

Elston, Michael (ODAG)

Subject: Phone Conference with Paul Charlton

Start: Wed 8/2/2006 5:00 PM

End: Wed 8/2/2006 5:30 PM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Required Attendees: McNulty, Paul J; Charlton, Paul (USAAZ); Meyer, Joan E (ODAG); Elston, Michael (ODAG)

POC: Elston. Subject AZ death penalty case.

Elston, Michael (ODAG)

From: McNulty, Paul J
Sent: Thursday, October 19, 2006 12:23 PM
To: Chiara, Margaret M. (USAMIW); Elston, Michael (ODAG); Moschella, William
Cc: Margolis, David
Subject: RE: Meeting w/USA Margaret M. Chiara

That's fine. David speaks for me in such matters. But please know that while my door is always open, I would not have selected Will as my principal associate or Mike as my Chief-of-Staff if they were not exemplary in their integrity, discretion and respect for United States Attorneys. See you this afternoon.

-----Original Message-----

From: Chiara, Margaret M. (USAMIW)
Sent: Thursday, October 19, 2006 6:39 AM
To: Elston, Michael (ODAG); Moschella, William; McNulty, Paul J
Subject: Re: Meeting w/USA Margaret M. Chiara

Last evening I received the response from David Margolis to my request on behalf of WDMI for an investigation. I ask that David or Scott Schools be present at this afternoon's meeting. I do not know Mr. Elston or Mr. Moschella. Scott Schools and David know the situation and me. Thank you. MMC

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: McNulty, Paul J <Paul.J.McNulty@usdoj.gov>
To: Moschella, William <William.Moschella@usdoj.gov>; Elston, Michael (ODAG) <Michael.Elston@usdoj.gov>; Chiara, Margaret M. (USAMIW) <MChiara@usa.doj.gov>
Sent: Tue Oct 17 17:27:17 2006
Subject: Meeting w/USA Margaret M. Chiara

When: Thursday, October 19, 2006 2:30 PM-2:50 PM (GMT-05:00) Eastern Time (US & Canada).
Where: RFK Bldg., Room 4111

~~*~*~*~*~*~*~*~*

Attendee: USA Chiara, Moschella, Elston

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Monday, February 12, 2007 8:23 PM
To: Elston, Michael (ODAG)
Subject: Chiara

In all fairness, you probably should make her aware of the fact that the DAG will brief her upcoming resignation on Wednesday and that it is possible that while we will not disclose outside of the Hill -- that the Hill may "out" her this week.

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Monday, February 12, 2007 8:24 PM
To: Chiara, Margaret M. (USAMIW)
Subject: RE: NAIS Meeting

Please give me a call at 202-307-2090 when you have a minute; need to discuss a related issue with you.

-----Original Message-----

From: Chiara, Margaret M. (USAMIW) [mailto:MM.Chiara@usdoj.gov]
Sent: Monday, February 12, 2007 5:36 PM
To: Elston, Michael (ODAG)
Cc: McNulty, Paul J
Subject: Re: NAIS Meeting

This is a good call. Thank you. I am aware of the required procedure to secure subcommittee assignments. The 2 interims were invited to ensure continuity of service to their district's Indian Country population Now that NAIS is convening on March 13 + 14, am I chairing the meeting and departing on March 16 or shall I work out other arrangements with NAIS members after I announce on Feb. 23? Margaret

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Elston, Michael (ODAG) <Michael.Elston@usdoj.gov>
To: Chiara, Margaret M. (USAMIW) <MChiara@usa.doj.gov>
CC: McNulty, Paul J <Paul.J.McNulty@usdoj.gov>; Shappert, Gretchen (USANCW) <GShappert@usa.doj.gov>
Sent: Mon Feb 12 15:43:49 2007
Subject: NAIS Meeting

Margaret:

I have spoken to Gretchen Shappert, and, as you recommended and based on the additional information Gretchen provided, I have concluded that it makes sense to keep the meeting date as scheduled in March despite the absence of some long-time members of the subcommittee.

You also mentioned that two new members of the subcommittee from Arizona and Western Washington would attend. I don't have any problem with the interims from Arizona and Western Washington attending, but I wanted to make it clear that they are not members of the subcommittee. New U.S. Attorneys do not simply succeed their predecessors on AGAC or its subcommittees, and normally interims are not made members of AGAC subcommittees except in unusual circumstances. There is a process for appointment to subcommittees, and neither interim has been appointed to the subcommittee.

Thanks again for bringing this issue to my attention.

Mike

Moschella, William

From: Collins, Dan
Sent: Wednesday, July 09, 2003 11:38 AM
To: Moschella, William
Cc: Bryant, Dan (OLP)
Subject: DOJ Reauth

Will--

You had asked at the meeting a few weeks ago for ideas on DOJ Reauth. One that sprang to mind was eliminating the district courts' role in selecting interim USAs. The relevant section is 28 USC 546. Section 546(c)(2) states that the AG may appoint an interim USA who may serve for only 120 days. Upon expiration of the 120 days, section 546(d) states that the district court appoints the interim until a USA is appointed as a PAS.

--Dan

View whole
item

Author Collins, Dan
Recipients Moschella, William; Bryant, Dan (OLP)
Subject RE: DOJ Reauth
Date 7/9/2003 2:05:41 PM

Quite frequently, especially during the turnover that occurs during a change of Administrations. (When an AUSA in LA, we had a court-appointed USA for over a year.) Dave Margolis in our office has had task over the years of dealing with the judges on this issue. (The Department is generally not silent on question, but makes its views known.)

-----Original Message-----

From: Moschella, William
Sent: Wednesday, July 09, 2003 1:46 PM
To: Collins, Dan
Cc: Bryant, Dan (OLP)
Subject: RE: DOJ Reauth

Have the courts ever used this authority?

-----Original Message-----

From: Collins, Dan
Sent: Wednesday, July 09, 2003 11:38 AM

February 2, 2004

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

I write to request information concerning an incident that reportedly occurred on November 20, 2003. According to news reports, Antonio Amparo-Lopez was arrested on suspicion of alien smuggling and held at the Temecula, California, interior checkpoint while border patrol agents contacted your office for guidance.

According to recent reports, Mr. Amparo-Lopez (Alien #A76266395), a known alien smuggler with a long criminal record, was released after your office declined to prosecute.

I respectfully request that your office provide me with information about the facts surrounding the alleged incident of November 20, 2003, and, if applicable, the rationale behind any decision made by your office to decline or delay prosecution of Mr. Amparo-Lopez or any other action that may have contributed to his release.

I look forward to your response. If you have any questions, please feel free to contact me or my Legislative Assistant Josh Brown at (202)-225-3906. Thank you for your attention to this important matter.

Sincerely,

Darrell Issa
Member of Congress

DAG000002001

Moschella, William

From: CollinsDP@MTO.com
Sent: Wednesday, June 16, 2004 12:39 PM
To: Moschella, William
Subject: RE:

Attachments: tmp.htm



tmp.htm (4 KB)

Will--

It's good to hear from you. I saw some of the AG's testimony on C-Span last week, and I thought he did very well.

The provision in question is 28 USC 546(d). There are several options for fixing the problem. You could simply provide that "Subsection (d) of section 546 of Title 28 is repealed." Doing that, and nothing more, would presumably allow the AG (under 28 USC 546(a)) to continue to make, seriatim, 120-day appointments of interim U.S. Attorneys. (Under 28 USC 546(c)(2), interim appointments under 28 USC 546(a) cannot last more than 120 days.) There could be a question whether the AG could continue to appoint the same person to a new 120-day term, i.e., is the 120-day limit of (c)(2) meant to be a total cap on interim service by way of AG appointment. I don't think that is the right reading of 546(c)(2), but if you wanted to eliminate this risk, you could amend 546(c) by striking "A person appointed as United States attorney under this section may serve until" and inserting "The term of an appointment under this section shall expire upon". Alternatively, you could add language repealing the 120-day limit on AG interim appointments altogether:

Another option would be to amend, rather than repeal, 546(d). Under the current system, the AG gets a 120-day appointment, followed by the court's appointment, which then lasts until a US Attorney is confirmed. You could just give the AG both appointments. The amendment might look like this:

Section 546 of title 28, United States Code, is amended --
(a) in subsection (c), by changing "this subsection" each place it appears to "subsection (a)"; and
(b) in subsection (d) by --
(1) striking the last sentence; and
(2) striking "the district court for such district"
and inserting "the Attorney General".

A third option, which I would NOT recommend, would be to allow US Attorneys to be filled under the Vacancies Act, 5 USC 3345, et seq. This carries over too many constraints and would impose an additional logistical burden on the White House.

Good luck!

--Dan

P.S.: I notice that things are still quiet on the Sentencing Commission front. Is there any hint that the earlier anticipated hearing will go forward?

-----Original Message-----

From: William.Moschella@usdoj.gov [mailto:William.Moschella@usdoj.gov]
Sent: Wednesday, June 16, 2004 6:16 AM

To: Dan Collins (E-mail)
Subject:

Dan, I hope this email finds you well. You once indicated to me (a pet peeve of yours I think) that federal judges have the ability to appoint acting USA's. What is the code section? There is a potential vehicle for an amendment to fix that constitutional anomaly.

Congress of the United States

Washington, DC 20515

July 30, 2004

The Honorable John Ashcroft
Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Ashcroft:

We write to express our concern with the Department of Justice's current policy of not prosecuting certain alien smugglers. At this time, we ask that you adopt a zero-tolerance policy for alien smuggling. We believe that all cases of alleged immigrant smuggling referred to the Department of Justice by the Department of Homeland Security should be fully pursued and, if the case could reasonably result in a conviction or plea agreement, prosecuted.

It is our understanding that on numerous occasions when the Department of Homeland Security has apprehended alien smugglers and have requested guidance from the U.S. Attorney's office, they have been told to release these criminals. It is unfortunate and unacceptable that anyone in the Department of Justice would deem alien smuggling, on any level or by any person, too low of a priority to warrant prosecution in a timely fashion. In our view, a lack available resources for prosecution is not a valid reason for a decision not to prosecute and, in fact, would signify a mismanagement of your Department's priorities.

Alien smugglers place the safety and well-being of border region communities, Border Patrol officers, local authorities, and illegal immigrants in jeopardy. Smugglers stand at the root of our nation's immigration problem and any failure to prosecute these offenders represents a failure in our nation's current border security strategy.

The House Judiciary Committee is currently requesting information on a known alien smuggler Antonio Amparo-Lopez, who was last arrested on suspicion of alien smuggling and held at the Temecula, California, interior checkpoint. In this particular case, Border Patrol agents contacted the Office of the U.S. Attorney for the Southern District of California for guidance on how to proceed with alien Amparo-Lopez (Alien #A76266395), who has a long documented record that includes multiple deportation proceedings and numerous arrests. He was released after your office declined to prosecute.

Alien smugglers, including Amparo-Lopez, should not be given a second, third, or unlimited number of chances before the Department of Justice decides to pursue

The Honorable John Ashcroft
July 30, 2004.
Page 2

charges. Alien smuggling is indefensible and when continued unchecked will ultimately lead to far greater taxpayer expenditures than the costs of prosecution and incarceration.

We strongly urge you to consider our request for a zero tolerance alien smuggling policy. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

David H. ... Richard ...
Don ... Ken ...
Elton ... Howard O. "Buck" ...
John T.
... ...
David
Ed Royce ...

Congress of the United States

Washington, DC 20515

September 23, 2005

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

There is a crisis along the Southwest border that needs your immediate attention. We are writing to encourage the dedication of resources toward the increased prosecution of human smugglers known as "coyotes." The Justice Department has stated that they lack the necessary resources to prosecute a number of "coyotes," a situation that must change.

Illegal immigration poses one of the greatest dangers to our national security. Many immigrants who enter illegally are dangerous criminals. Smugglers, who assist the entry of such criminals into the country, deserve the same prosecution as the criminals they transport. Additionally, "coyotes" often endanger the lives of those they transport both during and after transit through harsh travel conditions and lack of food, water or other basic necessities. Human smugglers also hold many individuals captive after their arrival to the United States to extract greater fees from relatives abroad. It is unfathomable that these smugglers who risk the lives of others for profit be allowed to go free.

The U.S. Attorney's Office is responsible for the prosecution of smugglers, but they have had insufficient funds to prosecute these criminals to the fullest extent in the past. For example, the Border Patrol was instructed to release known coyote, Antonio Amparo-Lopez, an individual with 21 aliases and 20 prior arrests. Border Patrol agents have stated on numerous occasions that they find such occurrences demoralizing. Why should they put their lives at risk to apprehend "coyotes" when the system has turned into a catch-and-release fiasco?

Further illustrating the problem, the U.S. Attorney's Office in San Diego stated that it is forced to limit prosecution to only the worst "coyote" offenders, leaving countless bad actors to go free. Again, this means they are free to smuggle more criminals into the United States.

There are many demands for prosecutorial funding today. However, eliminating the multi-layered threat posed by "coyotes" is a priority for the Southwest region. We ask that you dedicate additional resources and direct U.S. Attorneys in the Southwest region to make the prosecution of human smugglers a priority.

Sincerely,

Lamar Smith

Paul Smith

Dana Rohrabacher

Dale Campbell

Vance Hunt

Timothy E. J. Jones

Boyd Rostenkowski

Buck McKeon

Max Baucus

David D. Bonior

Keri Cobble

Jonny Lee

Wally Herger

Darin Nunez

Moschella, William

From: Brett_Tolman@judiciary-rep.senate.gov
Sent: Wednesday, November 09, 2005 11:06 PM
To: Moschella, William
Subject: RE: Dan Collins special

I will get the comprehensive fix done.

