

**FAST-TRACK POLICIES FOR ILLEGAL REENTRY CASES
BY DISTRICT AND CIRCUIT
DECEMBER 2013**

CIRCUIT	DISTRICT	FAST TRACK PROGRAM?	KNOWN DETAILS OF PROGRAM	SRC HAS COPY OF WRITTEN POLICY?	VARIANCE BASED ON FAST-TRACK DISPARITY?
D.C.					No case precludes it.
	District of Columbia	Yes, but no formal local policy.	4-level downward departure if no prior violent felony and defendant agrees to sentence within the guideline range.		
FIRST					Yes. <i>United States v. Rodriguez, 527 F.3d 221, 229-30 (1st Cir. 2008).</i>
	Maine	Yes.	<p>4-level downward departure for eligible defendants in CHC III or lower.</p> <p>2-level downward departure for eligible defendants in CHC IV or higher <u>or</u> who have been previously convicted of aggravated assault, arson, a firearms or explosives offense, an immigration-related or drug trafficking offense, or who have been previously deported two or more times.</p> <p>Defendant must</p> <ul style="list-style-type: none"> • Enter into a plea agreement within 30 days; • Agree not to file any motions under FRCP 12(b)((3). <p>A defendant is ineligible if previously convicted of murder, voluntary manslaughter, kidnapping, a forcible sex offense, a child-</p>	Yes.	

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			<p>sex offense (including child pornography offenses), or a national security or terrorism offense, regardless of the sentence imposed, or any other offense for which the defendant received a sentence of incarceration of ten years or more; or if a supervisory AUSA determines that the circumstances at the time of the defendant's arrest or any other aggravating factors render fast-track inappropriate.</p> <p>Waive right to argue for a variance under 18 U.S.C. § 3553; waive right to appeal or challenge conviction under § 2255, except ineffective assistance of counsel.</p>		
	Massachusetts	Yes, but terms have not been provided in writing.	<p>4-level departure for defendants in CHC IV or below.</p> <p>2-level departure for defendants in CHC V & VI <u>or</u> if prior conviction for aggravated assault, arson, firearm possession, explosives, drug trafficking, <u>or</u> prior conviction for illegal reentry; immigration offense; previous participation in fast track; is under any form of court supervision.</p> <p>Defendant must agree to the following:</p> <ul style="list-style-type: none"> • To plead within 30 days of arraignment; • To agree to binding plea under FRCP 11(c)(1)(C); • Not to file any motions; • To factual basis and stipulate to prior conviction forming basis of enhancement. <p>Disqualified if prior conviction for most serious violent offenses (murder, kidnapping, forcible sex offenses, child sex offenses (including child pornography offenses), national security and</p>		

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			<p>terrorism offenses); any prior with sentence of 10 or more years; if deported or removed 2 or more times (possible change to 3); and circumstances of arrest or other factors that may make defendant inappropriate as candidate.</p> <p>Waive variance arguments; appeal. PSR will NOT be waived</p>		
	New Hampshire	Yes.	<p>4-level downward departure for eligible defendants in CHC III or lower.</p> <p>2-level downward departure for eligible defendants in CHC IV or higher for a defendant who has one or more priors under 8 U.S.C. § 1326 at least one of which is countable under the guidelines; has one or more immigration-related prior offense at least one of which is countable under the guidelines; if part of an independent federal criminal investigation; if under court or correctional supervision; or there are certain aggravating factors U.S. Attorney can identify circumstances at time of arrest or other aggravating factors.</p> <p>Defendant must agree within 30 days to enter into a plea agreement pursuant to FRCP 11(c)(1)(B) or (C); agree to factual basis and stipulate to facts of prior removal(s) and any conviction that triggers an increase in applicable statutory maximum or any removal that triggers increase in max sentence under 1326(b)(4); agree not to file any motions under FRCP 12(b)(3).</p> <p>A defendant is ineligible based on defendant’s prior violent felony convictions, including murder, kidnapping, forcible sex offenses, child-sex offenses, child pornography offenses, drug trafficking, firearms offenses, others including those for domestic violence crimes that reflect history of serious violent crime; having been excluded from United States because excludable under statute</p>	Yes.	

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			<p>relating to terrorist activities or alien terrorist; previously deported 3 or more times; previous participation in fast track program.</p> <p>The list of prior convictions establishing ineligibility is illustrative only. The U.S. Attorney may determine that <i>any</i> defendant is ineligible or eligible.</p> <p>Waive right to argue for a variance under 18 U.S.C. § 3553; right to appeal or challenge conviction as specified in plea agreement; presentence investigation</p>		
	Puerto Rico	Yes.	<p>Up to 4-level reduction, at prosecutor's discretion.</p> <p>Only 2-level reduction if the deportation followed a conviction for a drug trafficking offense or crime of violence.</p> <p>Ineligible if defendant, in illegally re-entering, either tested positive to drugs or was under some kind of supervision.</p> <p>Waive preliminary hearing, indictment, appeal, right to argue to variance or departure.</p>		
	Rhode Island	Yes.	<p>4-level reduction for fully eligible defendant</p> <p>2-level reduction for partially eligible.</p> <p>Defendant must plead quickly, agree not to file any motions, and agree not to ask for a below-guidelines sentence.</p> <p>Eligibility restricted based on prior record, prior deportations, violence, guns, drugs, and gang affiliation.</p>	Yes.	

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SECOND					No case precludes it.
	Connecticut	Yes.	<p>4-level reduction for defendants in CHC V or lower.</p> <p>2-level reduction for defendants not otherwise disqualified and who have a prior conviction for a firearms offense, including unlawful possession of weapons or crime involving use of explosives, including explosive materials or destructive device; have been previously deported one time; have one prior conviction for illegal reentry under 8 U.S.C. § 1326; have one or more prior convictions for immigration-related offenses; have previously participated in a fast-track program; are under any form of court or correctional supervision.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts of prior conviction and removal; • Agree not to file any motions under Rule 12(b)(3); • If requested by the government, agree to enter into a sentencing agreement pursuant to Rule 11(c)(1)(B) or (C). <p>Ineligible if defendant has been previously convicted of murder, manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or any other offense that reflects a history of serious violent crime; has been previously convicted of a child pornography or other child-sex offense; has been previously convicted of a national security or terrorism offense; has been previously deported or removed 2 or more times; has more than one prior conviction for ill reentry under 8 U.S.C. § 1326; has been previously convicted of a drug trafficking offense for which the defendant was sentenced to 5 years or more; has been previously</p>	Yes.	

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			<p>convicted of any offense for which the defendant was sentenced to 10 years or more; has a CHC VI; or any other aggravating factors identified by AUSA, with supervisory approval.</p> <p>Waive right to argue for a variance under 18 U.S.C. § 3553(a); right to appeal and opportunity to challenge conviction under 28 U.S.C. §2255 – except on the issue of ineffective assistance of counsel.</p>		
	New York Eastern	Yes.	<p>4-level departure for eligible defendants.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Not file any motions, including but not limited to those under FRCP 12(b)(3); • Allocute to factual basis that accurately reflects offense conduct; • Agree within 30 days to enter into plea agreement in which defendant <ul style="list-style-type: none"> • Stipulates to prior conviction and removal (though not guideline calculation); • Consents to an order of removal and not challenge or seek relief from removal. <p>Ineligible if defendant has 7 or more criminal history points; has a prior conviction for a serious violent felony (defined at 18 U.S.C. § 3559(c)(2)(F)), or serious drug offense (defined at 18 U.S.C. § 3559(c)(2)(H)); has been previously removed 2 or more times; has been previously convicted of illegal reentry under 8 U.S.C. § 1326; has previously participated in fast-track.</p> <p>Office retains discretion to deny participation if defendant is part of an independent federal or state criminal investigation or other</p>	Yes (available on request).	

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			<p>aggravating factors warrant disqualification from the program.</p> <p>Waive preliminary hearing; all rights to discovery other than receiving a copy of criminal record; appeal and any opportunity to collaterally challenge conviction;</p>		
	New York Northern	Yes.	<p>Up to 4-level departure.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Enter into plea agreement within 30 days of arrest, including truthful written admissions to the facts supporting conviction and sentence, and the fact of prior convictions and/or deportations; • Agree not to file any motions under FRCP 12(b)(3); <p>Defendant must be charged with violation of 8 U.S.C. § 1326(a) and subject to the sentencing provisions in § 1326(a), (b)(1), (b)(2), or (b)(4). Defendant is not subject to the 16- or 12-level enhancement under USSG § 2L1.2.</p> <p>Ineligible if defendant's combined guideline offense level, after credit for acceptance of responsibility, is 13 or lower; if defendant has more than 1 prior conviction for illegal reentry or other immigration-related felony; has been previously deported or removed more than 2 times; is charged with or subject to charges for any other readily provable felonies, <i>e.g.</i>, possession of fraudulent identification or immigration documents or use of false social security number.</p> <p>Waive appeal, collateral attack, and the right to seek any additional departure or variance.</p>	Yes.	

