

filed 12-5-14
Clark, U. S. District Court
Western District of Texas
By AD
Deputy

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

INTERAGENCY AGREEMENT

ADELANTE ALTERNATIVE TO PROSECUTION
PROGRAM FOR OVERSIGHT OF POST-GUILTY PLEA DIVERSION PARTICIPANTS

1. Parties: The parties to this Interagency Agreement are the following federal agencies for the Western District of Texas: United States District Court Chambers of Judge Frank Montalvo (“the Court”), United States Pretrial Services (“Pretrial Services”), United States Attorney’s Office (“USAO”), and Federal Public Defender’s Office (“FPDO”), all of whom by executing this agreement have committed to allow selected individuals who agree to Post-Guilty Plea Diversion (“PGP Diversion”), to participate in the ADELANTE ALTERNATIVE TO PROSECUTION PROGRAM (ADELANTE), a program offering a creative approach to treatment, sanction alternatives, and incentives to effectively address offender behavior, rehabilitation, and the safety of the community.

2. Agreement Regarding Underlying Principles: The National Association of Drug Court Professionals has identified the following ten key components for successful programs, such as drug re-entry programs, that provide alternatives to a standard conviction and sentence. The parties agree that these key components are incorporated in the ADELANTE ALTERNATIVE TO PROSECUTION PROGRAM as principles underlying their participation in this agreement:

- A. For those participants with substance abuse issues, the program integrates alcohol and drug treatment services with justice system case processing.
- B. Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- C. Eligible participants are identified early and promptly placed in the program.
- D. For those participants with substance abuse issues, the program provides access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- E. For those participants with substance abuse issues, abstinence is monitored by frequent alcohol and drug testing.
- F. A coordinated strategy governs the program’s responses to participants' compliance and noncompliance.
- G. Ongoing judicial interaction with each program participant is essential.

- H. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- I. Continuing interdisciplinary education promotes effective program planning, implementation, and operations.
- J. Forging partnerships among the program's agency participants, other public agencies, and community-based organizations generates local support and enhances the program's effectiveness.

3. *ADELANTE Program Overview:* The ADELANTE program will be voluntary for its participants, who, before beginning participation in the program, will be required to: (a) enter into an agreement pursuant to which they agree to participate in the program and abide by the governing terms of the program as set forth in the ADELANTE Participant Guidebook and Agreement; and (b) enter a guilty plea to one or more counts pursuant to a plea agreement that specifies the benefits to be received upon successful completion of the ADELANTE program. Successful participants will be involved in ADELANTE for at least 18 months, though the term of involvement may be extended to a maximum of no more than 24 months. During their time in ADELANTE, participants will engage in a variety of services to address underlying causes of their criminal conduct and will attend regularly scheduled ADELANTE court sessions that will include progress reports. Participants with substance abuse issues will also engage in varying levels and modalities of treatment to address those issues. Failure to abide by the mandates of the ADELANTE program may result in a participant being terminated from the program and sentenced without receiving the benefits for successful completion specified in the participant's plea agreement.

4. *ADELANTE Team:* The ADELANTE Team is comprised of the Court, Pretrial Services, the USAO, the FPDO and other treatment providers as may be needed.

5. *Participants:* ADELANTE participants must be individuals who have been charged in the Western District of Texas in a charging instrument with a federal crime or crimes. Participants are individuals whose criminal conduct is believed to be motivated by substance abuse issues or other underlying causes that appear amenable to treatment. Participants will be identified and selected using the methods described in paragraphs 6 and 7 below.

6. *Criteria for Participation in the ADELANTE Program:* To be eligible to participate in the program, participants must (a) be charged in the Western District of Texas in a charging instrument with a federal crime or crimes; (b) have engaged in non-predatory criminal conduct that appears motivated by substance abuse issues or other underlying causes that appear amenable to treatment; and (c) have limited roles in their offenses with no substantial criminal history. For those defendants qualified to participate whose case is not pending before the ADELANTE Court, the government and defense counsel will file an Agreed Motion to Transfer, stating that participation in the program is the reason for requesting the transfer. Pretrial Services will screen all potential participants to identify possible substance abuse issues.