-----Original Message-----

From: William.Moschella@usdoj.gov [mailto:William.Moschella@usdoj.gov]
Sent: Wednesday, November 09, 2005 10:09 PM
To: Tolman, Brett (Judiciary)
Subject: Dan Collins special

Brett, as I mentioned, Dan Collins mentioned the issue of courts appointing USA's. The provision in question is 28 USC 546(d). There are several options for fixing the problem. You could simply provide that "Subsection (d) of section 546 of Title 28 is repealed." Doing that, and nothing more, would presumably allow the AG (under 28 USC 546(a)) to continue to make, seriatim, 120-day appointments of interim U.S. Attorneys. (Under 28 USC 546(c)(2), interim appointments under 28 USC 546(a) cannot last more than 120 days.) There could be a question whether the AG could continue to appoint the same person to a new 120-day term, i.e., is the 120-day limit of

(c)(2) meant to be a total cap on interim service by way of AG appointment. I don't think that is the right reading of 546(c)(2), but if you wanted to eliminate this risk, I would suggest this more comprehensive fix:

Section 546 of title 28, United States Code, is amended by replacing subsections (c) and (d) with the following new subsection:

(c) A person appointed as United States attorney under this section may serve until the qualification of a United States attorney for such district appointed by the President under section 541 of this title.

Moschella, William

From: Goodling, Monica
Sent: Friday, November 11, 2005 4:24 PM
To: Voris, Natalie (USAEO); Moschella, William; Battle, Michael (USAEO)
Cc: Blake, Dave
Subject: Re: Need Help ASAP

In both the Sheldon and Acosta cases, although the judges refused to grant a court appointment to the individual we had in the spot via AG appointment, both judges agreed not to exercise their court appointment authority at all, which left open the AG's ability to do successive AG appointments.

There was a case in 2001 when the Dept asked the court to install the President's nominee, who was pending confirmation. The judges instead voted to install someone else from the USAO, over the Dept's request. (The person they put in, though, was the office's civil chief so had a leadership position in the office and must have had some sort of background check in relation to the job.) And just between us, this is one of the USAs who didn't last long, so it could be said in retrospect that the judges proved to be wise.

I don't know of any other cases, but Doug might.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Voris, Natalie (USAEO) <Natalie.Voris@usdoj.gov>
To: Moschella, William <William.Moschella@SMOJMD.USDOJ.gov>; Battle, Michael (USAEO) <Michael.Battle@usdoj.gov>
CC: Goodling, Monica <Monica.Goodling@SMOJMD.USDOJ.gov>; Blake, Dave <Dave.Blake@SMOJMD.USDOJ.gov>
Sent: Fri Nov 11 16:10:03 2005
Subject: Re: Need Help ASAP

I will see what I can find on the last point.
My cell is 202/353-5221.

-----Original Message-----

From: Moschella, William <William.Moschella@usdoj.gov>
To: Battle, Michael (USAEO) <MBattle@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
CC: Blake, Dave <Dave.Blake@usdoj.gov>; Goodling, Monica <Monica.Goodling@usdoj.gov>
Sent: Fri Nov 11 16:07:44 2005
Subject: RE: Need Help ASAP

This information is good. It would be helpful to figure out the last point.

-----Original Message-----

From: Voris, Natalie (USAEO)
Sent: Friday, November 11, 2005 4:02 PM
To: Moschella, William; Battle, Michael (USAEO)
Cc: Blake, Dave; Goodling, Monica
Subject: Re: Need Help ASAP

I just spoke to the eousa staffer responsible for court appointments. According to him, there have been two fairly recent instances where the chief judge refused to appoint a USA. Sheldon Sperling (ED/AR) was appointed by AG three consecutive times b/c the chief judge there refused to do a court appt (judge did not like Sheldon). Sheldon is now Presidentially appointed. Alex Acosta has been appt'ed by AG twice due to judge's

unwillingness to appoint. Monica - can you pls confirm this is true?

One other thing to note, though I don't know how to confirm this since it hasn't happened recently, there have been situations where the court chose to make a USA court appointment of their very own (no background checks by the Dept, no vetting, no interviews, etc.). This pre-dates the current eousa staffer who handles court appointments so, again, I don't know how to confirm.

-----Original Message-----

From: Moschella, William <William.Moschella@usdoj.gov>
To: Voris, Natalie (USAEO) <NVoris@usa.doj.gov>; Battle, Michael (USAEO) <MBattle@usa.doj.gov>
CC: Goodling, Monica <Monica.Goodling@usdoj.gov>; Blake, Dave <Dave.Blake@usdoj.gov>
Sent: Fri Nov 11 15:32:03 2005
Subject: Need Help ASAP

An amendment was floated by one of our friends during the Patriot negotiations that would eliminate a court's ability to appoint acting USA's pursuant to 28 USC 546 (d). We support eliminating the court's role in the appointment of acting USA and believe that the AG should have that authority alone. Under current law, the AG appoints, but after 120 days, the district court for that district appoints.

Does someone in EOUSA have instances in which judges have refused to reappoint the acting USA that was appointed by the AG pursuant to 28 USC 546.

Moschella, William

From: Battle, Michael (USAEO)
Sent: Friday, November 11, 2005 4:12 PM
To: Moschella, William
Subject: RE: Need Help ASAP

Will, I can confirm the Acosta matter since I spoke to the Chief Judge. It was fairly recent.

-----Original Message-----

From: Moschella, William
Sent: Fri Nov 11 16:06:55 2005
To: Battle, Michael (USAEO); Voris, Natalie (USAEO)
Cc: Blake, Dave; Goodling, Monica
Subject: RE: Need Help ASAP

This information is good. It would be helpful to figure out the last point.

-----Original Message-----

From: Voris, Natalie (USAEO)
Sent: Friday, November 11, 2005 4:02 PM
To: Moschella, William; Battle, Michael (USAEO)
Cc: Blake, Dave; Goodling, Monica
Subject: Re: Need Help ASAP

I just spoke to the eousa staffer responsible for court appointments. According to him, there have been two fairly recent instances where the chief judge refused to appoint a USA. Sheldon Sperling (ED/AR) was appointed by AG three consecutive times b/c the chief judge there refused to do a court appt (judge did not like Sheldon). Sheldon is now Presidentially appointed. Alex Acosta has been appt'ed by AG twice due to judge's unwillingness to appoint. Monica - can you pls confirm this is true?

One other thing to note, though I don't know how to confirm this since it hasn't happened recently, there have been situations where the court chose to make a USA court appointment of their very own (no background checks by the Dept, no vetting, no interviews, etc.). This pre-dates the current eousa staffer who handles court appointments so, again, I don't know how to confirm.

-----Original Message-----

From: Moschella, William <William.Moschella@usdoj.gov>
To: Voris, Natalie (USAEO) <NVoris@usa.doj.gov>; Battle, Michael (USAEO) <MBattle@usa.doj.gov>
CC: Goodling, Monica <Monica.Goodling@usdoj.gov>; Blake, Dave <Dave.Blake@usdoj.gov>
Sent: Fri Nov 11 15:32:03 2005
Subject: Need Help ASAP

An amendment was floated by one of our friends during the Patriot negotiations that would eliminate a court's ability to appoint acting USA's pursuant to 28 USC 546 (d). We support eliminating the court's role in the appointment of acting USA and believe that the AG should have that authority alone. Under current law, the AG appoints, but after 120 days, the district court for that district appoints.

Does someone in EOUSA have instances in which judges have refused to reappoint the acting USA that was appointed by the AG pursuant to 28 USC 546.

Moschella, William

From: Moschella, William
Sent: Friday, November 11, 2005 9:08 PM
To: 'Brett Tolman@judiciary-rep.senate.gov'
Subject: Re: Collins Special

Are you done for the night? If so, please call me at 353 5136.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Brett Tolman@judiciary-rep.senate.gov <Brett_Tolman@judiciary-rep.senate.gov>
To: Moschella, William <William.Moschella@SMOJMD.USDOJ.gov>
Sent: Fri Nov 11 20:30:56 2005
Subject: Re: Collins Special

Very helpful. Thank you.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

-----Original Message-----

From: William.Moschella@usdoj.gov <William.Moschella@usdoj.gov>
To: Tolman, Brett (Judiciary) <Brett_Tolman@judiciary-rep.senate.gov>
Sent: Fri Nov 11 19:29:41 2005
Subject: Collins Special

There have been two fairly recent instances where the chief judge refused to appoint a USA -- one in the ED/of AR and one in Miami. In the ED/AR case, the Acting USA was appointed by the AG three consecutive times b/c the chief judge there refused to do a court appt (judge apparently did not like the individual who is now presidentially appointed). The AG has had to appoint the USA in Miami twice due to the judge's unwillingness to appoint.

Judges should not be appointing USA's period for separation of powers issue. Notwithstanding that, these examples point out the difficulties with the statute when a judge refuses to appoint the USA who was previously appointed by the AG.

Also, there was a case in 2001 when the Dept asked the court to install the President's nominee, who was pending confirmation. The judges instead voted to install someone else from the USAO, over the Dept's request. The President's nom was later confirmed.

One other thing to note, though I don't know how to confirm this since it hasn't happened recently and the folks who handle this don't have records. I am told, however, that there have been situations where the court chose to make a USA court appointment of their very own (no background checks by the Dept, no vetting, no interviews, etc.). Again, this pre-dates the current staffer who handles court appointments so, again, I don't know how to confirm. This may go back to the AG Reno's tenure.

June 6, 2006

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

THROUGH: William Mercer
Principal Associate Deputy Attorney General

FROM: Daniel Fridman
Counsel to the Deputy Attorney General

SUBJECT: Analysis of Immigration Prosecutions in the Southern District of California

The United States Attorney's Office for the Southern District of California has come under criticism for ostensibly weak enforcement of federal immigration criminal offenses. Most recently, Representative Darrell Issa released to the Associated Press an internal 41-page report written last August by the Border Patrol in San Diego claiming that the lack of federal immigration prosecutions in San Diego is hurting morale within the Border Patrol. Specifically, the report points to low numbers of prosecutions of alien smugglers and large numbers of case declinations by SDCA. Carol Lam, the U.S. Attorney for SDCA, responded publicly that the report is an unauthorized, altered version of an old report. Regardless of the authenticity of the report, media attention is now focused on SDCA's handling of immigration cases with discussions about the office appearing on the Lou Dobbs show and in network news reports.

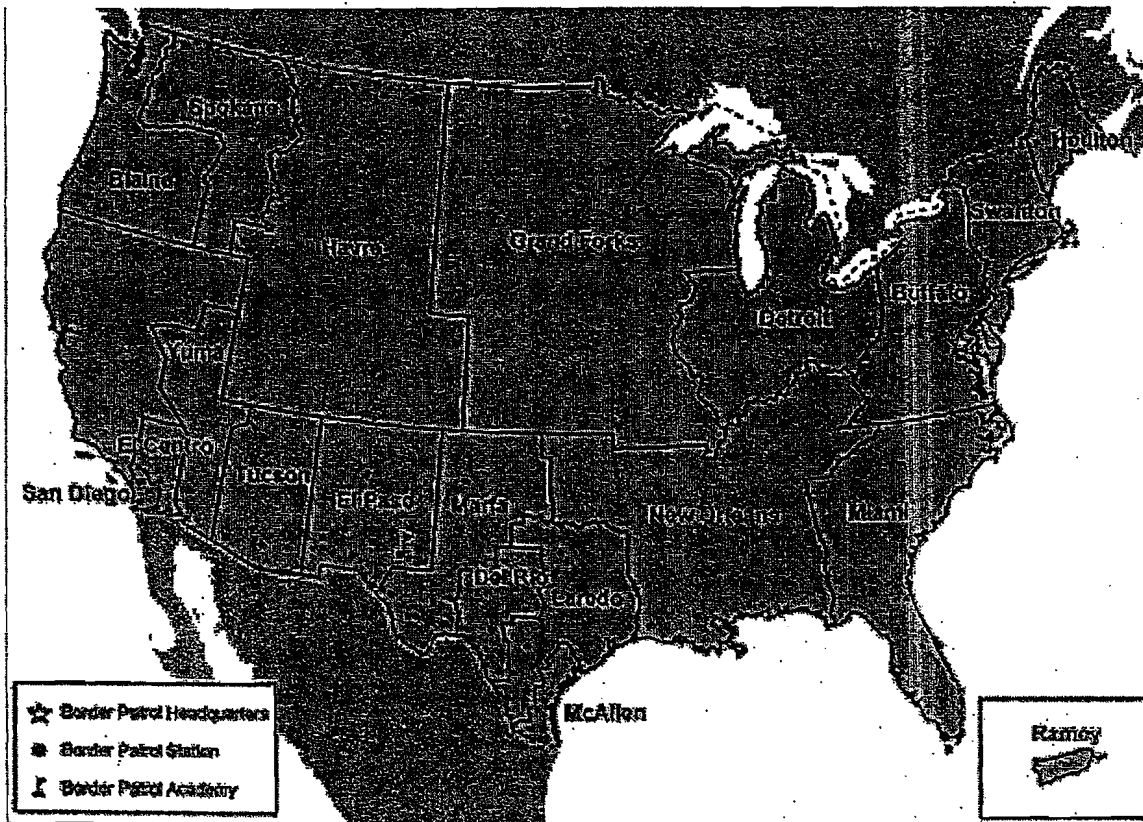
The purpose of this white paper is to analyze the situation in SDCA by using staffing and prosecution data maintained by EOUSA, case data maintained by the U.S. Courts and the U.S. Sentencing Commission, an EARS evaluation of SDCA, and self-reported statements by U.S. Attorney's Offices on their prosecution guidelines for immigration offenses. The report will compare data from the SDCA to the situation of the U.S. Attorney's Offices in Arizona and New Mexico, two other border districts.