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	New York Southern	Yes.	<p>4-level departure if defendant meets all agreements.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to waive preliminary hearing & indictment and proceed by Information if arrested by complaint; • Agree to factual basis of offense conduct and stipulate to facts of prior conviction, deportation, removal or exclusion, including date(s) of illegal reentry into U.S.; • Agree not to file any 12(b)(3) motions; • Enter into factual stipulation re: offense level and criminal history calculations under guidelines, including anticipated downward departures for USSG § 5K3.1; • Stipulate to guideline range; • Agree not to move for downward departure from stipulated guideline range but ALLOWED to move for downward variance under 3553(a); • Agree to stipulated order of removal, if sought by government; not challenge removal; assist in execution of removal order. <p>Government agrees:</p> <ul style="list-style-type: none"> • Not to move for upward departure from stipulated guideline range but ALLOWED to move for upward variance from guideline range under 3553(a); • Not to appeal sentence within or above stipulated guideline range. <p>Eligibility: Must be charged solely with reentry under 8 U.S.C. § 1326; not eligible if charged in multiple counts, only one of which is a violation of § 1326.</p>	Yes.	

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			<p>Ineligible if defendant has a prior conviction for “serious violent felony” as defined in 3559(c)(2)(F)(i) or “serious drug offense” as defined in 18 U.S.C. § 3559(c)(2)(H); has 7 or more criminal history points, has a prior conviction for illegal reentry under § 1326; has 2 or more prior deportations, exclusions and/or removals from the U.S. or was subject to a previous prosecution for an immigration offense that was resolved in whole or in part with the use of a fast-track program.</p> <p>U.S. Attorney can limit or deny eligibility if:</p> <p>Defendant was subject of independent federal criminal investigation; committed instant illegal reentry offense while under any judicial or correctional supervision; there are aspects of defendant's criminal history, any pending state or federal charges and/or circumstances of arrest in instant case suggests defendant should not receive fast track sentencing benefit</p> <p>Waive right to discovery other than prior record; right to appeal; right to collaterally attack pursuant to 2255 and/or 2241 or seek sentence modification under 18 U.S.C. § 3582(c) of sentence within or below stipulated guideline range as well as supervised release at or below statutory maximum.</p>		
	New York Western	Yes.	<p>4-level departure for defendants in CHC V and below.</p> <p>2-level departure for defendants in CHC VI or who have prior convictions for violent felony.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to a factual basis and stipulate to facts of prior conviction and removal; 	Yes.	

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			<ul style="list-style-type: none"> • Agree not to file 12(b)(3) motions; • Have a guideline range other than 0 to 6 months. <p>Disqualified if defendant has prior violent felony convictions, including murder, kidnapping, voluntary manslaughter, forcible sex offenses, child sex offenses, drug trafficking, firearms offenses, or other convictions which qualify as crimes of violence under guidelines or as “violent felony” under 924(e)(2)(B); has been previously deported 2 or more times; has 1 or more prior convictions under 8 U.S.C. § 1326; has 2 or more prior convictions for other immigration related offenses; previous participation in fast-track program; is part of independent federal criminal investigation or is under any form of court or correctional supervision; or circumstances at time of arrest or other aggravating factors are identified by USA (with supervisor approval).</p> <p>Waive right to argue for variance under 18 U.S.C. § 3553(a).</p>		
	Vermont	Yes.	<p>Either a 4-level or 2-level departure as part of a plea agreement under FRCP 11(c)(1)(C), depending on prior aggravators.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to accurate factual basis; • Not file motions; • Agree to the guideline calculations. <p>Ineligible: Defendants with prior aggravated felony or multiple reentries.</p> <p>Waive variance under 18 U.S.C. § 3553; appeal.</p>		

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THIRD					Yes. <i>United States v. Arrelucea-Zamudio</i> , 581 F.3d 142, 143 (3d Cir. 2009).
	Delaware	No.			
	New Jersey	Yes.	<p>4-level departure for defendants in CHC V or below.</p> <p>2-level departure for defendants in CHC VI <u>or</u> who have a prior felony conviction for “serious violent offense.”</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts of prior conviction and removal; • Agree not to file any 12(b)(3) motions. <p>Disqualified if, as determined by US Attorney, defendant has prior violent felony convictions (murder, kidnapping, voluntary manslaughter, forcible sex offenses, child-sex offenses [including child pornography], drug trafficking, firearms offenses or convictions that reflect history of serious violent crime); has been previously deported 2 or more times; has 1 or more prior convictions under 8 U.S.C. § 1326 or 2 or more prior convictions for other immigration related offenses or prior participation in a fast-track program; if the defendant is part of an independent federal criminal investigation or if they are under any court or correctional supervision. US Attorney can consider other aggravating factors.</p> <p>Waive right to argue for variance under 18 U.S.C. § 3553; appeal and opportunity to challenge conviction under 2255, except issue of</p>	Yes.	

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			ineffective assistance of counsel; presentence investigation.		
	Pennsylvania Eastern	Yes.	<p>4-level departure for defendants in CHC V or below.</p> <p>2-level departure for defendants in CHC VI <u>or</u> who have prior conviction for serious violent offense or 2 prior convictions for assault.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts of prior conviction and removal; • Agree not to file any 12(b)(3) motions. <p>Eligibility: USA discretion to limit or deny participation based on prior violent felony convictions (murder, kidnapping, voluntary manslaughter, forcible sexual offenses, child-sex offenses, drug trafficking, firearms offenses, convictions reflecting history of serious violent crime); the number of prior deportations, prior convictions under 8 U.S.C. § 1326 or other immigration related offenses; prior participation in fast-track program; defendant is part of independent federal criminal investigation or is under court or correctional supervision; circumstances at time of arrest or other aggravating factors as identified by USA.</p> <p>Disqualified, generally, for drug trafficking convictions involving substantial drug quantities (drug trafficking priors for small amounts of marijuana or drug amounts below federal mandatory levels will not automatically disqualify); use or brandishing firearm; conviction for “firearms offense” as defined in Application Note (1)(B)(v)(I)-(VI) of USSG § 2L1.2 (firearms convictions of simple possession will not generally disqualify); at least 2 simple assault convictions</p>	Yes.	

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			<p>will generally disqualify unless they did not result in injury (with supervisor approval; may get 2 level departure). Consider age of prior conviction (if conviction is at least 15 years old, defendant may not be automatically disqualified if criminal history does not include intervening convictions for violent crimes or otherwise demonstrate risk of recidivism).</p> <p>Disqualified for prior removals and immigration offenses: 2 or more deportations or removals prior to charged reentry; prior conviction under 8 U.S.C. § 1326; 2 or more priors under 8 U.S.C. § 1325; prior of immigration-related offenses involving visa/document fraud, passport fraud which was committed on behalf others (same review for 15-year-old convictions); will review any independent investigation or pendency of supervision.</p> <p>Disqualified with 13 or more criminal history points or who demonstrates serious risk of recidivism. Defendant who presents mitigating circumstances may be accepted with supervisor approval.</p> <p>Waive: Right to argue for variance under 18 U.S.C. § 3553; appeal and opportunity to challenge conviction under 2255 pursuant to standard appellate waiver.</p>		
	Pennsylvania Middle	Yes, but full terms are not known.	Full terms are not known, but it appears that a defendant with a previous conviction for an aggravated felony is ineligible .		
	Pennsylvania Western	Yes, but terms have not been formally revealed.	<p>Either a 4-level or 2-level departure, depending on the defendant's criminal history, if defendant:</p> <ul style="list-style-type: none"> • Consents to removal after sentence and waive all rights to any relief from removal, and abandons any pending applications for relief; 		

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			<ul style="list-style-type: none"> Agrees not to file any pretrial motions; <p>Waive variance under 18 U.S.C. § 3553, appeal, relief under 2255, full presentence investigation.</p>		
	Virgin Islands	No.			
FOURTH					No case precludes it.
	Maryland	Yes.	<p>4-level departure (Routine) if defendant has no prior violent felony conviction; no pending charge involving a victim; no prior conviction for an immigration crime; no more than 6 criminal history points; no other aggravating factor, such as gang affiliation.</p> <p>2-level departure (Aggravated) if defendant does not meet all routine fast track criteria so can be considered with written approval of criminal chief or first assistant.</p> <p>Denied, generally, if convictions or pending charges involving violence or significant financial loss.</p> <p>Defendant must agree not to file pretrial motions.</p> <p>Waive right to move for variance under 18 U.S.C. § 3553; appeal and right to challenge conviction under 2255, except issue of ineffective assistance of counsel.</p>	Yes.	
	North Carolina Eastern	Yes, but no written policy and full terms	<p>Anybody with an aggravated felony is excluded.</p> <p>Apparently, anybody who meets the “discretionary” factors referred</p>		

