense involving drug trafficking or possession of narcotics in trafficking amounts;

2. the defendant previously has been removed from the United States four or more times prior to the instant illegal

reentry offense;

3. the defendant previously has been convicted under 8 U.S.C. § 1326 for illegal reentry or other immigration-related offenses;

4. the defendant previously participated in a fast-track program;

5. the defendant is part of an independent federal criminal investigation;

6. the defendant is under any form of court or correctional supervision; or

7. the circumstances at the time of the defendant's arrest or the nature and extent of his or her previous criminal record (including consideration of original charges as well as final dispositions) warrant disqualification from the fast-track program and a supervisor has approved such ad hoc disqualification.

Procedures and Definitions

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

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

A. Availability of full presentence report procedures

A Fast-Track Discovery Package will be provided to the

defense attorney at the initial appearance. A duplicate copy of that discovery will be provided to a representative of the Pretrial Services and Probation Office together with a stamped copy of the complaint and arrest warrant and a cover sheet designating the case as a potential fast-track prosecution. The cover sheet will include contact information for the case agent, who should expect a call from the assigned probation officer regarding the contents of the alien's official records, commonly referred to as the A-File.

Within approximately one business day, an officer will be assigned to the defendant's case and be responsible for preparing the presentence report. With a waiver of local Rule 32.2 timelines and the district judge's acquiescence in permitting the objection period to be waived, presentence reports for the typical Fast-Track case will be disclosed to all parties and the court 7 days prior to sentencing but no less than 45 days from the date of initial appearance. If the court requires the objections to be submitted and reviewed by probation, an additional fourteen days will be added to the process.

Timely preparation of the presentence report is dependent upon the U.S. Pretrial Services and Probation Office being able to interview the defendant in a timely fashion. Defense counsel are to make a reasonable effort to be available for the interview, which may be conducted as early as the date of the arraignment.

The waiver of the formal reporting of objections to the officer does not alleviate the defense attorney's responsibility to review the entire report with his or her client prior to the sentencing date. Any objections by either party should be submitted to the court in writing or as part of any written sentencing memorandum.

B. Discovery Procedures

The discovery package defense counsel will receive at the initial appearance will contain the following information: Prior deportations, including notice of charges, any order of removal, and warrant of removal (for reinstatements, the reinstatement order and the warrant of removal); any and all Brady material in the possession of the prosecution team; information regarding the current encounter, including Record of Deportable Alien or other investigative reports; any statement made by the defendant; police report(s) (if applicable); fingerprint card(s); and prior criminal record documents, including (if available) indictment,

plea, and sentencing journal entries.

Involvement in the Fast-Track Program does not relieve defense counsel of his or her discovery obligations, including the obligation to review all discovery received and to consult with the defendant about the same.

C. Preliminary Examinations, Detention Hearings, and Waivers

The defendant shall waive the preliminary examination and Pretrial detention hearing at the initial appearance, reserving the right to those hearings if a defendant opts out of participation in the program. The required waiver form shall provide for the following additional waivers:

1. The waiving of the 30 day time limit for filing the criminal indictment or information and an extension of 15 additional days for such filing;

2. The defendant's Consent to the Court's Inspection of Presentence Report Prior to Plea of Guilty, Nolo Contendere, or Finding of Guilt, and

3. The waiving of the time limits of Local Rule 32.2 including the 14 day period associated with the filing of objections and a formal response to those objections by the Pretrial Services and Probation Officer.

Additionally, Defense counsel shall be provided a separate Waiver of Indictment which needs to be returned to the USAO within 14 days (ideally within 7 days) of the initial appearance to facilitate the filing of the criminal information.

D. Criminal Information

Upon receipt of the signed waiver of indictment, the AUSA shall prepare and file a criminal information charging the offense of Illegal Reentry following Removal.

Ordinarily, the criminal information will be filed within 10 days of receipt of the notice from the defendant of his/her desire to participate in the program.

E. Arraignment and Plea Procedures

See the attached standard plea agreement for use in fast-

track cases. This form will be used to draft the plea agreement. It is anticipated that the plea of guilty will be made at the arraignment if that proceeding is set before the district judge. The plea agreement will provide for a four-level or two-level reduction in the sentencing guidelines.