Background on the San Diego Border District

SDCA is within the San Diego Sector patrolled by the United States Border Patrol. San Diego is California's second largest city and the seventh largest city in the country. The San Diego Sector consists of 66 linear miles of international boundary with Mexico. Although the land border in the district comprises only 7 percent of the entire U.S./Mexico border, 60 percent of the people who live along the entire 2,000 mile border live in, or on the Mexican side adjacent to, the Southern District of California. Directly to the south of San Diego lie the Mexican cities of Tijuana and Tecate, Baja California - with a combined population of more than 2 million people.

DAG000002015

According to Carol Lam, Border Patrol made 140,000 immigration arrests in the Sector last year. The chart below shows border patrol stations near the San Diego border with Mexico, as well as the stations in the neighboring border states.



SDCA Staffing

As of June 1, 2006, SDCA has a total of 125 authorized FTE AUSA positions, with 111 actually filled. This is an 11.2% vacancy rate, higher than the national average of 10%. SDCA appears to be looking at a potentially higher effective vacancy rate with three AUSAs on extended medical leave, one AUSA awaiting disability retirement, and four AUSAs in the military reserves who have received formal notice they may be called to active duty in the coming year. Without including a natural rate of turnover, this would give SDCA a worst-case vacancy rate of 19.8% if the reservists get called and the AUSAs on medical leave do not return.

Of the 111 AUSAs currently employed, 51 are assigned to the General Crimes Section, primarily responsible for border related prosecutions, and two are assigned to the Civil Section, working on civil immigration cases. According to an EARS report analyzing SDCA, 95% of the reactive cases handled by the General Crimes AUSAs involve border immigration or drugs, and AUSAs split their time 50-50 between reactive cases and proactive investigations.

By way of comparison, further east along the border, Arizona currently has 116 AUSAs and New Mexico has 59. These two border districts can serve as points of comparison to the Southern District of California on overall effectiveness in immigration prosecutions.

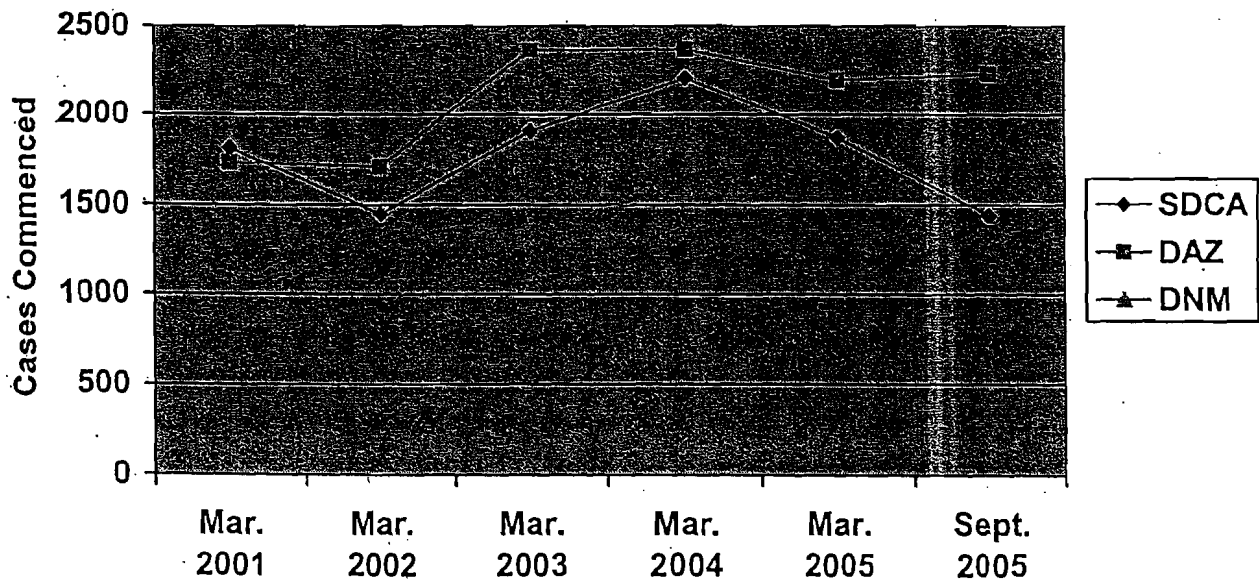
SDCA also employs about 50 contractors, many of which are supposed to provide support for the immigration caseload. The EARS report is critical about the use of contractors at SDCA and concludes that, in many instances, the contractors are needlessly consuming office resources without assisting in processing immigration cases.

Immigration Enforcement Data

According to data obtained from the U.S. District Courts for the period from September 30, 2004 to September 30, 2005, the Southern District of California had 398 prosecutions for illegal reentry by an alien and 1041 prosecutions for "other" immigration offenses. The U.S. Courts data includes all felony and class A misdemeanor cases. This is the most recent data available from the courts.

The U.S. Courts website has historical data on prosecution cases commenced broken down by district and by type of crime from 2000 to 2005. The chart below contains a line graph of the trends in immigration prosecutions for SDCA, Arizona, and New Mexico. Since the fiscal year ending in March 2001, Arizona and New Mexico have had an upward trend in their immigration prosecutions. SDCA peaked in 2003-04 and has since had a precipitous decline. Comparing SDCA's performance using 111 AUSAs and New Mexico's higher case commencement numbers using 59 AUSAs, it seems that SDCA should be doing much more. In fairness, there may be differences in each district not reflected in a simple line graph that could account for the disparity, but the data helps to focus attention on the problem.

**Trends in Overall Immigration Prosecutions by District
(Felonies and Class A Misdemeanors)**

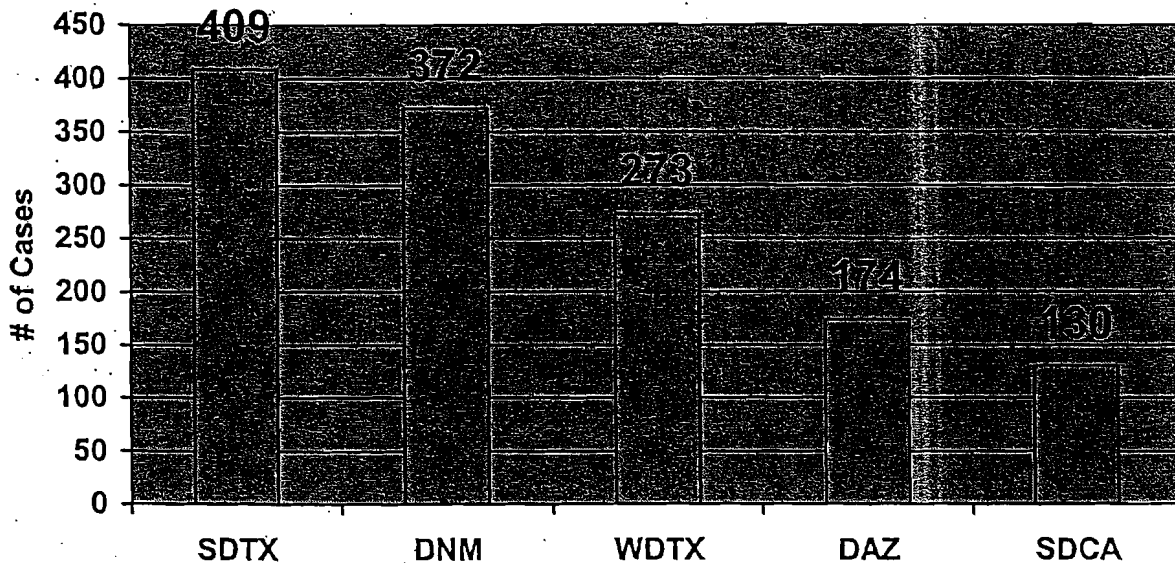


Data Source: United States Courts

AUSA Productivity

Another way of comparing SDCA's performance to other border districts is to examine how many immigration cases SDCA is handling per AUSA work year.¹ This is essentially a measure of productivity and efficiency for each district in handling immigration cases. This analysis shows that SDCA is lagging far behind the other districts. SDCA handled about 130 immigration cases per AUSA work year, half the average of 271 cases for the other border districts. In FY 2005, the data looks even less favorable for SDCA. In the first quarter of 2005, the number dropped to 56.34 immigration cases handled per AUSA work year.

Immigration Cases Handled Per AUSA Work Year (FY 2004)



SDCA provides three main reasons for the disparity in the EARS report. First, SDCA states that its data includes time spent by appellate and supervisory personnel working on immigration cases. If they only reported line AUSA time spent on immigration cases, as they believe other districts do, SDCA states that their numbers would be higher. Second, SDCA mostly files felony immigration cases and the other districts file misdemeanor cases which take less time and resources. Third, the public defender is more aggressive in San Diego, and as a result, they take more immigration cases to trial. SDCA had 42 immigration cases disposed of by trial in FY 2004, while the next highest districts had 29, 21, and 11. Overall, the data suggests that SDCA could be doing more and should be able to change its prosecution guidelines to handle more misdemeanor cases and increase the numbers of cases their AUSAs are handling.²

¹ The number of work years spent on immigration cases is determined by aggregating the number of hours AUSAs in the district reported spending on immigration cases in their USA-5 time entries.

² The EARS report was also critical of SDCA's use of contractors to help process immigration cases, when other border districts do not have the benefit of such a substantial contractor support force. The report concludes, "San Diego appears to be handling fewer cases per AUSA, but with more resources, both AUSA and support (contractor and civil service), than other districts."

Prosecution Guidelines

The prosecution guidelines employed by SDCA may help explain why their immigration prosecutions have declined in the past two years and are lower than the other border districts. SDCA does not prosecute purely economic migrants. SDCA directs its resources to bringing felony charges against the most egregious violators, focusing on illegal aliens with substantial criminal histories such as violent/major felons, recidivist felons, repeat immigration violators on supervised release, and alien smugglers and guides. SDCA does not prosecute foot guides that do not have a serious criminal history.

SDCA has a fast track charge bargain program in place for illegal reentry cases and for alien smuggling cases, but the number of fast track prosecutions they have done has declined. In their supplementary materials requesting reauthorization of the fast track program, SDCA admits its prosecution guidelines have resulted in fewer cases being filed: “[i]n 2004, we adjusted our prosecution guidelines to, among other things, eliminate a large number of criminal alien cases where the alien was a suspected foot guide without a serious criminal history. This change in the prosecution guidelines resulted in a decrease of approximately 360 cases in 2005.”

New Mexico has a lower threshold for accepting immigration cases for prosecution. New Mexico accepts illegal reentry cases even when the illegal alien has no prior criminal record. New Mexico also takes in alien smuggling cases, focusing on cases where there is evidence of a profit motive or where the health and safety of the persons transported was jeopardized.

Analysis of Specific Immigration Offenses Being Prosecuted

The differences in prosecution guidelines are borne out by the case filing data from each district. When the immigration prosecutions are broken down by specific offense, it is apparent why SDCA is now lagging behind the other border districts in the number of prosecutions.

According to the data, SDCA is doing as well as any other district, except for SDTX, in alien smuggling prosecutions under 8 U.S.C. 1324. In 2005, SDCA filed 484 alien smuggling cases with 554 defendants, a number comparable to Arizona, which filed 380 alien smuggling cases with 585 defendants. New Mexico had far fewer alien smuggling cases in 2005 with 111 cases filed with 145 defendants.

SDCA filed far fewer illegal entry cases under 8 U.S.C. 1325 than Arizona and New Mexico. In 2005, Arizona filed 3409, New Mexico filed 1194, and SDCA filed 470 illegal entry cases.

SDCA is also lagging far behind other border districts in the number of illegal reentry prosecutions under 8 U.S.C. 1326. In 2005, Arizona filed 1491 illegal reentry cases, New Mexico filed 1607 illegal reentry cases, and SDCA filed 422 illegal reentry cases. SDCA filed almost half as many illegal reentry cases in 2005 than it did in 2004.

U.S. Sentencing Commission Data

SDCA's emphasis on prosecuting more serious felony immigration cases is borne out by data maintained by the U.S. Sentencing Commission. For FY 2005, the mean and median sentence in an immigration case in SDCA was about 24 months. New Mexico's sentencing data reflects lower

sentences with a mean sentence of about 15 months and a median sentence of 8 months. Arizona's mean and median sentences were slightly higher than SDCA at about 26 months.

Conclusions and Recommendations

It appears that SDCA is employing prosecution guidelines that are more restrictive than other districts in immigration prosecutions. The most immediate fix would be to change the prosecution guidelines so they are more in line with the guidelines employed by other border districts. In particular, SDCA should place a greater emphasis on pursuing more illegal reentry cases and alien smuggling cases and to also begin prosecuting more misdemeanor illegal entry without inspection cases.

Any additional resources provided to the district to lower the vacancy rate should be done with a clear understanding that they will supplement current resources focused on criminal aliens. To the extent that Border Patrol is dissatisfied with the level of immigration prosecutions, Customs and Border Protection or the Bureau of Immigration and Customs Enforcement should provide SDCA with Special Assistant United States Attorneys to focus on immigration prosecutions and improve the manpower issues.

DIANNE FEINSTEIN
CALIFORNIA



COMMITTEE ON APPROPRIATIONS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION
SELECT COMMITTEE ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510-0504
<http://feinstein.senate.gov>

June 15, 2006

Honorable Alberto Gonzales
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Gonzales:

During our meeting last week you asked if I had any concerns regarding the U.S. Attorneys in California. I want to follow up on that point and raise the issue of immigration related prosecutions in Southern California.

It has come to my attention that despite high apprehensions rates by Border Patrol agents along California's border with Mexico, prosecutions by the U.S. Attorney's Office Southern District of California appear to lag behind. A concern voiced by Border Patrol agents is that low prosecution rates have a demoralizing effect on the men and women patrolling our Nation's borders.