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		are unknown.	to in the Cole Memorandum is “inappropriate” for participation in the program.		
	North Carolina Middle	No.			
	North Carolina Western	No.			
	South Carolina	No.			
	Virginia Eastern	Yes.	<p>4-level reduction for defendants in CHC V or lower.</p> <p>2-level reduction for defendants in CHC VI <u>or</u> if defendant has a prior felony conviction for a “serious violent offense” (term undefined).</p> <p>Defendant must within 14 days after appointment of counsel, notify USAO of intent to plead guilty pursuant to fast-track agreement, by which defendant agrees:</p> <ul style="list-style-type: none"> • To waive indictment; • To stipulate to factual basis; • Not to file any pretrial motions; • To provide all financial information, and if requested, to participate in a pre-sentencing debtor’s examination; • To request an expedited removal hearing and consent to removal; • To abandon any existing immigration benefit and any applications for relief from removal, deportation, or exclusion, and not to prosecute a new application, except applications for asylum or withholding of removal based on changed circumstances. • To jointly seek a sentence within the agree-upon advisory guideline range; 		

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			<ul style="list-style-type: none"> To be sentenced immediately after entering plea of guilty. <p>Disqualified if defendant has a prior conviction for a “serious violent offense.” Term is not defined.</p> <p>Waive any and all motions, defenses, probable cause determinations, and objections to the information, indictment, or petition to revoke; preparation of pre-sentence report; right to seek any departure or variance, adjustment or reduction under 18 U.S.C. § 3553(a); right to appeal conviction and sentence within the statutory maximum; all rights to request or receive any records pertaining to the investigation or prosecution, including FOIA requests; right to apply for any and all forms of relief or protection from removal, deportation or exclusion, except when the application is based solely on changed circumstances arising after the plea but before removal. Note no requirement to waive opportunity for collateral attack.</p>		
	Virginia Western	No.			
	West Virginia Northern	No.			
	West Virginia Southern	Yes, though terms have not been revealed.	[Government recently agreed to a 4-level fast-track variance in a pending case.]		
FIFTH					<p>No.</p> <p><i>United States v. Gomez-Herrera</i>, 523 F.3d 554, 563 (5th Cir. 2008).</p>
	Louisiana Eastern	No.			

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	Louisiana Middle	Yes.	<p>4-level reduction for defendants in CHC V or below</p> <p>2-level reduction for defendants in CHC VI</p> <p>Defendant agrees to:</p> <ul style="list-style-type: none"> • Plead guilty to illegal re-entry; • Waive pre-trial motions; • Waive appeals except for sentence above the statutory maximum, sentence above the guidelines, sentence above guidelines calculated by judge, and claims of ineffective assistance of counsel. <p>Government agrees not to file any other charges.</p>		
	Louisiana Western	No.			
	Mississippi Northern	No.			
	Mississippi Southern	No.			
	Texas Eastern	Yes.	<p>4-level reduction for defendants in CHC V or lower.</p> <p>2-level reduction for defendants in CHC VI <u>or</u> if defendant has a prior conviction for a “serious violent offense” that was not deemed to be a disqualifying “violent felony,” as described below. “Serious violent offense” includes drug-trafficking offenses, as defined at Application Note 1(B)(iv) and firearms offenses other than simple possession of a firearm by a prohibited person.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts of prior 	Yes.	

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			<p>conviction and removal;</p> <ul style="list-style-type: none"> • Agree not to file any motions under FRCP 12(b)(3). <p>May be disqualified if defendant has a prior “violent felony” conviction (only with supervisory approval and including “crimes of violence” as defined at Application Note 1(B)(iii) at USSG § 2L1.2 or other convictions which reflect a history of serious violent crime); has at least one prior conviction under 8 U.S.C. § 1326 for illegal reentry or one prior conviction for other immigration-related offense; previously participated in a fast-track program; is a subject or target in an independent federal criminal investigation; is under any form of court or correctional supervision; any other aggravating factors identified by AUSA, with supervisory approval.</p> <p>Waive right to argue for a variance under 18 U.S.C. § 3553(a); right to appeal and opportunity to challenge conviction under 28 U.S.C. §2255, except on the issue of ineffective assistance of counsel.</p>		
	Texas Northern	Yes.	<p>4-level reduction for defendants in CHC V or lower.</p> <p>2-level reduction for defendants in CHC VI <u>or</u> (only with supervisor approval) if defendant has a prior “serious” felony conviction (term undefined, depends on interpretation of individual prosecutor) or has 2 or more DWI convictions.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to government’s factual resume; • Agree not to file any pretrial motions. <p>Disqualified if defendant has a prior “violent felony” conviction (murder, robbery, kidnapping, sexual assault, child exploitation,</p>		

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			<p>arson, extortion, etc.), has a prior federal drug trafficking conviction, has 2 or more convictions under 8 U.S.C. § 1326, or possessed a firearm at the time of arrest for the instant offense.</p> <p>Waive right to appeal conviction and sentence and right to contest conviction and sentence in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255 – except that defendant reserves the right (a) to bring a direct appeal of a sentence exceeding the statutory maximum punishment that is applicable at the time of her initial sentencing, (b) to challenge the voluntariness of her plea of guilty or this waiver, or (c) to bring a claim of ineffective assistance of counsel.</p>		
	Texas Southern	Yes.	<p>Follows DOJ Fast-Track Policy as set forth in Cole Memorandum, but defendant must waive appeal and now fast-track is almost never offered.</p> <p>Not offered in McAllen Division because the court will not accept an appeal waiver.</p> <p>In Brownsville, court will not accept fast-track agreement until after the presentence report (PSR). If the defendant is not happy with the PSR, he can withdraw the agreement within 7 days.</p>		
	Texas Western	Yes.	<p>4-level reduction for defendants in CHC V or lower, if:</p> <ul style="list-style-type: none"> • Defendant agrees to factual basis and stipulate to facts of prior conviction and removal. • Agrees not to file 12(b)(3) motions <p>Disqualified if prior conviction is for offense that involved use,</p>	Yes.	

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			<p>attempted use, threatened use or potential use of force or violence, whether or not such conduct was an element of offense (not limited by definition of “crime of violence: under 18 USC § 16 or USSG) or, prior for child sex or exploitation offense, felony drug offense, felony firearms offense; prior conviction under 8 U.S.C. § 1326 or any other felony immigration offense (alien smuggling, immigration document fraud or false claim to US citizenship); prior fast track participation; is under federal investigation for a federal offense; is currently charged with federal or state offense; is under court or correctional supervision. May be disqualified for aggravating factors not described; BUT may be qualified where mitigating circumstances arises—both with supervisor approval.</p> <p>Waive right to argue any other departures or variances under 3553; right to appeal and opportunity to challenge conviction under 2255; full presentence investigation.</p>		
SIXTH					<p>Yes. <i>United States v. Camacho-Arellano</i>, 614 F.3d 244 (6th Cir. 2010).</p>
	Kentucky Eastern	No.			
	Kentucky Western	Yes.	<p>4-level departure for defendants in CHC V and below.</p> <p>2-level departure for defendants in CHC VI <u>or</u> who have 1 prior felony for serious violent offense.</p> <p>Defendant</p> <ul style="list-style-type: none"> • Agrees/admits to the factual basis of plea and the acts and 		

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			<p>essential elements of indictment counts she pleads guilty to;</p> <ul style="list-style-type: none"> • Is only allowed to seek downward criminal history departure under USSG § 4A1.3 and government is free to oppose; • Agrees not to object to government transferring evidence or information to other agencies (i.e., IRS); if court rejects, defendant can withdraw plea. <p>Agreement conditioned on defendant having less than 18 CH points.</p> <p>Waive all rights associated with going to trial; right to direct appeal of conviction and sentence; right to contest or collaterally attack conviction and sentence under 2255 or any other collateral attack (except ineffective assistance of counsel); any adjustments, variances, reductions or departures, including under 18 U.S.C. § 3553; right to receive records of investigation.</p>		
	Michigan Eastern	Yes.	<p>4-level departure, unless defendant has a violent prior felony conviction or 3 or more immigration contacts.</p> <p>Otherwise, 2-level departure.</p> <p>Defendant must proceed by information, waive all motions, and immigration defenses, agree to not contest removal.</p> <p>Ineligible if defendant has a prior re-entry conviction; if under court supervision (state or federal); 3 or more prior orders of removal.</p>		
	Michigan Western	Yes.	<p>4-level departure for defendants in CHC V and below.</p> <p>2-level departure for defendants in CHC VI <u>or</u> who have prior conviction for serious violent felony offense (not defined), with</p>	Yes.	

