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SCRIPT FOR INITIAL APPEARANCES

1. Will the Deputy Clerk of Court please swear the interpreter? I'm (name of magistrate judge), a United States Magistrate Judge from the United States District Court for the Northern District of Iowa. We are in court on the following cases:
[The judge will announce the cases].
2. Please raise your hand if you can hear and understand what the interpreter is saying to you in Spanish. If you have problems hearing or understanding something that happens during this hearing, please raise your hand and get my attention.
3. I want each of you to state your name so I'll know who you are. [The judge will have each defendant to identify him/herself.]
4. Felony charges have been filed in this court charging each of you with making false representations about social security numbers and/or with aggravated identity theft. You each should have a copy of a document called a "complaint," which describes the charges against you. If you don't have a copy of the complaint, please raise your hand. [The judge will make sure each defendant has a copy of the complaint filed against him/her.]
5. This is your first appearance in federal court, and I'm going to tell you about a few of your rights under the United States Constitution.

You have the right to remain silent. You don't have to say anything to anyone. If you give up that right and make a statement, the prosecutor can, and probably will, use everything you say against you. Even if you've already given a statement, you don't have to say anything else. If you decide to go ahead and make a statement, you have the right to stop at any time.

You also have the right to be represented by a lawyer at every stage of this case. If you want a lawyer but can't afford to hire one, I'll appoint one to represent you. If I appoint a lawyer to represent you, the lawyer will represent you in this case, but the court will pay the lawyer's fees and expenses.

You won't have to pay anything for the lawyer.

6. We have lawyers available here today, and I'll appoint one to represent each of you if you want. Please raise your hand if you don't want me to appoint a free lawyer for you or if you have enough money to hire a lawyer on your own. [For everyone who wants a court-appointed lawyer, the judge will say the following.] I hereby order that lawyers be appointed to represent each of you.
7. Mr./Ms. (*name of prosecutor*), have ICE detainers been filed against all of these defendants? [If the prosecutor says "yes," the judge will say the following.] Based on these detainers, I hereby order the defendants all detained.
8. You each have the right to a preliminary examination within 10 days from today. At that hearing, the prosecutor will have to show probable cause that you committed the offense you're charged with in the complaint.
9. The Court **Orders** that status hearings in these cases will be held at this facility beginning at _____ .m. on (day of the week), May _____, 2008 [the judge will schedule a time and a date seven days from the date of the initial appearance], and preliminary examinations will be held at the United States Courthouse in Cedar Rapids, Iowa, beginning at 8:00 a.m. on Wednesday, May 28, 2008.
10. Does anyone have any questions about anything I've said here today?
11. Does anyone want to make any further record? We are in recess.

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Defendant.

No. _____

**WAIVER OF INDICTMENT AND
CONSENT TO BE PROSECUTED BY
INFORMATION**

I have been advised that I have the right to insist that any felony charge brought against me in federal court first be presented to a United States Grand Jury, and that I cannot be prosecuted in this court on a felony charge unless the Grand Jury indicts me for it. I would like to waive that right, and agree to be prosecuted under the Information filed against me in this case by the United States Attorney.

I understand that a Grand Jury is a group of people composed of at least sixteen but not more than twenty-three citizens. Before a felony charge against me can go forward in this court, at least twelve members of the grand jury must find there is probable cause to believe I committed a crime, and then vote to return an Indictment against me charging me with that crime. I know I do not have to waive my right to be charged in Indictment, but I want to waive that right. I understand that if I waive this right and agree to be charged by Information, the case will proceed against me based on the Information just as though I had been indicted.

I hereby waive my right to Indictment, and consent to be prosecuted based on the Information filed against me in this case by the United States Attorney.

Date: _____

Defendant

Defendant's Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EN EL TRIBUNAL DE DISTRITO DE ESTADOS UNIDOS
PARA EL DISTRITO NORTE DE IOWA

UNITED STATES OF AMERICA,
ESTADOS UNIDOS DE AMÉRICA,

Plaintiff,
Demandante,

vs.
contra

Defendant.
El Acusado.

No. CR _____
No. de Registro

**WAIVER OF INDICTMENT AND
CONSENT TO BE PROSECUTED BY
INFORMATION
RENUNCIA AL ACTA ACUSATORIO Y
CONSENTIMIENTO A SER
ENJUICIADO POR DENUNCIA**

I have been advised that I have the right to insist that any felony charge brought against me in federal court first be presented to a United States Grand Jury, and that I cannot be prosecuted in this court on a felony charge unless the Grand Jury indicts me for it. I would like to waive that right, and agree to be prosecuted under the Information filed against me in this case by the United States Attorney.

Yo he sido asesorado de mi derecho de insistir de que cualquier delito grave del que se me acuse ante un tribunal federal, debe ser primero presentado ante Jurado Acusatorio de los Estados Unidos, y que yo no podré ser enjuiciado de delito grave a menos de que el Jurado Acusatorio me acuse formalmente por el. Yo deseo renunciar ese derecho, y acuerdo de que se me enjuicie bajo la Denuncia presentada en mi contra en este caso por el Fiscal Federal de los Estados Unidos.

I understand that a Grand Jury is a group of people composed of at least sixteen but not more than twenty-three citizens. Before a felony charge against me can go forward in this court, at least twelve members of the grand jury must find there is probable cause to believe I committed a crime, and then vote to return an Indictment against me charging me with that crime. I know I do not have to waive my right to be charged in Indictment, but I want to waive that right. I understand that if I waive this right and agree to be charged by Information, the case will proceed against me based on the Information just as though I had been indicted.

Yo entiendo que el Jurado Acusatorio es un grupo de por lo menos dieciseis, pero no más de veintitrés ciudadanos. Antes de que este tribunal me enjuicie, por lo menos doce miembros de este Jurado Acusatorio deberán encontrar motivo fundado de creencia de que he cometido un crimen, y después votar para presentar una Acusación Formal contra mí persona, acusándome de ese crimen. Yo entiendo que no es necesario renunciar mi derecho de ser Acusado Formalmente, pero deseo renunciar

ese derecho. Yo entiendo de que si renuncio este derecho y acuerdo ser acusado por Denuncia, de que el caso ha de proceder tal como si hubiese sido acusado.

I hereby waive my right to Indictment, and consent to be prosecuted based on the Information filed against me in this case by the United States Attorney.

Yo por este medio renuncio mi derecho de ser Acusado Formalmente, y consiento el ser enjuiciado por el Fiscal Federal de los Estados Unidos, basado en la Denuncia presentada contra mi en este caso.

Defendant
El Acusado

Date
Fecha

Attorney for Defendant
Abogado del Acusado

Date
Fecha

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Defendant.

No. _____

**CONSENT TO PLEAD GUILTY
BEFORE A MAGISTRATE JUDGE**

I know I have the right to plead guilty before a United States District Court Judge. However, I would like to plead guilty before a United States Magistrate Judge, so I am signing this document. No one has forced or pressured me to sign this document.

By signing this document, I consent to plead guilty before a United States Magistrate Judge. After I plead guilty, the Magistrate Judge will recommend that my guilty plea be accepted, but the plea must be accepted by a United States District Court Judge before it is effective.

If my guilty plea is accepted, a District Court Judge will preside over my sentencing hearing, and will decide whether to accept or reject any plea agreement. The District Court Judge also will pronounce my sentence.

I also consent to allow the United States Probation Office to immediately begin to prepare a presentence investigation report about me.

Date: _____

Defendant

Defendant's Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EN EL TRIBUNAL DE DISTRITO DE ESTADOS UNIDOS
PARA EL DISTRITO NORTE DE IOWA

UNITED STATES OF AMERICA,
ESTADOS UNIDOS DE AMÉRICA,

Plaintiff,
Demandante,

vs.
contra

Defendant.
El Acusado.

No. CR _____
No. de Registro

**CONSENT TO PLEAD GUILTY
BEFORE A MAGISTRATE JUDGE
CONSENTIMIENTO PARA HACER
ACUERDO DECLARATORIO ANTE UN
TRIBUNAL DE PRIMERA INSTANCIA**

I know I have the right to plead guilty before a United States District Court Judge. However, I would like to plead guilty before a United States Magistrate Judge, so I am signing this document. No one has forced or pressured me to sign this document.

Yo sé que tengo derecho de no hacer acuerdo declaratorio de culpabilidad ante el Juez de Distrito de los Estados Unidos, Sin embargo, de ceo comparecer ante un Tribunal de Primera Instancia de Distrito de los Estados Unidos para hacer acuerdo declaración de culpabilidad, así que voy a firmar este documento. Nadie me ha forzado, ni presionado para que firme este documento.

By signing this document, I consent to plead guilty before a United States Magistrate Judge. After I plead guilty, the Magistrate Judge will recommend that my guilty plea be accepted, but the plea must be accepted by a United States District Court Judge before it is effective.

Al firmar este documento, yo consiento hacer acuerdo declaratorio de culpabilidad ante un Tribunal de Primera Instancia de los Estados Unidos. Después de declararme culpable, el Tribunal ha de recomendar que mi declaración de culpabilidad sea aceptada, pero la declaración debe ser aceptada por el Juez de Distrito de los Estados Unidos para que entre en vigor.

If my guilty plea is accepted, a District Court Judge will preside over my sentencing hearing, and will decide whether to accept or reject any plea agreement. The District Court Judge also will pronounce my sentence.

Si mi declaración de culpabilidad es aceptada, un Juez de Distrito de los Estados Unidos ha de presidir sobre la audiencia de la sentencia y ha de decidir si aceptar o rechazar cualquier acuerdo de declaración de culpabilidad. El Juez de Distrito también ha de pronunciar my sentencia.

I also consent to allow the United States Probation Office to immediately begin to prepare a presentence investigation report about me.

También he de consentir de que la Oficina de Permiso de Libertad Condicional de los Estados Unidos, empiece inmediatamente un informe de investigación previo a la sentencia referente a mi.

Defendant
El Acusado

Date
Fecha

Attorney for Defendant
Abogado del Acusado

Date
Fecha

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SCRIPT FOR 11(c)(1)(C) GUILTY PLEAS

1. INTRODUCTION.

- Will the deputy clerk of court please swear the interpreter?
- My name is _____. I am a Magistrate Judge from the United States District Court for the Northern District of Iowa. We are in court on the following cases: [The Judge will announce the cases.]
- Please raise your hand if you can hear and understand what the interpreter is saying to you in Spanish. If you have problems hearing or understanding something that happens during this hearing, please raise your hand and get my attention.
- I want each of you to state your name so that I'll know who you are. [The Judge will have each Defendant identify him/herself.]

2. NATURE OF THE CHARGES.

- You have each been charged with [name of charge(s)].
- You should each have a copy of an Information that has been filed against you. If you don't have a copy of the Information, please raise your hand. [The Judge will make sure each Defendant has a copy of the Information filed against him/her.]

3. WAIVER OF INDICTMENT.

- These are felony charges. You have the right under the United States Constitution to insist that these charges be brought against you in an Indictment, rather than in an Information.
- An Indictment is a formal charging document returned by a grand jury. A grand jury is composed of at least sixteen but not more than twenty-three citizens. Before a felony charge against you can go forward in this Court, at least twelve members of the grand jury must find there is probable cause to

believe you committed a crime, and then vote to return an Indictment charging you with that crime.

- If you want, you can waive your right to be charged in an Indictment and agree to be charged in an Information, which is a document that is simply filed by the United States Attorney. If you agree to be charged in an Information, the case will proceed against you based on the Information just as though you had been indicted.
- You have each signed a form consenting to have these charges brought against you in an Information. I am going to ask each of you this question: Is it your intent to waive your right to be charged in an Indictment and consent to have these charges brought against you in an Information? [The Judge will address each Defendant individually.] [Mr./Ms. Defense Counsel], is it your understanding that your client(s) wish(es) to waive his/her/their right to be charged in an Indictment and agree(s) to have these charges brought against him/her/them in an Information?

4. **WAIVER OF FORMAL READING.**

- You each have the right to have the Information read to you here in open Court before we proceed further, or you can waive that right. It is my understanding that the charges have already been read to you and translated into Spanish.
- If you would you like me to read the Information to you at this time, please raise your hand. Since you have not raised your hand, I find you have waived this requirement.

5. **GUILTY PLEA.**

- At this time you are required to enter a plea to the charge(s), and your plea(s) can be either guilty or not guilty.

- [The Judge will ask each of the Defendants the following question.] How do you plead to Count 1, guilty or not guilty? [The Judge will repeat for Count 2, etc.]

6. **CONSENT TO MAGISTRATE JUDGE.**

- You each have the right to have a District Judge preside over any guilty plea proceeding. As a Magistrate Judge, I can preside over this hearing, but only with your voluntary consent.
- Each of you has signed a form stating that you consent to have me preside over this plea hearing. I am going to ask each of you this question: Do you agree that I may preside at this guilty plea hearing? [The Judge will address each Defendant individually.]

7. **DEFENDANT PLACED UNDER OATH.**

- I am now going to place each of you under oath. Would you all please raise your right hand? [The Judge or the deputy clerk of court will place the Defendants under oath.]
- You all are now under oath. You should tell the truth because if you don't, you could be prosecuted for perjury or for making a false statement. In any such prosecution, the Government can use against you any statements which you make here under oath.

8. **ENSURING MENTAL CAPACITY.** [The Judge will ask each of the Defendants the following questions.]

- [Name of Defendant], are you a United States citizen? Of what country are you a citizen? How far did you go in school?
- Have you ever abused drugs or alcohol? Have you ever suffered from depression, anxiety, or any other mental illness? Within the past three days, have you used or taken alcohol, legal or illegal drugs, or prescription or non-prescription medication? [If the Defendant answers "yes" to any of these

questions, the Judge will ask the following question: “Do you think the fact that you [issue raised by the Defendant] might affect your ability to understand the legal matters we will be talking about at this hearing today?”]

- Do you know of any other reason why you might have difficulty understanding these proceedings?
- [Mr./Ms. Defense Counsel], do you have any reason to believe your client, [name of Defendant], is not competent to enter (a) plea(s) of guilty at this hearing today?

9. **RIGHT TO AN ATTORNEY.**

- Each of you has the right to a lawyer to answer your questions and represent you during every stage of this case. If you cannot afford an lawyer, you are entitled to have a lawyer appointed to represent you at no cost to you. In this case, a lawyer has been appointed to represent each of you at public expense. Your lawyer will continue to represent you until your case is concluded, even if you decide to go to trial instead of entering (a) guilty plea(s) to the charge(s) against you.
- I am going to ask each of you this question: Are you satisfied with the representation you’ve received from your lawyer? [The Judge will address each Defendant individually.]

10. **RIGHT TO A JURY TRIAL.**

- Before I can accept any of your guilty pleas, I must explain your trial rights to you. If you plead guilty, you will be giving up your one chance for a jury trial on these charges. You each have the right to a speedy, public jury trial before a jury of twelve people selected from a cross-section of this community. Your jurors would promise under oath to try your case fairly and justly, based only on what is submitted into evidence at trial and the instructions given to them by the trial judge.