7. Selection of ADELANTE Participants: Participants will be selected as follows:

- (a) Initial identification of prospective participants will be done by Pretrial Services, the USAO, and the FPDO. Initially, only individuals represented by the FPDO will be considered for the program. Once the program is fully implemented, defendants represented by Criminal Justice Act (CJA) and retained counsel will be considered. If both the USAO and the FPDO agree, the person may be referred to the ADELANTE Team for possible selection.
- (b) Initial selection of prospective participants will be performed by the ADELANTE Team.
- (c) Once the ADELANTE Team has selected a prospective participant, the attorney representing the prospective participant will be approached to obtain a speedy trial waiver for the time necessary for the prospective participant to complete all steps necessary to be accepted into the ADELANTE program. Once a speedy trial waiver is obtained, the USAO and the FPDO will seek from the Originating District Judge approval for a referral of the prospective participant's case to the ADELANTE Court. If the Originating District Judge approves the referral, the Originating District Judge will execute an order referring the prospective participant's case to the ADELANTE Court for all purposes. The referral order will contain speedy trial findings.
- (d) Once a prospective participant's case has been referred, the ADELANTE Court will appoint the FPDO to represent the prospective participant for purposes of the ADELANTE program, including advising the prospective participant and the prospective participant's attorney whether to consent to participating in ADELANTE and whether to execute the ADELANTE Participant Guidebook and Agreement that will include the waiver of confidentiality regarding treatment information required for participation in ADELANTE. Prospective participants not represented by the FPDO in underlying criminal case will continue to be represented by his or her own attorney for purposes of determining whether to enter a guilty plea as required for participation in ADELANTE.
- (e) Each prospective participant's voluntary consent to participate in ADELANTE will be confirmed in the ADELANTE Participant Guidebook and Agreement to be signed by the prospective participant, as well as the ADELANTE Team. The ADELANTE Participant Guidebook and Agreement, attached as **Exhibit 1**, will articulate expectations and obligations of the prospective participant and the ADELANTE Team. As noted above, a prospective participant will be approached for signature of an ADELANTE Participant Guidebook and Agreement only after (i) the Originating District Judge has referred the prospective participant's case to the ADELANTE Court; (ii) the FPDO has been appointed to represent the prospective participant for purposes of the ADELANTE program; and (iii) the prospective participant has entered a plea of guilty pursuant to a plea agreement as discussed in 7(g) below. All of the parties to this Interagency Agreement recognize that an essential component of the ADELANTE program is the participant's complete candor with the ADELANTE Team. Accordingly, no oral or written statement, documents or other information provided by a participant while taking part in the ADELANTE program shall be used by the USAO in its case in chief or in any criminal prosecution it may subsequently bring against the participant.
- (f) To maximize each participant's probability for success in ADELANTE, the ADELANTE Team will have access to full information regarding successes and failures in any program, including treatment and rehab services, to which the participant is referred. Accordingly, included in the ADELANTE Participant Guidebook and Agreement, each prospective participant will be required to execute a waiver authorizing access to program information by the ADELANTE Team, as well as any research partner or treatment provider working with Pretrial Services and the United States Probation Office. The USAO acknowledges that its access to this treatment program information is only for the purpose of participating in the monitoring and evaluation of a participant's progress while

participating in the ADELANTE program.

- (g) Participation in the ADELANTE program is contingent on the prospective participant entering a guilty plea pursuant to a plea agreement that will include successful completion of the ADELANTE program as one of its terms and conditions. The USAO further agrees that the plea agreement will be entered into pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) to the extent that it will bind the ADELANTE Court, upon a participant's successful completion of the ADELANTE program, to accord the participant the benefits specified in the plea agreement, which will include dismissal with prejudice of the criminal charges contained in the plea agreement and no prosecution for any conduct giving rise to those charges. Conversely, unsuccessful termination will lead to a sentencing hearing on the charges contained in the plea agreement before the ADELANTE Court.
- (h) Once a prospective participant has executed the ADELANTE Participant Guidebook and Agreement, then the prospective participant shall appear for entry of a guilty plea pursuant to the plea agreement before the ADELANTE Court. Once this occurs, the prospective participant will become a participant in the ADELANTE program and the ADELANTE Court will handle all further proceedings in the criminal case.¹
- (i) If prior to entering a guilty plea in accordance with subparagraph (h) above, a prospective participant fails to complete any of the steps necessary to become a participant in the ADELANTE program or for any reason voluntarily elects not to pursue participation in the ADELANTE program, the ADELANTE Court will execute an order returning the underlying criminal case for proceedings to continue before the Originating District Judge.