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			<p>supervisory approval on a case-by-case basis after considering the interest of public safety.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to plead guilty within 30 days of initial appearance absent exceptional circumstance; • Agree to the factual basis and stipulate to the facts related to prior conviction and prior removal; • Agree not to file any motions under FRCP 12(b)(3); <p>Disqualified if defendant has a prior felony conviction for a crime of violence, including murder, kidnapping, voluntary manslaughter, forcible sex offenses, child-sex offenses, drug trafficking, or firearms offenses, or a conviction for any crimes which reflect a history of serious violent conduct; has been removed two or more times; has been convicted of any felony immigration-related offense; has previously participated in or benefitted from a fast-track program in this or any other district; is under any form of court or correctional supervision or part of an independent federal criminal investigation; resisted law enforcement or seriously obstructed justice in the course of the investigation, apprehension, or interview, or otherwise engaged in aggravating misconduct, relating to the instant offense.</p> <p>Waive right to seek a variance under 18 U.S.C. § 3553(a), to appeal the conviction or sentence, and to seek collateral review under 28 U.S.C. § 2255, consistent with office policy.</p>		

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	Ohio Northern	Yes.	<p>4-level departure for defendants in CHC V and below.</p> <p>2-level departure for defendants in CHC VI <u>or</u> who have prior felony for serious violent offense.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree within 30 days to enter into fast-track agreement; • Agree to the factual basis and stipulate to the facts related to prior conviction and prior removal; • Agree not to file any motions under FRCP 12(b)(3); • Agree not to contest detention or request a preliminary hearing until a decision is made whether to participate in fast-track; • Not require full disclosure and examination of the A-file or otherwise extensive additional discovery; • Handle all objections to presentence report at sentencing. <p>May be disqualified if defendant previously convicted of a serious violent felony (defined as including, but not limited to, murder, kidnapping, voluntary manslaughter, forcible sex offenses, child exploitation offenses (including child pornography), drug trafficking offenses, firearms offenses), and offense related to firearms, narcotics offense involving drug trafficking or possession of narcotics in trafficking amounts; previously removed four or more times; previously convicted for illegal reentry under 8 U.S.C. § 1326 or for other immigration-related offenses; previously participated in a fast-track program; is part of an independent federal criminal investigation; or circumstances at the time of arrest or nature and extent of criminal record (including consideration of original charges) warrant disqualification, with supervisor approval.</p>	Yes.	

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			<p>Waive the timeline requirements set out in local rule 32.2 regarding presentence reports and sentencing proceedings, as well as the objection period; right to argue for a variance under 18 U.S.C. § 3553; right to appeal and right to challenge conviction under 2255 (except ineffective assistance of counsel or prosecutorial misconduct).</p>		
	Ohio Southern	Yes.	<p>4-level departure for defendants in CHC V or below.</p> <p>2-level departure for defendants in CHC VI <u>or</u> who have prior felony for offense that does not otherwise disqualify from program.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to be prosecuted by an information; • Agree to factual basis and stipulate to facts of prior conviction and removal; • Agree not to file 12(b)(3) motions; • Agree to enter into a sentencing agreement. <p>Disqualified if defendant has prior conviction for a violent felony offense (murder, voluntary manslaughter, offense resulting in death of another or injury to law enforcement officer, armed robbery, residential burglary, arson, any offense committed with deadly or dangerous weapon, kidnapping, forcible sex offenses and child sex offenses); a “drug trafficking offense” as defined by USSG 2L1.2 App Note 1(B)(iv) and sentence exceeds 13 months; a firearms offense; convictions for offenses reflecting a history of serious violent criminal conduct such as domestic violence; prior removal 5 or more times; 2 or more prior convictions under 8 U.S.C. § 1326; 2 or more prior convictions for other immigration-related offenses;</p>	Yes.	

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			<p>prior participation in a fast-track program; defendant is part of an independent federal criminal investigation; defendant is under any court or correctional supervision; circumstances at time of arrest or other aggravating factors are identified by USA (with supervisor approval).</p> <p>Waive right to a preliminary hearing; right to pre-trial detention hearing and agree to entry of order to be detained; right to indictment by grand jury and agree to be prosecuted by information; right to disclosure of impeachment and exculpatory information; right to argue for a variance under 18 U.S.C. § 3553; right to appeal and opportunity to challenge conviction and sentence under 2255 except on issue of ineffective assistance of counsel; presentence investigation and presentence report; full presentence investigation and issuance of a full presentence report.</p>		
	Tennessee Eastern	Yes, but terms are secret.	Those with prior aggravated felonies are ineligible .		
	Tennessee Middle	Yes, but terms are secret.			
	Tennessee Western	Yes.	<p>4-level departure for those in CHC V or below.</p> <p>2-level departure for those in CHC VI <u>or</u> who have a prior felony conviction for a “serious violent offense.”</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts of prior conviction and removal; • Agree not to file any motion under FRCP 12(b)(3); • Agree to enter into a binding plea agreement under Rule 11(c)(1)(C). 	Yes.	

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			<p>Participation may be limited or denied based on defendant’s prior violent felony convictions, including murder, kidnapping, voluntary manslaughter, aggravated or other serious felonious assault, forcible sex offenses, child-sex offenses, drug trafficking, firearm offenses, or other convictions which reflect a history of serious violent crime; if defendant has been previously deported 2 or more times; has one or more prior convictions under 8 U.S.C. § 1326 for illegal reentry or other immigration-related offense; has two or more prior convictions for DUI; has previously participated in fast-track; is part of an independent federal criminal investigation; is under any form of court or correctional supervision; or circumstances at the time of arrest or any other aggravating factors, identified by U.S. Attorney, with supervisory approval.</p> <p>Waive right to argue for a variance under 18 U.S.C. § 3553; right to appeal and opportunity to challenge conviction under 2255, except on issue or ineffective assistance of counsel or prosecutorial misconduct.</p>		
SEVENTH					<p>Yes. <i>United States v. Reyes-Hernandez</i>, 624 F.3d 405, 417-21 (7th Cir. 2010).</p>
	Illinois Central	Yes.	<p>4-level reduction if:</p> <ul style="list-style-type: none"> • Defendant stipulates to facts reflecting offense conduct and facts related to prior conviction and removal; • Defendant agrees not to file any 12(b) motions; • Government agrees to make effort to expedite sentencing; 	Yes.	

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			<p>Government will also recommend low end of guideline range.</p> <p>Eligibility: Only 1 prior deportation or removal (administrative or voluntarily); priors cannot be for aggravated felony, crime of violence or drug trafficking offenses; may not be simultaneously charged with another felony, including manufacture or use of false documents, 18 U.S.C. § 1028 or 1546, or aggravated identity theft, 18 U.S.C. § 1028A.</p> <p>Waive right to argue for a variance under 18 U.S.C. § 3553; all appeal rights and right to contest conviction and sentence under 2255, except for ineffective assistance of counsel.</p>		
	Illinois Northern	Yes.	<p>4-level downward variance for defendants in CHC V or below.</p> <p>2-level downward variance for defendants in CHC VI <u>or</u> who have at least 1 prior felony conviction for serious violent offense.</p> <p>Defendant must agree not to seek any variance from guideline range as modified.</p> <p>Each party free to recommend sentence within guideline range as modified by 2 or 4 level variance.</p> <p>Plea offer withdrawn and no longer eligible if defendant files any 12(b)(3) pretrial motions.</p> <p>Ineligible if prior conviction for violent felony (within meaning of 18 USC 924(e)); prior offense involving actual violence, threat of violence, significant drug offense (excluding those too old to count under USSG § 4A1.1 and those with sentence of 1 year or less),</p>		

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			<p>firearms trafficking or priors that otherwise reflect history of serious violent crime or danger to public; 4 or more prior deportations; prior conviction for illegal reentry under 8 U.S.C. § 1326; prior participation in fast-track program; is a subject in another federal criminal investigation other than illegal reentry; other aggravating factors identified by USA that may preclude participation.</p> <p>Waive right to argue under 18 U.S.C. § 3553 for sentence outside the guideline range as modified by this variance; right to appeal; right to collaterally attack conviction under 2255 (except for claims of involuntariness or ineffective assistance of counsel relating directly to the waiver or its negotiation).</p>		
	Illinois Southern	Yes, but no formal local policy.	USAO has suggested it will exercise its discretion to deny eligibility to the extent permitted in the Cole memorandum.		
	Indiana Northern	Yes.	<p>4-level reduction for defendants in CHC III or below and no prior felony convictions for a serious violent offense.</p> <p>2-level reduction for defendants in CH IV or higher or felony conviction for serious violent offense with supervisor approval considering public safety, including prior violent convictions that reflect history of serious violent crime.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis; • Agree not to file Rule 12(b)(3) motions. <p>Exceptions: With supervisory approval, AUSA may refuse to offer</p>	Yes.	