- The Judge would tell the jury that you are presumed innocent, and that the presumption of innocence remains with you unless and until, at the end of your trial, the prosecution has convinced the jury of your guilt beyond a reasonable doubt. The Judge would also tell the jury that the presumption of innocence alone is enough for you to be acquitted of these charges. Any verdict by the jury would have to be unanimous, which means that all twelve jurors would have to agree on the verdict.
- The prosecution would have to call its witnesses to testify under oath here in Court. Your lawyer would not have to question the prosecution's witnesses, but if your lawyer wanted to, he or she could confront them by cross-examining them. If you plead guilty, you are giving up your right to confront witnesses.
- The burden of proof would remain on the prosecution throughout the trial. You would not have to put on a defense or prove anything at all. However, if you wanted to, you could present any relevant evidence to the jury. For example, you could make witnesses come to Court by having subpoenas served on them. If you could not afford to pay the costs and fees necessary to serve the subpoenas or get your witnesses to court, I would make the Government pay those costs and fees. If you plead guilty, you are giving up your right to present any defense.
- You have the right to remain silent. You could testify at your trial if you wanted to, but you would not have to. If you decided not to testify, the prosecutor would not say anything about it to the jury. In fact, the Judge would tell the jurors that you have a Constitutional right not to testify, and that they must not hold it against you if you don't testify.

- If you plead guilty, you will be giving up your right to a jury trial, including all of the rights I have just described. You will be judged guilty based upon your pleas, just as if a jury had returned a guilty verdict against you.
- I am going to ask each of you this question: Do you understand that by pleading guilty, you are giving up the rights I have just explained? [The Judge will address each Defendant individually.]

11. **ELEMENTS AND FACTUAL BASIS.**

- Before I can accept your pleas of guilty, I must establish that you understand what you have been charged with and that there exists an adequate factual basis to convict you on the charge(s) against you.
- Regarding the charge of [name of charge], the prosecution would have to prove all of the following elements beyond a reasonable doubt to the satisfaction of a unanimous jury: [The Judge will recite the elements and obtain a factual basis for a guilty plea on each count.]
- [Mr./Ms. Prosecutor], did I accurately describe the elements of the charges to the Defendants? Do you believe I have established an adequate factual basis for guilty pleas by the Defendants to the charges against them?
- [Mr./Ms. Defense Counsel], do you think your clients understand the elements of the charges against them? Do you believe there is a factual basis for their pleas of guilty to the charges against them? Do you know of any possible defenses to the charges which you have not considered and discussed with your clients?

12. **PLEA AGREEMENT.**

- I understand that the Government and the Defendants have executed Plea Agreements providing for agreed sentences under FEDERAL RULE OF CRIMINAL PROCEDURE 11(c)(1)(C). Would the prosecutor please offer the

Plea Agreements into evidence at this time, and describe the terms of these Agreements to the Defendants?

- [The Judge will address each of the Defendants about his/her Plea Agreement.] Do you have a copy of your Plea Agreement in front of you? Is that your signature on the last page of the Agreement? Are those your initials that appear throughout the document? Did your attorney review the document with you before you signed it? Do you understand all of the terms of the Plea Agreement? Do you have any questions about the Plea Agreement? Do you understand that by initialing and signing the Plea Agreement, you are agreeing to be bound by its terms, and agreeing that the facts recited in the Plea Agreement are true and accurate?

13. **PENALTIES.**

- I want to inform all of you regarding the penalties which apply to the charges in this case. On the charge of [name of charge], [the Judge will state the applicable penalty].
- At the sentencing hearing, the Judge will perform a calculation under the Federal Sentencing Guidelines, which are guidelines issued by the United States Sentencing Commission. This calculation will result in what is called an “advisory guideline range,” which is a range of months within which the Sentencing Commission suggests that you be sent to jail or prison. The Judge will consider this range in determining your sentence, but so long as the sentence is reasonable, the Judge can depart or vary from the range.
- In your Plea Agreement, the Government agrees to recommend that you be sentenced as follows: [The Court will describe the sentence set forth in the Plea Agreement]. If the sentencing Judge agrees to this sentence, then you will be given the sentence provided in the Plea Agreement. This will be the total sentence you will receive on these charges. On the other hand, if the

sentencing Judge decides not to impose the agreed sentence, then the Judge will tell you and you will be given a chance to withdraw your guilty plea(s). If you decide to withdraw your guilty plea(s), then (a) not guilty plea(s) will be entered and your case will be scheduled for trial. If you decide you do not want to withdraw your guilty plea(s) even though the sentencing Judge will not be giving you the sentence agreed to in the Plea Agreement, then the Judge will go ahead and sentence you, but the Judge will not be limited to the sentence agreed to in the Plea Agreement. The Judge then could impose any reasonable sentence, up to and including the statutory maximum sentence.

- You should understand that you will be in custody for all of any jail or prison sentence you receive, reduced only by any credit for good time you may earn. You can earn a reduction in your prison sentence for “good time” of up to 15 percent of your sentence, but only if you are sentenced to more than one year in custody. If you are sentenced to a year or less in custody, then you cannot earn any good time, and would have to serve all of your sentence in some type of custody.
- Whatever sentence you receive, you will never see a parole board or be paroled out of prison because there is no parole in federal court.
- You will be deported immediately after you are released from custody on these charges. A condition of your supervised release or probation will be that you not reenter the United States while on supervised release or probation. If you reenter the United States while on supervised release or probation, the Judge will send you to prison. This imprisonment would be in addition to any sentence you receive if you are convicted on a new charge of illegally reentering the United States.
- If you have any questions about the sentencing procedure, please raise your hand.

14. **SENTENCING HEARING.**

- If you plead guilty here today, I will order a Presentence Investigation Report, which will be prepared by a probation officer. You have the right to read and review the Presentence Investigation Report. In your Plea Agreement, however, you have waived that right.
- After the Report has been finalized, it will be given to the District Court Judge who will sentence you. You will then have a sentencing hearing. At the sentencing hearing, the lawyers can present witnesses and exhibits on any sentencing issue and you will be given a chance to talk to the Judge directly.

15. **RIGHT TO APPEAL.**

- The Plea Agreement in your case includes a waiver of your right to appeal. After your guilty plea(s) is/are accepted by the District Judge and you are sentenced, you will have no right to withdraw your guilty plea(s) or appeal your sentence, even if you are unhappy with the sentence the Judge gives you.
- I am going to ask each of you this question: Do you understand that you are waiving any right to appeal? [The Court will address each Defendant individually.]

16. **ENSURING VOLUNTARINESS OF PLEA.**

- If anyone has forced or pressured you to plead guilty or made any promises to you to get you to plead guilty, other than what is in the Plea Agreement, please raise your hand.
- [Mr./Ms. Defense Counsel], do you believe guilty pleas by your clients to the charges against them would be voluntary? Do you know of any legal reason why the pleas should not be accepted? Do you know of anything the Court has omitted which could affect the validity of the pleas?

- [Mr./Ms. Prosecutor], do you know of anything the Court has omitted which could affect the validity of the pleas?
- If any of you have any questions about anything we have discussed here today, please raise your hand.
- I am going to ask each of you this question: Formally and for the record, how do you plead to the charge of [name of offense], guilty or not guilty? [The Court will address each Defendant individually.]

17. **FINDING.**

- I find that the Defendants have waived their right to indictment and have agreed to proceed by Information only. In addition, the Defendants have consented to proceed before a Magistrate Judge for the guilty plea hearing.
- I find that the Defendants are competent, they fully understand the charges against them, there is a factual basis for their pleas of guilty, they know the maximum punishment that could be imposed on the charges against them, and they know their jury rights and have voluntarily waived those rights.
- I further find that the Defendants' decisions to plead guilty were voluntary, knowing, and not the result of any force, pressure, threats, or promises, other than the promises made by the Government in the Plea Agreement.
- Therefore, I find the Defendants should be judged guilty based on their pleas of guilty.

18. **REPORT AND RECOMMENDATION.**

- I have signed and will file a Report and Recommendation in each case, recommending that the Defendant's guilty pleas be accepted.
- I HEREBY ORDER a Presentence Investigation Report for each Defendant.
- Counsel, is there anything further that needs to be addressed? We are in recess.

C

United States Code Annotated Currentness

Federal Rules of Criminal Procedure for the United States District Courts (Refs & Annos)

▣ IV. Arraignment and Preparation for Trial

→ Rule 11. Pleas

(a) Entering a Plea.

(1) In General. A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) Nolo Contendere Plea. Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) Failure to Enter a Plea. If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

- (C) the right to a jury trial;
- (D) the right to be represented by counsel--and if necessary have the court appoint counsel--at trial and at every other stage of the proceeding;
- (E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;
- (F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;
- (G) the nature of each charge to which the defendant is pleading;
- (H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;
- (I) any mandatory minimum penalty;
- (J) any applicable forfeiture;
- (K) the court's authority to order restitution;
- (L) the court's obligation to impose a special assessment;
- (M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a); and
- (N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.

(2) Ensuring That a Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) Plea Agreement Procedure.

(1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) Disclosing a Plea Agreement. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) Judicial Consideration of a Plea Agreement.

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the

defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) Accepting a Plea Agreement. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) Rejecting a Plea Agreement. If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under Rule 11(c)(5); or

(B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) Finality of a Guilty or Nolo Contendere Plea. After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) Recording the Proceedings. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) Harmless Error. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

CREDIT(S)

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub.L. 94-64, § 3(5)-(10), 89 Stat. 371, 372; Apr. 30, 1979, eff. Aug. 1, 1979, and Dec. 1, 1980; Apr. 28, 1982, eff. Aug. 1, 1982; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 9, 1987, eff. Aug. 1, 1987; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7076, 102 Stat. 4406; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 29, 1999, eff. Dec. 1, 1999; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007.)

Amendments received to 02-19-08

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C

United States Code Annotated Currentness

Federal Rules of Criminal Procedure for the United States District Courts (Refs & Annos)

▣ IV. Arraignment and Preparation for Trial

→ Rule 12. Pleadings and Pretrial Motions

(a) **Pleadings.** The pleadings in a criminal proceeding are the indictment, the information, and the pleas of not guilty, guilty, and nolo contendere.

(b) **Pretrial Motions.**

(1) **In General.** Rule 47 applies to a pretrial motion.

(2) **Motions That May Be Made Before Trial.** A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial of the general issue.

(3) **Motions That Must Be Made Before Trial.** The following must be raised before trial:

(A) a motion alleging a defect in instituting the prosecution;

(B) a motion alleging a defect in the indictment or information--but at any time while the case is pending, the court may hear a claim that the indictment or information fails to invoke the court's jurisdiction or to state an offense;

(C) a motion to suppress evidence;

(D) a Rule 14 motion to sever charges or defendants; and

(E) a Rule 16 motion for discovery.

(4) Notice of the Government's Intent to Use Evidence.

(A) At the Government's Discretion. At the arraignment or as soon afterward as practicable, the government may notify the defendant of its intent to use specified evidence at trial in order to afford the defendant an opportunity to object before trial under Rule 12(b)(3)(C).

(B) At the Defendant's Request. At the arraignment or as soon afterward as practicable, the defendant may, in order to have an opportunity to move to suppress evidence under Rule 12(b)(3)(C), request notice of the government's intent to use (in its evidence-in-chief at trial) any evidence that the defendant may be entitled to discover under Rule 16.

(c) Motion Deadline. The court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing.

(d) Ruling on a Motion. The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

(e) Waiver of a Defense, Objection, or Request. A party waives any Rule 12(b)(3) defense, objection, or request not raised by the deadline the court sets under Rule 12(c) or by any extension the court provides. For good cause, the court may grant relief from the waiver.

(f) Recording the Proceedings. All proceedings at a motion hearing, including any findings of fact and conclusions of law made orally by the court, must be recorded by a court reporter or a suitable recording device.

(g) Defendant's Continued Custody or Release Status. If the court grants a motion to dismiss based on a defect in instituting the prosecution, in the indictment, or in the information, it may order the defendant to be released or detained under 18 U.S.C. § 3142 for a specified time until a new indictment or information is filed. This rule does not affect any federal statutory period of limitations.

(h) Producing Statements at a Suppression Hearing. Rule 26.2 applies at a suppression hearing under Rule 12(b)(3)(C). At a suppression hearing, a law enforcement officer is considered a government witness.

CREDIT(S)

(As amended Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Pub.L. 94-64, § 3(11), (12), 89 Stat. 372; Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002.)

ADVISORY COMMITTEE NOTES

1944 Adoption

Note to Subdivision (a). 1. This rule abolishes pleas to the jurisdiction, pleas in abatement, demurrers, special pleas in bar, and motions to quash. A motion to dismiss or for other appropriate relief is substituted for the purpose of raising all defenses and objections heretofore interposed in any of the foregoing modes. "This should result in a reduction of opportunities for dilatory tactics and, at the same time, relieve the defense of embarrassment. Many competent practitioners have been baffled and mystified by the distinctions between pleas in abatement, pleas in bar, demurrers, and motions to quash, and have, at times, found difficulty in determining which of these should be invoked." Homer Cummings, 29 A.B.A.Jour. 655. See also, Medalie, 4 Lawyers Guild R. (3) 1, 4.

2. A similar change was introduced by the Federal Rules of Civil Procedure (Rule 7(a)) which has proven successful. It is also proposed by the A.L.I. Code of Criminal Procedure (Sec. 209).

Note to Subdivision (b)(1) and (2). These two paragraphs classify into two groups all objections and defenses to be interposed by motion prescribed by Rule 12(a). In one group are defenses and objections which must be raised by motion, failure to do so constituting a waiver. In the other group are defenses and objections which at the defendant's option may be raised by motion, failure to do so, however, not constituting a waiver. (Cf. Rule 12 of Federal Rules of Civil Procedure, 28 U.S.C., Appendix.)

In the first of these groups are included all defenses and objections that are based on defects in the institution of the prosecution or in the indictment and information, other than lack of jurisdiction or failure to charge an offense. All such defenses and objections must be included in a single motion. (Cf. Rule 12(g) of Federal Rules of Civil Procedure, 28 U.S.C. Appendix.) Among the defenses and objections in this group are the following: Illegal selection or organization of the grand jury, disqualification of individual grand jurors, presence of unauthorized persons in the grand jury room, other irregularities in grand jury proceedings, defects in indictment or information other than lack of jurisdiction or failure to state an offense, etc. The provision that these defenses and objections are waived if not raised by motion substantially continues existing law, as they are waived at present unless raised before trial by plea in abatement, demurrer, motion to quash, etc.

5

ELEMENTS OF FALSE REPRESENTATIONS ABOUT SOC. SEC. NUMBERS
(42 U.S.C. § 408(a)(7)(B))

To convict you on [*this charge*] [*the charge in Count @ of the Information*], the prosecution would have to prove all of the following matters to the jury:

First, the prosecution would have to prove that at some time after June 1, 2003, in the Northern District of Iowa, you knowingly represented to someone that a Social Security number was assigned to you by the Commissioner of Social Security.

Do you admit that at some time after June 1, 2003, in the Northern District of Iowa, you knowingly represented to someone that a Social Security number was assigned to you by the Commissioner of Social Security?

Second, the prosecution would have to prove that the Social Security number was not assigned to you by the Commissioner of Social Security.

Do you admit that the Social Security number was not assigned to you by the Commissioner of Social Security?

Third, the prosecution would have to prove that when you falsely represented the Social Security number was assigned to you, you intended to deceive someone.

Do you admit that when you falsely represented the Social Security number was assigned to you, you intended to deceive someone? Specifically, do you admit you falsely represented to an employer that this was your Social Security number so you could get a job?

STATUTORY PENALTIES

Under the statutes that apply to this charge, you could be sent to prison for up to five years, placed on supervised release for up to three years, and fined up to \$250,000. There also will be a special assessment of \$100 on this count.