It is my understanding that the U.S. Attorney's Office Southern District of California may have some of the most restrictive prosecutorial guidelines nationwide for immigration cases, such that many Border Patrol agents end up not referring their cases. While I appreciate the possibility that this office could be overwhelmed with immigration related cases; I also want to stress the importance of vigorously prosecuting these types of cases so that California isn't viewed as an easy entry point for alien smugglers because there is no fear of prosecution if caught. I am concerned that lax prosecution can endanger the lives of Border Patrol agents, particularly if highly organized and violent smugglers move their operations to the area.

Therefore, I would appreciate responses to the following issues:

- Please provide me with an update, over a 5 year period of time, on the numbers of immigration related cases accepted and prosecuted by the

DAG000002021

U.S. Attorney Southern District of California, particularly convictions under sections 1324 (alien smuggling), 1325 (improper entry by an alien), and 1326 (illegal re-entry after deportation) of the U.S. Code.

- What are your guidelines for the U.S. Attorney's Office Southern District of California? How do these guidelines differ from other border sectors nationwide?

By way of example, based on numbers provided to my office by the Bureau of Customs and Border Protection and the U.S. Sentencing Commission, in FY05 Border Patrol agents apprehended 182,908 aliens along the border between the U.S. and Mexico. Yet in 2005, the U.S. Attorney's office in Southern California convicted only 387 aliens for alien smuggling and 262 aliens for illegal re-entry after deportation. When looking at the rates of conviction from 2003 to 2005, the numbers of convictions fall by nearly half.

So I am concerned about these low numbers and I would like to know what steps can be taken to ensure that immigration violators are vigorously prosecuted. I appreciate your timely address of this issue and I look forward to working with you to ensure that our immigration laws are fully implemented and enforced.

Sincerely,


Dianne Feinstein
U.S. Senator

Moschella, William

From: Sampson, Kyle
Sent: Monday, December 04, 2006 6:30 PM
To: McNulty, Paul J; Battle, Michael (USAEO)
Cc: Goodling, Monica; Moschella, William; Elston, Michael (ODAG)
Subject: FW: US Atty Plan
Importance: High
Attachments: USA replacement plan.doc

Paul/Mike, we are a go for Thursday (see below). At this point we likely need to inform Johnny Sutton and Bill Mercer re the plan (so they are not caught unawares) – Paul, do you want to handle that, or would you like me to? On Thursday, I think we should shoot to get the Senator calls done in the morning, and then have Mike start calling USAs at noon – let me know if anyone thinks otherwise. Thx.

From: Sampson, Kyle
Sent: Monday, December 04, 2006 6:26 PM
To: 'Kelley, William K.'
Cc: 'Miers, Harriet'
Subject: RE: US Atty Plan

here is the revised plan, per our discussions

From: Sampson, Kyle
Sent: Monday, December 04, 2006 6:12 PM
To: 'Kelley, William K.'
Cc: Miers, Harriet
Subject: RE: US Atty Plan
Importance: High

Great. We would like to execute this on Thursday, December 7 (all the U.S. Attorneys are in town for our Project Safe Childhood conference until Wednesday; we want to wait until they are back home and dispersed, to reduce chatter). So, on Thursday morning, we'll need the calls to be made as follows:

- * AG calls Sen. Kyl
- * Harriet/Bill call Sens. Ensign and Domenici (alternatively, the AG could make these calls and, if Senators express any concern, offer briefings re why the decision was made – let me know)
- * White House OPA calls California, Michigan, and Washington "leads"

EOUSA Director Mike Battle then will call the relevant U.S. Attorneys. Okay?

From: Kelley, William K. [mailto:William_K._Kelley@who.eop.gov]
Sent: Monday, December 04, 2006 4:48 PM
To: Sampson, Kyle
Cc: Miers, Harriet
Subject: US Atty Plan

We're a go for the US Atty plan. WH leg, political, and communications have signed off and acknowledged that

DAG000002023

we have to be committed to following through once the pressure comes.

PLAN FOR REPLACING CERTAIN UNITED STATES ATTORNEYS

STEP 1

Senator calls: On December 7, the following Republican home-state Senators or, where there is no Republican home-state Senator, the home-state "Bush political lead" are contacted:

- AG calls **Jon Kyl** (re Charlton)
- WHCO calls **John Ensign** (re Bogden)
- WHCO calls **Pete Domenici** (re Iglesias)
- WH OPA calls **California political lead** (re Lam and Ryan)
- WH OPA calls **Michigan political lead** (re Chiara)
- WH OPA calls **Washington political lead** (re McKay)

AG/WHCO/WH OPA inform the Senators/Bush political leads as follows:

- The Administration has determined to give someone else the opportunity to serve as U.S. Attorney in [relevant district] for the final two years of the Administration.
- [Relevant U.S. Attorney] has been informed of this determination and knows that we intend to have a new Acting or Interim U.S. Attorney in place by January 31, 2007.
- We will look to you, Senator/Bush political lead, to recommend candidates that we should consider for appointment as the new U.S. Attorney. As always, we ask that you recommend at least three candidates for the President's consideration. Importantly, we ask that you make recommendations as soon as possible.

STEP 2

U.S. Attorney calls: On December 7 (very important that Senator calls and U.S. Attorney calls happen simultaneously), Mike Battle contacts the following U.S. Attorneys:

- **Paul Charlton** (D. Ariz.)
- **Carol Lam** (S.D. Cal.)
- **Kevin Ryan** (N.D. Cal.)
- **Margaret Chiara** (W.D. Mich.)
- **Dan Bogden** (D. Nev.)
- **David Iglesias** (D.N.M.)
- **John McKay** (W.D. Wash.)

Battle informs the U.S. Attorneys as follows:

- What are your plans with regard to continued service as U.S. Attorney?
- The Administration is grateful for your service as U.S. Attorney, but has determined to give someone else the opportunity to serve as U.S. Attorney in your district for the final two years of the Administration.
- We will work with you to make sure that there is a smooth transition, but intend to have a new Acting or Interim U.S. Attorney in place by January 31, 2007.

STEP 3

Prepare to Withstand Political Upheaval: U.S. Attorneys desiring to save their jobs (aided by their allies in the political arena as well as the Justice Department community), likely will make efforts to preserve themselves in office. We should expect these efforts to be strenuous. Direct and indirect appeals of the Administration's determination to seek these resignations likely will be directed at: various White House offices, including the Office of the Counsel to the President and the Office of Political Affairs; Attorney General Gonzales and DOJ Chief of Staff Sampson; Deputy Attorney General McNulty and ODAG staffers Moschella and Elston; Acting Associate AG Bill Mercer; EOUSA Director Mike Battle; and AGAC Chair Johnny Sutton. Recipients of such "appeals" must respond identically:

- What? U.S. Attorneys serve at the pleasure of the President (there is no right, nor should there be any expectation, that U.S. Attorneys would be entitled to serve beyond their four-year term).
- Who decided? The Administration made the determination to seek the resignations (not any specific person at the White House or the Department of Justice).
- Why me? The Administration is grateful for your service, but wants to give someone else the chance to serve in your district.
- I need more time! The decision is to have a new Acting or Interim U.S. Attorney in place by January 31, 2007 (granting "extensions" will hinder the process of getting a new U.S. Attorney in place and giving that person the opportunity to serve for a full two years).

STEP 4

Evaluation and Selection of "Interim" Candidates: During December 2006-January 2007, the Department of Justice, in consultation with the Office of the Counsel to the President, evaluates and selects candidates for Attorney General-appointment (or candidates who may become Acting U.S. Attorney by operation of law) to serve upon the resignation of above-listed U.S. Attorneys.

STEP 5

Selection, Nomination, and Appointment of New U.S. Attorneys: Beginning as soon as possible in November 2006, Office of the Counsel to the President and Department of Justice carry out (on an expedited basis) the regular U.S. Attorney appointment process: obtain recommendations from Senators/Bush political leads and other sources; evaluate candidates; make recommendations to the President; conduct background investigations; have President make nominations and work to secure confirmations of U.S. Attorney nominees.

Author	Moschella, William
Recipients	McNulty, Paul J
Subject	Re: NDCA update
Date	10/20/2006 4:51:07 PM

I am with Ken. Would you like me to bring him to your office.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: McNulty, Paul J
To: Elston, Michael (ODAG)
CC: Moschella, William; Margolis, David
Sent: Fri Oct 20 16:47:01 2006
Subject: RE: NDCA update

Let's huddle up on this early next week. Thanks.

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Friday, October 20, 2006 3:21 PM
To: McNulty, Paul J
Cc: Moschella, William; Margolis, David
Subject: Fw: NDCA update

FYI

-----Original Message-----

From: Nowacki, John (USAEO)
To: Elston, Michael (ODAG)
Sent: Fri Oct 20 15:18:15 2006
Subject: NDCA update

Mike,

Just an update on the NDCA situation. John has been running into scheduling difficulties right and left with the folks out there, not to mention trouble getting a hotel room in the midst of some massive Oracle conference. Because of this, he will reschedule from next Monday to the following week and direct the appropriate people in the office to make themselves available when he's out there.

-- John

DAG000002028

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Sunday, May 21, 2006 10:05 AM
To: Mercer, Bill (ODAG)
Subject: Trends in Immigration Prosecutions

Attachments: trend graph.doc

-----Original Message-----

From:
To: Fridman, Daniel (ODAG)
CC:
Sent: Sun May 21 10:00:22 2006
Subject: Trends in Immigration Prosecutions



trend graph.doc
(35 KB)

Bill -

I've attached a line graph that helps illustrate the problem. I took the U.S. Courts data you obtained and got historical data from the courts for immigration prosecutions from 2000 to 2005. The data includes felonies and class A misdemeanors. I graphed the trends for SDCA, Arizona, and New Mexico.

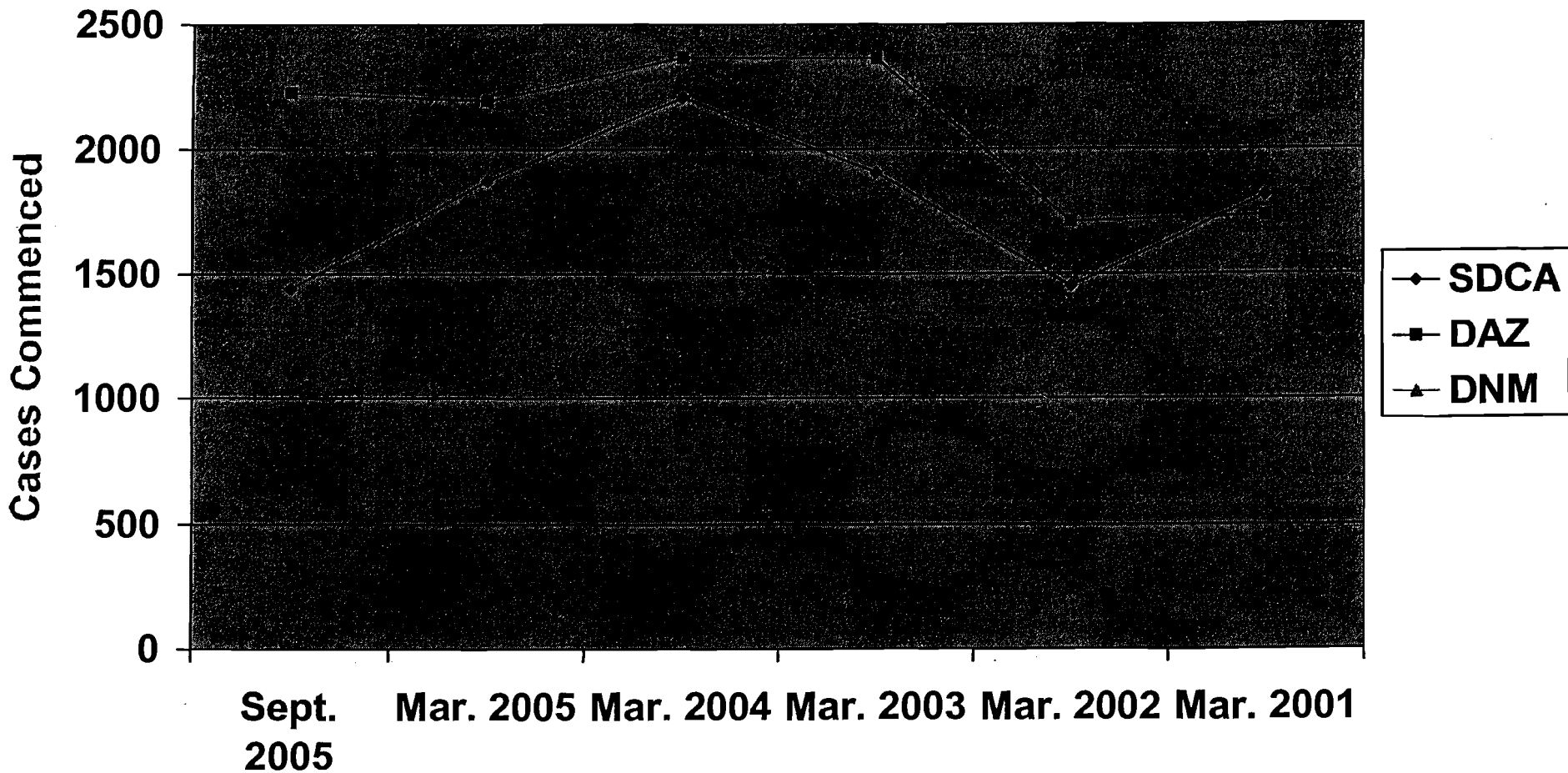
Since 2000-01, Arizona and New Mexico have had an upward trend in their immigration prosecutions. SDCA peaked in 2003-04 and has since had a precipitous decline. At the risk of comparing apples and oranges, when you compare SDCA's performance using 111 AUSAs (as self-reported to EOUSA) and New Mexico with 59 AUSAs but still generating more cases than SDCA, it seems that SDCA should be doing much more.