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			<p>fast track to an eligible defendant. Considerations include prior violent felony convictions, multiple prior deportations or convictions for immigration related offenses; prior participation in fast track program; part of an independent federal criminal investigation or under court or correctional supervision; there are aggravating factors in defendant's history or circumstances of arrest.</p> <p>Waive right to argue for a variance under 18 U.S.C. § 3553; sign standard appeal waiver for N.D. Indiana.</p>		
	Indiana Southern	Yes.	<p>4-level departure for defendants in CHC V or below who have not previously been convicted of a disqualifying offense (set forth below).</p> <p>2-level departure for defendants in CHC VI <u>or</u> has a prior felony conviction that does not otherwise disqualify them.</p> <p>At initial appearance, defendant must:</p> <ul style="list-style-type: none"> • Waive right to preliminary hearing; • Waive right to a pre-trial detention hearing and agree to an order of detention on the grounds that “no condition or combination of conditions will reasonably assure the appearance of the defendant as required, in accordance with 18 U.S.C. § 3142(e).” <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts of prior conviction and removal; • Agree not to file any Rule 12(b)(3) motions. 	Yes.	

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			<p>Categorically disqualified if defendant has prior conviction for “violent felony offense” (including murder and any offense that resulted in the death of another individual, any offense that resulted in injury to a law enforcement officer, armed robbery, burglary of a dwelling, arson, any offense committed with a deadly or dangerous weapon, kidnapping, forcible sex offenses, and child sex offenses), a ”controlled substance offense” as defined by USSG § 4B1.2(b), a firearms offense, offenses “which reflect a history of serious violent criminal conduct, or an attempt or conspiracy to commit any such offense described above.</p> <p>May be denied based on prosecutor discretion if defendant has been previously deported, has one or more prior convictions under 8 U.S.C. § 1326 for illegal reentry, has one or more prior conviction for an immigration-related offenses, has previously participated in a fast-track program, is part of an independent federal criminal investigation, is under any form of court or correctional supervision, or, with supervisory approval, there are circumstances at the time of defendant’s arrest or any other aggravating factors identified by the U.S. Attorney.</p> <p>Waive right to indictment; right to disclosure of impeachment and exculpatory information; right to argue for variance; right to appeal sentence and opportunity to challenge conviction under § 2255 except on issue of ineffective assistance of counsel.</p>		
	Wisconsin Eastern	Yes.	<p>4-level reduction for defendants in CHC V or below and no prior conviction for a “serious violent felony.”</p> <p>No reduction for defendants in CHC VI.</p> <p>Defendant must:</p>	Yes.	

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			<ul style="list-style-type: none"> • Agree to factual basis and describe facts of prior conviction and removal; • Agree not to file any Rule 12(b)(3) motions; <p>Disqualified if defendant has a prior “serious violent felony” (including murder, manslaughter, kidnapping, forcible sex offense, child sex offense, drug trafficking that involved firearms) and any other felony that could be considered a crime of violence under 18 USC § 16; two or more removals from United States prior to instant offense; prior conviction under 8 U.S.C. § 1326; previous participation in a fast-track program; part of an independent federal criminal investigation; under any court or correctional supervision; circumstances at time of arrest disqualify them from program; or prior misdemeanor conviction that in any way involved domestic or physical violence.</p> <p>Waive right to appeal and challenge conviction under 2255, except issue of ineffective assistance of counsel.</p>		
	Wisconsin Western	Yes.	<p>4-level reduction for defendants in CHC V or below and no prior felony conviction for a “serious violent offense.”</p> <p>2-level reduction for defendants in CHC VI or who have a prior felony conviction for a “serious violent offense.”</p> <p>“Serious violent offense” includes murder, kidnapping, voluntary manslaughter, forcible sex offenses, and child sex offenses.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and describe facts of prior conviction and removal; 	Yes.	

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			<ul style="list-style-type: none"> • Agree not to file any Rule 12(b)(3) motions; • Agree that the only downward departure provision the defendant may seek is a departure related to criminal history under USSG § 4A1.3, which the government is free to oppose. <p>Not eligible if defendant has a prior “violent felony conviction” for murder, kidnapping, voluntary manslaughter, a forcible sex offense, or an offense involving child pornography; has a prior conviction under 8 U.S.C. § 1326 for illegal reentry; or has previously participated in a fast-track program.</p> <p>Rebuttable presumption of ineligibility if defendant has a prior “violent felony conviction” for a non-forcible sex offense, drug trafficking, firearms offense, or convictions that otherwise reflect a history of serious crime.</p> <p>Waive right to seek any other adjustments, variances, reductions, or departures (except for overstatement of criminal history under USSG § 4A1.3); right to appeal and opportunity to challenge conviction under 2255, except issue of ineffective assistance of counsel.</p>		
EIGHTH					Yes. <i>United States v. Jimenez-Perez</i> , 659 F.3d 704, 709-10 (8th Cir. 2011).
	Arkansas Eastern	No.			

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	Arkansas Western	Yes.	<p>4-level departure for defendants in CHC V or below.</p> <p>2-level departure for defendants in CHC VI.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual stipulation contained in the plea agreement and stipulate to any prior conviction that is a felony or aggravated felony; • Agree not to file any pretrial motions described in Rule 12(b)(3), except discovery; • Agree to consent to the U.S. Magistrate Judge conducting the plea hearing when the U.S. District Judge makes such a referral. <p>Disqualified if defendant has prior conviction for “violent or serious felony,” including murder, kidnaping, voluntary manslaughter, forcible sex offenses, child sex offenses, drug trafficking, or other conviction of a serious or violent nature. All offenses covered by the 16-level enhancement under USSG § 2L1.2(b)(1)(A) will be considered to be such felonies. Offenses not covered by that enhancement may be so considered depending on the facts and circumstances of the conviction.</p> <p>Also disqualified if the defendant has a combination of three or more prior deportations, prior convictions for illegal reentry under 8 U.S.C. § 1326, or immigration-related offenses. If less than three, U.S. Attorney has discretion to exclude based on nature of defendant’s criminal history and prior immigration offenses.</p> <p>Also disqualified if defendant is part of an independent criminal</p>	Yes.	

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			<p>investigation, as determined by the U.S. Attorney in its sole discretion.</p> <p>A defendant will not be eligible if there exist certain circumstances and factors identified by the U.S. Attorney, such as defendant has been identified by law enforcement as a member of a gang, or has a pending state felony charge or is on probation, or under a suspended sentence for a state felony offense and defendant's participation in fast-track would adversely affect the state's interest.</p> <p>Waive right to argue for variance under 18 U.S.C. § 3553(a); right to appeal and opportunity to challenge conviction under § 2255 except on issue of ineffective assistance of counsel; full pre-sentence investigation.</p>		
	Iowa Northern	No.			
	Iowa Southern	Yes, but written policy is secret.	<p>4-level departure for defendants in CHC V or below and without prior drug felony or crime of violence.</p> <p>2-level departure for defendants who have such prior offenses.</p> <p>U.S. Attorney will not consider a defendant with the following disqualifiers:</p> <ul style="list-style-type: none"> • An adjusted offense level, before acceptance, of 20 or above. • Conviction of a prior felony crime of violence. • Conviction of a prior felony drug trafficking offense. • Conviction of illegal reentry. • Participation at the time of arrest in a major offense such as 		

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			a drug trafficking offense.		
	Minnesota	Yes.	<p>4-level departure for defendants in CHC V or below.</p> <p>2-level departure for defendants in CHC VI <u>or</u> has one serious violent felony that doesn't otherwise disqualify them.</p> <p>Only those charged with a felony are eligible.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts of prior conviction and removal; • Agree not to file any pretrial motions; • Agree to pay special assessment. <p>Disqualified if defendant has prior conviction for serious violent felony (as defined to include security or terrorism offenses, murder, kidnapping, voluntary manslaughter, forcible sex offenses, child exploitation/porn offenses, human trafficking, alien smuggling, drug trafficking, firearms and other reflecting a history of serious violent crime); has multiple prior deportations; any prior conviction under 8 U.S.C. § 1326 or for any immigration offense; previously participated in a fast-track program; is part of an independent criminal investigation; is charged with an offense(s) other than illegal reentry; is under any form of court or correctional supervision; any other aggravating factors identified by the USAO.</p> <p>Waive right to seek departure on any grounds; right to argue for variance, non-guideline sentence or other reduction under 18 U.S.C. § 3553(a); right to appeal sentence, including waiving right to appeal</p>	Yes.	