Effective: March 2, 2004

United States Code Annotated Currentness

Title 42. The Public Health and Welfare

▣ Chapter 7. Social Security (Refs & Annos)

▣ Subchapter II. Federal Old-Age, Survivors, and Disability Insurance Benefits (Refs & Annos)

→ § 408. Penalties

(a) In general

Whoever--

(1) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to--

(A) whether wages were paid or received for employment (as said terms are defined in this subchapter and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(B) whether net earnings from self-employment (as such term is defined in this subchapter and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(C) whether a person entitled to benefits under this subchapter had earnings in or for a particular period (as determined under section 403(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(2) makes or causes to be made any false statement or representation of a material fact in any application for any

payment or for a disability determination under this subchapter; or

(3) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this subchapter; or

(4) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(5) having made application to receive payment under this subchapter for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(6) willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title; or

(7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose--

(A) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Commissioner of Social Security (in the exercise of the Commissioner's authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Commissioner of Social Security by him or by any other person; or

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person; or

(C) knowingly alters a social security card issued by the Commissioner of Social Security, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it; or

(8) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;

shall be guilty of a felony and upon conviction thereof shall be fined under Title 18 or imprisoned for not more than five years, or both.

(b) Restitution [FN1]

(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) of this section, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the victims of such offense specified in paragraph (4).

(2) Sections 3612, 3663, and 3664 of Title 18 shall apply with respect to the issuance and enforcement of orders of restitution to victims of such offense under this subsection.

(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4) For purposes of paragraphs (1) and (2), the victims of an offense under subsection (a) of this section are the following:

(A) Any individual who suffers a financial loss as a result of the defendant's violation of subsection (a) of this section.

(B) The Commissioner of Social Security, to the extent that the defendant's violation of subsection (a) of this section results in--

(i) the Commissioner of Social Security making a benefit payment that should not have been made; or

(ii) an individual suffering a financial loss due to the defendant's violation of subsection (a) of this section in his or her capacity as the individual's representative payee appointed pursuant to section 405(j) of this title.

(5)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund, as appropriate.

(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (4)(B)(ii), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss, except that such amount may be reduced by the amount of any overpayments of benefits owed under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter by the individual.

(c) Violations by certified payees

Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined under Title 18 or imprisoned for not more than five years, or both.

(d) Effect upon certification as payee; definitions

Any individual or entity convicted of a felony under this section or under section 1383a(b) of this title may not be certified as a payee under section 405(j) of this title. For the purpose of subsection (a)(7) of this section, the terms "social security number" and "social security account number" mean such numbers as are assigned by the Commissioner of Social Security under section 405(c)(2) of this title whether or not, in actual use, such numbers are called social security numbers.

(e) Application of subsection (a)(6) and (7) to certain aliens

(1) Except as provided in paragraph (2), an alien--

(A) whose status is adjusted to that of lawful temporary resident under section 1160 or 1255a of Title 8 or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

(B) whose status is adjusted to that of permanent resident--

(i) under section 202 of the Immigration Reform and Control Act of 1986, or

(ii) pursuant to section 1259 of Title 8, or

(C) who is granted special immigrant status under section 1101(a)(27)(I) of Title 8,

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) of this section if such conduct is alleged to have occurred prior to 60 days after November 5, 1990.

(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C) of this section) consisting of--

(A) selling a card that is, or purports to be, a social security card issued by the Commissioner of Social Security,

(B) possessing a social security card with intent to sell it, or

(C) counterfeiting a social security card with intent to sell it.

(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) of this section to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) of this section were not committed.

CREDIT(S)

(Aug. 14, 1935, c. 531, Title II, § 208, 49 Stat. 625; Aug. 10, 1939, c. 666, Title II, § 201, 53 Stat. 1372; Aug. 28, 1950,



United States Code Annotated Currentness

Federal Sentencing Guidelines (Refs & Annos)

Chapter Two. Offense Conduct (Refs & Annos)

▣ Part B. Basic Economic Offenses

▣ 1. Theft, Embezzlement, Receipt of Stolen Property, Property Destruction, and Offenses Involving Fraud or Deceit (Refs & Annos)

→ § 2B1.1. Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States

(a) Base Offense Level:

- (1) 7, if (A) the defendant was convicted of an offense referenced to this guideline; and (B) that offense of conviction has a statutory maximum term of imprisonment of 20 years or more; or
- (2) 6, otherwise.

(b) Specific Offense Characteristics

- (1) If the loss exceeded \$5,000, increase the offense level as follows:

	Loss (Apply the Greatest)	Increase in Level
(A)	\$5,000 or less.....	no increase
)		
(B)	More than \$5,000.....	add 2
)		
(C)	More than \$10,000.....	add 4
)		
(D)	More than \$30,000.....	add 6
)		
(E)	More than \$70,000.....	add 8
)		
(F)	More than \$120,000.....	add 10
)		
(G)	More than \$200,000.....	add 12
)		
(H)	More than \$400,000.....	add 14
)		
(I)	More than \$1,000,000.....	add 16

(J)	More than \$2,500,000.....		.....
		add 18	
(K)	More than \$7,000,000.....		.....
)		add 20	
(L)	More than \$20,000,000.....		.....
)		add 22	
(	More than \$50,000,000.....		.....
M		add 24	
)			
(N)	More than \$100,000,000.....		.....
)		add 26	
(O)	More than \$200,000,000.....		.....
)		add 28	
(P)	More than \$400,000,000.....		.....
)		add 30.	

- (2) (Apply the greatest) If the offense--
 - (A)(i) involved 10 or more victims; or (ii) was committed through mass-marketing, increase by 2 levels;
 - (B) involved 50 or more victims, increase by 4 levels; or
 - (C) involved 250 or more victims, increase by 6 levels.
- (3) If the offense involved a theft from the person of another, increase by 2 levels.
- (4) If the offense involved receiving stolen property, and the defendant was a person in the business of receiving and selling stolen property, increase by 2 levels.
- (5) If the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit a foreign government, foreign instrumentality, or foreign agent, increase by 2 levels.
- (6) If the offense involved theft of, damage to, or destruction of, property from a national cemetery or veterans' memorial, increase by 2 levels.
- (7) If (A) the defendant was convicted of an offense under 18 U.S.C. § 1037; and (B) the offense involved obtaining electronic mail addresses through improper means, increase by 2 levels.
- (8) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency; (B) a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding; (C) a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines; or (D) a misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.
- (9) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.
- (10) If the offense involved (A) the possession or use of any (i) device-making equipment, or (ii) authentication feature; (B) the production or trafficking of any (i) unauthorized access device or counterfeit access device, or (ii)

authentication feature; or (C)(i) the unauthorized transfer or use of any means of identification unlawfully to produce or obtain any other means of identification, or (ii) the possession of 5 or more means of identification that unlawfully were produced from, or obtained by the use of, another means of identification, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(11) If the offense involved an organized scheme to steal or to receive stolen (A) vehicles or vehicle parts; or (B) goods or chattels that are part of a cargo shipment, increase by 2 levels. If the offense level is less than level 14, increase to level 14.

(12) If the offense involved (A) the conscious or reckless risk of death or serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

(13) (Apply the greater) If--

(A) the defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase by 2 levels; or

(B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; (ii) substantially endangered the solvency or financial security of an organization that, at any time during the offense, (I) was a publicly traded company; or (II) had 1,000 or more employees; or (iii) substantially endangered the solvency or financial security of 100 or more victims, increase by 4 levels.

(C) The cumulative adjustments from application of both subsections (b)(2) and (b)(13)(B) shall not exceed 8 levels, except as provided in subdivision (D).

(D) If the resulting offense level determined under subdivision (A) or (B) is less than level 24, increase to level 24.

(14)(A) (Apply the greatest) If the defendant was convicted of an offense under:

(i) 18 U.S.C. 1030, and the offense involved (I) a computer system used to maintain or operate a critical infrastructure, or used by or for a government entity in furtherance of the administration of justice, national defense, or national security; or (II) an intent to obtain personal information, increase by 2 levels.

(ii) 18 U.S.C. 1030(a)(5)(A)(i), increase by 4 levels.

(iii) 18 U.S.C. 1030, and the offense caused a substantial disruption of a critical infrastructure, increase by 6 levels.

(B) If subdivision (A)(iii) applies, and the offense level is less than level 24, increase to level 24.

(15) If the offense involved--

(A) a violation of securities law and, at the time of the offense, the defendant was (i) an officer or a director of a publicly traded company; (ii) a registered broker or dealer, or a person associated with a broker or dealer; or (iii) an investment adviser, or a person associated with an investment adviser; or

(B) a violation of commodities law and, at the time of the offense, the defendant was (i) an officer or a director of a futures commission merchant or an introducing broker; (ii) a commodities trading advisor; or (iii) a commodity pool operator,
increase by 4 levels.

(16) If the offense involved fraud or theft involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a declaration of a major disaster or an emergency, increase by 2 levels.

(c) Cross References

(1) If (A) a firearm, destructive device, explosive material, or controlled substance was taken, or the taking of any such item was an object of the offense; or (B) the stolen property received, transported, transferred, transmitted, or

possessed was a firearm, destructive device, explosive material, or controlled substance, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), § 2D2.1 (Unlawful Possession; Attempt or Conspiracy), § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), or § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), as appropriate.

(2) If the offense involved arson, or property damage by use of explosives, apply § 2K1.4 (Arson; Property Damage by Use of Explosives), if the resulting offense level is greater than that determined above.

(3) If (A) neither subdivision (1) nor (2) of this subsection applies; (B) the defendant was convicted under a statute proscribing false, fictitious, or fraudulent statements or representations generally (e.g., 18 U.S.C. § 1001, § 1341, § 1342, or § 1343); and (C) the conduct set forth in the count of conviction establishes an offense specifically covered by another guideline in Chapter Two (Offense Conduct), apply that other guideline.

(4) If the offense involved a cultural heritage resource, apply § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources), if the resulting offense level is greater than that determined above.

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

CREDIT(S)

(Effective November 1, 1987, and amended effective June 15, 1988; November 1, 1989; November 1, 1990; November 1, 1991; November 1, 1993; November 1, 1995; November 1, 1997; November 1, 1998; November 1, 2000; November 1, 2001; November 1, 2002; January 25, 2003; November 1, 2003; November 1, 2004; November 1, 2005; November 1, 2006; November 1, 2007; February 6, 2008.)

COMMENTARY

<Statutory Provisions:7 U.S.C. 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. 50, 77e, 77g, 77x, 78i, 78ff, 80b-6, 1644, 6821; 18 U.S.C. 38, 225, 285-289, 471-473, 500, 510, 553(a)(1), 641, 656, 657, 659, 662, 1001-1008, 1010-1014, 1016-1022, 1025, 1026, 1028, 1029, 1030(a)(4)-(5), 1031, 1037, 1341-1344, 1348, 1350, 1361, 1363, 1369, 1702, 1703 (if vandalism or malicious mischief, including destruction of mail, is involved), 1708, 1831, 1832, 1992(a)(1), (a)(5), 2113(b), 2282A, 2282B, 2291, 2312-2317, 2332b(a)(1), 2701; 19 U.S.C. 2401f; 29 U.S.C. 501(c); 42 U.S.C. 1011; 49 U.S.C. § 14915, 30170, 46317(a), 60123(b). For additional statutory provision(s) see Appendix A (Statutory Index).>

<Application Notes>

<1. **Definitions.**--For purposes of this guideline:>

<“Cultural heritage resource” has the meaning given that term in Application Note 1 of the Commentary to § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources).>

<“Equity securities” has the meaning given that term in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(11)).>

6

ELEMENTS OF AGGRAVATED IDENTITY THEFT
(18 U.S.C. § 1028A(a)(1))

To convict you on the charge in Count @ of the Information, the prosecution would have to prove all of the following matters to the jury:

First, the prosecution would have to prove you are guilty of the felony described in Count @ of the Information.

Do you admit that you are guilty of the felony described in Count @?

Second, the prosecution would have to prove that at some time after June 1, 2003, in the Northern District of Iowa, you possessed or used a means of identification of another person, – that is, a Social Security number belonging to another person – during and in relation to the felony described in Count @.

Do you admit that at some time after June 1, 2003, in the Northern District of Iowa, you possessed or used a Social Security number belonging to another person during and in relation to the felony described in Count @?

Third, the prosecution would have to prove that you knowingly possessed or used that Social Security number.

Do you admit that you knowingly possessed or used that Social Security number?

Fourth, the prosecution would have to prove that your possession or use of the Social Security number was without lawful authority.

Do you admit that your possession or use of the Social Security number was without lawful authority?

STATUTORY PENALTIES

Under the statutes that apply to this charge, you will be sent to prison for a mandatory term of two years, consecutive to any sentence you receive on Count @ of the Information. You also could be placed on supervised release for up to one year and fined up to \$250,000. There also will be a special assessment of \$100 on this count.



Effective: July 15, 2004

United States Code Annotated Currentness
Title 18. Crimes and Criminal Procedure (Refs & Annos)
 Part I. Crimes (Refs & Annos)
 Chapter 47. Fraud and False Statements (Refs & Annos)
 → § 1028A. Aggravated identity theft

(a) Offenses.--

(1) **In general.**--Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.

(2) **Terrorism offense.**--Whoever, during and in relation to any felony violation enumerated in section 2332b(g)(5)(B), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person or a false identification document shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 5 years.

(b) **Consecutive sentence.**--Notwithstanding any other provision of law--

(1) a court shall not place on probation any person convicted of a violation of this section;

(2) except as provided in paragraph (4), no term of imprisonment imposed on a person under this section shall run concurrently with any other term of imprisonment imposed on the person under any other provision of law, including any term of imprisonment imposed for the felony during which the means of identification was transferred, possessed, or used;

(3) in determining any term of imprisonment to be imposed for the felony during which the means of identification was transferred, possessed, or used, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment imposed or to be imposed

for a violation of this section; and

(4) a term of imprisonment imposed on a person for a violation of this section may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person for an additional violation of this section, provided that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28.

(c) Definition.--For purposes of this section, the term "felony violation enumerated in subsection (c)" means any offense that is a felony violation of--

(1) section 641 (relating to theft of public money, property, or rewards [FN1]), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), or section 664 (relating to theft from employee benefit plans);

(2) section 911 (relating to false personation of citizenship);

(3) section 922(a)(6) (relating to false statements in connection with the acquisition of a firearm);

(4) any provision contained in this chapter (relating to fraud and false statements), other than this section or section 1028(a)(7);

(5) any provision contained in chapter 63 (relating to mail, bank, and wire fraud);

(6) any provision contained in chapter 69 (relating to nationality and citizenship);

(7) any provision contained in chapter 75 (relating to passports and visas);

(8) section 523 of the Gramm-Leach-Bliley Act (15 U.S.C. 6823) (relating to obtaining customer information by false pretenses);

(9) section 243 or 266 of the Immigration and Nationality Act (8 U.S.C. 1253 and 1306) (relating to willfully failing to leave the United States after deportation and creating a counterfeit alien registration card);

(10) any provision contained in chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1321 et seq.) (relating to various immigration offenses); or

(11) section 208, 811, 1107(b), 1128B(a), or 1632 of the Social Security Act (42 U.S.C. 408, 1011, 1307(b), 1320a-7b(a), and 1383a) (relating to false statements relating to programs under the Act).

CREDIT(S)

(Added Pub.L. 108-275, § 2(a), July 15, 2004, 118 Stat. 831.)

[FNI] So in original. Probably should be "records".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2004 Acts. House Report No. 108-528, see 2004 U.S. Code Cong. and Adm. News, p. 779.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S15.

References in Text

Chapter 63 of Title 18, referred to in subsec. (c)(5), is classified to 18 U.S.C.A. § 1341 et seq.

Chapter 69, referred to in subsec. (c)(6), is classified to 18 U.S.C.A. § 1421 et seq.

Chapter 75, referred to in subsec. (c)(7), is classified to 18 U.S.C.A. § 1541 et seq.