I am working on the write up/white paper. My impressions from looking at the written materials you sent and the data is that SDCA's prosecution guidelines are more restrictive than the other districts. In particular, looking at the 2005 courts data, they do far fewer (between 50% to 75% fewer) illegal reentry cases than New Mexico or Arizona.

Dan

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Trends in Overall Immigration Prosecutions by District



Source: United States Courts Data

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Sunday, May 21, 2006 12:41 PM
To: Mercer, Bill (ODAG)
Subject: Fw: Trends in Immigration Prosecutions

Attachments: trend graph.doc

-----Original Message-----

From: Fridman, Daniel (ODAG)
To: Mercer, Bill (ODAG)
Sent: Sun May 21 10:04:56 2006
Subject: Trends in Immigration Prosecutions

-----Original Message-----

From: Fridman, Daniel (ODAG)
To: Fridman, Daniel (ODAG)
CC:
Sent: Sun May 21 10:00:22 2006
Subject: Trends in Immigration Prosecutions

Bill -



trend graph.doc
(35 KB)

I've attached a line graph that helps illustrate the problem. I took the U.S. Courts data you obtained and got historical data from the courts for immigration prosecutions from 2000 to 2005. The data includes felonies and class A misdemeanors. I graphed the trends for SDCA, Arizona, and New Mexico.

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Dan

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Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Tuesday, May 23, 2006 11:32 AM
To: Mercer, Bill (ODAG)
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage)

Ok. I also met with John Crews today who was able to better explain to me the numbers in the reports, so I do need to revise some of the figures in the memo. The most significant change involves prosecutions for 1325 Entry without Inspection violations -- a class B misdemeanor which is not captured in LIONS or court data. Arizona apparently did about 4000 of these cases in 2005, New Mexico about 1000, and SDCA has not reported their number.

-----Original Message-----

From: Mercer, Bill (ODAG)
Sent: Tuesday, May 23, 2006 11:25 AM
To: Fridman, Daniel (ODAG)
Subject: Fw: Urgent Report (Border Patrol Report-CNN Coverage)

Important -- should be added to the memo. I have a handful of edits to the memo which I will fax.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: USAEO-Urgent
To: Tenpas, Ronald J (ODAG); Taylor, Jeffrey (OAG); Sierra, Bryan (OPA); Scolinos, Tasia; Sampson, Kyle; Roehrkasse, Brian; Mercer, Bill (ODAG); Goodling, Monica; Elwood, Courtney; Elston, Michael (ODAG); Smith, Kimberly A; Battle, Michael (USAEO); Beeman, Judy (USAEO); Coughlin, Robert; Fisher, Alice; Friedrich, Matthew; Kelly, John (USAEO); Parent, Steve (USAEO); Sabin, Barry; Schools, Scott (USAEO); USAEO-Chron; Voris, Natalie (USAEO)
Sent: Tue May 23 11:06:47 2006
Subject: Urgent Report (Border Patrol Report-CNN Coverage)

URGENT REPORT-06-05-0021

TO: THE ATTORNEY GENERAL
THE DEPUTY ATTORNEY GENERAL

FROM: Carol C. Lam
United States Attorney
Southern District of California
(619) 557-5690 (Office)
(858)
(619)

DATE: May 23, 2006

CLASSIFICATION: Limited Official Use

CONTACT PERSON: Carol C. Lam
United States Attorney
Southern District of California
(619) 557-5690 (Office)
(858)
(619)

SYNOPSIS: Yesterday, Congressman Darryl Issa criticized on CNN's "Lou Dobbs Tonight" SDCA's "refusal" to prosecute 100% of all alien smugglers. The USAO-SDCA has learned that the "Border Patrol Report" on

which Rep. Issa relies is an unauthorized, altered version of an old report. The USAO-SDCA has issued a written statement to CNN with that information.

DISCUSSION: On Thursday, May 18, 2006, the Associated Press ran a news story prompted by the release of a 2004 "Border Patrol Report" by Congressman Darryl Issa (R-CA). According to Congressman Issa, the report from the El Cajon substation of the Border Patrol (San Diego Sector) concluded that morale was low among Border Patrol agents at the El Cajon station due to the high number of declined prosecutions by our office. The story received national media attention.

On Friday, May 19, 2006, the Chief of the U.S. Border Patrol, San Diego Sector, informed us that the report released by Congressman Issa was actually an altered and unauthorized version of an actual internal intelligence report issued by the El Cajon substation. The original report was labeled "Prosecution of Smugglers" for Fiscal Year 2003; the altered report was labeled "Prosecution of Smugglers (1324) Fiscal Year 2004." The altered 2004 report contained editorial comments and conclusions that were never seen by or authorized by Border Patrol management.

On Monday, May 22, 2006, this office was contacted by CNN and informed that Congressman Issa would be appearing on "Lou Dobbs Tonight" to discuss the "Border Patrol Report." CNN asked our office for a written statement to be shared during the interview. After checking with Border Patrol, San Diego Sector, we submitted the following written statement:

"Representative Issa has been misled. The document he calls a "Border Patrol Report" is actually an old internal Border Patrol document, relating to a single substation, that has been substantially altered and passed off as an official report. Many of the comments in the document to which Representative Issa refers are editorial comments inserted by an unidentified individual, and they were not approved by or ever seen by Border Patrol management.

Many important issues are raised by the problem of illegal immigration. However, we believe that all dialogue and debate should be based on well-informed and accurate data."

We have also advised Representative Issa's office that we believe the Border Patrol report to be an unauthorized and altered version of an old internal report.

In light of previous media interest in this issue, there is a possibility that the disclosure that the report is not genuine could generate substantial media interest. Our statement was read to Representative Issa by Lou Dobbs during his interview which aired at 3:30 PST.

<<UR-06-06-0021SDCAwpd.wpd>>

3. Provide the number of cases, by district and fiscal year, in which the government entered into a charge bargain as a reward for substantial assistance or as a form of Early Disposition Program from October 1, 2002 through January 11, 2006.

The government does not typically enter into charge bargains as a reward for substantial assistance. Instead, substantial assistance is typically rewarded through a motion to reduce sentence pursuant to United States Sentencing Guideline 5K1.1. Thus, we do not track data that would be responsive to this aspect of the question.

The table below summarizes the number of cases, by district and fiscal year, in which the government entered into a charge bargain under an approved early disposition program. The fiscal year runs from October 1 through September 30, so the data from fiscal year 2003 covers the period from October 1, 2002 to September 30, 2003. Data for fiscal year 2006 will be available after September 30, 2006.

District	Number of Cases Resolved by Charge Bargain		
	FY 2003	FY 2004	FY 2005*
AZ	300	392	477
CAC	194	588	348
CAN	73	59	61
CAS	2,218	2,094	974
FLS	-	273	450
GAN	-	100	90
NM	-	-	8
NYE	400	150	207
OR	222	153	130
WAW**	40	65	45
TOTAL	3,447	3,974	2,790

* The numbers for FY 2005 may slightly understate the number of cases because the districts extracted the information during the month of September, but not as of September 30, 2005.

** The numbers for WAW also include offenders who were prosecuted under a downward departure program, rather than a charge bargaining program.

The number for FLS in FY 2005 includes some offenders who were prosecuted in the last two months of FY 2004 and were not counted that year.

Programs without numbers indicate that the program was not yet authorized/implemented or that offenders were not prosecuted under a charge bargaining program that fiscal year.

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Tuesday, May 23, 2006 7:19 PM
To: Otis, Lee L
Subject: Border Patrol Report

Lee --

Any luck getting your hands on the border patrol report that was referenced in the AP story about SDCA?

Daniel S. Fridman, Esq.
Counsel to the Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Office # 4114
Washington, D.C. 20530
Tel: (202) 514-5650
Daniel.Fridman2@usdoj.gov

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Wednesday, May 24, 2006 3:42 PM
To: Dunn, Clara; Crews, John (USAEO)
Subject: FW: Charge Bargain QFR Answer

Please let me know if you have answers for Ron's questions or let me know who I should talk to. Thanks.

Dan

From: Tenpas, Ronald J (ODAG)
Sent: Wednesday, May 24, 2006 3:24 PM
To: Fridman, Daniel (ODAG)
Cc: Dunn, Clara; Crews, John (USAEO)
Subject: RE: Charge Bargain QFR Answer

Dan: This looks like we're getting close. John/Clara – thanks for your timely work on this. Can I ask for one more double-check on the numbers. Arizona's strike me as low, especially compared to SDCA? Anybody have any sense of why the large discrepancy? Also, any insight on why SDCA dropped by 50% in fy 05?

Finally, even assuming the data is correct, I do want to change the order of the answer a small bit and eliminate the last sentence – it's a department answer so I don't know why we should be saying that the data comes from the individual districts.

The government does not typically enter into charge bargains as a reward for substantial assistance. Instead, substantial assistance is typically rewarded through a motion to reduce sentence pursuant to United States Sentencing Guideline 5K1.1. Thus, we do not track data that would be responsive to this aspect of the question.

The table below summarizes the number of cases, by district and fiscal year, in which the government entered into a charge bargain under an approved early disposition program. The fiscal year runs from October 1 through September 30, so the data from fiscal year 2003 covers the period from October 1, 2002 to September 30, 2003. Data for fiscal year 2006 will be available after September 30, 2006.

From: Fridman, Daniel (ODAG)
Sent: Wednesday, May 24, 2006 2:22 PM
To: Tenpas, Ronald J (ODAG)
Cc: Dunn, Clara; Crews, John (USAEO)
Subject: Charge Bargain QFR Answer

Ron -

Here is a draft answer to question #3 of the QFR using the data compiled by Clara, which was self-reported by individual districts.

Dan

Daniel S. Fridman, Esq.
Counsel to the Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Office # 4114
Washington, D.C. 20530
Tel: (202) 514-5650
Daniel.Fridman2@usdoj.gov

<< File: charge bargain.doc >>

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Wednesday, May 24, 2006 5:35 PM
To: Dunn, Clara
Subject: FW: Charge Bargain QFR Answer

-----Original Message-----

From: Tenpas, Ronald J (ODAG)
Sent: Wednesday, May 24, 2006 5:31 PM
To: Dunn, Clara; Fridman, Daniel (ODAG)
Subject: RE: Charge Bargain QFR Answer

Thanks. That answers that; sorry about the e-mails I know various units are having trouble today around the Dept.

Dan: I would get the final answer to Bill Mercer per my last set of edits so he can put them in his QFRs. Tell him I've signed off on them.

Ron

-----Original Message-----

From: Dunn, Clara
Sent: Wednesday, May 24, 2006 5:25 PM
To: Fridman, Daniel (ODAG)
Cc: Tenpas, Ronald J (ODAG)
Subject: RE: Charge Bargain QFR Answer

Ron, I'm not getting your emails. I hope you are receiving mine...

The data is correct. Most programs in AZ are Downward departure programs, whereas most programs in CAS are charge bargaining programs.

AZ numbers reflect only the charge bargaining programs 2b (6-11 aliens) and 3 (baby smuggling). Most offenders in AZ were prosecuted under downward departure fast track programs-over 2000 in FY 2005 reentry defendants and around 300+ for smugglers of 12 or more aliens.

About CAS reductions for FY 2005, I'm quoting from the district's request: "the reason for this caseload reduction was caused by the December 2004 revision to our prosecution guidelines for criminal alien cases....there is more at the bottom of page 6 of their submission footnote 8. Please see attached PDF file.

Clara N. Dunn

4-3975

From: Daniel.Fridman2@usdoj.gov [mailto:Daniel.Fridman2@usdoj.gov]
Sent: Wednesday, May 24, 2006 4:42 PM
To: Dunn, Clara
Subject: FW: Charge Bargain QFR Answer

From: Tenpas, Ronald J (ODAG)
Sent: Wednesday, May 24, 2006 3:24 PM
To: Fridman, Daniel (ODAG)
Cc: Dunn, Clara; Crews, John (USAEO)
Subject: RE: Charge Bargain QFR Answer

Dan: This looks like we're getting close. John/Clara -- thanks for you timely work on this. Can I ask for one more double-check on the numbers. Arizona's strike me as low, especially compared to SDCA? Anybody have any sense of why the large discrepancy? Also, any insight on why SDCA dropped by 50% in fy 05?

Finally, even assuming the data is correct, I do want to change the order of the answer a small bit and eliminate the last sentence -- it's a department answer so I don't know why we should be saying that the data comes from the individual districts.

The government does not typically enter into charge bargains as a reward for substantial assistance. Instead, substantial assistance is typically rewarded through a motion to reduce sentence pursuant to United States Sentencing Guideline 5K1.1. Thus, we do not track data that would be responsive to this aspect of the question.

The table below summarizes the number of cases, by district and fiscal year, in which the government entered into a charge bargain under an approved early disposition program. The fiscal year runs from October 1 through September 30, so the data from fiscal year 2003 covers the period from October 1, 2002 to September 30, 2003. Data for fiscal year 2006 will be available after September 30, 2006.

From: Fridman, Daniel (ODAG)
Sent: Wednesday, May 24, 2006 2:22 PM
To: Tenpas, Ronald J (ODAG)
Cc: Dunn, Clara; Crews, John (USAEO)
Subject: Charge Bargain QFR Answer

Ron -

Here is a draft answer to question #3 of the QFR using the data compiled by Clara, which was self-reported by individual districts.