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			sentence that exceeds top of range resulting from fast track departure; opportunity to challenge conviction under 2255 except on issue of ineffective assistance of counsel.		
	Missouri Eastern	Yes.	<p>4-level departure for defendants in CHC V or below.</p> <p>2-level departure for defendants in CHC VI <u>or</u> who have prior conviction for aggravated felony.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to all prior convictions, removals and deportations; • Agree not to file any pre-trial motions. <p>Disqualified if defendant has a prior violent felony (murder, kidnapping, voluntary manslaughter, forcible sex offense, child-sex offense, drug trafficking, firearms offenses, any other reflecting violent crime), 2 or more prior deportations or 4 or more voluntary removals; 2 or more prior convictions under 8 U.S.C. § 1326; 1 or more priors for immigration related offenses; previous participation in a fast-track program; part of an independent criminal investigation; is charged with an offense(s) other than illegal reentry or is under any form of court or correctional supervision; circumstances at arrest or other aggravating factors could disqualify with approval of Immigration Coordinator.</p> <p>Waive right to argue for a variance or non-guideline sentence; right to appeal and challenge conviction under 2255 except ineffective assistance of counsel or prosecutorial misconduct.</p>	Yes.	
	Missouri	Yes.	4-level departure <u>unless</u> the defendant is in CHC VI or has at least	Yes.	

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	Western		<p>one felony conviction for a serious violent offense.</p> <p>2-level departure if the defendant is in CHC VI or has at least one felony conviction for a serious violent offense and is otherwise eligible.</p> <p>Agreement requires:</p> <ul style="list-style-type: none"> • Agreed factual basis with stipulation to all prior convictions, removals and deportations; • Agreement not to file any pretrial motions, including but not limited to motions under FRCP 12(b)(3); • Payment in full of special assessment; • Any additional requirement deemed appropriate. <p>Ineligible if defendant has prior serious violent felony conviction (including but not limited to murder, kidnapping, voluntary manslaughter, forcible sex offenses, child exploitation offenses (including child pornography offenses), drug trafficking, firearms offenses, or any other conviction reflecting a serious violent crime; any prior conviction that generates a 12-level enhancement or more under USSG § 2L1.2; more than one prior deportation, any prior conviction for illegal reentry or for any other immigration-related offense, or prior participation in fast-track; if defendant is part of an independent criminal investigation, charged with an offense or offenses other than illegal reentry, or is under any form of court or correctional supervision; or any other aggravating factor or circumstance that justifies exclusion, as determined in the discretion of the prosecutor on the basis of information the prosecutor deems relevant and reliable.</p>		

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			<p>Waive right to argue for a variance under 18 U.S.C. § 3553(a); right to appeal according to standard appellate waiver required by district's model plea agreement.</p>		
	Nebraska	Yes.	<p>4-level reduction if defendant pleads without filing motions, agrees to deportation/removal, and waives appeal.</p>		
	North Dakota	Yes.	<p>4-level reduction for defendants in CHC V or below.</p> <p>2-level reduction for defendants in CH VI <u>or</u> with one felony conviction for serious violent offense.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts of prior convictions and removals; • Agree not to file any Rule 12(b)(3) motions; • If defendant possessed \$500 or more at the time of arrest, agree not to contest any action to seize any funds exceeding the \$500 to satisfy (1) the defendant's special assessment, (2) a restitution order for the present conviction or any prior conviction, and (3) any court-ordered reimbursement for public defense expenses. <p>Disqualifiers: Participation may be limited or denied based on prior violent felony convictions (including murder, kidnapping, voluntary manslaughter, forcible sex offenses, child-sex offenses, drug trafficking, firearms offenses or convictions that include misdemeanors which otherwise reflect history of serious violent crime, subject to USA discretionary determination); the defendant having more than one prior conviction under 8 U.S.C. § 1326 for</p>	Yes.	

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			<p>illegal reentry or other immigration related offenses or prior participation in a fast-track program; the defendant is part in an independent federal criminal investigation or under any court or correctional supervision; U.S. Attorney can consider other aggravating factors.</p> <p>USA may decide, when looking at the conduct underlying the “prior violent felony conviction” that defendant is still eligible in whole or part.</p> <p>Waive right to argue for variance under 18 U.S.C. § 3553; right to appeal and opportunity to challenge conviction or sentence on appeal or under 2255, except on issue of ineffective assistance of counsel; full presentence investigation.</p>		
	South Dakota	Yes.	<p>4-level reduction for defendants in CHC V or below.</p> <p>2-level reduction for defendants in CH VI <u>or</u> (subject to supervisor approval) with a prior conviction for a serious violent felony, human trafficking, or alien smuggling, or is subject to the 12-level enhancement or more under USSG § 2L1.2(b).</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts of prior convictions and removals; • Agree not to file any Rule 12(b)(3) motions; • Agree to the standard appellate waiver required by the district’s model plea agreement; • Agree to any additional requirement deemed appropriate by the case AUSA, with written supervisor approval. 	Yes.	

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			<p>Disqualifiers: Participation may be limited or denied if the defendant has previously been convicted of a serious violent felony (including murder, kidnaping, voluntary manslaughter, forcible sex offenses, child exploitation offenses (including possession, receipt, distribution or production of child pornography and any contact sex offenses with minors), drug trafficking, firearms offenses or any other offenses that otherwise reflect history of serious violent crime); if the defendant is in CHC VI, if the defendant has two or more prior conviction under 8 U.S.C. § 1326 for illegal reentry or other immigration related offenses or prior participation in a fast-track program; if the defendant has previously been removed three or more times; the defendant is part in an independent federal criminal investigation or charged with an offense other than illegal reentry or is under any court or correctional supervision; U.S. Attorney can consider other aggravating factors.</p> <p>Waive right to argue for variance or non-guideline sentence under 18 U.S.C. § 3553; right to appeal and opportunity to challenge conviction or sentence on appeal or under 2255, except on issue of ineffective assistance of counsel; full presentence investigation.</p>		
NINTH					<p>No. <i>United States v. Gonzalez-Zotelo</i>, 556 F.3d 736, 740 (9th Cir. 2009).</p>
	Alaska	No.			
	Arizona	Yes.	<p>4-level departure for defendants in CHC V or below.</p> <p>2-level departure for defendants in CHC VI <u>or</u> who have at least one felony for an offense identified in USSG § 2L1.2(b)(1)(A) (a drug</p>		

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			<p>trafficking offense when sentence exceeded 13 months; a crime of violence; a firearms offense; a child porn offense; a national security or terrorism offense; a human trafficking offense; or an alien smuggling offense) and subject to the 16-level enhancement.</p> <p><i>If</i> the defendant is on supervised release when charged with instant offense, he only gets 1-level departure if he receives the 16-level enhancement under USSG § 2L1.2, or a 2-level departure if he receives the 4-level enhancement, and his sentence for the violation of supervised release is capped at the mid-range of the supervised release guideline.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to plead to an information; • Admit to factual basis and prior removal. <p>Defendant may not argue for departure or variance if s/he receives the 4-level fast-track departure; however, defendant may argue for a variance (but not departure) if s/he receives the 2-level fast-track departure because s/he is subject to +16 under § 2L1.2(b)(1)(A) or is in CHC IV.</p> <p>If defendant does not qualify for 1326(b)(1) or (b)(2) enhancement, then in lieu of departures, sentence shall not exceed caps of: 3 months for CH I, 4 months for CH II, 5 months for CH III, 6 months for CH IV, 9 months for CH V and 12 months and 1 day for CH VI. If multiple convictions under more than one offense classification, highest one is used.</p> <p>Waive motions, defenses, objections to indictment/information; right to file appeal, collateral attack and any other writ or motion</p>		

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			that challenges the conviction, order of restitution or forfeiture, judgment or any aspect of sentence, including appeals and motions under 2241 and 2255.		
	California Central	Yes.	<p>4-level departure for defendants in CHC V or below.</p> <p>2-level departure for defendants in CHC VI or who have a prior conviction for a “serious” felony.</p> <p>USAO has explained that some defendants who previously received 4-level departure will now receive only a 2-level departure due to serious criminal histories (those in CH VI; those with priors that would trigger +16/+12 enhancement under USSG § 2L1.2(b)(1)(A) and received 3 or more years).</p> <p>Waive preliminary hearing, waive indictment, and accept the plea agreement within 21 days from their initial appearance. (Sometimes the USAO is flexible with the deadline). Defendant receives the A-file at the initial appearance.</p>		
	California Eastern	Yes.	<p>2-level departure if:</p> <p>Defendant waives full presentence investigation; change of plea and sentencing on same day; recommendation for sentence at low end of guideline range after reductions for fast track and acceptance of responsibility; stipulates that federal sentence will run consecutive to state sentence if federal prosecution brought after state conviction.</p>		
	California Northern	Yes.	<p>4-level departure pursuant to a binding plea agreement under Rule 11(c)(1)(C).</p> <p>Not eligible if defendant previously participated in fast-track.</p>		