C

United States Code Annotated Currentness

Federal Sentencing Guidelines (Refs & Annos)

Chapter Two. Offense Conduct (Refs & Annos)

▣ Part B. Basic Economic Offenses

▣ 1. Theft, Embezzlement, Receipt of Stolen Property, Property Destruction, and Offenses Involving Fraud or Deceit (Refs & Annos)

→ **§ 2B1.6. Aggravated Identity Theft**

(a) If the defendant was convicted of violating 18 U.S.C. § 1028A, the guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) shall not apply to that count of conviction.

CREDIT(S)

(Effective November 1, 2005.)

COMMENTARY

<Statutory Provision:18 U.S.C. 1028A. For additional statutory provision(s), see Appendix A (Statutory Index).>

<Application Notes>

<1. Imposition of Sentence.-->

<(A) **In General.**--Section 1028A of title 18, United States Code, provides a mandatory term of imprisonment. Accordingly, the guideline sentence for a defendant convicted under 18 U.S.C. 1028A is the term required by that statute. Except as provided in subdivision (B), 18 U.S.C. 1028A also requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.>

<(B) **Multiple Convictions Under Section 1028A.**--Section 1028A(b)(4) of title 18, United States Code, provides that in the case of multiple convictions under 18 U.S.C. 1028A, the terms of imprisonment imposed on such counts may, in the discretion of the court, run concurrently, in whole or in part, with each other. See the Commentary to

§ 5G1.2 (Sentencing on Multiple Counts of Conviction) for guidance regarding imposition of sentence on multiple counts of 18 U.S.C. 1028A.>

<2. Inapplicability of Chapter Two Enhancement.--If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for the transfer, possession, or use of a means of identification when determining the sentence for the underlying offense. A sentence under this guideline accounts for this factor for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). "Means of identification" has the meaning given that term in 18 U.S.C. 1028(d)(7).>

<3. Inapplicability of Chapters Three and Four.--Do not apply Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of those chapters because the guideline sentence for each offense is determined only by the relevant statute. See §§ 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2.>

HISTORICAL NOTES

2005 Addition

Reason for Amendment: This amendment implements sections 2 and 5 of the Identity Theft Penalty Enhancement Act, Public Law 108-275, 118 Stat. 831 ("the Act"), which create two new criminal offenses at 18 U.S.C. 1028A and direct the Sentencing Commission to expand the upward adjustment at § 3B1.3 (Abuse of Position of Trust/Special Skill). This amendment also provides guidance to the courts on imposing sentences for multiple violations of section 1028A.

The Act creates a new offense at 18 U.S.C. 1028A(a)(1) that prohibits the unauthorized transfer, use, or possession of a means of identification of another person during, or in relation to, specific enumerated felonies. These felonies consist of various types of fraud, including mail and wire fraud in connection with passports, visas and other immigration, nationality, and citizenship laws, programs under the Social Security Act, and the acquisition of firearms. A conviction under section 1028A(a)(1) carries a two-year mandatory term of imprisonment that must run consecutively to any other term of imprisonment, including the sentence for the underlying felony conviction. The Act also creates a new offense at 18 U.S.C. 1028A(b)(1) that prohibits the unauthorized transfer, use, or possession of a means of identification of another person during, or in relation to, specific felonies enumerated in 18 U.S.C. 2332b(g)(5)(B) ("federal crimes of terrorism"). Section 1028A(b)(1) provides a five-year mandatory term of imprisonment that must run consecutively to any other term of imprisonment, including the sentence for the underlying felony conviction. As described below, section 1028A(b)(4) creates an exception to the requirement for consecutive terms of imprisonment in cases involving multiple violations of the statute sentenced at the same time.

First, in response to the creation of these new criminal offenses, the amendment creates a new guideline at §

United States Code Annotated Currentness

Federal Sentencing Guidelines (Refs & Annos)

Chapter Two. Offense Conduct (Refs & Annos)

Part L. Offenses Involving Immigration, Naturalization, and Passports

2. Naturalization and Passports

→ § 2L2.2. Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport

(a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels.

(2) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels.

(3) If the defendant fraudulently obtained or used (A) a United States passport, increase by 4 levels; or (B) a foreign passport, increase by 2 levels.

(c) Cross Reference

(1) If the defendant used a passport or visa in the commission or attempted commission of a felony offense, other than an offense involving violation of the immigration laws, apply--

(A) § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that felony offense, if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

CREDIT(S)

(Effective November 1, 1987, and amended effective January 15, 1988; November 1, 1989; November 1, 1992; November 1, 1993; November 1, 1995; May 1, 1997; November 1, 1997; November 1, 2004; November 1, 2006.)

COMMENTARY

<Statutory Provisions: 8 U.S.C. §§ 1160(b)(7)(A), 1185(a)(3), (5), 1325(b), (c); 18 U.S.C. §§ 911, 1015, 1028, 1423-1426, 1542-1544, 1546.>

<Application Notes:>

<1. **Definition.**--For purposes of this guideline, "immigration and naturalization offense" means any offense covered by Chapter Two, Part L.>

<2. **Application of Subsection (b)(2).**--Prior felony conviction(s) resulting in an adjustment under subsection (b)(2) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).>

<3. **Application of Subsection (b)(3).**--The term "used" is to be construed broadly and includes the attempted renewal of previously-issued passports.>

<4. **Multiple Counts.**--For the purposes of Chapter Three, Part D (Multiple Counts), a count of conviction for unlawfully entering or remaining in the United States covered by § 2L1.2 (Unlawfully Entering or Remaining in the United States) arising from the same course of conduct as the count of conviction covered by this guideline shall be considered a closely related count to the count of conviction covered by this guideline, and therefore is to be grouped with the count of conviction covered by this guideline.>

<5. **Upward Departure Provision.**--If the defendant fraudulently obtained or used a United States passport for the purpose of entering the United States to engage in terrorist activity, an upward departure may be warranted. See Application Note 4 of the Commentary to § 3A1.4 (Terrorism).>

HISTORICAL NOTES

2006 Amendments

Section 2L2.2(b)(3) is amended by inserting “(A)” after “used” and by inserting “; or (B) a foreign passport, increase by 2 levels” after “4 levels”.

Reason for Amendment: This two-part amendment addresses various issues pertaining to §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien), 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law), and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport).

The first part of this amendment modifies § 2L1.1. First, this amendment addresses national security concerns pertaining to the smuggling of illegal aliens. Specifically, a new base offense level of 25 at § 2L1.1(a)(1) provides increased punishment for defendants convicted of 8 U.S.C. 1327 involving an alien who is inadmissible because of “security or related grounds,” as defined in 8 U.S.C. 1182(a)(3). To further address concerns related to national security, an application note provides that an upward departure may be warranted if the defendant had specific knowledge that the alien the defendant smuggled, transported, or harbored was inadmissible for reasons of security and related grounds, as set forth in 8 U.S.C. 1182(a)(3). This upward departure note applies regardless of whether the defendant is convicted of 8 U.S.C. 1327.

Second, the amendment provides a two-level enhancement for a case in which the defendant smuggled, transported, or harbored a minor unaccompanied by the minor’s parent or grandparent. This enhancement addresses concerns regarding the increased risk involved when unaccompanied minors are smuggled into, or harbored or transported within, the United States. Application Note 1 defines “minor” as “an individual who had not attained the age of 16 years” and defines “parent” as “(A) a natural mother or father; (B) a stepmother or stepfather; or (C) an adoptive mother or father.”



United States Code Annotated Currentness

Federal Sentencing Guidelines (Refs & Annos)

Chapter Two. Offense Conduct (Refs & Annos)

▣ Part B. Basic Economic Offenses

▣ 1. Theft, Embezzlement, Receipt of Stolen Property, Property Destruction, and Offenses Involving Fraud or Deceit (Refs & Annos)

→ § 2B1.1. Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States

(a) Base Offense Level:

- (1) 7, if (A) the defendant was convicted of an offense referenced to this guideline; and (B) that offense of conviction has a statutory maximum term of imprisonment of 20 years or more; or
- (2) 6, otherwise.

(b) Specific Offense Characteristics

- (1) If the loss exceeded \$5,000, increase the offense level as follows:

	Loss (Apply the Greatest)	Increase in Level
(A)	\$5,000 or less.....	no increase
(B)	More than \$5,000.....	add 2
(C)	More than \$10,000.....	add 4
(D)	More than \$30,000.....	add 6
(E)	More than \$70,000.....	add 8
(F)	More than \$120,000.....	add 10
(G)	More than \$200,000.....	add 12
(H)	More than \$400,000.....	add 14
(I)	More than \$1,000,000.....	add 16

(J)	More than \$2,500,000.....	add 18	.....
(K)	More than \$7,000,000.....	add 20	.....
(L)	More than \$20,000,000.....	add 22	.....
(M)	More than \$50,000,000.....	add 24	.....
(N)	More than \$100,000,000.....	add 26	.....
(O)	More than \$200,000,000.....	add 28	.....
(P)	More than \$400,000,000.....	add 30.	.....

- (2) (Apply the greatest) If the offense--
 - (A)(i) involved 10 or more victims; or (ii) was committed through mass-marketing, increase by 2 levels;
 - (B) involved 50 or more victims, increase by 4 levels; or
 - (C) involved 250 or more victims, increase by 6 levels.
- (3) If the offense involved a theft from the person of another, increase by 2 levels.
- (4) If the offense involved receiving stolen property, and the defendant was a person in the business of receiving and selling stolen property, increase by 2 levels.
- (5) If the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit a foreign government, foreign instrumentality, or foreign agent, increase by 2 levels.
- (6) If the offense involved theft of, damage to, or destruction of, property from a national cemetery or veterans' memorial, increase by 2 levels.
- (7) If (A) the defendant was convicted of an offense under 18 U.S.C. § 1037; and (B) the offense involved obtaining electronic mail addresses through improper means, increase by 2 levels.
- (8) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency; (B) a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding; (C) a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines; or (D) a misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.
- (9) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.
- (10) If the offense involved (A) the possession or use of any (i) device-making equipment, or (ii) authentication feature; (B) the production or trafficking of any (i) unauthorized access device or counterfeit access device, or (ii)

authentication feature; or (C)(i) the unauthorized transfer or use of any means of identification unlawfully to produce or obtain any other means of identification, or (ii) the possession of 5 or more means of identification that unlawfully were produced from, or obtained by the use of, another means of identification, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(11) If the offense involved an organized scheme to steal or to receive stolen (A) vehicles or vehicle parts; or (B) goods or chattels that are part of a cargo shipment, increase by 2 levels. If the offense level is less than level 14, increase to level 14.

(12) If the offense involved (A) the conscious or reckless risk of death or serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

(13) (Apply the greater) If--

(A) the defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase by 2 levels; or

(B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; (ii) substantially endangered the solvency or financial security of an organization that, at any time during the offense, (I) was a publicly traded company; or (II) had 1,000 or more employees; or (iii) substantially endangered the solvency or financial security of 100 or more victims, increase by 4 levels.

(C) The cumulative adjustments from application of both subsections (b)(2) and (b)(13)(B) shall not exceed 8 levels, except as provided in subdivision (D).

(D) If the resulting offense level determined under subdivision (A) or (B) is less than level 24, increase to level 24.

(14)(A) (Apply the greatest) If the defendant was convicted of an offense under:

(i) 18 U.S.C. 1030, and the offense involved (I) a computer system used to maintain or operate a critical infrastructure, or used by or for a government entity in furtherance of the administration of justice, national defense, or national security; or (II) an intent to obtain personal information, increase by 2 levels.

(ii) 18 U.S.C. 1030(a)(5)(A)(i), increase by 4 levels.

(iii) 18 U.S.C. 1030, and the offense caused a substantial disruption of a critical infrastructure, increase by 6 levels.

(B) If subdivision (A)(iii) applies, and the offense level is less than level 24, increase to level 24.

(15) If the offense involved--

(A) a violation of securities law and, at the time of the offense, the defendant was (i) an officer or a director of a publicly traded company; (ii) a registered broker or dealer, or a person associated with a broker or dealer; or (iii) an investment adviser, or a person associated with an investment adviser; or

(B) a violation of commodities law and, at the time of the offense, the defendant was (i) an officer or a director of a futures commission merchant or an introducing broker; (ii) a commodities trading advisor; or (iii) a commodity pool operator,

increase by 4 levels.

(16) If the offense involved fraud or theft involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a declaration of a major disaster or an emergency, increase by 2 levels.

(c) Cross References

(1) If (A) a firearm, destructive device, explosive material, or controlled substance was taken, or the taking of any such item was an object of the offense; or (B) the stolen property received, transported, transferred, transmitted, or

possessed was a firearm, destructive device, explosive material, or controlled substance, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), § 2D2.1 (Unlawful Possession; Attempt or Conspiracy), § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), or § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), as appropriate.

(2) If the offense involved arson, or property damage by use of explosives, apply § 2K1.4 (Arson; Property Damage by Use of Explosives), if the resulting offense level is greater than that determined above.

(3) If (A) neither subdivision (1) nor (2) of this subsection applies; (B) the defendant was convicted under a statute proscribing false, fictitious, or fraudulent statements or representations generally (e.g., 18 U.S.C. § 1001, § 1341, § 1342, or § 1343); and (C) the conduct set forth in the count of conviction establishes an offense specifically covered by another guideline in Chapter Two (Offense Conduct), apply that other guideline.

(4) If the offense involved a cultural heritage resource, apply § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources), if the resulting offense level is greater than that determined above.

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

CREDIT(S)

(Effective November 1, 1987, and amended effective June 15, 1988; November 1, 1989; November 1, 1990; November 1, 1991; November 1, 1993; November 1, 1995; November 1, 1997; November 1, 1998; November 1, 2000; November 1, 2001; November 1, 2002; January 25, 2003; November 1, 2003; November 1, 2004; November 1, 2005; November 1, 2006; November 1, 2007; February 6, 2008.)

COMMENTARY

<Statutory Provisions: 7 U.S.C. 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. 50, 77e, 77q, 77x, 78i, 78ff, 80b-6, 1644, 682i; 18 U.S.C. 38, 225, 285-289, 471-473, 500, 510, 553(a)(1), 641, 656, 657, 659, 662, 1001-1008, 1010-1014, 1016-1022, 1025, 1026, 1028, 1029, 1030(a)(4)-(5), 1031, 1037, 1341-1344, 1348, 1350, 1361, 1363, 1369, 1702, 1703 (if vandalism or malicious mischief, including destruction of mail, is involved), 1708, 1831, 1832, 1992(a)(1), (a)(5), 2113(b), 2282A, 2282B, 2291, 2312-2317, 2332b(a)(1), 2701; 19 U.S.C. 2401f; 29 U.S.C. 501(c); 42 U.S.C. 1011; 49 U.S.C. § 14915, 30170, 46317(a), 60123(b). For additional statutory provision(s) see Appendix A (Statutory Index).>

<Application Notes>

<1. Definitions.—For purposes of this guideline:>

<“Cultural heritage resource” has the meaning given that term in Application Note 1 of the Commentary to § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources).>

<“Equity securities” has the meaning given that term in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(11)).>



United States Code Annotated Currentness

Federal Sentencing Guidelines (Refs & Annos)

Chapter Two. Offense Conduct (Refs & Annos)

▣ Part L. Offenses Involving Immigration, Naturalization, and Passports

▣ 2. Naturalization and Passports

→ § 2L2.1. Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law

(a) Base Offense Level: 11

(b) Specific Offense Characteristics

- (1) If the offense was committed other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child), decrease by 3 levels.
- (2) If the offense involved six or more documents or passports, increase as follows:

Number of Documents/Passports	Increase in Level
(A) 6-24.....	add 3
(B) 25-99.....	add 6
(C) 100 or more.....	add 9

(3) If the defendant knew, believed, or had reason to believe that a passport or visa was to be used to facilitate the commission of a felony offense, other than an offense involving violation of the immigration laws, increase by 4 levels.