Dan

Daniel S. Fridman, Esq.
Counsel to the Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Office # 4114
Washington, D.C. 20530
Tel: (202) 514-5650
Daniel.Fridman2@usdoj.gov

<< File: charge bargain.doc >>

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Wednesday, May 31, 2006 7:16 PM
To: Mercer, Bill (ODAG)
Subject: Re: Draft Analysis of Immigration Prosecutions in SDCA

Bill -

That's not the most current draft. The one I gave you last friday for the DAG to take with him was a revised version. Although that version had more detail about SDCAs fast track program, revised prosecution numbers, and some of the findings of the EARS report, I've since had a chance to go through EARS more completely and will revise the report one final time. I can email you the most recent version tomorrow. I can have a final revised version for you by friday.

Dan

-----Original Message-----

From: Mercer, Bill (ODAG)
To: Fridman, Daniel (ODAG)
Sent: Wed May 31 18:49:43 2006
Subject: Re: Draft Analysis of Immigration Prosecutions in SDCA

Dan: is this your final draft?

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Fridman, Daniel (ODAG)
To: Mercer, Bill (ODAG)
Sent: Mon May 22 08:59:44 2006
Subject: Draft Analysis of Immigration Prosecutions in SDCA

Bill -

Here is my first cut at an analysis of SDCA. I still have questions about the data and materials provided by EOUSA which I will follow up on today. There is also some additional data I'd like to see.

Let me know if this is what you had in mind.

Dan

-----Original Message-----

Fr:
To: Fridman, Daniel (ODAG)
C:
Sent: Mon May 22 07:12:29 2006
Subject: dan_fridman@yahoo.com

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Thursday, June 01, 2006 9:30 AM
To: Mercer, Bill (ODAG)
Subject: RE: Draft Analysis of Immigration Prosecutions in SDCA

Attachments: SWB4.doc



SWB4.doc (297 KB)

Bill -

Here is the most current version.

Dan

-----Original Message-----

From: Mercer, Bill (ODAG)
Sent: Wednesday, May 31, 2006 7:19 PM
To: Fridman, Daniel (ODAG)
Subject: RE: Draft Analysis of Immigration Prosecutions in SDCA

If I can get either the older draft or the updated one first thing tomorrow, that would be good.

-----Original Message-----

From: Fridman, Daniel (ODAG)
Sent: Wednesday, May 31, 2006 7:16 PM
To: Mercer, Bill (ODAG)
Subject: Re: Draft Analysis of Immigration Prosecutions in SDCA

Bill -

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Let me know if this is what you had in mind.

Dan

-----Original Message-----

Frc

To: Fridman, Daniel (ODAG)

CC:

Sent: Mon May 22 07:12:29 2006

Subject: dan_fridman@yahoo.com

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>

May 26, 2006

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

THROUGH: William Mercer
Principal Associate Deputy Attorney General

FROM: Daniel Fridman
Counsel to the Deputy Attorney General

SUBJECT: Analysis of Immigration Prosecutions in the Southern District of California

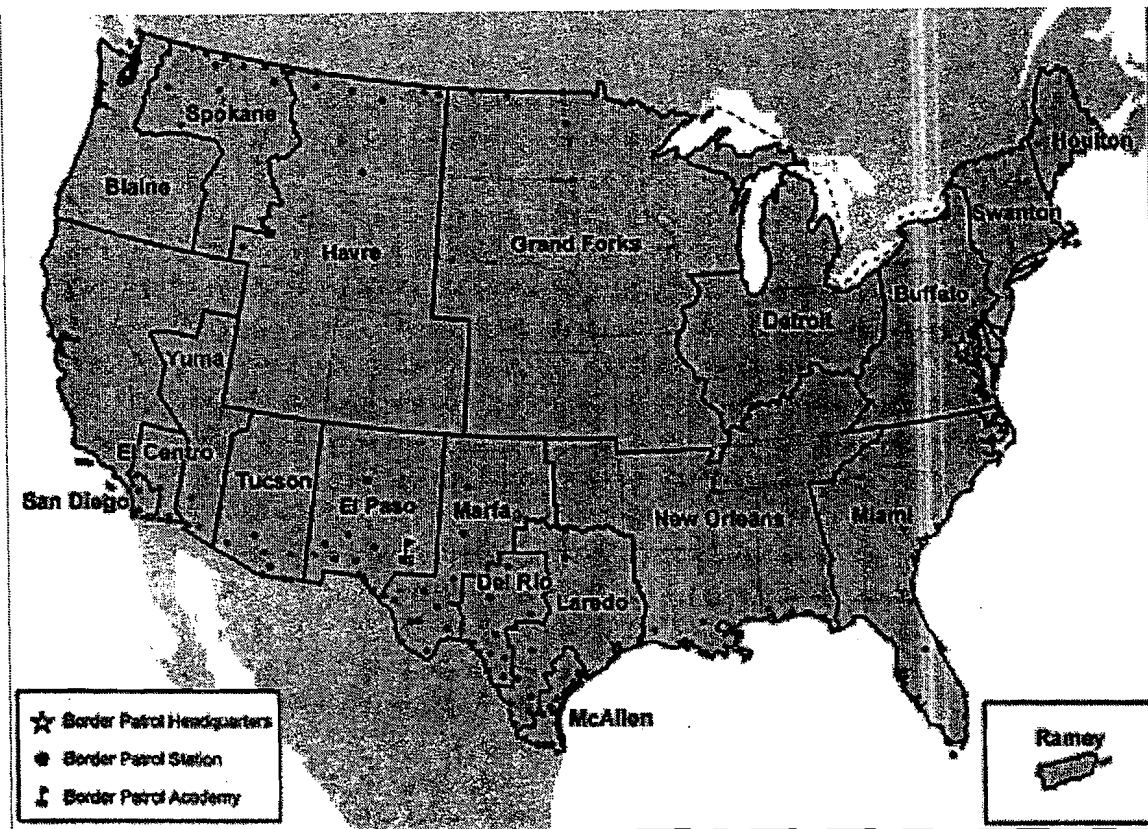
The United States Attorney's Office for the Southern District of California has come under criticism for ostensibly weak enforcement of federal immigration criminal offenses. Most recently, Representative Darrell Issa released to the Associated Press an internal 41-page report written last August by the Border Patrol in San Diego claiming that the lack of federal immigration prosecutions in San Diego is hurting morale within the Border Patrol. Specifically, the report points to low numbers of prosecutions of alien smugglers and large numbers of case declinations by SDCA. Carol Lam, the U.S. Attorney for SDCA, responded publicly that the report is an unauthorized, altered version of an old report. Regardless of the authenticity of the report, media attention is now focused on SDCA's handling of immigration cases with discussions about the office appearing on the Lou Dobbs show and in CNN general news reports.

The purpose of this white paper is to analyze the situation in SDCA by using staffing and prosecution data maintained by EOUSA, case data maintained by the U.S. Courts, and self-reported statements by U.S. Attorney's Offices on their prosecution guidelines for immigration offenses. The report will compare data from the SDCA to the situation of the U.S. Attorney's Offices in Arizona and New Mexico, two other border districts.

Background on the San Diego Border District

SDCA is within the San Diego Sector patrolled by the United States Border Patrol. The San Diego Sector consists of 66 linear miles of international boundary with Mexico. Directly to the South of San Diego lie the Mexican cities of Tijuana and Tecate, Baja California - with a combined population of more than 2 million. According to Carol Lam, Border Patrol made 140,000 immigration arrests in the Sector last year. The chart below shows border patrol stations near the San Diego border with Mexico, as well as the stations in the neighboring border states.

DAG000002044



SDCA Staffing

As of June 1, 2006, SDCA has a total of 125 authorized FTE AUSA positions, with 111 actually filled. This is an 11.2% vacancy rate, higher than the national average of 10%. SDCA appears to be looking at a potentially higher effective vacancy rate with three AUSAs on extended medical leave, one AUSA awaiting disability retirement, and four AUSAs in the military reserves who have received formal notice they may be called to active duty in the coming year. Without including a natural rate of turnover, this would give SDCA a worst-case vacancy rate of 19.8% if the reservists get called and the AUSAs on medical leave do not return.

Of the 111 AUSAs currently employed, 51 are assigned to the General Crimes Section, primarily responsible for border related prosecutions, and two are assigned to the Civil Section, working on civil immigration cases. According to an EARS report analyzing SDCA, 95% of the reactive cases handled by the General Crimes AUSAs involve border immigration or drugs, and AUSAs split their time 50-50 between reactive cases and proactive investigations.

By way of comparison, further east along the border, Arizona currently has 116 AUSAs and New Mexico has 59. These two border districts can serve as points of comparison to the Southern District of California on overall effectiveness in immigration prosecutions.

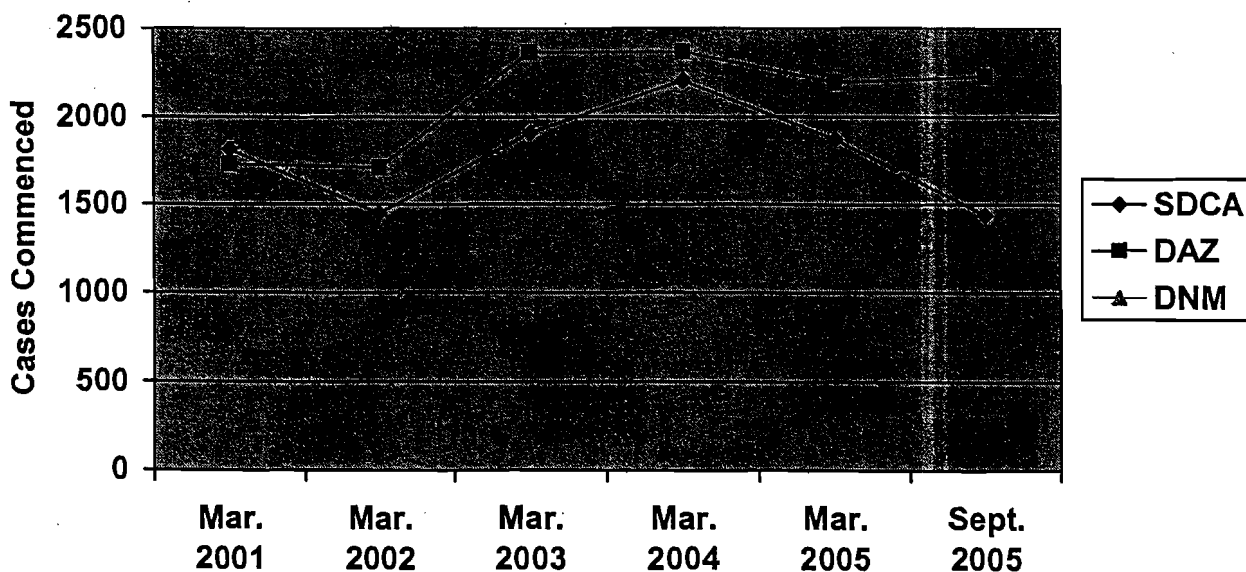
SDCA also employs about 50 contractors, many of which are supposed to provide support for the immigration caseload. The EARS report is critical about the use of contractors at SDCA and concludes that, in many instances, the contractors are needlessly consuming office resources without assisting in processing immigration cases.

Immigration Enforcement Data

According to data obtained from the U.S. District Courts for the period from September 30, 2004 to September 30, 2005, the Southern District of California had 398 protections for illegal reentry by an alien and 1041 prosecutions for "other" immigration offenses. The U.S. Courts data includes all felony and class A misdemeanor cases. This is the most recent data available from the courts.

The U.S. Courts website has historical data on prosecution cases commenced broken down by district and by type of crime from 2000 to 2005. The chart below contains a line graph of the trends in immigration prosecutions for SDCA, Arizona, and New Mexico. Since the fiscal year ending in March 2001, Arizona and New Mexico have had an upward trend in their immigration prosecutions. SDCA peaked in 2003-04 and has since had a precipitous decline. Comparing SDCA's performance using 111 AUSAs and New Mexico's higher case commencement numbers using 59 AUSAs, it seems that SDCA should be doing much more. In fairness, there may be differences in each district not reflected in a simple line graph that could account for the disparity, but the data helps to focus attention on the problem.

**Trends in Overall Immigration Prosecutions by District
(Felonies and Class A Misdemeanors)**



Data Source: United States Courts

Prosecution Guidelines

The prosecution guidelines employed by SDCA may help explain why their immigration prosecutions have declined in the past two years. SDCA does not prosecute purely economic migrants. SDCA directs its resources to bringing felony charges against the most egregious violators, focusing on illegal aliens with substantial criminal histories such as violent/major felons, recidivist felons, repeat immigration violators on supervised release, and alien smugglers and guides.

By contrast, New Mexico has a lower threshold for accepting immigration cases for prosecution. New Mexico accepts illegal reentry cases even when the illegal alien has no prior criminal record. New Mexico also takes in alien smuggling cases, focusing on cases where there is evidence of a profit motive or where the health and safety of the persons transported was jeopardized.

Analysis of Specific Immigration Offenses Being Prosecuted

The differences in prosecution guidelines are borne out by the case filing data from each district. When the immigration prosecutions are broken down by specific offense, it is apparent why SDCA is now lagging behind the other border districts in the number of prosecutions.

According to the data, SDCA is doing as well as any other district, except for SDTX, in alien smuggling prosecutions under 8 U.S.C. 1324. In 2005, SDCA filed 484 alien smuggling cases with 554 defendants, a number comparable to Arizona, which filed 380 alien smuggling cases with 585 defendants. New Mexico had far fewer alien smuggling cases in 2005 with 111 cases filed with 145 defendants.

SDCA could be doing more alien smuggling cases with the fast track program it has in place. In their supplementary materials requesting reauthorization of the fast track program, SDCA admits its prosecution guidelines have resulted in fewer cases being filed: “[i]n 2004, we adjusted our prosecution guidelines to, among other things, eliminate a large number of criminal alien cases where the alien was a suspected foot guide without a serious criminal history. This change in the prosecution guidelines resulted in a decrease of approximately 360 cases in 2005.”