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			Generally not eligible if defendant has been previously convicted of a “crime of violence,” defined more or less broadly depending on the AUSA. Defendants with prior drug trafficking offenses are not disqualified.		
	California Southern	Yes.	<p>4-level departure for all defendants except those in CHC VI.</p> <p>2-level departure for those in CHC VI.</p> <p>Defendant may ask for downward departures, but not variances under 18 U.S.C. § 3553(a).</p> <p>Defendant must waive appeal at high end of government’s recommended guideline range (meaning that defendant cannot appeal if he disagrees with the application of an aggravating specific offense characteristic).</p>		
	Hawaii	No.			
	Idaho	Yes.	<p>4-level departure if:</p> <ul style="list-style-type: none"> • Defendant consented to detention and did not have a detention hearing, probable cause hearing, file a motion to suppress or any other substantive motion challenging guilt, custody or the evidence; • Defendant has three or few prior deportations; • Defendant executed plea agreement, making known intent to plead within 30 days of arraignment; • Defendant has not previously participated in fast track; • Defendant’s CHC is III or less and does not include a prior crime of violence or controlled substance offense, as defined 		

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			<p>by USSG § 4B1.2;</p> <ul style="list-style-type: none"> Provides written notice w/in three days of presentence report that defendant meets criteria. <p>2-level departure if defendant meets the above criteria, but either (A) has a prior crime of violence or controlled substance offense or (B) has a CHC of IV or V and has no prior crime of violence or controlled substance offense.</p>		
	Montana	No.			
	Nevada	Yes.	<p>4-level reduction for defendants in CHC V or below.</p> <p>2-level reduction for defendants in CH V or below with one felony conviction for serious violent offense.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> Agree to factual basis and stipulate to facts of prior convictions and removals; Agree not to file any 12(b)(3) motions; Agree to maximum term of supervised release; Agree to enter into binding sentencing agreement pursuant to FRCP Rule 11(c)(1)(C). <p>Government will consider variance or downward based on defendant's lost opportunity for concurrent time.</p> <p>Eligibility: U.S. Attorney has discretion to limit or deny participation based on prior violent felony convictions (murder, kidnapping, voluntary manslaughter, forcible sex offenses, child-sex</p>	Yes.	

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			<p>offenses, drug trafficking, firearms offenses or convictions that include misdemeanors which otherwise reflect history of serious violent crime); the defendant's number of prior deportations and removals, prior convictions under 8 U.S.C. § 1326 or other immigration related offenses or prior participation in a fast-track program; the defendant's part in an independent federal criminal investigation or if they are under any court or correctional supervision; U.S. Attorney can consider other aggravating factors.</p> <p>Waive right to argue for variance under 18 U.S.C. § 3553 or any downward departure; appeal and opportunity to challenge conviction or sentence on appeal or under 2255, except on issue of ineffective assistance of counsel.</p>		
	Oregon	Yes, though full details are unknown.	<p>4-level departure for defendants in CHC V or below.</p> <p>Binding plea agreement under Rule 11(c)(1)(C); government calculates the expected guidelines.</p> <p>Presentence report is waived; plea and sentencing done at the same time.</p> <p>Not available for defendants who have previously received a fast-track offer prior to deportation. There appear to be other exceptions and disqualifications, but the details have not been revealed.</p>		
	Washington Eastern	Yes.	<p>4-level departure for defendants in CHC V or below.</p> <p>2-level departure for defendants in CHC VI <u>or</u> who have prior felony for a serious violent offense.</p> <p>Defendant must:</p>	Yes.	

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			<ul style="list-style-type: none"> • Agree to file no pretrial motions; • Agree to join government in requesting Magistrate to order post-hearing presentence report; • Agree not to recommend sentence outside sentencing range; • Agree to be sentenced on same day as change of plea. <p>Government agrees to recommend sentence within applicable Guideline range with 4- or 2-level downward variance.</p> <p>Disqualified or limited based on prior serious violent felony conviction that is countable under criminal history computation and relates to use or threatened use of bodily harm (i.e., kidnapping, bank robbery, voluntary manslaughter, forcible sex offenses, child sex offenses, and the like); prior participation in fast-track program after prosecution for violation of 8 U.S.C. § 1326; defendant on supervised release following prosecution for 1326; if under court or correctional supervision.</p> <p>Exceptions are occasionally made to defendants who would otherwise be “disqualified.”</p> <p>Assigned AUSA can determine eligibility opportunity based on multiple § 1326 convictions, criminal history, circumstances at time of arrest, connection to any independent federal criminal investigation or other mitigating or aggravating circumstances.</p> <p>Waive probable cause hearing; detention hearing; right to request downward variance, absent government consent; filing of objections to any matter or assertions in presentence report; direct appeal and collateral challenge to conviction and sentence under 2255, except on ineffective assistance of counsel.</p>		

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	Washington Western	No.			
TENTH					<p>Yes. <i>United States v. Lopez-Macias</i> 661 F.3d 485, 491 (10th Cir. 2011).</p>
	Colorado	Yes.	<p>4-level departure for defendants in CHC V or below and no prior felony convictions for “crime of violence” as defined by USSG § 2L1.2 comment (n.1(B)(iii)).</p> <p>2-level departure for defendants in CHC VI <u>or</u> who have one or more prior convictions for crime of violence.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts related to prior conviction and removal; • Agree not to file any motions under FRCP 12(b)(3); • Agree that credit for pretrial confinement will be determined by BOP. <p>Ineligible if defendant previously convicted of a violent felony, including murder, kidnapping, voluntary manslaughter, vehicular homicide, vehicular assault, a sex offense, assault resulting in serious bodily injury or committed by use of a deadly weapon where bodily injury results, committed intentionally, knowingly, with extreme indifference, or by a conscious disregard or a serious and unjustifiable risk that a result will occur; has previously been removed three or more times; has previously been convicted of</p>	Yes.	

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			<p>illegal reentry; has previously participated in fast-track; was the subject of an independent federal criminal investigation or was involved in the smuggling of other aliens at or about the time of apprehension; was under any form of post-conviction or guilty plea supervision; aggravating circumstances at the time of the defendant's arrest and/or aggravating facts in defendant's history warrant disqualification, with supervisor approval.</p> <p>Waive right to argue for a variance under 18 U.S.C. § 3553, right to appeal; right to collateral attack under 2255, except on the issue of ineffective assistance of counsel and prosecutorial misconduct. However, waiver provision does not prevent the defendant from seeking relief is there is an explicitly retroactive change in the applicable guidelines or sentencing statute.</p>		
	Kansas	Yes.	<p>4-level departure for defendants in CHC V or below (subject to exclusions, below).</p> <p>2-level departure for defendants in CHC VI <u>or</u> who have 5 or more prior deportations/removals or 3 or more prior deportations/removals within the year preceding being "found in" the United States, or with a single drug trafficking conviction carrying a penalty under 21 U.S.C. § 841(b)(1)(C), or a single state drug trafficking offense for which a sentence of less than 5 years was imposed.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and to admit that s/he was subject to a previous order of removal/deportation; • To the reinstatement of that previous order; • Admit that s/he has no fear of returning to country, submit 	Yes.	

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			<p>no application for asylum, and not contest either directly or by collateral attack the reinstatement of prior removal order;</p> <ul style="list-style-type: none"> • Agree not to file any FRCP 12(b)(3) motions. <p>Ineligible: Defendants with prior conviction for murder, kidnapping, voluntary manslaughter, national security or terrorism offense, human trafficking offense, DUI involuntary manslaughter, rape or other forcible sex offenses, sex offenses with children, including child pornography, firearms offenses, a drug trafficking offense carrying an aggravated penalty under 21 U.S.C. § 841(b)(1)(A) or (b)(1)(B), a state drug trafficking offense for which a minimum term of 5 years or more was imposed; defendants with two or more prior convictions of “crimes of violence” and/or “controlled substance offenses” as defined in USSG § 4B1.2; a defendant with 3 or more prior convictions for “violent felonies” or “serious drug offenses” as defined in the ACCA, 18 U.S.C. 924(e); a defendant with 16 or more criminal history points; a defendant with “a history of violent crime as determined solely by the U.S. Attorney’s office.”</p> <p>Waive right to argue for a variance under 18 U.S.C. § 3553; right to appeal or collaterally attack any matter except on the issue of ineffective assistance of counsel.</p>		
	New Mexico	Yes.	<p>4-level departure for defendants in CHC V or below and have no prior for a crime of violence.</p> <p>2-level departure for defendants in CHC VI or who have prior felony for crime of violence.</p> <p>“Policy letter” references nationwide “fast-track” policy.</p>	Yes.	

