

## IMMIGRATION, RIGHTS AND SENTENCING

This paper will focus on the fact that our U.S. Dept. of Justice and our Immigration and Naturalization Service are operating under the "color of law"<sup>1</sup> and systematically denying the People of our right to the "due process of law."<sup>2</sup> Our prisons are filled with people to the point that the "land of the free" now has the highest prisoner per capita rate in the world.

**Due Process of law:** to have the right of controverting, by proof, every material fact...  
**If any question of fact or liability be conclusively presumed against him, this is not due process of law.** – Blacks Law Dictionary

In a recent settlement of a class action suit, the I.N.S. agreed to notify all arrested aliens of important due process rights, e.g., the right to speak with an attorney or representative; the right to request a list of free and low cost legal services; the right to a hearing before an Immigration Judge; the right to release from detention on bond; the right to communicate with a consular or diplomatic officer of their home country; and the possibility of relief from deportation if they are married to a U.S. citizen or permanent resident or have lived in the U.S. longer than seven years. Along with the notice, the I.N.S. must distribute a Request for Disposition, which asks arrested aliens whether they would face harm if they returned to their home country. If so, the case will go to an

Immigration Judge, pursuant to the rule §17.03[2] [d] of the **Immigration Law and Procedure Desk Edition 17-12**

In the Immigration and Naturalization Act, Congress states the powers and duties of the Attorney General in §1103(a) to include: (3) "He shall establish such regulations; ... as he deems necessary for carrying out his authority under the provisions of this chapter." (5) "He shall have the power and duty to control and guard the boundaries and borders of the United States against illegal entry of aliens ...."

The following is the typical procedure for defendants charged with violating Title 8 U. S. Code §1326 for re-entry.

After the suspect's arrest he (or she) is held without bail. Sometime after the arraignment and indictment government attorneys in the Department of Justice then offer a plea agreement of a 30-month prison sentence followed by deportation. This is passed on to the defendant by his attorney (usually a Public Defender), who tells him that it's a "good deal and that he should take it. The attorneys then add that the only alternative is to go trial where a conviction is certain, resulting in a much longer sentence. Let's see if this is true.

Looking in the Statutory Index of the Federal Sentencing Guidelines under Immigration, Title 8 USC §1326, it refers us to §2L1.2 of the Guidelines. The following is an excerpt from §2 L 1.2 and the Sentencing Table of the Guidelines of November 1, 2005 (Note: This guideline still stands as of August 16, 2006).

### **FEDERAL SENTENCING GUIDELINES MANUAL** (as of November 1, 2005 )

#### **§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.

**Color of Law:** The appearance, without the substance, of a legal right. An action done with the apparent authority of law but actually in contravention of law.  
– Law Dictionary, 4<sup>th</sup> Ed., Stephen H. Gifis.

<sup>1</sup> Color of Law: The appearance, without the substance, of a legal right. An action done with the apparent authority of law but actually in contravention of law. – Law Dictionary, 4<sup>th</sup> Ed., Stephen H. Gifis.

<sup>2</sup> due process of law: Implies the right of the person affected thereby... to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

**FEDERAL SENTENCING TABLE**  
(in months of imprisonment)

| Offense Level    | Criminal History Category (Criminal History Points) |                |                  |                 |                      |                    |
|------------------|---|----------------|------------------|-----------------|----------------------|--------------------|
|                  | I<br>(0 or 1)                                       | II<br>(2 or 3) | III<br>(4, 5, 6) | IV<br>(7, 8, 9) | V<br>(10, 11,<br>12) | VI<br>(13 or more) |
| <b>Zone A 1</b>  | 0-6   | 0-6            | 0-6              | 0-6             | 0-6                  | 0-6                |
| <b>2</b>         | 0-6   | 0-6            | 0-6              | 0-6             | 0-6                  | 1-7                |
| <b>3</b>         | 0-6   | 0-6            | 0-6              | 0-6             | 2-8                  | 3-9                |
| <b>4</b>         | 0-6   | 0-6            | 0-6              | 2-8             | 4-10                 | 6-12               |
| <b>5</b>         | 0-6   | 0-6            | 1-7              | 4-10            | 6-12                 | 9-15               |
| <b>6</b>         | 0-6   | 1-7            | 2-8              | 6-12            | 9-15                 | 12-18              |
| <b>7</b>         | 0-6   | 2-8            | 4-10             | 8-14            | 12-18                | 15-21              |
| <b>8</b>         | 0-6   | 4-10           | 6-12             | 10-16           | 15-21                | 18-24              |
| <b>Zone B 9</b>  | 4-10  | 6-12           | 8-14             | 12-18           | 18-24                | 21-27              |
| <b>10</b>        | 6-12  | 8-14           | 10-16            | 15-21           | 21-27                | 24-30              |
| <b>Zone C 11</b> | 8-14  | 10-19          | 39069            | 18-24           | 24-30                | 27-33              |
| <b>12</b>        | 10-16   | 12-18          | 15-21            | 21-27           | 27-33                | 30-37              |
| <b>Zone D 13</b> | 12-18   | 15-21          | 18-24            | 24-30           | 30-37                | 33-41              |
| <b>14</b>        | 15-21   | 18-24          | 21-27            | 27-33           | 33-41                | 37-46              |
| <b>15</b>        | 18-24   | 21-27          | 24-30            | 30-37           | 37-46                | 41-51              |
| <b>16</b>        | 21-27   | 24-30          | 27-33            | 33-41           | 41-51                | 46-57              |
| <b>17</b>        | 24-30   | 27-33          | 30-37            | 37-46           | 46-57                | 51-63              |
| <b>18</b>        | 27-33   | 30-37          | 33-41            | 41-51           | 51-63                | 57-71              |
| <b>19</b>        | 30-37   | 33-41          | 37-46            | 46-57           | 57-71                | 63-78              |
| <b>20</b>        | 33-41   | 37-46          | 41-51            | 51-63           | 63-78                | 70-87              |
| <b>21</b>        | 37-46   | 41-51          | 46-57            | 57-71           | 70-87                | 77-96              |
| <b>22</b>        | 41-51   | 46-57          | 51-63            | 63-78           | 77-96                | 84-105             |
| <b>23</b>        | 46-57   | 51-63          | 57-71            | 70-87           | 84-105               | 92-115             |
| <b>24</b>        | 51-63   | 57-71          | 63-78            | 77-96           | 92-115               | 100-125            |

Partial Table shown (Esta es una Tabla parcial.) Full Table continues to Offense Level 43  
En realidad continua hasta la Ofensa Nivel 43, la cual tiene sentencias de por vida para todas las categorias.

The Federal Sentencing Table is used by 1) find the offense level, and 2) read across until the proper Criminal History Category is intersected. If you have an extensive criminal history the 30-month plea offer might be a good deal so they probably will not be offering you that. If you have no prior felony convictions or limited misdemeanor convictions you will be Criminal History Category 1, and your charge of §1326 begins with a basic Offense Level of 8. The two intersect at 0-6 months in the Table.

Does your attorney's recommendation of signing your own conviction for a 30-month prison sentence still sound like a "good deal" to you? If you don't mind doing the extra two years or so, it might be a good deal as room and board are free at the Big House as well as prison uniforms. In addition you will have a lot of time to rest and relax. If this sounds good to you, say nothing and sign the deal. Otherwise, bring this up with your legal counsel. You might also mention that there are no implementing regulations published in the Federal Register for §1326, which are needed to establish jurisdiction and which we discuss in another paper: Common Sense on Immigration. Please pass this article on to others.

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