

Testimony of Chief Judge Marilyn L. Huff, Southern District of California
before the United States Sentencing Commission
Concerning Fast Track or Early Disposition Programs
September 23, 2003

Thank you for the invitation to provide testimony before the United States Sentencing Commission concerning the implementation of the PROTECT Act, Public Law No. 108-21, 117 Stat 650 (2003) as it relates to fast track departures or early disposition programs. Within 180 days of its enactment, Section 401(m) will require the Sentencing Commission, to “promulgate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures are substantially reduced.” Specifically, Congress has directed the Sentencing Commission to limit the availability of fast-track or early disposition departures to instances where (1) the government files a motion for a departure, (2) pursuant to an early disposition program authorized by the Attorney General, and (3) the extent of the downward departure does not exceed four levels.

The judges in the Southern District of California appreciate the opportunity to discuss a fast track or early disposition program with the Sentencing Commission due to the high volume of criminal cases the court handles in our district. The most recent published statistics for the Sentencing Commission indicate that the Southern District of California has sentenced more guideline defendants (4,213) than the entire First Circuit (1,645), Second Circuit (4,147), Third Circuit (2,636), Seventh Circuit (2,450), Eighth Circuit (3,568), Tenth Circuit (3,415) or D.C. Circuit (276) in 2001.

Despite the high volume of cases, the Federal Court Management Statistics indicate that in 2001 the Southern District of California was the fastest court in the nation for criminal dispositions and first in the nation in criminal felony cases. The median time from filing to disposition for a criminal felony case in 2001 was 4.0 months even though the court had 478 criminal felony cases per district judge. To put the magnitude of 478 criminal cases in context, the average number of criminal felony cases in the nation was only 77. As of 2002, the Southern District of California reduced the time for disposition to 3.8 months while remaining first in the nation for criminal felony cases per judge as shown in Exhibit 1. The disposition time is primarily due to the existence of two primary types of early disposition or fast track programs, one for criminal aliens and one for border drug cases. Even with the prospect of additional judicial resources for our district, the district will continue to handle a high volume of criminal cases and will continue to benefit from a fast track or early disposition program as authorized under the PROTECT Act.

The Southern District of California includes San Diego and Imperial Counties with a combined population of over three million residents. The City of San Diego ranks as the seventh largest city in the United States. Additionally, the district includes six ports of entry

along the Southwest border with Mexico. The Department of Homeland Security reports that there were 87,000,000 inspections at the six ports of entry in the district in 2002. Significantly, the ports of entry at San Ysidro in San Diego County, shown in Exhibit 2, and Calexico in Imperial County are the busiest land ports of entry in the world, averaging 135,000 daily crossings at San Ysidro and 104,000 daily inspections at Calexico. Maritime drug seizures on the high seas are also frequently brought to the district. The maritime drug seizures were in record amounts. See U.S. v. Klimavicius, 144 F.3d 1249 (9th Cir. 1998) (12 tons of cocaine); U.S. v. Savchenko, 01CR1652 (S.D. Cal. 2001) (13 tons of cocaine). The large metropolitan problems, border inspections and maritime seizures result in a large number of federal criminal cases for the district. Absent significant changes in the law or prosecutorial policies, the district will continue to face a high volume of criminal felony cases and would benefit from an early disposition or fast track program as authorized by law.

The court did not create these fast track or early disposition programs. Rather, since 1994, the five successive U.S. Attorneys in our district have established fast track or early disposition programs while exercising their prosecutorial discretion. On a case by case basis, the court either accepted or rejected the plea agreement entered into by the government and the defense pursuant to an early disposition program. Ultimately, the Ninth Circuit approved a fast track program in U.S. v. Estrada-Plata, 57 F.3d 757 (9th Cir. 1995):

The evidence is clear that the government selected Section 1326(b) cases for the fast-track policy to conserve prosecutorial and judicial resources...In light of the overall crime problem in the Southern District of California, the government chose to allow Section 1326(b) defendants the opportunity to plead to a lesser offense if done so at the earliest stage of the case. Like the district court, we find absolutely nothing wrong (and, quite frankly, a great deal right) with such a practice. The policy benefits the government and the court system by relieving congestion.

The fast track or early disposition programs benefit the system in a number of ways. By encouraging an early disposition of cases, the programs reduce the cost and need for grand jurors, petit jurors, interpreters, deputy U.S. marshals, prosecutors, Criminal Justice Act panel attorneys, federal defenders, immigration judge time, magistrate judge time, district court time, and appellate court time. Overall, the participants value the benefits of an early disposition program.

The current Criminal Alien Fast Track Program adopted by the U.S. Attorney in the district addresses the high volume of criminal aliens who have reentered the United States after deportation. Each year, approximately 1,800 are charged with violating Title 8 U.S.C. Section 1326. Those with serious violent felonies are indicted and prosecuted under Section 1326 to the full extent of the law. The rest are offered an opportunity to plead guilty to two counts of

violating Title 8 U.S.C. Section 1325 (one misdemeanor and one felony count) with a statutory maximum of 30 months under U.S.S.G. 5G1.1 if the defendant agrees to the fast track conditions: (1) waive indictment, (2) file no motions, (3) plead guilty within 60 days of arraignment, (4) stipulate to removal after completion of the sentence (5) agree to immediate sentencing, and (6) waive appeal and collateral attack. Certain defendants with guideline ranges of less than 30 months are permitted to plead to Title 18 U.S.C. Section 911, 1001, or 1546 if they agree to the fast track requirements. In addition, recidivist deported aliens with extensive immigration contacts but no prior criminal record are prosecuted under Title 8 Section 1326. The parties jointly recommend a sentence of 60 days if the defendant agrees to the fast track conditions. The pleas are not binding on the court, and the court is free to reject the plea and impose a just sentence. The parties and the court rate the program as exceptionally successful.