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			<p>Government will agree to 75-day extension of deadline for speedy indictment.</p> <p>Defendant must admit to offense facts and prior deportation and/or removal.</p> <p>Eligibility is determined by USA. Those in CH VI or one or more prior felonies for a crime of violence are potentially eligible for a 2 level downward on a case-by-case basis after taking into account public safety concerns.</p> <p>Waive sentencing departure, deviation, reduction or variance; right to appeal conviction and sentence; right to collaterally attack conviction under 2255 (except on issue of ineffective assistance); right to preliminary hearing; collateral attack or contest reinstatement of prior deportation/removal order; right to hearing before immigration judge.</p>		
	Oklahoma Eastern	Yes.	<p>4-level downward departure for defendants in CHC V or below.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Within 14 days of initial appearance, enter into written plea agreement that includes all required terms; • Agree to factual basis and stipulate to facts of prior conviction and removal/deportation; • Agree not to file any Rule 12(b)(3) motions; • Agree to abbreviated presentence investigation. <p>Disqualified if defendant has prior conviction for crime of violence or controlled substance offense (as defined in USSG § 4B1.2), child</p>	Yes.	

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			<p>pornography, human trafficking, or terrorism (as defined in Application Notes to USSG § 2L1.2); is in CHC VI; has 3 or more prior removals or deportations; has been previously convicted of a felony immigration offense or 2 or more misdemeanor immigration offenses; has previously participated in fast track program; is the target of independent federal criminal investigation; is charged with offense(s) other than illegal reentry under 8 U.S.C. § 1326; is under court or correctional supervision; circumstances at time of arrest or other aggravating factors are identified by USA (with supervisor approval).</p> <p>Waive right to indictment in the event of a pre-indictment plea; right to argue for downward departure or variance under 18 U.S.C. § 3553; right to appeal or challenge conviction under § 2255 except on issue of ineffective assistance of counsel challenging validity of guilty plea; full pre-sentence investigation.</p>		
	Oklahoma Northern	Yes.	<p>4-level downward departure for defendants in CHC V or below.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Within 14 days of arraignment, enter into written plea agreement that includes all required terms; • Agree to factual basis and stipulate to facts of prior conviction and removal; • Agree not to file Rule 12(b)(3) motions; • Agree to abbreviated pre-sentence investigation. <p>Disqualified if defendant has one or more prior convictions for “crime of violence” or controlled substance offense (as defined in USSG § 4B1.2(a) and (b) (2011)), child pornography offense,</p>	Yes.	

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			<p>national security or terrorism offense, human trafficking offense or alien smuggling offense (defined in USSG § 2L1.2 (2011)); kidnapping, voluntary manslaughter, an offense where a minor child is a victim or any other conviction that otherwise reflects history of serious violent crime; aggravated identity theft under 18 U.S.C. § 1028A; if deported 3 or more times; if 1 or more convictions for felony immigration offense; 2 or more convictions for misdemeanor immigration offenses; previous participation in fast-track program; if charged with another federal crime; is subject or target in another federal criminal investigation; was under any form of court or correctional supervision following a felony conviction on date of offense; is in CHC VI; or if there are circumstances at time of arrest or aggravating factors warrant disqualification (with supervisor approval).</p> <p>Waive right to argue for downward departure or variance under 18U.S.C. § 3553; right to appeal and opportunity to challenge conviction under § 2255, except claims of ineffective assistance of counsel challenging validity of guilty plea; full pre-sentence investigation.</p>		
	Oklahoma Western	Yes.	<p>4-level departure for defendants in CHC V or below, if defendant agrees not to file 12(b)(3) motions.</p> <p>Disqualified if defendant has prior for crime of violence or controlled substance offense as defined in USSG § 4B1.2, kidnapping, voluntary manslaughter, escape, offense where minor child is victim or any other offense otherwise reflecting a history of violence; prior for child porn offense, national security or terrorism offense or human trafficking offense as defined in USSG § 2L1.2; is in CHC VI; was previously removed or deported 3 or more times; prior conviction of felony immigration offense or 2 or more</p>	Yes.	

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			<p>misdemeanor immigration offenses; prior participation in fast-track program in any federal district; currently charged with or a target of a non-immigration federal crime; defendant is under court or correctional supervision based on a felony conviction; circumstances at time of arrest warrant a disqualification and supervisory AUSA approves.</p> <p>Waive right to argue for downward on other grounds or variance under 18 U.S.C. § 3553; appeal and opportunity to challenge conviction under 2255 except on issue of ineffective assistance of counsel; presentence investigation.</p>		
	Utah	Yes.	<p>4-level departure for all except for defendants who receive the 16-level enhancement under USSG § 2L2.1 or are in CHC VI, in which case they get 2-level departure.</p> <p>Defendant must agree:</p> <ul style="list-style-type: none"> • To proceed by information rather than indictment; • Not to file any motions, including motions for departures/variances. <p>Defendant may object to presentence report and challenge guideline calculations.</p> <p>Waive right to appeal.</p>		
	Wyoming	No.			

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ELEVENTH					<p align="center">No. <i>United States v. Vega-Castillo</i>, 540 F.3d 1235, 1239 (11th Cir. 2009).</p>
	Alabama Middle	Yes.	<p>Generally tracks the Cole Memorandum, though as a practical matter, it is rarely offered for defendants above CHC II and the cases are not expedited, so defendants end up serving the top of the guideline sentences.</p> <p>Ineligible if defendant has more than 3 prior deportations or removals or prior conviction of an aggravated felony.</p>		
	Alabama Northern	No.			
	Alabama Southern	No.			
	Florida Middle	Yes.	<p>4-level departure for defendants in CHC V or below.</p> <p>2-level departure for defendants in CHC VI.</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts of prior conviction and removal; • Agree not to reenter without express consent. 	Yes.	

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			<ul style="list-style-type: none"> • Disqualified if defendant has been previously deported for drug trafficking offense with sentence exceeding 5 years, a prior crime of violence, firearms offense, child porn offense, national security or terrorism offense, human trafficking offense, alien smuggling offense; previous conviction for illegal reentry; deported previously 3 or more times; having previously participated in a fast-track program; under any form of court or correctional supervision <p>Waive all appeals and challenges under 2255 of conviction except ineffective assistance of counsel; right to appeal sentence or challenge it collaterally on any ground except exceeding applicable guideline range, statutory maximum or violation of 8th Amendment.</p>		
	Florida Northern	Yes.	Tracks the requirements set out in the Cole Memorandum.		
	Florida Southern	Yes.	<p>4-level departure for defendants in CHC V and below.</p> <p>2-level departure for defendants in CHC VI or have prior “serious violent offense,” defined as (1) any offense included within this program’s definition of “serious violent felony;” (2) any other firearms offense; and (3) any of the offenses included within 18 USC §3559(c)(2)(F)(ii).</p> <p>Defendant must:</p> <ul style="list-style-type: none"> • Agree to factual basis and stipulate to facts of prior conviction and removal; • Agree not to file Rule 12(b)(3) motions. <p>Disqualified if defendant has at least 1 prior conviction for "serious violent felony (defined as (1) any of the offenses included within 18</p>	Yes.	

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			<p>USC §3559(c)(2)(F)(i); (2) any child pornography offense; (3) any national security or terrorism offense; (4) any human trafficking offense; (5) any forcible sex offense; (6) any child exploitation offense; (7) any felony domestic violence offense; (8) any drug trafficking offense included within 18 USC §3559(c)(2)(H); and (9) any felony arson offense); has been previously deported 2 or more times; has at least 1 prior conviction under 8 U.S.C. § 1326; has at least 1 prior conviction for an immigration-related offense; has previously participated in fast-track program; is part of an independent federal criminal investigation; is under any court or correctional supervision; or there are circumstances at the time of arrest or other aggravating factors identified by USA.</p> <p>Waive: right to argue for variance under 18 U.S.C. § 3553; right to appeal sentence; full pr-sentence investigation.</p>		
	Georgia Middle	Yes.	4-level or 2-level downward departure depending on the AUSA's discretionary determination, numerous waivers.		
	Georgia Northern	No.	[FPD office has alternately been informed that the USAO has a fast-track policy of undisclosed terms, but those charged (mostly aggravated felons) would not qualify.]		
	Georgia Southern	No.			