(4) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels.

(5) If the defendant fraudulently obtained or used (A) a United States passport, increase by 4 levels; or (B) a foreign passport, increase by 2 levels.

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

CREDIT(S)

(Effective November 1, 1987, and amended effective November 1, 1989; November 1, 1992; November 1, 1993;

November 1, 1995; May 1, 1997; November 1, 1997; November 1, 2006.)
COMMENTARY

<Statutory Provisions: 8 U.S.C. §§ 1160(b)(7)(A), 1185(a)(3), (4), 1325(b), (c); 18 U.S.C. §§ 1015, 1028, 1425-1427, 1542, 1544, 1546. For additional statutory provision(s), see Appendix A (Statutory Index).>

<Application Notes:>

<1. For purposes of this guideline>

<“The offense was committed other than for profit” means that there was no payment or expectation of payment for the smuggling, transporting, or harboring of any of the unlawful aliens.>

<“Immigration and naturalization offense” means any offense covered by Chapter Two, Part L.>

<“Child” has the meaning set forth in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1101(b)(1)).>

<“Spouse” has the meaning set forth in section 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(35)).>

<2. Where it is established that multiple documents are part of a set of documents intended for use by a single person, treat the set as one document.>

<3. Subsection (b)(3) provides an enhancement if the defendant knew, believed, or had reason to believe that a passport or visa was to be used to facilitate the commission of a felony offense, other than an offense involving violation of the immigration laws. If the defendant knew, believed, or had reason to believe that the felony offense to be committed was of an especially serious type, an upward departure may be warranted.>

<4. Prior felony conviction(s) resulting in an adjustment under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).>

<5. If the offense involved substantially more than 100 documents, an upward departure may be warranted.>

HISTORICAL NOTES

2006 Amendments

Section 2L2.1(b) is amended by adding at the end the following:

“(5) If the defendant fraudulently obtained or used (A) a United States passport, increase by 4 levels; or (B) a foreign passport, increase by 2 levels.”.

Reason for Amendment: This two-part amendment addresses various issues pertaining to §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien), 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship

United States Code Annotated Currentness
Federal Sentencing Guidelines (Refs & Annos)
 Chapter Two. Offense Conduct (Refs & Annos)
 Part J. Offenses Involving the Administration of Justice
 → § 2J1.3. Perjury or Subornation of Perjury; Bribery of Witness

(a) Base Offense Level: 14

(b) Specific Offense Characteristics

(1) If the offense involved causing or threatening to cause physical injury to a person, or property damage, in order to suborn perjury, increase by 8 levels.

(2) If the perjury, subornation of perjury, or witness bribery resulted in substantial interference with the administration of justice, increase by 3 levels.

(c) Cross Reference

(1) If the offense involved perjury, subornation of perjury, or witness bribery in respect to a criminal offense, apply § 2X3.1 (Accessory After the Fact) in respect to that criminal offense, if the resulting offense level is greater than that determined above.

(d) Special Instruction

(1) In the case of counts of perjury or subornation of perjury arising from testimony given, or to be given, in separate proceedings, do not group the counts together under § 3D1.2 (Groups of Closely Related Counts).

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

CREDIT(S)

(Effective November 1, 1987, and amended effective November 1, 1989; November 1, 1991; November 1, 1993; November 1, 2003.)

COMMENTARY

<Statutory Provisions: 18 U.S.C. §§ 201(b)(3), (4), 1621-1623. For additional statutory provision(s), see Appendix A (Statutory Index).>

<Application Notes:>

<1. "Substantial interference with the administration of justice" includes a premature or improper termination of a felony investigation; an indictment, verdict, or any judicial determination based upon perjury, false testimony, or other false evidence; or the unnecessary expenditure of substantial governmental or court resources.>

<2. For offenses covered under this section, Chapter Three, Part C (Obstruction) does not apply, unless the defendant obstructed the investigation or trial of the perjury count.>

<3. In the event that the defendant is convicted under this section as well as for the underlying offense (i.e., the offense with respect to which he committed perjury, subornation of perjury, or witness bribery), see the Commentary to Chapter Three, Part C (Obstruction), and to § 3D1.2(c) (Groups of Closely Related Counts).>

<4. If a weapon was used, or bodily injury or significant property damage resulted, an upward departure may be warranted. See Chapter Five, Part K (Departures).>

<5. "Separate proceedings," as used in subsection (d)(1), includes different proceedings in the same case or matter (e.g., a grand jury proceeding and a trial, or a trial and retrial), and proceedings in separate cases or matters (e.g., separate trials of codefendants), but does not include multiple grand jury proceedings in the same case.>

<Background: This section applies to perjury, subornation of perjury, and witness bribery, generally prosecuted under the referenced statutes. The guidelines provide a higher penalty for perjury than the pre-guidelines practice.>

estimate of ten months imprisonment. The Commission believes that perjury should be treated similarly to obstruction of justice. Therefore, the same considerations for enhancing a sentence are applied in the specific offense characteristics, and an alternative reference to the guideline for accessory after the fact is made.>

HISTORICAL NOTES

2003 Amendments

Section 2J1.3(a) is amended by striking “12” and inserting “14”.

Reason for Amendment: With this amendment the Commission continues its work to deter and punish economic and white collar crimes, building on its Economic Crime Package of 2001 and subsequent formation in early 2002 of an Ad Hoc Advisory Group on the Organizational Guidelines for sentencing corporations and other organizations. This 2003 amendment also implements directives in sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002, Pub. L. 107-204 (the “Act”), by making several modifications to §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), 2J1.2 (Obstruction of Justice), and 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act; Destruction and Failure to Maintain Corporate Audit Records), as well as conforming changes to §§ 2J1.1 (Contempt), 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness), and 2T4.1 (Tax Table). The amendment also responds to increased statutory penalties for existing crimes and several severely punished new crimes created by the Act.

The directives in the Act generally pertain to serious fraud and related offenses and obstruction of justice offenses. Congress gave the Commission emergency amendment authority to promulgate amendments addressing, among other things, officers and directors of publicly traded companies who commit fraud and related offenses, fraud offenses that endanger the solvency or financial security of a substantial number of victims, fraud offenses that involve significantly greater than 50 victims, and obstruction of justice offenses that involve the destruction of evidence. This amendment expands upon the temporary emergency amendment effective January 25, 2003, and repromulgates it as a permanent amendment.

First, the amendment modifies the base offense level in § 2B1.1 to implement more fully the directive contained in section 905(b)(2) of the Act to consider whether the guidelines “for violations of the sections amended by this Act are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this Act.” Section 903 of the Act, for example, quadrupled the statutory

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ELEMENTS OF FALSE CLAIM OF CITIZENSHIP
(18 U.S.C. § 911)

To convict you on [*this charge*] [*the charge in Count @ of the Information*], the prosecution would have to prove all of the following matters to the jury:

First, the prosecution would have to prove that at some time after June 1, 2003, in the Northern District of Iowa, you willfully represented that you were a citizen of the United States.

Do you admit that at some time after June 1, 2003, in the Northern District of Iowa, you willfully represented that you were a citizen of the United States?

Second, the prosecution would have to prove that the representation was false.

Do you admit your representation that you were a citizen of the United States was false? Do you admit that you have never been a citizen of the United States?

STATUTORY PENALTIES

Under the statutes that apply to this charge, you could be sent to prison for up three years, placed on supervised release for up to one year, and fined up to \$250,000. There also will be a special assessment of \$100 on this count.



Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 18. Crimes and Criminal Procedure (Refs & Annos)
 Part I. Crimes (Refs & Annos)
 Chapter 43. False Personation (Refs & Annos)
 → § 911. Citizen of the United States

Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined under this title or imprisoned not more than three years, or both.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 742; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(H), 108 Stat. 2147.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1948 Acts. Based on subsection (a), paragraph (18) and subsection (d), of § 746, Title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, c. 876, § 346(a), par. (18), and (d), 54 Stat. 1165, 1167).

Section consolidates said provisions of § 746, Title 8, U.S.C., 1940 ed., Aliens and Nationality. The word “willfully” was substituted for “knowingly”, “\$1,000” for “\$5,000”, and “three years” for “five years”, to harmonize with congressional intent evidenced by the other sections of this chapter.

Minor changes were made in phraseology and unnecessary words were omitted.

1994 Acts. House Report Nos. 103-324 and 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code

United States Code Annotated Currentness

Federal Sentencing Guidelines (Refs & Annos)

Chapter Two. Offense Conduct (Refs & Annos)

Part B. Basic Economic Offenses

1. Theft, Embezzlement, Receipt of Stolen Property, Property Destruction, and Offenses Involving Fraud or Deceit (Refs & Annos)

→ § 2B1.1. Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States

(a) Base Offense Level:

(1) 7, if (A) the defendant was convicted of an offense referenced to this guideline; and (B) that offense of conviction has a statutory maximum term of imprisonment of 20 years or more; or

(2) 6, otherwise.

(b) Specific Offense Characteristics

(1) If the loss exceeded \$5,000, increase the offense level as follows:

	Loss (Apply the Greatest)	Increase in Level
(A)	\$5,000 or less.....	no increase
)		
(B)	More than \$5,000.....	add 2
)		
(C)	More than \$10,000.....	add 4
)		
(D)	More than \$30,000.....	add 6
)		
(E)	More than \$70,000.....	add 8
)		
(F)	More than \$120,000.....	add 10
)		
(G)	More than \$200,000.....	add 12
)		
(H)	More than \$400,000.....	add 14
)		
(I)	More than \$1,000,000.....	add 16

(J)	More than \$2,500,000.....	add 18	.....
(K)	More than \$7,000,000.....	add 20	.....
)			
(L)	More than \$20,000,000.....	add 22	.....
)			
(	More than \$50,000,000.....	add 24	.....
M			
)			
(N)	More than \$100,000,000.....	add 26	.....
)			
(O)	More than \$200,000,000.....	add 28	.....
)			
(P)	More than \$400,000,000.....	add 30.	.....
)			

(2) (Apply the greatest) If the offense--

- (A)(i) involved 10 or more victims; or (ii) was committed through mass-marketing, increase by 2 levels;
- (B) involved 50 or more victims, increase by 4 levels; or
- (C) involved 250 or more victims, increase by 6 levels.

(3) If the offense involved a theft from the person of another, increase by 2 levels.

(4) If the offense involved receiving stolen property, and the defendant was a person in the business of receiving and selling stolen property, increase by 2 levels.

(5) If the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit a foreign government, foreign instrumentality, or foreign agent, increase by 2 levels.

(6) If the offense involved theft of, damage to, or destruction of, property from a national cemetery or veterans' memorial, increase by 2 levels.

(7) If (A) the defendant was convicted of an offense under 18 U.S.C. § 1037; and (B) the offense involved obtaining electronic mail addresses through improper means, increase by 2 levels.

(8) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency; (B) a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding; (C) a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines; or (D) a misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.

(9) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(10) If the offense involved (A) the possession or use of any (i) device-making equipment, or (ii) authentication feature; (B) the production or trafficking of any (i) unauthorized access device or counterfeit access device, or (ii)

authentication feature; or (C)(i) the unauthorized transfer or use of any means of identification unlawfully to produce or obtain any other means of identification, or (ii) the possession of 5 or more means of identification that unlawfully were produced from, or obtained by the use of, another means of identification, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(11) If the offense involved an organized scheme to steal or to receive stolen (A) vehicles or vehicle parts; or (B) goods or chattels that are part of a cargo shipment, increase by 2 levels. If the offense level is less than level 14, increase to level 14.

(12) If the offense involved (A) the conscious or reckless risk of death or serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

(13) (Apply the greater) If—

(A) the defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase by 2 levels; or

(B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; (ii) substantially endangered the solvency or financial security of an organization that, at any time during the offense, (I) was a publicly traded company; or (II) had 1,000 or more employees; or (iii) substantially endangered the solvency or financial security of 100 or more victims, increase by 4 levels.

(C) The cumulative adjustments from application of both subsections (b)(2) and (b)(13)(B) shall not exceed 8 levels, except as provided in subdivision (D).

(D) If the resulting offense level determined under subdivision (A) or (B) is less than level 24, increase to level 24.

(14)(A) (Apply the greatest) If the defendant was convicted of an offense under:

(i) 18 U.S.C. 1030, and the offense involved (I) a computer system used to maintain or operate a critical infrastructure, or used by or for a government entity in furtherance of the administration of justice, national defense, or national security; or (II) an intent to obtain personal information, increase by 2 levels.

(ii) 18 U.S.C. 1030(a)(5)(A)(i), increase by 4 levels.

(iii) 18 U.S.C. 1030, and the offense caused a substantial disruption of a critical infrastructure, increase by 6 levels.

(B) If subdivision (A)(iii) applies, and the offense level is less than level 24, increase to level 24.

(15) If the offense involved—

(A) a violation of securities law and, at the time of the offense, the defendant was (i) an officer or a director of a publicly traded company; (ii) a registered broker or dealer, or a person associated with a broker or dealer; or (iii) an investment adviser, or a person associated with an investment adviser; or

(B) a violation of commodities law and, at the time of the offense, the defendant was (i) an officer or a director of a futures commission merchant or an introducing broker; (ii) a commodities trading advisor; or (iii) a commodity pool operator,

increase by 4 levels.

(16) If the offense involved fraud or theft involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a declaration of a major disaster or an emergency, increase by 2 levels.

(c) Cross References

(1) If (A) a firearm, destructive device, explosive material, or controlled substance was taken, or the taking of any such item was an object of the offense; or (B) the stolen property received, transported, transferred, transmitted, or

possessed was a firearm, destructive device, explosive material, or controlled substance, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), § 2D2.1 (Unlawful Possession; Attempt or Conspiracy), § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), or § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), as appropriate.

(2) If the offense involved arson, or property damage by use of explosives, apply § 2K1.4 (Arson; Property Damage by Use of Explosives), if the resulting offense level is greater than that determined above.

(3) If (A) neither subdivision (1) nor (2) of this subsection applies; (B) the defendant was convicted under a statute proscribing false, fictitious, or fraudulent statements or representations generally (e.g., 18 U.S.C. § 1001, § 1341, § 1342, or § 1343); and (C) the conduct set forth in the count of conviction establishes an offense specifically covered by another guideline in Chapter Two (Offense Conduct), apply that other guideline.

(4) If the offense involved a cultural heritage resource, apply § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources), if the resulting offense level is greater than that determined above.

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

CREDIT(S)

(Effective November 1, 1987, and amended effective June 15, 1988; November 1, 1989; November 1, 1990; November 1, 1991; November 1, 1993; November 1, 1995; November 1, 1997; November 1, 1998; November 1, 2000; November 1, 2001; November 1, 2002; January 25, 2003; November 1, 2003; November 1, 2004; November 1, 2005; November 1, 2006; November 1, 2007; February 6, 2008.)