If available, the assigned probation officer may seek to have the initial interview with the defendant conducted immediately before or following the arraignment if the court-assigned interpreter is available. This procedure will expedite the preparation of the presentence report.

The parties will recommend that sentencing be set by the court no sooner than 49 days following the initial appearance.

F. Sentencing and Presentence Reports

The parties may request the assigned district court judge to set the sentencing hearing at the earliest date which will allow for timely disclosure of the presentence report (at least four days prior to the sentencing to allow for the filing of objections and the court's review of the presentence report, but not sooner than 49 days from the initial appearance).

All objections shall be made in writing to the court and filed prior to the sentencing date. There will be no first disclosure of the report for the purpose of making written objections with the pretrial services and probation officer since that extra disclosure procedure requires an additional fourteen days.

G. Referral for Removal from the United States

The AUSA will notify the Enforcement and Review Office (ERO) (charged with the physical removal of aliens from the United States) of the projected date of release of the defendant from the sentence of imprisonment (to facilitate an expeditious removal from the United States). Defendant should cooperate with ERO's requests for assistance in obtaining any necessary travel documents.

H. Non-Fast-Track cases

1. Cases which do not qualify for the Fast-Track Program will be treated in accordance with usual practices of the United States Attorney's Office for the handling of criminal cases.

2. If a defendant opts not to participate in the Fast-Track Program, the defendant will proceed without the benefit of the departure recommendation associated with the program.

a. The USAO will immediately notify the United States Pretrial Services and Probation Office that the defendant has chosen not to participate in the Fast-Track program.

b. A normal full Presentence Report will be prepared pursuant to local rule.

3. If defense counsel requests, the assigned prosecutor will consult with the Chief or Deputy Chief of the Major and Cyber Crimes Unit of the USAO to confirm that the defendant does not qualify for participation in the Fast-Track Program.

a. If the defendant opts out of the program or fails to qualify for or to fully comply with the requirements of the program, the USAO will consistently object to variances and departures based on fast-track policy considerations.

NOTICE TO DEFENSE ATTORNEY

**FAST-TRACK PROGRAM FOR EXPEDITED RESOLUTION OF
"ILLEGAL REENTRY FOLLOWING REMOVAL" PROSECUTIONS
IN THE NORTHERN DISTRICT OF OHIO**

Your client is the subject of a criminal complaint charging illegal reentry following removal. The United States Attorney's Office for the Northern District of Ohio (USAO) has identified your client as being a potential candidate for expedited prosecution pursuant to this district's Fast-Track Program. The Fast-Track Program is not for everyone, including those defendants seeking to--

- proceed to trial on the elements of the offense,
- contest the elements of the offense through pretrial motions,
- conduct a full review of the A-File or otherwise seeking extensive discovery of contested issues, or
- challenge available evidence through suppression motions.

However, defendants charged with being illegally present in the United States following removal often express a desire for an expedited resolution of the criminal case and to take advantage of a shorter sentence than normally would apply to such a charge. For those defendants, the Fast-Track Program may provide an opportunity for an expedited resolution of the criminal charges with exposure to a shorter term of imprisonment.

Your client has been identified as a potential candidate for participation in our Fast-Track Program. As such, you may wish to consider waiving the preliminary examination and pretrial detention hearings while you review the attached fast-track discovery package and to waive the time limits set out in Local Rule 32.2 to facilitate the production of a presentence report at an earlier time than ordinarily is available.

The discovery package you will receive at the initial appearance will contain the following information: Prior deportations, including notice of charges, any order of removal, and warrant of removal (for reinstatements, the reinstatement order and the warrant of removal); any and all Brady material in the possession of the prosecution team; information regarding the current encounter, including Record of Deportable Alien or other investigative reports, any statement made by the defendant, police report(s) (if applicable), and fingerprint card(s); and

prior criminal record documents, including (if available) indictment, plea, and sentencing journal entries.

A fast-track participation waiver of rights form is required to be executed within one week of arrest. The form will include:

1. Waiver of pretrial detention hearing;
2. Waiver of preliminary examination;
3. Waiver of 30-day speedy indictment provision with an extension of 15 days for filing of an indictment or criminal information;
4. Waiver of Local Rule 32.2 and waiver of disclosure of report for objections; and
5. Request for preparation of a presentence report and authorization to disclose the report to the court prior to the filing of the criminal information and the entering of a plea of guilty.

