



Office of the Attorney General

Washington, D. C. 20530

September 22, 2003

TO: All United States Attorneys

FROM:

John Ashcroft

Attorney General

A handwritten signature of John Ashcroft in black ink, written over the printed name and title.

SUBJECT: Department Principles for Implementing an Expedited Disposition or "Fast-Track" Prosecution Program in a District

Section 401(m)(2)(B) of the 2003 Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act ("PROTECT Act") instructs 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). Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to fast-track programs that rely on downward departures, the Memorandum I have issued on "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" likewise requires Attorney General approval for any "fast-track" program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense. This memorandum sets forth the general criteria that must be satisfied in order to obtain Attorney General authorization for "fast-track" programs and the procedures by which U.S. Attorneys may seek such authorization.¹

I. REQUIRED CRITERIA FOR ATTORNEY GENERAL AUTHORIZATION OF A "FAST-TRACK" PROGRAM.

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. Such programs are not to be used simply to avoid the ordinary application of the Guidelines to a particular class of cases.

¹ The requirement that a fast-track program be approved by the "Attorney General" under the PROTECT Act or under these Principles 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).

In order to obtain Attorney General authorization to implement a "fast track" program, the United States Attorney must submit a proposal that demonstrates that —

- (A) (1) the district confronts an exceptionally large number of a specific class of offenses within the district, and failure to handle such cases on an expedited or "fast-track" basis would significantly strain prosecutorial and judicial resources available in the district; or
- (2) the district confronts some other exceptional local circumstance with respect to a specific class of cases that justifies expedited disposition of such cases;
- (B) declination of such cases in favor of state prosecution is either unavailable or clearly unwarranted;
- (C) the specific class of cases consists of ones that are highly repetitive and present substantially similar fact scenarios; and
- (D) the cases do not involve 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).

These criteria will ensure that "fast-track" programs are implemented only when warranted. Thus, these criteria specify more clearly the circumstances under which a fast-track program could properly be implemented based on the high incidence of a particular type of offense within a district — one of the most commonly cited reasons for justifying fast-track programs. Paragraph (A)(2), however, does not foreclose the possibility that there may be some other exceptional local circumstance, other than the high incidence of a particular type of offense, that could conceivably warrant "fast-track" treatment.

II. REQUIREMENTS GOVERNING UNITED STATES ATTORNEY IMPLEMENTATION OF FAST-TRACK PROGRAMS.

Once a United States Attorney has obtained authorization from the Attorney General to implement a fast-track program with respect to a particular specified class of offenses, the United States Attorney may implement such program in the manner he or she deems appropriate for that district, provided that the program is otherwise consistent with the law, the Sentencing Guidelines, and Department regulations and policy. Any such program must include the following elements:

- A. *Expedited disposition.* 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 an offense covered by the fast-track program.

B. *Minimum requirements for "fast-track" plea agreement.* The Defendant must enter into a written plea agreement that includes at least the following terms:

- i. The defendant agrees to a factual basis that accurately reflects his or her offense conduct;
- ii. The defendant agrees not to file any of the motions described in Rule 12(b)(3), Fed. R. Crim. P.
- iii. The defendant agrees to waive appeal; and
- iv. 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.

C. *Additional provisions of plea agreement.* In exchange for the above, the attorney for the Government may agree to move at sentencing for a downward departure from the adjusted base offense level found by the District Court (after application of the adjustment for acceptance of responsibility) of a specific number of levels, not to exceed 4 levels. The plea agreement may commit the departure to the discretion of the district court, or the parties may agree to bind the district court to a specific number of levels, up to four levels, pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P. A "charge bargaining" fast-track program should provide for sentencing reductions that are commensurate with the foregoing. The parties may otherwise agree to the application of the Sentencing Guidelines consistently with the provisions of the Sentencing Guidelines and Rule 11.

III. PROCEDURES WITH RESPECT TO IMPLEMENTATION OF FAST-TRACK PROGRAMS.

Procedures for Attorney General approval. Before implementing a fast-track program, a district must submit to the Director of the Executive Office for United States Attorneys (EOUSA), for Attorney General approval, its proposal to implement a fast-track program. Likewise, any such program in existence on the date of this Memorandum may not be continued after October 27, 2003, unless a fast-track proposal has been submitted and approved. Any fast-track proposal must contain the following elements:

- A. An identification of the specific category of violations to be covered by the fast-track program.
- B. A detailed explanation of why the criteria described in Section I are satisfied with respect to such offenses. If the district has previously implemented a fast-track program for such offenses (*i.e.*, prior to the date of this memorandum), the explanation should include a detailed discussion of the experience under such program in the district.

Notice to EOUSA of compliance with additional requirements for fast-track programs.

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

cc: The Acting Deputy Attorney General
The Associate Attorney General
The Solicitor General
The Assistant Attorney General, Criminal Division
The Director, Executive Office for United States Attorneys