COMMENTARY

<Statutory Provisions: 7 U.S.C. 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. 50, 77e, 77g, 77x, 78j, 78ff, 80b-6, 1644, 6821; 18 U.S.C. 38, 225, 285-289, 471-473, 500, 510, 553(a)(1), 641, 656, 657, 659, 662, 1001-1008, 1010-1014, 1016-1022, 1025, 1026, 1028, 1029, 1030(a)(4)-(5), 1031, 1037, 1341-1344, 1348, 1350, 1361, 1363, 1369, 1702, 1703 (if vandalism or malicious mischief, including destruction of mail, is involved), 1708, 1831, 1832, 1992(a)(1), (a)(5), 2113(b), 2282A, 2282B, 2291, 2312-2317, 2332b(a)(1), 2701; 19 U.S.C. 2401f; 29 U.S.C. 501(c); 42 U.S.C. 1011; 49 U.S.C. § 14915, 30170, 46317(a), 60123(b). For additional statutory provision(s) see Appendix A (Statutory Index).>

<Application Notes>

<1. Definitions.--For purposes of this guideline:>

<"Cultural heritage resource" has the meaning given that term in Application Note 1 of the Commentary to § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources).>

<"Equity securities" has the meaning given that term in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(11)).>

United States Code Annotated Currentness
Federal Sentencing Guidelines (Refs & Annos)
Chapter Two. Offense Conduct (Refs & Annos)
Part L. Offenses Involving Immigration, Naturalization, and Passports
2. Naturalization and Passports
→ § 2L2.2. Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport

(a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels.

(2) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels.

(3) If the defendant fraudulently obtained or used (A) a United States passport, increase by 4 levels; or (B) a foreign passport, increase by 2 levels.

(c) Cross Reference

(1) If the defendant used a passport or visa in the commission or attempted commission of a felony offense, other than an offense involving violation of the immigration laws, apply--

(A) § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that felony offense, if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

CREDIT(S)

(Effective November 1, 1987, and amended effective January 15, 1988; November 1, 1989; November 1, 1992; November 1, 1993; November 1, 1995; May 1, 1997; November 1, 1997; November 1, 2004; November 1, 2006.)

COMMENTARY

<*Statutory Provisions:* 8 U.S.C. §§ 1160(b)(7)(A), 1185(a)(3), (5), 1325(b), (c); 18 U.S.C. §§ 911, 1015, 1028, 1423-1426, 1542-1544, 1546.>

<Application Notes:>

<**1. Definition.**--For purposes of this guideline, "immigration and naturalization offense" means any offense covered by Chapter Two, Part L.>

<**2. Application of Subsection (b)(2).**--Prior felony conviction(s) resulting in an adjustment under subsection (b)(2) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).>

<**3. Application of Subsection (b)(3).**--The term "used" is to be construed broadly and includes the attempted renewal of previously-issued passports.>

<**4. Multiple Counts.**--For the purposes of Chapter Three, Part D (Multiple Counts), a count of conviction for unlawfully entering or remaining in the United States covered by § 2L1.2 (Unlawfully Entering or Remaining in the United States) arising from the same course of conduct as the count of conviction covered by this guideline shall be considered a closely related count to the count of conviction covered by this guideline, and therefore is to be grouped with the count of conviction covered by this guideline.>

<5. **Upward Departure Provision.**--If the defendant fraudulently obtained or used a United States passport for the purpose of entering the United States to engage in terrorist activity, an upward departure may be warranted. See Application Note 4 of the Commentary to § 3A1.4 (Terrorism).>

HISTORICAL NOTES

2006 Amendments

Section 2L2.2(b)(3) is amended by inserting "(A)" after "used" and by inserting "; or (B) a foreign passport, increase by 2 levels" after "4 levels".

Reason for Amendment: This two-part amendment addresses various issues pertaining to §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien), 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law), and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport).

The first part of this amendment modifies § 2L1.1. First, this amendment addresses national security concerns pertaining to the smuggling of illegal aliens. Specifically, a new base offense level of 25 at § 2L1.1(a)(1) provides increased punishment for defendants convicted of 8 U.S.C. 1327 involving an alien who is inadmissible because of "security or related grounds," as defined in 8 U.S.C. 1182(a)(3). To further address concerns related to national security, an application note provides that an upward departure may be warranted if the defendant had specific knowledge that the alien the defendant smuggled, transported, or harbored was inadmissible for reasons of security and related grounds, as set forth in 8 U.S.C. 1182(a)(3). This upward departure note applies regardless of whether the defendant is convicted of 8 U.S.C. 1327.

Second, the amendment provides a two-level enhancement for a case in which the defendant smuggled, transported, or harbored a minor unaccompanied by the minor's parent or grandparent. This enhancement addresses concerns regarding the increased risk involved when unaccompanied minors are smuggled into, or harbored or transported within, the United States. Application Note 1 defines "minor" as "an individual who had not attained the age of 16 years" and defines "parent" as "(A) a natural mother or father; (B) a stepmother or stepfather; or (C) an adoptive mother or father."

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**ELEMENTS OF FALSE CLAIM OF CITIZENSHIP TO OBTAIN
EMPLOYMENT
(18 U.S.C. § 1015(e))**

To convict you on [*this charge*] [*the charge in Count @ of the Information*], the prosecution would have to prove all of the following matters to the jury:

First, the prosecution would have to prove that at some time after June 1, 2003, in the Northern District of Iowa, you knowingly stated or claimed you were a citizen or national of the United States.

Do you admit that at some time after June 1, 2003, you knowingly stated or claimed you were a citizen or national of the United States?

Second, the prosecution would have to prove that your statement or claim that you were a citizen or national of the United States was false.

Do you admit that your statement or claim that you were a citizen or national of the United States was false? Do you admit that you have never been a citizen or national of the United States?

Third, the prosecution would have to prove that you made the statement or claim that you were a citizen or national of the United States with the intent to engage unlawfully in employment in the United States.

Do you admit that you made the statement or claim that you were a citizen or national of the United States with the intent to engage unlawfully in employment in the United States?

STATUTORY PENALTIES

Under the statutes that apply to this charge, you could be sent to prison for up to five years, placed on supervised release for up to three years, and fined up to \$250,000. There also will be a special assessment of \$100 on this count.



Effective: October 30, 2000

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

▣ Part I. Crimes (Refs & Annos)

▣ Chapter 47. Fraud and False Statements (Refs & Annos)

→ **§ 1015. Naturalization, citizenship or alien registry**

- (a) Whoever knowingly makes any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens; or

- (b) Whoever knowingly, with intent to avoid any duty or liability imposed or required by law, denies that he has been naturalized or admitted to be a citizen, after having been so naturalized or admitted; or

- (c) Whoever uses or attempts to use any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship or other documentary evidence of naturalization or of citizenship, or any duplicate or copy thereof, knowing the same to have been procured by fraud or false evidence or without required appearance or hearing of the applicant in court or otherwise unlawfully obtained; or

- (d) Whoever knowingly makes any false certificate, acknowledgment or statement concerning the appearance before him or the taking of an oath or affirmation or the signature, attestation or execution by any person with respect to any application, declaration, petition, affidavit, deposition, certificate of naturalization, certificate of citizenship or other paper or writing required or authorized by the laws relating to immigration, naturalization, citizenship, or registry of aliens; or

- (e) Whoever knowingly makes any false statement or claim that he is, or at any time has been, a citizen or national of the United States, with the intent to obtain on behalf of himself, or any other person, any Federal or State benefit or service, or to engage unlawfully in employment in the United States; or

- (f) Whoever knowingly makes any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election (including an initiative, recall, or referendum)--

Shall be fined under this title or imprisoned not more than five years, or both. Subsection (f) does not apply to an alien if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making the false statement or claim that he or she was a citizen of the United States.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 752; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(K), 108 Stat. 2147; Sept. 30, 1996, Pub.L. 104-208, Div. C, Title II, § 215, 110 Stat. 3009-572; Oct. 30, 2000, Pub.L. 106-395, Title II, § 201(d)(2), 114 Stat. 1635.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1948 Acts. Based on subsections (a)(1), (16), (17), (19), (32), (b), (d) and (l) of § 746 of Title 8, U.S.C., 1940 ed., Aliens and Nationality (Oct. 14, 1940, c. 876, § 346(a)(1), (16), (17), (19), (32), (b), (d), and (l), 45 Stat. 1163, 1165, 1167).

Section consolidates, with minor changes, subsection (a), paragraphs (1), (16), (17), (19), (32) and subsections (b), (d), and (l), of § 746 of Title 8, U.S.C., 1940 ed., Aliens and Nationality.

Such changes of arrangement and phraseology were made as were appropriate and necessary.

1994 Acts. House Report Nos. 103-324 and 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

2000 Acts. House Report No. 106-852, see 2000 U.S. Code Cong. and Adm. News, p. 1499.

Amendments

2000 Amendments. Pub.L. 106-395, § 201(d)(2), at the end of section, inserted "Subsection (f) does not apply to an alien

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ELEMENTS OF USE OF FALSE EMPLOYMENT DOCUMENTS
(18 U.S.C. § 1546(a))

To convict you on [*this charge*] [*the charge in Count @ of the Information*], the prosecution would have to prove all of the following matters to the jury:

First, the prosecution would have to prove that at some time after June 1, 2003, in the Northern District of Iowa, you knowingly used or possessed a document prescribed by statute or regulation as evidence of authorized employment in the United States; that is, a Resident Alien card.

Do you admit that at some time after June 1, 2003, in the Northern District of Iowa, you knowingly used or possessed a Resident Alien card?

Second, the prosecution would have to prove that the Resident Alien card you used or possessed was unlawfully obtained.

Do you admit that the Resident Alien card you used or possessed was unlawfully obtained?

Third, the prosecution would have to prove that when you used or possessed the Resident Alien card, you knew it had been unlawfully obtained.

Do you admit that when you used or possessed the Resident Alien card, you knew it had been unlawfully obtained?

STATUTORY PENALTIES

Under the statutes that apply to this charge, you could be sent to prison for up to ten years, placed on supervised release for up to three years, and fined up to \$250,000. There also will be a special assessment of \$100 on this count.



Effective: November 2, 2002

United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

▣ Part I. Crimes (Refs & Annos)

▣ Chapter 75. Passports and Visas (Refs & Annos)

→ § 1546. Fraud and misuse of visas, permits, and other documents

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable

basis in law or fact--

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

(b) Whoever uses--

(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an identification document knowing (or having reason to know) that the document is false, or

(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481). For purposes of this section, the term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 771; June 27, 1952, c. 477, Title IV, § 402(a), 66 Stat. 275; Oct. 18, 1976, Pub.L. 94-550, § 5, 90 Stat. 2535; Nov. 6, 1986, Pub.L. 99-603, Title I, § 103(a), 100 Stat. 3380; Oct. 24, 1988, Pub.L. 100-525, Title I, § 2(c), 102 Stat. 2610; Nov. 29, 1990, Pub.L. 101-647, Title XXXV, § 3550, 104 Stat. 4926; Sept. 13, 1994, Pub.L. 103-322, Title XIII, § 130009(a)(4), (5), Title XXXIII, § 330011(p), 108 Stat. 2030, 2145; Sept. 30, 1996, Pub.L. 104-208, Div. C, Title II, §§ 211(a)(2), 214, 110 Stat. 3009-569, 3009-572; Oct. 11, 1996, Pub.L. 104-294, Title VI, § 607(m), 110 Stat. 3512; Nov. 2, 2002, Pub.L. 107-273, Div. B, Title IV, § 4002(a)(3), 116 Stat. 1806.)



United States Code Annotated Currentness

Federal Sentencing Guidelines (Refs & Annos)

Chapter Two. Offense Conduct (Refs & Annos)

▣ Part L. Offenses Involving Immigration, Naturalization, and Passports

▣ 2. Naturalization and Passports

→ § 2L2.1. Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law

(a) Base Offense Level: 11

(b) Specific Offense Characteristics

- (1) If the offense was committed other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child), decrease by 3 levels.
- (2) If the offense involved six or more documents or passports, increase as follows:

Number of Documents/Passports	Increase in Level
(A) 6-24.....	add 3
(B) 25-99.....	add 6
(C) 100 or more.....	add 9

(3) If the defendant knew, believed, or had reason to believe that a passport or visa was to be used to facilitate the commission of a felony offense, other than an offense involving violation of the immigration laws, increase by 4 levels.

(4) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels.

(5) If the defendant fraudulently obtained or used (A) a United States passport, increase by 4 levels; or (B) a foreign passport, increase by 2 levels.

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

CREDIT(S)

(Effective November 1, 1987, and amended effective November 1, 1989; November 1, 1992; November 1, 1993;

November 1, 1995; May 1, 1997; November 1, 1997; November 1, 2006.)
COMMENTARY

<Statutory Provisions: 8 U.S.C. §§ 1160(b)(7)(A), 1185(a)(3), (4), 1325(b), (c); 18 U.S.C. §§ 1015, 1028, 1425-1427, 1542, 1544, 1546. For additional statutory provision(s), see Appendix A (Statutory Index).>

<Application Notes:>

<1. For purposes of this guideline>

<"The offense was committed other than for profit" means that there was no payment or expectation of payment for the smuggling, transporting, or harboring of any of the unlawful aliens.>

<"Immigration and naturalization offense" means any offense covered by Chapter Two, Part L.>

<"Child" has the meaning set forth in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1101(b)(1)).>

<"Spouse" has the meaning set forth in section 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(35)).>

<2. Where it is established that multiple documents are part of a set of documents intended for use by a single person, treat the set as one document.>

<3. Subsection (b)(3) provides an enhancement if the defendant knew, believed, or had reason to believe that a passport or visa was to be used to facilitate the commission of a felony offense, other than an offense involving violation of the immigration laws. If the defendant knew, believed, or had reason to believe that the felony offense to be committed was of an especially serious type, an upward departure may be warranted.>

<4. Prior felony conviction(s) resulting in an adjustment under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).>

<5. If the offense involved substantially more than 100 documents, an upward departure may be warranted.>

HISTORICAL NOTES

2006 Amendments

Section 2L2.1(b) is amended by adding at the end the following:

"(5) If the defendant fraudulently obtained or used (A) a United States passport, increase by 4 levels; or (B) a foreign passport, increase by 2 levels."

Reason for Amendment: This two-part amendment addresses various issues pertaining to §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien), 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship



United States Code Annotated Currentness

Federal Sentencing Guidelines (Refs & Annos)

Chapter Two. Offense Conduct (Refs & Annos)

Part L. Offenses Involving Immigration, Naturalization, and Passports

2. Naturalization and Passports

→ **§ 2L2.2. Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport**

(a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels.

(2) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels.

(3) If the defendant fraudulently obtained or used (A) a United States passport, increase by 4 levels; or (B) a foreign passport, increase by 2 levels.

(c) Cross Reference

(1) If the defendant used a passport or visa in the commission or attempted commission of a felony offense, other than an offense involving violation of the immigration laws, apply--

(A) § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that felony offense, if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

CREDIT(S)

(Effective November 1, 1987, and amended effective January 15, 1988; November 1, 1989; November 1, 1992; November 1, 1993; November 1, 1995; May 1, 1997; November 1, 1997; November 1, 2004; November 1, 2006.)

COMMENTARY

<*Statutory Provisions: 8 U.S.C. §§ 1160(b)(7)(A), 1185(a)(3), (5), 1325(b), (c); 18 U.S.C. §§ 911, 1015, 1028, 1423-1426, 1542-1544, 1546.*>

<Application Notes:>

<**1. Definition.**--For purposes of this guideline, "immigration and naturalization offense" means any offense covered by Chapter Two, Part L.>

<**2. Application of Subsection (b)(2).**--Prior felony conviction(s) resulting in an adjustment under subsection (b)(2) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).>

<**3. Application of Subsection (b)(3).**--The term "used" is to be construed broadly and includes the attempted renewal of previously-issued passports.>

<**4. Multiple Counts.**--For the purposes of Chapter Three, Part D (Multiple Counts), a count of conviction for unlawfully entering or remaining in the United States covered by § 2L1.2 (Unlawfully Entering or Remaining in the United States) arising from the same course of conduct as the count of conviction covered by this guideline shall be considered a closely related count to the count of conviction covered by this guideline, and therefore is to be grouped with the count of conviction covered by this guideline.>

<5. **Upward Departure Provision.**--If the defendant fraudulently obtained or used a United States passport for the purpose of entering the United States to engage in terrorist activity, an upward departure may be warranted. See Application Note 4 of the Commentary to § 3A1.4 (Terrorism).>

HISTORICAL NOTES

2006 Amendments

Section 2L2.2(b)(3) is amended by inserting “(A)” after “used” and by inserting “; or (B) a foreign passport, increase by 2 levels” after “4 levels”.

