



Ann Benson, Directing Attorney
abenson@defensenet.org - (360) 385-2538

Jonathan Moore, Immigration Specialist
jonathan@defensenet.org - (206) 623-4321, X104

Washington Defender Association's Immigration Project

110 Prefontaine Place S., Suite 610
Seattle, Washington 98104

“Real Facts” for Sentencing and Immigration Consequences Just Say No – February 2012

- **“Real Facts” Agreements Unnecessary for Standard Range Sentences**

If the sentence will be within the standard range, a stipulation to “real facts” other than to the criminal history is not required by law and is unnecessary to the plea and subsequent conviction.¹ A sentence within the standard range where the trial judge has exercised normal discretion and the criminal history is correct is not appealable.²

The “real facts” doctrine pertains to exceptional sentences. The “real facts” doctrine bars reliance on facts that are wholly unrelated to the current offense, or that would elevate the degree of crime charged to a greater offense than charged.³ A trial court may not under the real facts doctrine impose a sentence based on elements of a more serious crime the State did not charge or prove.⁴ Therefore, unless the case involves an exceptional sentence outside of the standard range, additional “real facts” stipulations are irrelevant for sentencing.

- Plea agreement alone is sufficient for a standard range sentence.
- **Do Not Agree to Check “Real Facts” Box on Plea Form or make any other agreement that permits admission of the CDPC (Certificate of Determination of Probable Cause) or the Police Report as basis for sentencing.**
- Both parties can make oral statements at sentencing regarding relevant factors (both positive and negative), however, key for defense counsel is to not agree to written documentation that is related to the underlying crime or criminal activity. Prosecutor’s oral statements alone regarding the nature of the crime cannot support an order of removal due to the conviction.⁵

- **“Real Facts” Admissions at Sentencing Can Trigger Removal Grounds**

- Under the 9th Circuit’s recent, controversial decision in *U.S. v. Aguila-Montes de Oca*,⁶ admissions, (including sentencing admissions) that relate to the factual basis for a conviction will now be deemed to constitute a part of the official record of conviction that can be reviewed in later removal proceedings. Preventing such admissions can make the difference in whether or not the defendant’s conviction will result in her or his removal from the U.S.

¹ RCW 9.94A.530(2)(former 9.94A.370(2) codifying “real facts” doctrine)

² RCW 9.94A.585(1)

³ *State v. Reynolds*, 80 Wn. App. 851 (1996); *see also, State v. Coats*, 84 Wn. App. 623 (1997).

⁴ *State v. Wakefield*, 130 Wn.2d 464, 476 (1996); *see also, State v. Barnes*, 117 Wn.2d 701 (1991).

⁵ *Matter of Cassisi* 10 I&N Dec 136 (BIA 1963); *Matter of Mena* 17 I&N Dec. 38 (BIA 1979)

⁶ *U.S. v. Aguila-Montes de Oca* 655 F.3d 915 (9th Cir. 2011)(*en banc*).