8. *Role of the ADELANTE Court:* The active involvement of the ADELANTE Court with participants in the ADELANTE program is essential. When participants are in noncompliance with the ADELANTE program or in violation of the terms of their PGP Diversion, the ADELANTE Court, after receiving the recommendation of the other members of the ADELANTE Team, will make a determination as to the appropriate sanction based on the nature of the participant's noncompliant behavior. When the ADELANTE Team determines that a participant has exhausted the opportunities to continue in the ADELANTE program, the ADELANTE Court will make the final decision to terminate the participant from the ADELANTE program and proceed to sentencing. The decision to terminate the participant is final and non-appealable.

9. *Role of the ADELANTE Pretrial Services Officer(s):* The ADELANTE Pretrial Services Officer ("APSO") will be charged with supervision of participants and making referrals for treatment and rehab services based on the needs of individual participants. In addition:

¹ Once the ADELANTE Court accepts the guilty plea and plea agreement, the matter will not be referred for preparation of a Pre-Sentence Report. Rather, referral for preparation of a Pre-Sentence Report will only occur if required upon a subsequent termination from the ADELANTE program as specified in paragraph 18 below.

- (a) At the ADELANTE court sessions, the APSO will oversee the preparation of reports to inform the ADELANTE Team of participant's struggles and achievements. To expedite the reporting process and create continuity in reporting, a standardized ADELANTE Progress Report, similar to the form used in the SENDERO Re-entry Court Program, will be used. The ADELANTE Progress Report will not be filed and is intended only for use in planning for and conducting ADELANTE court sessions. For each participant, the APSO will distribute an ADELANTE Progress Report, along with any attachments, to the other members of the ADELANTE Team at least 24 hours before each scheduled ADELANTE court session.
- (b) The APSO will ensure effective communication between the treatment and other program providers and the ADELANTE Team.
- (c) When serious problems in supervision arise, the APSO will work with the Federal Public Defender and Assistant United States Attorney to intervene immediately and address issues with the participant. Any such interventions will be described in the next ADELANTE Progress Report.
- (d) The APSO will maintain within each participant's Pretrial Services file a separately delineated section that will constitute the ADELANTE file for each participant. This ADELANTE file will include the participant's ADELANTE Participant Guidebook and Agreement, ADELANTE Progress Reports, treatment and other program records, results of drug testing, and all other records relating to the participant's progress. The participant's ADELANTE file will be made available to the other members of the ADELANTE Team as necessary.

10. *Role of the ADELANTE Assistant United States Attorney (or designee):* The role of the ADELANTE Assistant United States Attorney ("AUSA") is to participate in a team effort with the ADELANTE Court, Federal Public Defender and the APSO to encourage each participant's success in the ADELANTE program, discourage bad decisions and disinterest in the program and participate in decisions about proper sanctions for participants struggling with the program's requirements. The AUSA will be involved in decisions about program planning, both when a participant is succeeding and when a participant is struggling, and in determining whether a participant's continued participation in ADELANTE is warranted.

11. *Role of the Federal Public Defender (or designee):* The role of the Federal Public Defender ("FPD") is to participate in a team effort with the ADELANTE Court, the AUSA, and the APSO to encourage each participant's success in the ADELANTE program, discourage bad decisions and disinterest in the program, and participate in decisions about proper sanctions for participants struggling with the program's requirements. The FPD will be involved in decisions about program planning, both when a participant is succeeding and when a participant is struggling, and in determining whether a participant's continued participation in the ADELANTE program is warranted.

12. *ADELANTE Court Sessions*: The frequency of court sessions and the duration of the various phases of the ADELANTE program will be modeled after the SENDERO Re-entry Court Program. This program reduces the frequency of court session from once a week to once a month as the participant progresses in the program. All participants will appear at least monthly before the ADELANTE Court and the other members of the ADELANTE Team. After each ADELANTE court session, the participant will be informed of the next scheduled court session. To ensure continuity, only the APSO(s), FPD, and AUSA constituting the ADELANTE Team, or their designees, will be involved in the ADELANTE program and will appear for each ADELANTE court session. With the exception of excused absences, participants will be expected to remain throughout the court sessions of the other participants. To effectuate the ADELANTE Team's intent that the ADELANTE program be non-adversarial and provide as much support as possible to participants, the ADELANTE Team agrees that conduct that might otherwise constitute a violation of the terms of ADELANTE program rules may be handled informally. In particular:

(a) all conduct that might be considered a violation will be presented to the ADELANTE Team and the participant through the regular ADELANTE court session or a status report to the ADELANTE Court filed on an expedited basis if the circumstances so warrant.

