

**TESTIMONY FROM U.S. MAGISTRATE JUDGE JENNIFER C. GUERIN,  
U.S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA**

Good afternoon. Thank you for the opportunity to testify before the Sentencing Commission regarding the large number of cases that are being prosecuted under the United States Border Patrol's Arizona Denial Prosecution Initiative (ADPI). The Initiative, which is sometimes referred to as Operation Streamline, was implemented in the District of Arizona on January 14, 2008. The Initiative is structured to permit a Magistrate Judge to conduct a single court proceeding in which defendants receive an initial appearance to explain the charges against them and their rights, the Court accepts any guilty pleas, and the Court imposes sentence in those cases where a guilty plea is entered. Since initiation, approximately 30,000 persons have been prosecuted under the Initiative.

These cases are prosecuted in one courtroom. In the morning, the defendants are brought to the large ceremonial courtroom where they meet with their court-appointed attorneys to discuss the charges and any possible plea offer by the government, the defendant's rights and the defendant's options, i.e., pleading guilty or proceeding to trial. Each defense attorney represents between four to six defendants. The defendants are typically men and women from Mexico or Central America. After lunch, the defendants are brought back into the courtroom for the single court proceeding. Cases initiated against juveniles, indigenous persons who do not speak sufficient English or Spanish to understand the proceedings, and persons with competency issues are dismissed.

The morning of the proceedings, the government provides to the Magistrate Judge information regarding each defendant's criminal history, immigration history, and the circumstances of the arrest. At the time of sentencing, the defense attorney or the defendant, if he chooses, provides information regarding the defendant's personal background or other personal information. If there is a dispute regarding a fact that the judge believes is material to the sentencing, the sentencing may

be continued at defendant's request. The Ninth Circuit recently ruled that the Court should implement procedures for personally questioning the defendants to ensure each defendant's plea is voluntary. *United States v. Roblero-Solis*, 588 F.3d 692 (9<sup>th</sup> Cir. 2009). All Magistrate Judges have reviewed their procedures to ensure compliance with the Ninth Circuit's directive.

The majority of the defendants prosecuted under the Initiative (approximately seventy percent) were charged solely with illegal entry pursuant to 8 U.S.C. § 1325(a). Almost all of these defendants had no prior criminal convictions and received a sentence of time served. Approximately thirty percent of the defendants were charged with the petty offense of illegal entry and a felony charge - either illegal entry pursuant to 8 U.S.C. § 1325(a) (subsequent commission of same offense) or illegal reentry pursuant to 8 U.S.C. § 1326. Almost all of these defendants elected to plead guilty to the petty offense pursuant to a written plea agreement with a stipulated sentence and waiver of appeal rights in exchange for dismissal of the felony charge. In these cases, the Magistrate Judge imposed the sentence provided for in the plea agreement. Based on my observations, the stipulated sentence in the plea agreement is dependent on the defendant's criminal history and immigration record. All defendants are advised that they will likely be formally deported or removed from the United States following service of their sentence. The deportation and removal process will usually result in an additional period of confinement.

At initiation, thirty persons were presented for prosecution each day under the ADPI. In calendar year 2008, 13,621 persons were prosecuted. The number of persons presented for prosecution under the Initiative has increased as resources permitted. Modifications were made to ensure the sufficiency of the number of attorneys available to represent the defendants, holding cell capacity within the courthouse, work and meeting space in the courtroom, and availability of court staff and security personnel. Currently seventy persons are being prosecuted each day, and in

calendar year 2009, 16,178 persons were presented for prosecution under the Initiative. The Border Patrol has requested that the number be increased to 100 persons. Although these numbers are daunting, the participants in ADPI make great efforts to insure that the proceedings achieve a fair and just result for each defendant.

I appreciate your time and look forward to answering any questions.