Reason for Amendment: This two-part amendment addresses various issues pertaining to §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien), 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law), and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport).

The first part of this amendment modifies § 2L1.1. First, this amendment addresses national security concerns pertaining to the smuggling of illegal aliens. Specifically, a new base offense level of 25 at § 2L1.1(a)(1) provides increased punishment for defendants convicted of 8 U.S.C. 1327 involving an alien who is inadmissible because of “security or related grounds,” as defined in 8 U.S.C. 1182(a)(3). To further address concerns related to national security, an application note provides that an upward departure may be warranted if the defendant had specific knowledge that the alien the defendant smuggled, transported, or harbored was inadmissible for reasons of security and related grounds, as set forth in 8 U.S.C. 1182(a)(3). This upward departure note applies regardless of whether the defendant is convicted of 8 U.S.C. 1327.

Second, the amendment provides a two-level enhancement for a case in which the defendant smuggled, transported, or harbored a minor unaccompanied by the minor's parent or grandparent. This enhancement addresses concerns regarding the increased risk involved when unaccompanied minors are smuggled into, or harbored or transported within, the United States. Application Note 1 defines “minor” as “an individual who had not attained the age of 16 years” and defines “parent” as “(A) a natural mother or father; (B) a stepmother or stepfather; or (C) an adoptive mother or father.”

10

ELEMENTS OF UNLAWFUL REENTRY
(8 U.S.C. § 1326(a))

To convict you on [*this charge*] [*the charge in Count @ of the Information*], the prosecution would have to prove all of the following matters to the jury:

First, the prosecution would have to prove that you are not a citizen or national of the United States.

Do you admit that you have never been a citizen or national of the United States?

Second, the prosecution would have to prove that in the past, you were removed from the United States by immigration authorities.

Do you admit that in the past you were removed from the United States by immigration authorities?

Third, the prosecution would have to prove that after you were removed from the United States, you unlawfully returned to the United States, and then, on or about May 12, 2008, you were found in the Northern District of Iowa.

Do you admit that after you were removed from the United States, you unlawfully returned to the United States? Were you then found in the Northern District of Iowa on or about May 12, 2008?

Fourth, the prosecution would have to prove that when you returned to the United States, you did so knowingly, intentionally, and voluntarily.

Do you admit that when you returned to the United States, you did so knowingly, intentionally, and voluntarily?

STATUTORY PENALTIES

[*Depending on the defendant's record of prior conviction, one of the following will apply:*]

(*Under section (a)*) Under the statutes that apply to this charge, you could be sent to prison for up to two years, placed on supervised release for up to one year, and fined up to \$250,000. There also will be a special assessment of \$100 on this count.

(Under subsection (b)(1)) Under the statutes that apply to this charge, you could be sent to prison for up to ten years, placed on supervised release for up to three years, and fined up to \$250,000. There also will be a special assessment of \$100 on this count.

(Under subsection (b)(2)) Under the statutes that apply to this charge, you could be sent to prison for up to twenty years, placed on supervised release for up to three years, and fined up to \$250,000. There also will be a special assessment of \$100 on this count.

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8 U.S.C.A. § 1326



Effective: [See Notes]

UNITED STATES CODE ANNOTATED
 TITLE 8. ALIENS AND NATIONALITY
 CHAPTER 12--IMMIGRATION AND NATIONALITY
 SUBCHAPTER II--IMMIGRATION
 PART VIII--GENERAL PENALTY PROVISIONS
 → § 1326. Reentry of removed aliens

(a) In general

Subject to subsection (b) of this section, any alien who--

- (1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter
- (2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be fined under Title 18, or imprisoned not more than 2 years, or both.

(b) Criminal penalties for reentry of certain removed aliens

Notwithstanding subsection (a) of this section, in the case of any alien described in such subsection--

- (1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under Title 18, imprisoned not more than 10 years, or both;
- (2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such Title, imprisoned not more than 20 years, or both;
- (3) who has been excluded from the United States pursuant to section 1225(c) of this title because the alien was excludable under section 1182(a)(3)(B) of this title or who has been removed from the United States pursuant to the provisions of subchapter V of this chapter, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under Title 18 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence. [FN1] or
- (4) who was removed from the United States pursuant to section 1231(a)(4)(B) of this title who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under Title 18, imprisoned for not more than 10 years, or both.

8 U.S.C.A. § 1326

For the purposes of this subsection, the term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

(c) Reentry of alien deported prior to completion of term of imprisonment

Any alien deported pursuant to section 1252(h)(2) [FN2] of this title who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) of this section or subsection (b) of this section unless the alien demonstrates that--

- (1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;
- (2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and
- (3) the entry of the order was fundamentally unfair.

[FN1] So in original. The period probably should be a semicolon.

[FN2] See References in Text note below.

Current through P.L. 110-199 approved 4-9-08

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▶
United States Code Annotated Currentness
Federal Sentencing Guidelines (Refs & Annos)
Chapter Two. Offense Conduct (Refs & Annos)
▣ Part L. Offenses Involving Immigration, Naturalization, and Passports
▣ 1. Immigration
→ § 2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) Apply the Greatest:

If the defendant previously was deported, or unlawfully remained in the United States, after--

(A) a conviction for a felony that is (i) a drug trafficking offense for which the sentence imposed exceeded 13 months; (ii) a crime of violence; (iii) a firearms offense; (iv) a child pornography offense; (v) a national security or terrorism offense; (vi) a human trafficking offense; or (vii) an alien smuggling offense, increase by 16 levels;

(B) a conviction for a felony drug trafficking offense for which the sentence imposed was 13 months or less, increase by 12 levels;

(C) a conviction for an aggravated felony, increase by 8 levels;

(D) a conviction for any other felony, increase by 4 levels; or

(E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 4 levels.

<[Commentary to Guideline is located in Historical Note field. The following credit reflects amendments to both Guideline and Commentary.]>

CREDIT(S)

(Effective November 1, 1987, and amended effective January 15, 1988; November 1, 1989; November 1, 1991; November 1, 1995; November 1, 1997; November 1, 2001; November 1, 2002; November 1, 2003; November 1, 2007.)

COMMENTARY

<**Statutory Provisions:** 8 U.S.C. 1325(a) (second or subsequent offense only), 8 U.S.C. 1326. For additional statutory provision(s), see Appendix A (Statutory Index).>

<**Application Notes**>

<**1. Application of Subsection (b)(1).**-->

<**(A) In General.**--For purposes of subsection (b)(1):>

<(i) A defendant shall be considered to be deported after a conviction if the defendant has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding.>

<(ii) A defendant shall be considered to be deported after a conviction if the deportation was subsequent to the conviction, regardless of whether the deportation was in response to the conviction.>

<(iii) A defendant shall be considered to have unlawfully remained in the United States if the defendant remained in the United States following a removal order issued after a conviction, regardless of whether the removal order was in response to the conviction.>

<(iv) Subsection (b)(1) does not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.>

<(B) Definitions.--For purposes of subsection (b)(1):>

<(i) "Alien smuggling offense" has the meaning given that term in section 101(a)(43)(N) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(N)).>

<(ii) "Child pornography offense" means (I) an offense described in 18 U.S.C. 2251, 2251A, 2252, 2252A, or 2260; or (II) an offense under state or local law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.>

<(iii) "Crime of violence" means any of the following: murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, statutory rape, sexual abuse of a minor, robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or any offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another.>

<(iv) "Drug trafficking offense" means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.>

<(v) "Firearms offense" means any of the following:>

<(I) An offense under federal, state, or local law that prohibits the importation, distribution, transportation, or trafficking of a firearm described in 18 U.S.C. 921, or of an explosive material as defined in 18 U.S.C. 841(c).>

<(II) An offense under Federal, state, or local law that prohibits the possession of a firearm described in 26 U.S.C. 5845(a), or of an explosive material as defined in 18 U.S.C. 841(c).>

<(III) A violation of 18 U.S.C. 844(h).>

<(IV) A violation of 18 U.S.C. 924(c).>

<(V) A violation of 18 U.S.C. 929(a).>

<(VI) An offense under state or local law consisting of conduct that would have been an offense under subdivision (III), (IV), or (V) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.>

<(vi) "Human trafficking offense" means (I) any offense described in 18 U.S.C. 1581, 1582, 1583, 1584, 1585, 1588, 1589, 1590, or 1591; or (II) an offense under state or local law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.>

<(vii) "Sentence of imprisonment" has the meaning given that term in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), without regard to the date of the conviction. The length of the sentence of imprisonment includes any term of imprisonment given upon revocation of probation, parole, or supervised release.>

<(viii) "Terrorism offense" means any offense involving, or intending to promote, a "Federal crime of terrorism", as that term is defined in 18 U.S.C. 2332b(g)(5).>

<2. Definition of "Felony".--For purposes of subsection (b)(1)(A), (B), and (D), "felony" means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.>

<3. Application of Subsection (b)(1)(C).-->

<(A) Definitions.--For purposes of subsection (b)(1)(C), "aggravated felony" has the meaning given that term in 8 U.S.C. 1101(a)(43), without regard to the date of conviction for the aggravated felony.>

<(B) In General.--The offense level shall be increased under subsection (b)(1)(C) for any aggravated felony (as defined in subdivision (A)), with respect to which the offense level is not increased under subsections (b)(1)(A) or (B).>

<4. Application of Subsection (b)(1)(E).--For purposes of subsection (b)(1)(E):>

<(A) "Misdemeanor" means any federal, state, or local offense punishable by a term of imprisonment of one year or less.>

<(B) "Three or more convictions" means at least three convictions for offenses that are not counted as a single sentence pursuant to subsection (a)(2) of § 4A1.2 (Definitions and Instructions for Computing Criminal History).>

<5. Aiding and Abetting, Conspiracies, and Attempts.--Prior convictions of offenses counted under subsection (b)(1) include the offenses of aiding and abetting, conspiring, and attempting, to commit such offenses.>

<6. **Computation of Criminal History Points.**--A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).>

HISTORICAL NOTES

2007 Amendments

The Commentary to § 2L1.2 captioned “Application Notes” is amended in Note 4(B) by striking “considered ‘related cases’, as that term is defined in Application Note 3” and inserting “counted as a single sentence pursuant to subsection (a)(2)”.

Reason for Amendment: This amendment addresses two areas of the Chapter Four criminal history rules: The counting of multiple prior sentences and the use of misdemeanor and petty offenses in determining a defendant's criminal history score. In November 2006 the Commission hosted round-table discussions to receive input on criminal history issues from federal judges, prosecutors, defense attorneys, probation officers, and members of academia. In addition, the Commission gathered information through its training programs, the public comment process, and comments received during a public hearing of the Commission in March 2007. This amendment addresses two issues that were raised during this process.

First, the amendment addresses the counting of multiple prior sentences. The Commission has heard from a number of practitioners throughout the criminal justice system that the “related cases” rules at subsection (a)(2) of § 4A1.2 (Definitions and Instructions for Computing Criminal History) and Application Note 3 of § 4A1.2 are too complex and lead to confusion. Moreover, a significant amount of litigation has arisen concerning application of the rules, and circuit conflicts have developed over the meaning of terms in the commentary that define when prior sentences may be considered “related.” For example, the commentary provides that prior sentences for offenses not separated by an intervening arrest are to be considered related if the sentences resulted from offenses that were consolidated for sentencing. In determining whether offenses were consolidated for sentencing, some courts have required that the record reflect a formal order of consolidation, while others have not. Compare, e.g., United States v. Correa, 114 F.3d 314, 317 (1st Cir. 1997) (order required) with United States v. Huskey, 137 F.3d 283, 288 (5th Cir. 1998) (order not required).

The amendment simplifies the rules for counting multiple prior sentences and promotes consistency in the application of the guideline. The amendment eliminates use of the term “related cases” at § 4A1.2(a)(2) and instead uses the terms “single” and “separate” sentences. This change in terminology was made because some have misunderstood the term “related cases” to suggest a relationship between the prior sentences and the instant offense. Prior sentences for conduct that is part of the instant offense are separately addressed at §

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Defendant.

No. _____

**REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY**

On this date, the defendant, by consent, appeared before the undersigned United States Magistrate Judge pursuant to Federal Rule of Criminal Procedure 11, and pled guilty to the Information. After cautioning and examining the defendant under oath concerning each of the subjects mentioned in Rule 11, the court determined that the guilty plea(s) was/were knowledgeable and voluntary, and the offense(s) charged was/were supported by an independent basis in fact supporting each of the essential elements of the offense(s). The court therefore **RECOMMENDS** that the plea(s) of guilty be accepted and the defendant be adjudged guilty.

The defendant has pled guilty under Rule 11(C)(1)(c) pursuant to a plea agreement with the Government. At the plea hearing, the Court determined that the defendant understands that the terms of the plea agreement provide for a specific sentence; that a District Judge will consider whether or not to accept the plea agreement; that if the District Judge decides to accept the plea agreement, then the defendant will receive the agreed sentence; and that if the District Judge rejects the plea agreement, then the defendant will have an opportunity to withdraw the plea(s) of guilty and plead not guilty.

The court finds the defendant's guilty plea(s) was/were voluntary, knowing, and not the result of force, threats or promises, except plea agreement promises. The defendant is fully competent and is aware of the maximum punishment. The defendant knows of the right to trial by jury, and has voluntarily waived that right. There is a factual basis for the plea(s), and the defendant is, in fact, guilty of the crime(s) charged in the Information.

Dated this _____ day of May, 2008.

MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

_____ ,

Defendant.

No. _____

**WAIVER OF TIME TO OBJECT TO
REPORT AND RECOMMENDATION
AND CONSENT TO ACCEPTANCE
OF GUILTY PLEA BY THE
DISTRICT COURT JUDGE**

I have entered (a) guilty plea(s) in this case before a United States Magistrate Judge, and he has filed a Report and Recommendation recommending that my guilty plea(s) be accepted. I know I have ten days from the date I entered my guilty plea(s) to have my lawyer file objections to the Report and Recommendation.

My lawyer and I have completed our review of the Report and Recommendation, and I do not want to delay the acceptance of my guilty plea(s). I want the District Court Judge to accept my guilty plea(s) at this time, without waiting for the ten-day period to expire.

I hereby waive my right to object to the Report and Recommendation, and consent to the immediate acceptance of my guilty plea(s) by the District Court Judge.

Date: _____

Defendant

Defendant's Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EN EL TRIBUNAL DE DISTRITO DE ESTADOS UNIDOS
PARA EL DISTRITO NORTE DE IOWA

UNITED STATES OF AMERICA,
ESTADOS UNIDOS DE AMÉRICA,

Plaintiff,
Demandante,

vs.
contra

Defendant.
El acusado.

No. CR _____
No. de Registro

**WAIVER OF TIME TO OBJECT TO
REPORT AND RECOMMENDATION
AND CONSENT TO ACCEPTANCE OF
GUILTY PLEA BY THE DISTRICT
COURT JUDGE
RENUNCIA AL PERÍODO DE
OBJECCIÓN AL INFORME Y
RECOMENDACIÓN Y
CONCENTIMIENTO PARA QUE EL
TRIBUNAL DE PRIMERA INSTANCIA
ACEPTE MÍ ADMISIÓN DE
CULPABILIDAD**

I have entered (a) guilty plea(s) in this case before a United States Magistrate Judge, and he has filed a Report and Recommendation recommending that my guilty plea(s) be accepted. I know I have ten days from the date I entered my guilty plea(s) to have my lawyer file objections to the Report and Recommendation.