(b) absent a determination that termination from the program is justified, any sanction for such a violation, so long as it is within the range of sanctions set forth in the ADELANTE Participant Guidebook & Agreement will be handled through (i) a directive issued by the ADELANTE Court at a regular ADELANTE court session in a non-adversarial setting; or (ii) if the participant agrees to a particular sanction, it will be immediately implemented.

(c) with the exception of contested violation hearings and contested hearings to determine whether a participant should be terminated from the program, ADELANTE court sessions may be conducted without a court reporter.

13. *ADELANTE Program Sanctions*: Noncompliant behavior by a participant may result in sanctions, as detailed in the ADELANTE Participant Guidebook & Agreement. These sanctions are intended to take a creative approach to altering behavior, while cutting the costs associated with a traditional "days in jail" sanction. Sanctions imposed should be completed by the participant's next ADELANTE court session unless the ADELANTE Court allows more time. The APSO will monitor compliance with imposed sanctions and report on compliance at the regular ADELANTE court session, or, if circumstances warrant, file an expedited status report with the ADELANTE Team. If appropriate, any or all of the available sanctions may be ordered more than once during the course of a participant's progress through the ADELANTE program.

14. *ADELANTE Program Benefits*: Whether a participant has successfully completed the ADELANTE program shall be determined by the ADELANTE Court in consultation with the other members of the ADELANTE Team subject to the minimum requirement that a participant with substance abuse issues shall have demonstrated at least six months of

continuous sobriety. A participant who is determined to have successfully completed the ADELANTE program will receive the benefits specified in the participant's plea agreement.

15. *Cooperation with U.S. Probation Office (USPO):* To make best use of existing resources, participants will be allowed to access programs and services developed and managed by the USPO for SENDERO Re-entry Court Program participants.

16. *ADELANTE Program Graduation:* ADELANTE program graduation will take place at the participant's final ADELANTE court session. In addition to other participants, Originating District Judges, family members, sponsors, and friends will be invited to attend the graduation. The ADELANTE Court will present graduating participants with a Certificate of Completion and other articles of recognition as determined by the ADELANTE Court and the other members of the ADELANTE Team.

17. *Termination Procedures:* A participant may be terminated as successful or unsuccessful as follows:

- (a) **Successful Termination:** Participants who successfully complete the ADELANTE program will be given a Certificate of Completion, which will close the participant's Pretrial Services file. The AUSA and FPD will file a joint motion seeking the withdrawal of the participant's plea of guilty and dismissal of the case. The ADELANTE Court will issue an order vacating that guilty plea and dismissing with prejudice the criminal charges previously pending in the underlying criminal case at the time of that guilty plea.
- (b) **Unsuccessful Termination:** In recognition of the potential for relapse as a part of recovery from drug or alcohol dependence and/or in addressing underlying causes of criminal conduct, every effort should be made to continue to work with participants. The ADELANTE Team realizes, however, that there will be some circumstances in which it is appropriate to terminate a participant from the ADELANTE program as unsuccessful. Unsuccessful termination may be either voluntary or involuntary and, in either circumstance, will result in the participant proceeding to sentencing before the ADELANTE Court on the charge(s) subject to the plea agreement to which the participant entered a guilty plea. At sentencing, the ADELANTE Court will not give negative consideration to the participant's conduct in the program.

18. *Modification and Supplementation of Agreement:* The ADELANTE Team recognizes that as the ADELANTE program is implemented, modification or supplementation of this Interagency Agreement may be necessary. Any modification or supplementation of this Interagency Agreement shall be in writing.

AGREED ON BEHALF OF:



Frank Montalvo
United States District Court
Western District of Texas

12/5/14
Date



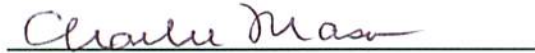
Robert Pitman
U.S. Attorney
Western District of Texas

11/24/14
Date



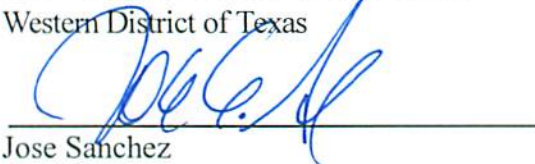
Maureen S. Franco
Federal Public Defender
Western District of Texas

12/5/14
Date



Charlie Mason
Chief U.S. Pre-Trial Services Officer
Western District of Texas

11-25-14
Date



Jose Sanchez
Chief U.S. Probation Officer
Western District of Texas

12/03/2014
Date