The second fast track program involves a two level departure under U.S. Sentencing Guideline 5K2.0 for the early resolution of border drug cases with similar fast track conditions but without immediate sentencing. As in the immigration cases, the court is free to accept or reject the joint sentencing recommendation for a fast track departure. The parties and the court also rate this program as exceptionally successful.

A related program involves alien smuggling cases where the government offers the defendants the opportunity to plead to a charge of transportation of illegal aliens and agrees to dismiss other charges. In these cases, the government does not request any departures from the Sentencing Guidelines.

The fast track or early disposition programs began as a means of coping with an increasing criminal caseload in the district and the lack of other resources. The Southern District of California continues to have geographical challenges in housing pretrial criminal defendants in several facilities, marshal shortages in handling a large volume of defendants, interpreter needs for non-English speaking defendants, immigration consequences to defendants from felony convictions and other circumstances outside of the heartland of cases not faced in the majority of districts. For example, the U.S. Marshal spent \$46 million last year for our district to house, feed and provide medical care for defendants in approximately eleven separate facilities. Currently, the district has 2,038 custodial defendants and faces an overall increase from last year in its criminal felony caseload of seven per cent. Without the early disposition and fast track programs, the budget would be substantially higher and the district would have difficulty in processing the many custodial defendants in a timely fashion as required by law. These unique circumstances warrant a flexible fast track or early disposition program for the court to appropriately exercise its sentencing authority under the law.

In conclusion, Congress recognized the benefit of a fast track policy and

institutionalized it in the PROTECT Act under specified circumstances. This demonstrates that Congress, in legislation intended to reduce departures, has recognized the wisdom and value of a fast track departure in appropriate cases. The court concludes that its fast track and early disposition programs are authorized by law and should be permitted in any guideline amendments, policy statements or commentary in the Sentencing Guidelines. By restricting the availability of fast track departures to those authorized under the PROTECT Act, the Sentencing Commission would meet the Congressional mandate to substantially reduce the number of departures without jeopardizing the benefits of an established and successful early disposition or fast track program in the Southern District of California.

Respectfully submitted,

Marilyn L. Huff, Chief Judge
Southern District of California

U.S. DISTRICT COURT -- JUDICIAL CASELOAD PROFILE

National
Judicial
Caseload
Profile

CALIFORNIA SOUTHERN

12-MONTH PERIOD ENDING SEPTEMBER 30

**OVERALL
CASELOAD
STATISTICS**

	2001	2000	1999	1998	1997	1996
Filings*	6,442	6,686	6,762	6,326	5,688	5,674
Terminations	6,393	6,579	6,513	6,755	5,728	4,454
Pending	3,462	4,087	3,489	3,391	3,708	4,149
Percent Change in Total Filings Current Year	Over Last Year. . . -3.7					
	Over Earlier Years. . . -4.7		1.8	13.3	13.5	
Number of Judgeships	8	8	8	8	8	8
Vacant Judgeship Months**	.0	.8	13.1	12.0	20.1	27.0

**NUMERICAL
STANDING
WITHIN
U.S. CIRCUIT**

[50] [8]
[23] [6]

2001
302,104
295,308
297,265

665
749.9

**ACTIONS
PER
JUDGESHIP**

		2001	2000	1999	1998	1997	1996
		FILINGS	Total	805	836	845	791
	Civil	327	348	377	324	319	437
	Criminal Felony	478	488	468	467	392	272
	Pending Cases	433	511	436	424	464	519
	Weighted Filings**	1,007	978	1,029	1,006	814	833
95% Confidence	Upper	1,131	1,106	1,160	1,139	927	936
	Lower	883	851	898	873	701	729
	Terminations	799	822	814	844	716	557
	Trials Completed	44	55	47	49	33	35

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[58] [8]
[1] [1]
[29] [8]
[1] [1]

454
377
77
447
479
510
447
444
20

**MEDIAN
TIMES
(MONTHS)**

		2001	2000	1999	1998	1997	1996
		From Filing to Disposition	Criminal Felony	4.0	3.7	3.8	3.6
	Civil**	6.9	7.5	7.8	13.5	7.9	7.0
	From Filing to Trial** (Civil Only)	24.0	26.0	28.0	20.0	20.7	18.7
	Number (and %) of Civil Cases Over 3 Years Old**	68 3.5	38 2.0	27 1.3	48 2.6	48 1.7	35 1.0

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[5] [1]
[62] [7]
[46] [5]

6.6
8.7
21.6
35,303
14.0

OTHER

		2001	2000	1999	1998	1997	1996
		Average Number of Felony Defendants Filed per Case		1.1	1.1	1.2	1.2
Jurors	Avg. Present for Jury Selection	58.31	35.52	54.40	43.75	39.48	38.81
	Percent Not Selected or Challenged	45.9	45.7	45.7	33.2	29.1	36.5

1.4
44.89
39.2

**FOR NATIONAL PROFILE AND NATURE OF SUIT AND OFFENSE CLASSIFICATIONS
SHOWN BELOW -- OPEN THE FOLD-OUT PAGE AT THE BACK COVER**

2001 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	2618	131	39	806	85	31	74	272	218	139	484	8	331
Criminal*	3807	1560	5	13	13	10	1680	**	5	418	21	26	56

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.
** See "Explanation of Selected Terms."