SDCA filed far fewer illegal entry cases under 8 U.S.C. 1325 than Arizona and New Mexico. In 2005, Arizona filed 3409, New Mexico filed 1194, and SDCA filed 470 illegal entry cases.

SDCA is also lagging far behind other border districts in the number illegal reentry prosecutions under 8 U.S.C. 1326. In 2005, Arizona filed 1491 illegal reentry cases, New Mexico filed 1607 illegal reentry cases, and SDCA filed 422 illegal reentry cases. SDCA filed almost half as many illegal reentry cases in 2005 than it did in 2004.

Conclusions and Recommendations

It appears that SDCA is employing prosecution guidelines that are more restrictive than other districts in immigration prosecutions. The most immediate fix would be to change the prosecution guidelines so they are more in line with the guidelines employed by other border districts. In particular, SDCA should place a greater emphasis on pursuing illegal reentry cases and alien smuggling cases.

Any additional resources provided to the district to lower the vacancy rate should be done with a clear understanding that they will supplement current resources focused on criminal aliens. To the extent that Border Patrol is dissatisfied with the level of immigration prosecutions, Customs and Border Protection or the Bureau of Immigration and Customs Enforcement should provide SDCA with Special Assistant United States Attorneys to focus on immigration prosecutions and

improve the manpower issues.

This analysis was based mostly on U.S Courts data, EOUSA data, as well as information self-reported by the districts. I have received an EARS evaluation of SDCA, which contains much greater detail about the situation at that office, including the results of interviews of office personnel. I will prepare a supplement to this memorandum incorporating the findings and recommendations of the evaluation team as they pertain to immigration enforcement efforts at SDCA.

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Tuesday, June 06, 2006 12:56 PM
To: Mercer, Bill (ODAG)
Subject: Final SDCA Analysis

Attachments: SWB5.doc

Bill -

Here is the final memo incorporating the EARS report and U.S. Sentencing Commission data you gave to me yesterday. I hope this is helpful. Let me know if there are any other avenues of inquiry you'd like me to pursue.

Dan



SWB5.doc (324 KB)

June 6, 2006

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

THROUGH: William Mercer
Principal Associate Deputy Attorney General

FROM: Daniel Fridman
Counsel to the Deputy Attorney General

SUBJECT: Analysis of Immigration Prosecutions in the Southern District of California

The United States Attorney's Office for the Southern District of California has come under criticism for ostensibly weak enforcement of federal immigration criminal offenses. Most recently, Representative Darrell Issa released to the Associated Press an internal 41-page report written last August by the Border Patrol in San Diego claiming that the lack of federal immigration prosecutions in San Diego is hurting morale within the Border Patrol. Specifically, the report points to low numbers of prosecutions of alien smugglers and large numbers of case declinations by SDCA. Carol Lam, the U.S. Attorney for SDCA, responded publicly that the report is an unauthorized, altered version of an old report. Regardless of the authenticity of the report, media attention is now focused on SDCA's handling of immigration cases with discussions about the office appearing on the Lou Dobbs show and in network news reports.

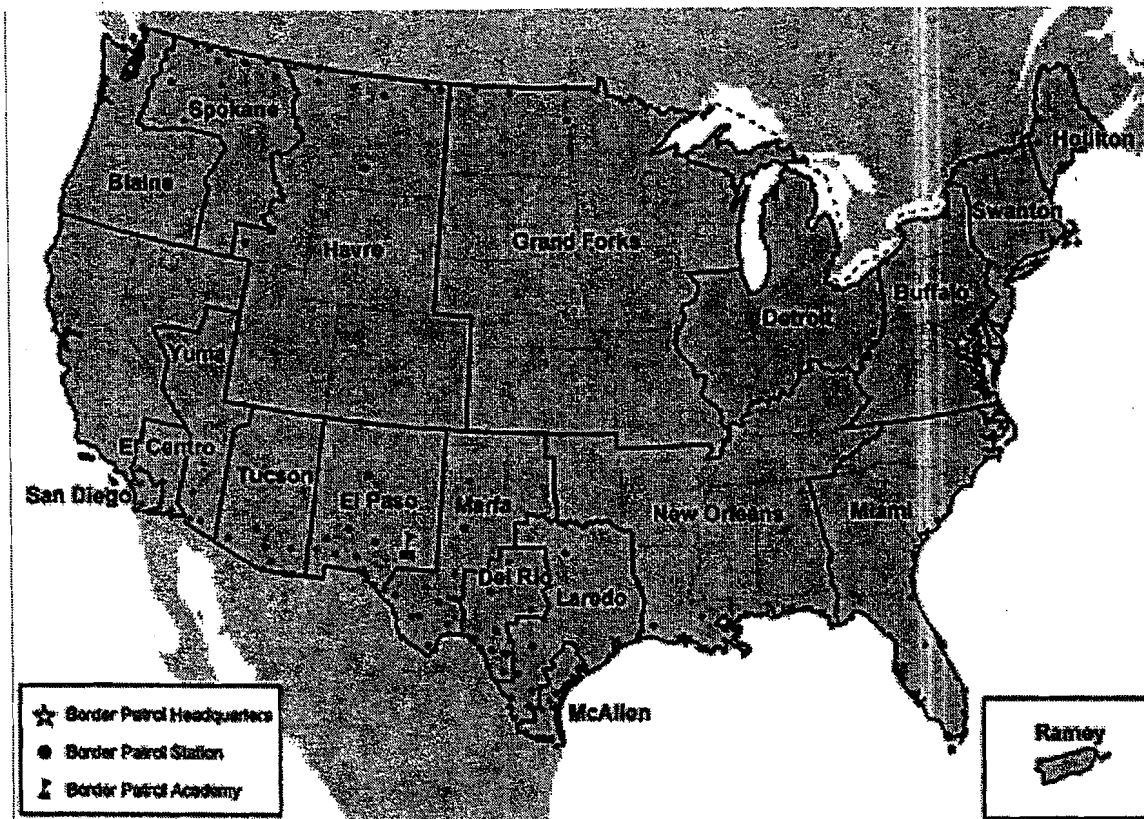
The purpose of this white paper is to analyze the situation in SDCA by using staffing and prosecution data maintained by EOUSA, case data maintained by the U.S. Courts and the U.S. Sentencing Commission, an EARS evaluation of SDCA, and self-reported statements by U.S. Attorney's Offices on their prosecution guidelines for immigration offenses. The report will compare data from the SDCA to the situation of the U.S. Attorney's Offices in Arizona and New Mexico, two other border districts.

Background on the San Diego Border District

SDCA is within the San Diego Sector patrolled by the United States Border Patrol. San Diego is California's second largest city and the seventh largest city in the country. The San Diego Sector consists of 66 linear miles of international boundary with Mexico. Although the land border in the district comprises only 7 percent of the entire U.S./Mexico border, 60 percent of the people who live along the entire 2,000 mile border live in, or on the Mexican side adjacent to, the Southern District of California. Directly to the south of San Diego lie the Mexican cities of Tijuana and Tecate, Baja California - with a combined population of more than 2 million people.

DAG000002050

According to Carol Lam, Border Patrol made 140,000 immigration arrests in the Sector last year. The chart below shows border patrol stations near the San Diego border with Mexico, as well as the stations in the neighboring border states.



SDCA Staffing

As of June 1, 2006, SDCA has a total of 125 authorized FTE AUSA positions, with 111 actually filled. This is an 11.2% vacancy rate, higher than the national average of 10%. SDCA appears to be looking at a potentially higher effective vacancy rate with three AUSAs on extended medical leave, one AUSA awaiting disability retirement, and four AUSAs in the military reserves who have received formal notice they may be called to active duty in the coming year. Without including a natural rate of turnover, this would give SDCA a worst-case vacancy rate of 19.8% if the reservists get called and the AUSAs on medical leave do not return.

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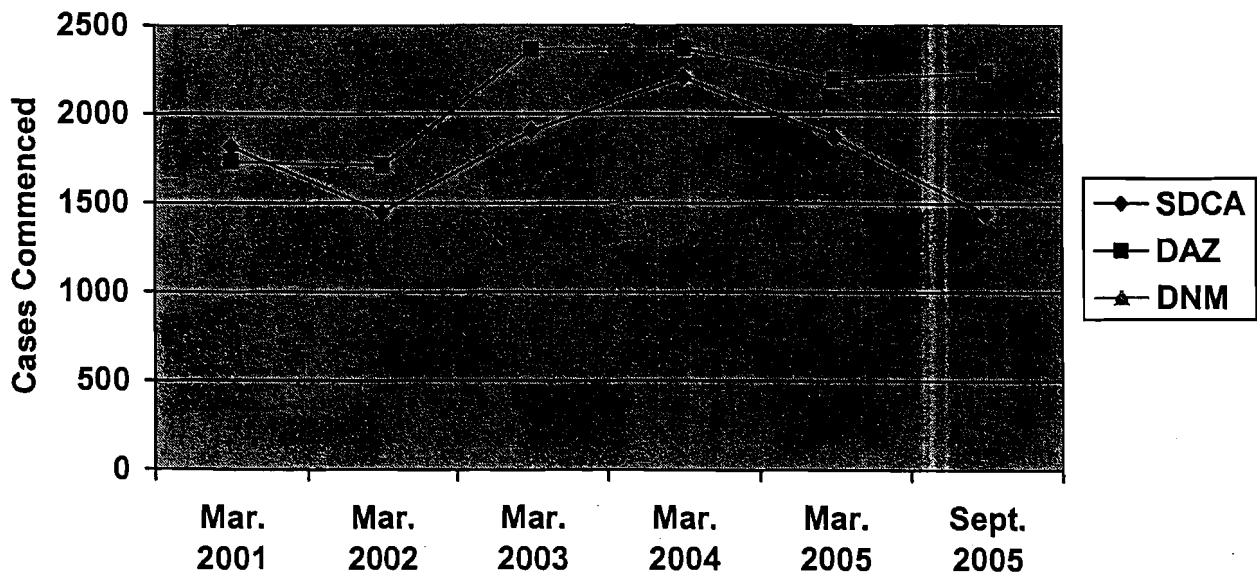
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(Felonies and Class A Misdemeanors)**

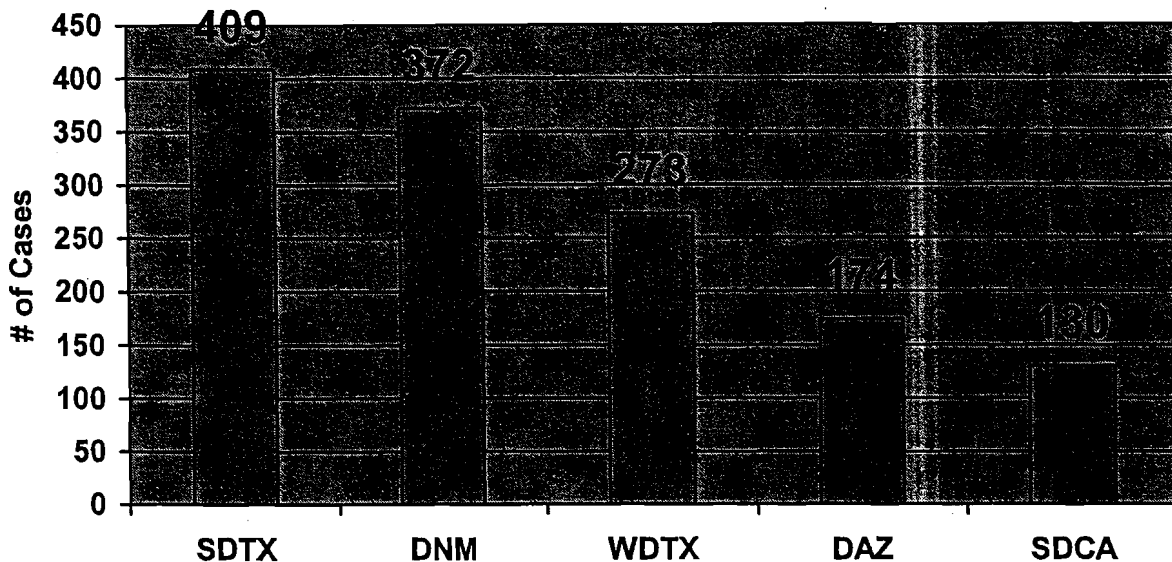


Data Source: United States Courts

AUSA Productivity

Another way of comparing SDCA's performance to other border districts is to examine how many immigration cases SDCA is handling per AUSA work year.¹ This is essentially a measure of productivity and efficiency for each district in handling immigration cases. This analysis shows that SDCA is lagging far behind the other districts. SDCA handled about 130 immigration cases per AUSA work year, half the average of 271 cases for the other border districts. In FY 2005, the data looks even less favorable for SDCA. In the first quarter of 2005, the number dropped to 56.34 immigration cases handled per AUSA work year.

**Immigration Cases Handled Per
AUSA Work Year (FY 2004)**



SDCA provides three main reasons for the disparity in the EARS report. First, SDCA states that its data includes time spent by appellate and supervisory personnel working on immigration cases. If they only reported line AUSA time spent on immigration cases, as they believe other districts do, SDCA states that their numbers would be higher. Second, SDCA mostly files felony immigration cases and the other districts file misdemeanor cases which take less time and resources. Third, the public defender is more aggressive in San Diego, and as a result, they take more immigration cases to trial. SDCA had 42 immigration cases disposed of by trial in FY 2004, while the next highest districts had 29, 21, and 11. Overall, the data suggests that SDCA could be doing more and should be able to change its prosecution guidelines to handle more misdemeanor cases and increase the numbers of cases their AUSAs are handling.²

¹ The number of work years spent on immigration cases is determined by aggregating the number of hours AUSAs in the district reported spending on immigration cases in their USA-5 time entries.