En este caso, yo he hecho declaración(s) de culpabilidad ante el Tribunal de Primera Instancia, y el ha iniciado un Informe y Recomendación que recomienda que mi(s) admisión(s) de culpabilidad sean aceptadas. Estoy conciente, de que tengo diez días desde la fecha que hice mi(s) admisión(es) de culpabilidad para hacer que mi abogado inicie protestas al Informe y Recomendación.

My lawyer and I have completed our review of the Report and Recommendation, and I do not want to delay the acceptance of my guilty plea(s). I want the District Court Judge to accept my guilty plea(s) at this time, without waiting for the ten-day period to expire.

Mi abogado y yo hemos completado nuestra revisión del Informe y Recomendación, y no deseo demorar la aceptación de mis admisión(es) de culpabilidad. Quiero solicitar al Juez de Distrito que acepte mi(s) declaración(s) de culpabilidad a partir de este momento, sin esperar los diez días del vencimiento

I hereby waive my right to object to the Report and Recommendation, and consent to the immediate acceptance of my guilty plea(s) by the District Court Judge.

Y yo he aquí renuncio mi derecho de objeción al Informe y Recomendación, y consiento la aceptación inmediata de mi(s) admision(es) de culpabilidad por el Juez de Distrito.

Defendant
El Acusado

Date
Fecha

Attorney for Defendant
Abogado del Acusado

Date
Fecha

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

_____ ,

Defendant.

Case No. _____

**ORDER ACCEPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION
CONCERNING DEFENDANT'S
GUILTY PLEA**

The defendant has signed a written Waiver of Indictment and consented to be prosecuted by Information. The defendant has appeared before a United States Magistrate Judge and entered a plea of guilty to the Information. The Magistrate Judge has filed a Report and Recommendation, in which he recommends that the defendant's guilty plea be accepted. The defendant has signed a Waiver of Time to Object to Report and Recommendation and consents to acceptance of the guilty plea by a district court judge. The court, therefore, undertakes the necessary review of the Magistrate Judge's recommendation to accept defendant's plea in this case.

The appropriate standard of review is set forth in 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b). In this case, the defendant has waived time to object and has consented to acceptance of the guilty plea by the district court judge. Therefore, the court **accepts** the Magistrate Judge's Report and Recommendation and accepts the defendant's plea of guilty to the Information.

IT IS SO ORDERED.

DATED this _____ day of May, 2008.

DISTRICT JUDGE
UNITED STATES DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EN EL TRIBUNAL DE DISTRITO DE ESTADOS UNIDOS
PARA EL DISTRITO NORTE DE IOWA**

UNITED STATES OF AMERICA,
ESTADOS UNIDOS DE AMÉRICA,

Plaintiff,
Demandante,

vs.
contra

Defendant.
El Acusado.

No. CR _____
No. de Registro

**ORDER ACCEPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION
CONCERNING DEFENDANT'S
GUILTY PLEA
ÓRDEN DE ACEPTAR EL INFORME
DEL TRIBUNAL Y
RECOMENDACIÓN CONCERNIENTE
A LA DECLARACIÓN DE
CULPABILIDAD DEL ACUSADO**

The defendant has signed a written Waiver of Indictment and consented to be prosecuted by Information. The defendant has appeared before a United States Magistrate Judge and entered a plea of guilty to the Information. The Magistrate Judge has filed a Report and Recommendation, in which he recommends that the defendant's guilty plea be accepted. The defendant has signed a Waiver of Time to Object to Report and Recommendation and consents to acceptance of the guilty plea by a district court judge. The court, therefore, undertakes the necessary review of the Magistrate Judge's recommendation to accept defendant's plea in this case.

El acusado ha firmado una Renuncia de Acusación Formal escrita y ha acordado ser enjuiciado por Denuncia. El acusado se presentó ante el Tribunal de Primera Instancia de los Estados Unidos e inició declaración de culpable de la Denuncia. El Tribunal de Primera Instancia ha presentado un Informe y Recomendación en el cual

recomienda que se acepte la declaración de culpable del acusado. El acusado ha firmado una Renuncia del Tiempo para Objetar al Informe y Recomendación y concuerda con la aceptación de un Juez de distrito de su declaración de culpable. El tribunal, conseqüentemente, emprenderá la revisión necesaria de las recomendaciones del Tribunal de Primera Instancia de aceptar la declaración del acusado en este caso.

The appropriate standard of review is set forth in 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). In this case, the defendant has waived time to object and has consented to acceptance of the guilty plea by the district court judge. Therefore, the court accepts the Magistrate Judge's Report and Recommendation and accepts the defendant's plea of guilty to the Information.

La norma de revisión adecuada se encuentra en el Título 28, Código de los Estados Unidos, Sección 636(b)(1) y en el Reglamento Federal de Proceso Civil 72(b). En este caso, el acusado renunció su derecho del tiempo para objeccionar y ha acordado con la aceptación del Juez de distrito de su declaración de culpable. Por lo tanto, el Tribunal acepta el Informe y Recomendación del Tribunal de Primera Instancia y acepta la declaración de culpable de la Denuncia del acusado.

IT IS SO ORDERED.

CÚMPLASE DE ESA MANERA.

DATED this ____ day of May, 2008.

FECHADO este día _____ de mayo 2008

DISTRICT JUDGE
UNITED STATES DISTRICT COURT

SENTENCING OUTLINE

1. Introduce the case

The following cases are before the court (it is anticipated the court will sentence multiple defendants at one time):

United States v. _____, _____, and _____; Crim. Nos. _____, _____ and _____ respectively.

2. Introduce and Swear the Interpreter

Mr. _____
Ms. _____, are federally-certified interpreters assisting the court.

Will the interpreters please raise their right hands:

Do each of you swear or affirm you will accurately translate English to Spanish and Spanish to English during this proceeding to the best of your ability?

Mr. _____?

Ms. _____?

3. Record who is in the courtroom

Present in the courtroom are the defendants with their attorney _____.

Assistant United States Attorney _____ represents the United States.

4. Reaffirm Plea

(Address this colloquy to each defendant)

a. Mr/Ms. _____ do you recall pleading guilty to the crime of _____?

b. At the time you pled guilty did the judge tell you that the maximum sentence you are facing is:

- ___ years in prison without the possibility of parole
- ___ probation is/is not an option
- ___ a fine of up to \$250,000 on each count of conviction
- ___ a special assessment of \$100 on each count of conviction ?

c. Do you understand that you are in court at this time to be sentenced on your plea of guilty?

d. Do you still admit you are guilty of the crime of _____?

5. State defendant has given up his right to read the Presentence Report as part of the plea agreement.

The court has received and read the presentence investigation report for each defendant.

Each Defendant gave up his/her right to read the presentence investigation report. For each of the Defendants before the court, the court makes the following guideline findings: AOL ___ Crim History ___ Range ___.

6. Advocacy by Lawyers

The court will now hear from the lawyers as to their recommendations for disposition

7. Opportunity for each Defendant to Speak

At this time, the court will hear from each of the Defendants if they would like to speak to the court.

8. After considering all of the statutory factors that apply under 18 U.S.C. section 3553(a), the court is ready to pronounce sentence.

9. Pronouncement of sentence

A. FOR SENTENCES OF IMPRISONMENT:

It is the judgment of the Court that _____,
_____,
_____.

are hereby sentenced to a term of _____(days)(months) imprisonment on
Count ____ of the Information. [This is a time served sentence, giving each
defendant credit for time previously served in federal custody from the date
they came into the custody of the United States Marshal to the present date].

Each defendant is ordered to serve a _____year term of supervised release,
[time served: which will commence immediately].

If removed from the United States, you will not be on "active supervision."
If you obtain prior permission from the Director of Homeland Security or his
designee and lawfully reenter the United States during the term of supervised
release, you shall report immediately to the nearest United States Probation
Office.

While on supervised release, you shall comply with the standard conditions
of supervision which will be set out in the judgment order. In addition, you
must not commit another federal, state, or local crime; not illegally possess
a controlled substance; not possess a firearm, ammunition, a destructive
device, or any other dangerous weapon. You shall cooperate in the
collection of a DNA sample.

The court imposes the following special condition on your supervised
release: If you are removed from the United States, you must not reenter
unless you obtain prior permission from the Director of Homeland Security.

The court finds you do not have the ability to pay a fine.

I order that you pay to the United States a special assessment of \$100, which
is due immediately.

[In the interest of justice, the court grants the government's motion to remit the special assessment pursuant to 18 U.S.C. section 3573.]

[The periodic drug testing mandated by the Violent Crime Control and Law Enforcement Act of 1994 is hereby suspended (for all defendants) (for the following defendant _____). The court finds that this offense is not drug related and (all defendants)(defendant _____) has no current or past history of substance abuse.]

Each defendant is remanded to the custody of the United States Marshal [time served: for immediate processing to the Bureau of Immigration and Customs Enforcement Detainer].

[Each defendant has a right to appeal his/her sentence] or [each defendant has given up his/her right to appeal this sentence except in limited circumstances]. If you want to appeal, you need to file a written notice of appeal with the Clerk of Court. This notice must be filed within the next ten days. If you do not, you forever give up your right to challenge this judgment. If you wish to appeal but you can not afford the services of an attorney, the court will appoint an attorney to represent you on appeal.

This sentencing hearing is concluded.

B. FOR SENTENCES OF PROBATION:

It is the judgment of the Court that _____,
_____,
_____.

Each defendant is ordered to serve a _____ year term of probation, which will commence immediately.

If removed from the United States, you will not be on "active supervision." If you obtain prior permission from the Director of Homeland Security or his designee and lawfully reenter the United States during the term of probation, you shall report immediately to the nearest United States Probation Office.

While on probation, you shall comply with the standard conditions of supervision which will be set out in the judgment order. In addition, you

must not commit another federal, state, or local crime; not illegally possess a controlled substance; not possess a firearm, ammunition, a destructive device, or any other dangerous weapon. You shall cooperate in the collection of a DNA sample.

The court imposes the following special condition on your probation: If you are removed from the United States, you must not reenter unless you obtain prior permission from the Director of Homeland Security.

The court finds you do not have the ability to pay a fine.

I order that you pay to the United States a special assessment of \$100, which is due immediately.

[In the interest of justice, the court grants the government's motion to remit the special assessment pursuant to 18 U.S.C. section 3573.]

[The periodic drug testing mandated by the Violent Crime Control and Law Enforcement Act of 1994 is hereby suspended (for all defendants) (for the following defendant _____). The court finds that this offense is not drug related and (all defendants)(defendant _____) has/have no current or past history of substance abuse.]

Each defendant is remanded to the custody of the United States Marshal for immediate processing to the Bureau of Immigration and Customs Enforcement Detainer.

[Each defendant has a right to appeal his/her sentence] or [each defendant has given up his/her right to appeal this sentence except in limited circumstances]. If you want to appeal, you need to file a written notice of appeal with the Clerk of Court. This notice must be filed within the next ten days. If you do not, you forever give up your right to challenge this judgment. If you wish to appeal but you can not afford the services of an attorney, the court will appoint an attorney to represent you on appeal.

This sentencing hearing is concluded.

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Defendant.

No.

**STIPULATED REQUEST FOR
JUDICIAL REMOVAL**

Defendant _____, a/k/a J. DOE _____, a/k/a _____, and plaintiff United States of America agree and stipulate pursuant to Title 8, United States Code, Section 1228(c)(5), to the following:

1. Defendant waives defendant's right to notice and hearing before an immigration judge prior to removal from the United States.
2. Defendant waives defendant's rights: a) to examine the evidence against defendant that establishes that defendant is removable from the United States; and b) to present any evidence on defendant's own behalf that establishes defendant is not subject to removal from the United States.
3. Defendant waives any right to seek or apply:
 - a) for asylum pursuant to 8 U.S.C. § 1158;
 - b) to not be removed to another country because defendant's life would be threatened in that country due to the defendant's race, religion, nationality, membership in a social group, or political opinion, pursuant to 8 U.S.C. § 1231(b)(3);
 - c) for protection under the Convention Against Torture, pursuant to 8 C.F.R. § 1208.16-18;
 - d) for a waiver of removal pursuant to 8 U.S.C. § 1227(a)(H):
 - 1) as an alien who is the spouse, parent, or child of a U.S. citizen or of an alien lawfully admitted to the United States for permanent residence; or

- 2) as an alien who was in possession of a lawful visa and was otherwise admissible at the time of admission but for having made willful or innocent misrepresentations to gain entry into the United States.
4. The Court should enter a judicial order removing defendant from the United States.
5. The facts in support of this request are:
 - a. Defendant is not a citizen or national of the United States;
 - b. Defendant is a native and citizen of _____;
 - c. Defendant entered the United States unlawfully and has never had lawful immigration status in the United States;
 - d. Defendant enters into this stipulation as a condition of defendant's plea agreement in which defendant agrees with the United States to plead guilty to falsely representing a social security number in violation of Title 42, United States Code, Section 408(a)(7)(b);
 - e. Defendant is currently removable from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A) relating to aliens present in the United States without admission or parole; and
 - f. Defendant agrees as a condition of defendant's plea agreement to entry of a judicial order of removal.
6. Accordingly, defendant and the United States jointly request the Court, after imposing sentence, order defendant be removed from the United States so that, promptly upon defendant's release from confinement, United States Immigration and Customs Enforcement may execute the order of removal according to the applicable laws and regulations.

SO STIPULATED.

MATT M. DUMMERMUTH
United States Attorney

PETER E. DEEGAN, JR.
Assistant United States Attorney

Date

I have read this stipulation or it has been read to me in Spanish, the language I understand best, and I have discussed it with my attorney. I understand the terms of this stipulation, and I voluntarily agree to those terms. I have no questions about this stipulation that have not been answered by my attorney. No promises or inducements have been given to me other than those contained in this stipulation and my plea agreement with the government. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

Date: _____

Defendant

Defendant's Attorney

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Defendant.

No. CR _____

ORDER OF REMOVAL

Defendant _____, a/k/a J. DOE _____, a/k/a _____, and plaintiff United States have jointly requested and stipulated to entry of a stipulated judicial order of removal, pursuant to Title 8, United States Code, Section 1228(c)(5). Pursuant to that stipulated request, the Court finds:

1. Defendant has waived defendant's right to notice and a hearing prior to removal from the United States.
2. The following facts in support entry of a judicial order that defendant be removed from the United States:
 - a. Defendant is not a citizen or national of the United States;
 - b. Defendant is a native and citizen of _____;
 - c. Defendant entered the United States unlawfully and has never had lawful immigration status in the United States;
 - d. Defendant entered into a stipulation as a condition of defendant's plea agreement in which defendant agrees with the United States to plead guilty to falsely representing a social security number in violation of Title 42, United States Code, Section 408(a)(7)(b);
 - e. Defendant is currently removable from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A) relating to aliens present in the United States without admission or parole; and
 - f. Defendant agreed as a condition of defendant's plea agreement to entry of a judicial order of removal.

Therefore, IT IS ORDERED pursuant to Title 8, United States Code, Section 1182(a)(6)(A) and Section 1228(c)(5) that defendant be removed from the United States and that, promptly upon defendant's release from confinement, United States Immigration and Customs Enforcement execute this ORDER of removal according to the applicable laws and regulations of the United States.

Date: _____

UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF IOWA