You can anticipate the criminal information to be filed within one week of the receipt of the signed waiver of indictment. The ability to prepare the presentence report within 45 days depends upon the timely receipt from you of requested documents and the ability of the probation office to conduct the interview of your client on or as near as possible to the arraignment date.

Please find attached hereto a copy of the Policy and Procedures for the NDOH Fast-Track Program for more details and a sample plea agreement.

Any questions regarding this program can be directed to the assigned AUSA or to AUSA Phillip J. Tripi at 216-622-3769. Deputy Criminal Division Chief Sharon Long supervises the program.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.
)	
Plaintiff,)	MAGISTRATE JUDGE
)	
-vs-)	
)	
_____ ,)	<u>WAIVERS AND CONSENTS</u>
)	<u>RELATED TO FAST-TRACK</u>
Defendant.)	<u>PROGRAM</u>
)	

I, _____, request to have my case resolved pursuant to the
(Name of Defendant)

Northern District of Ohio Fast-Track Program. I understand that to accomplish an expedited resolution of my criminal matter, there are a number of waivers and consents associated with the program. By signing this document, I voluntarily agree to the waivers and consents provided below.

WAIVER OF DETENTION HEARING

I, the above-named defendant, having been accused of violating Title 8, United States Code, Section 1326(a), being advised of the nature of the charge and of my rights and under advice of counsel, hereby waive in open court my right to a detention hearing and consent that I be held without bail pursuant to 18 U.S.C. § 3142. I reserve the right to have a hearing at a later

Defendant's Initials _____

time if I choose not to participate in the fast-track program. I understand that I will be detained in the custody of the U.S. Marshal.

WAIVER OF PRELIMINARY HEARING

I, the above-named defendant, understand that I have been charged with an offense in a criminal complaint filed in this court. A magistrate judge has informed me of my right to a preliminary hearing under Fed. R. Crim. P. 5. I agree to waive my right to a preliminary hearing under Fed. R. Crim. P. 5. I reserve the right to request the hearing at a later time if I choose not to participate in the fast-track program.

**DEFENDANT'S CONSENT TO COURT'S INSPECTION OF PRESENTENCE REPORT
PRIOR TO PLEA OF GUILTY, NOLO CONTENDERE, OR FINDING OF GUILT
AND WAIVER OF TIMELINE REQUIREMENTS IN LOCAL RULE 32.2**

I, the above-named defendant, hereby consent to a presentence investigation by the probation office of the United States District Court and review of my presentence report by a judge presiding over my case at any time, including the time prior to entry of a plea of guilty or nolo contendere or a finding of guilt.

I understand that this investigation is being conducted as a pre-plea report (prior to plea or conviction), and that disclosure of this pre-plea report meets the criteria pursuant to Local Rule 32.2 for full disclosure and objection periods. I further understand that the Probation Office will

Defendant's Initials _____

modify the report only upon order of the sentencing judge. Accordingly, I hereby waive my right to a second objection period, should the report be modified by order of the Court.

I hereby agree to waive the timeline requirements set out in Local Rule 32.2 regarding presentence report and sentencing proceedings. Additionally, I agree to waive the objection period and agree to handle all objections at sentencing.

**DEFENDANT’S CONSENT TO WAIVE TIMELINE REQUIREMENT FOR
FILING OF INDICTMENT OR INFORMATION AND EXTENSION OF TIME**

I, the above-named defendant, hereby agree to waive the 30-day timeline requirement set out in 18 U.S.C. § 3161(b) regarding the filing of any information or indictment following the arrest of an individual on criminal charges. Additionally, I agree to a 15-day extension of the time period for a total of 45 days from the date of my criminal arrest on the complaint charging me with illegal reentry following deportation for the filing of the criminal information or indictment.

Defendant’s Initials _____

DEFENDANT'S ACKNOWLEDGMENT

I have read, or had read to me, all of the consents and waivers identified in this document and fully understand them. No promise has been made to me as to what the final disposition of my case will be.

Defendant

Counsel for Defendant

Defendant is ordered detained in custody of U.S. Marshal.

It is so ordered that any criminal information or indictment be filed within 45 days of the criminal arrest of the defendant.

APPROVED AND ORDERED:

United States Magistrate Judge

Date

(Form revised August 28, 2012)