² The EARS report was also critical of SDCA's use of contractors to help process immigration cases, when other border districts do not have the benefit of such a substantial contractor support force. The report concludes, "San Diego appears to be handling fewer cases per AUSA, but with more resources, both AUSA and support (contractor and civil service), than other districts."

Prosecution Guidelines

The prosecution guidelines employed by SDCA may help explain why their immigration prosecutions have declined in the past two years and are lower than the other border districts. SDCA does not prosecute purely economic migrants. SDCA directs its resources to bringing felony charges against the most egregious violators, focusing on illegal aliens with substantial criminal histories such as violent/major felons, recidivist felons, repeat immigration violators on supervised release, and alien smugglers and guides. SDCA does not prosecute foot guides that do not have a serious criminal history.

SDCA has a fast track charge bargain program in place for illegal reentry cases and for alien smuggling cases, but the number of fast track prosecutions they have done has declined. In their supplementary materials requesting reauthorization of the fast track program, SDCA admits its prosecution guidelines have resulted in fewer cases being filed: “[i]n 2004, we adjusted our prosecution guidelines to, among other things, eliminate a large number of criminal alien cases where the alien was a suspected foot guide without a serious criminal history. This change in the prosecution guidelines resulted in a decrease of approximately 360 cases in 2005.”

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SDCA is also lagging far behind other border districts in the number of illegal reentry prosecutions under 8 U.S.C. 1326. In 2005, Arizona filed 1491 illegal reentry cases, New Mexico filed 1607 illegal reentry cases, and SDCA filed 422 illegal reentry cases. SDCA filed almost half as many illegal reentry cases in 2005 than it did in 2004.

U.S. Sentencing Commission Data

SDCA's emphasis on prosecuting more serious felony immigration cases is borne out by data maintained by the U.S. Sentencing Commission. For FY 2005, the mean and median sentence in an immigration case in SDCA was about 24 months. New Mexico's sentencing data reflects lower

sentences with a mean sentence of about 15 months and a median sentence of 8 months. Arizona's mean and median sentences were slightly higher than SDCA at about 26 months.

Conclusions and Recommendations

It appears that SDCA is employing prosecution guidelines that are more restrictive than other districts in immigration prosecutions. The most immediate fix would be to change the prosecution guidelines so they are more in line with the guidelines employed by other border districts. In particular, SDCA should place a greater emphasis on pursuing more illegal reentry cases and alien smuggling cases and to also begin prosecuting more misdemeanor illegal entry without inspection cases.

Any additional resources provided to the district to lower the vacancy rate should be done with a clear understanding that they will supplement current resources focused on criminal aliens. To the extent that Border Patrol is dissatisfied with the level of immigration prosecutions, Customs and Border Protection or the Bureau of Immigration and Customs Enforcement should provide SDCA with Special Assistant United States Attorneys to focus on immigration prosecutions and improve the manpower issues.

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Tuesday, June 27, 2006 3:00 PM
To: Mercer, Bill (ODAG)
Subject: Re: Did you ever see the EARS report on SDCA?

Yes, you sent it to me when I was preparing my memo on SDCA. I incorporated some of the findings into the last version of the memo.

Dan

-----Original Message-----












From: Bill (ODAG) Mercer
To: Fridman, Daniel (ODAG)
Sent: Jun 25, 2006 6:42 PM
Subject: Did you ever see the EARS report on SDCA?

Sent from my BlackBerry Wireless Handheld

Fridman, Daniel (ODAG)

From: Crews, John (USAEO)
Sent: Wednesday, June 21, 2006 5:28 PM
To: Fridman, Daniel (ODAG)
Subject: Fw: Request from ODAG staff

Attachments: imm1326_alpha.pdf; 18 usc 911-alpha.pdf; 18 usc 1001-alpha.pdf; 18 usc 1542-alpha.pdf; 18 usc 1543-alpha.pdf; 18 usc 1544-alpha.pdf; 18 usc 1546-alpha.pdf; 42 usc 408-alpha.pdf; id-1028-alpha.pdf; imm1324_alpha.pdf; imm1325_alpha.pdf

 mm1326_alpha.pdf (35 KB)
 18 usc 11-alpha.pdf (35 KB)
 18 usc 001-alpha.pdf (35 KB)
 18 usc 042-alpha.pdf (35 KB)
 18 usc 043-alpha.pdf (35 KB)
 18 usc 044-alpha.pdf (34 KB)
 18 usc 046-alpha.pdf (36 KB)
 42 usc 08-alpha.pdf (31 KB)
 id-1028-alpha.pdf (36 KB)
 imm1324_alpha.pdf (35 KB)
 imm1325_alpha.pdf (34 KB)

Fyi

Sent from my BlackBerry Wireless Device

-----Original Message-----

From: Slusher, Michelle (USAEO) <MSlusher@usa.doj.gov>
To: Crews, John (USAEO) <JCrews@usa.doj.gov>
CC: Tone, Barbara (USAEO) <BTone@usa.doj.gov>
Sent: Wed Jun 21 17:16:39 2006
Subject: RE: Request from ODAG staff

John,

Attached are the reports you asked for on behalf of the Deputy Attorney General's office for immigration-related statutes. Please let the Deputy Attorney General's office know that the individual reports were produced based upon each of the specified statutes. Therefore, the number of cases or defendants contained on the individual reports cannot be added together since double counting will occur if more than one of the requested statutes was charged against the same defendant. If you have any questions or require anything further, please let us know.

Regards,

Miche <<imm1326_alpha.pdf>> 1 <<18 usc 911-alpha.pdf>> 1 <<18 usc 1001-alpha.pdf>> e <<18 usc 1542-alpha.pdf>>
<<18 usc 1543-alpha.pdf>>
<<18 usc 1544-alpha.pdf>>
<<18 usc 1546-alpha.pdf>>
<<42 usc 408-alpha.pdf>> <<id-1028-alpha.pdf>> < <<imm1324_alpha.pdf>> < <<imm1325_alpha.pdf>> imm1326_alpha.pdf>> <<18 usc 911-alpha.pdf>> <<18 usc 1001-alpha.pdf>>
<<18 usc 1542-alpha.pdf>> <<18 usc 1543-alpha.pdf>> <<18 usc 1544-alpha.pdf>> <<18 usc 1546-alpha.pdf>> <<42 usc 408-alpha.pdf>> <<id-1028-alpha.pdf>> <<imm1324_alpha.pdf>> <<imm1325_alpha.pdf>>

From: Crews, John (USAEO)
Sent: Friday, June 16, 2006 2:06 PM
To: Slusher, Michelle (USAEO)
Subject: Request from ODAG staff

Michelle:

This is a request from the ODAG staff. They have requested that this information be provided at the earliest possible date. They have impressed upon me that the results

should be considered to be of the highest possible priority.

Please obtain the data from the following years; [1] FY 06 year to date; [2] FY 05; [3] FY 04; [4] FY 03; [5] FY 02; and [6] FY 01. This data request covers all 94 districts.

Please obtain information relating to number of cases and number of defendants actually prosecuted for:

- [A] 8 U.S.C. 1324
- [B] 8 U.S.C. 1325 (misdemeanor and felony)
- [C] 8 USC 1326
- [D] 18 USC 1542
- [E] 18 USC 1543
- [F] 18 USC 1544
- [G] 18 USC 1546
- [H] 18 USC 1028
- [I] 42 USC 408
- [J] 18 USC 911
- [K] 18 USC 1001 (if immigration coded)

The request is prioritized in the order (A to K) listed above.

After consultation with case management please provide me with an estimated time of completion.

Thank you in advance.

John

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United States Attorneys—Criminal Caseload Statistics*

Immigration - 8 U.S.C. 1326**

Cases Filed - Fiscal Years 2001-2006***

Listing Sorted: Alphabetically by District

District	2001	2002	2003	2004	2005	2006***
1 Alabama, Middle	1	2	3	3	6	3
2 Alabama, Northern	8	10	20	17	15	6
3 Alabama, Southern	0	2	1	11	5	7
4 Alaska	10	9	7	11	3	2
5 Arizona	1,608	1,710	2,008	1,888	1,491	728
6 Arkansas, Eastern	3	5	5	6	11	6
7 Arkansas, Western	23	28	34	29	29	18
8 California, Central	140	272	200	202	190	67
9 California, Eastern	323	340	342	153	194	87
10 California, Northern	208	115	160	87	69	34
11 California, Southern	1,027	709	761	800	422	197
12 Colorado	46	76	88	103	108	58
13 Connecticut	6	17	7	6	8	4
14 Delaware	3	5	8	10	17	8
15 District of Columbia	10	12	18	18	16	6
16 Florida, Middle	71	90	92	134	185	111
17 Florida, Northern	3	5	2	8	17	4
18 Florida, Southern	144	122	111	126	119	43
19 Georgia, Middle	8	5	7	10	3	1
20 Georgia, Northern	103	72	80	78	38	27
21 Georgia, Southern	3	4	9	8	7	2
22 Guam	7	5	8	2	1	1
23 Hawaii	9	5	1	3	3	5
24 Idaho	32	57	81	72	66	36
25 Illinois, Central	10	17	12	11	12	12
26 Illinois, Northern	54	63	96	63	52	22
27 Illinois, Southern	8	8	16	8	16	5
28 Indiana, Northern	0	1	1	4	7	3
29 Indiana, Southern	8	7	8	7	7	5
30 Iowa, Northern	41	46	56	58	54	27
31 Iowa, Southern	40	58	46	56	61	24
32 Kansas	44	53	59	90	85	30
33 Kentucky, Eastern	5	9	15	23	17	6
34 Kentucky, Western	9	8	12	12	9	5
35 Louisiana, Eastern	7	22	18	20	21	26
36 Louisiana, Middle	1	3	7	3	2	3
37 Louisiana, Western	2	12	7	9	18	3
38 Maine	10	10	6	8	20	6
39 Maryland	19	30	36	28	31	17
40 Massachusetts	43	42	40	31	28	12
41 Michigan, Eastern	13	13	26	34	31	13
42 Michigan, Western	32	36	42	50	45	16
43 Minnesota	15	13	12	13	19	15
44 Mississippi, Northern	3	1	3	0	2	1
45 Mississippi, Southern	5	15	17	16	18	5
46 Missouri, Eastern	10	28	38	28	39	13
47 Missouri, Western	13	25	35	33	28	21
48 Montana	14	16	27	29	48	10
49 Nebraska	50	64	92	48	71	28
50 Nevada	138	176	187	103	99	50

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District	2001	2002	2003	2004	2005	2006***
51 New Hampshire	7	3	10	14	3	3
52 New Jersey	28	30	28	33	25	16
53 New Mexico	629	1,104	1,304	1,267	1,607	800
54 New York, Eastern	93	96	108	72	52	30
55 New York, Northern	33	50	48	84	50	22
56 New York, Southern	67	79	114	140	169	45
57 New York, Western	19	23	26	30	37	15
58 North Carolina, Eastern	14	17	20	23	20	6
59 North Carolina, Middle	39	29	36	55	46	13
60 North Carolina, Western	6	10	16	27	39	13
61 North Dakota	17	13	29	33	43	11
62 Northern Mariana Islands	0	0	0	0	0	0
63 Ohio, Northern	10	26	18	34	30	12
64 Ohio, Southern	3	5	9	15	14	3
65 Oklahoma, Eastern	0	1	0	0	3	0
66 Oklahoma, Northern	1	6	3	4	0	0
67 Oklahoma, Western	6	8	10	2	8	4
68 Oregon	291	212	258	196	171	104
69 Pennsylvania, Eastern	47	43	37	54	48	19
70 Pennsylvania, Middle	18	13	12	26	17	8
71 Pennsylvania, Western	7	3	7	12	28	16
72 Puerto Rico	87	60	59	89	73	36
73 Rhode Island	27	18	14	13	16	14
74 South Carolina	15	19	19	23	22	12
75 South Dakota	13	9	10	20	17	12
76 Tennessee, Eastern	23	44	66	40	24	8
77 Tennessee, Middle	11	12	24	26	22	9
78 Tennessee, Western	8	10	14	8	10	4
79 Texas, Eastern	38	49	58	51	61	30
80 Texas, Northern	97	112	222	145	129	60
81 Texas, Southern	1,199	1,551	1,960	2,441	2,899	1,441
82 Texas, Western	1,134	1,095	1,450	1,594	1,981	981
83 Utah	185	161	203	222	226	108
84 Vermont	2	7	5	12	10	1
85 Virgin Islands	17	7	8	9	16	12
86 Virginia, Eastern	21	44	36	46	47	22
87 Virginia, Western	3	7	6	10	4	4
88 Washington, Eastern	134	155	136	122	95	85
89 Washington, Western	29	17	15	20	20	13
90 West Virginia, Northern	2	1	1	3	4	1
91 West Virginia, Southern	2	2	2	3	1	0
92 Wisconsin, Eastern	2	13	29	34	18	10
93 Wisconsin, Western	2	9	9	10	12	7
94 Wyoming	10	15	26	18	18	23
All Districts	8,786	9,631	11,432	11,650	11,998	5,872

*Caseload data extracted from the United States Attorneys' Case Management System.

**Data includes any and all criminal cases/defendants where § U.S.C. 1326 (Reentry of Deported Aliens) was brought as any charge against a defendant.

***FY 2006 numbers are actual data through the end of March 2006.

United States Attorneys--Criminal Caseload Statistics*

Immigration - 8 U.S.C. 1326**

Defendants in Cases Filed - Fiscal Years 2001-2006***

Listing Sorted: Alphabetically by District

District	2001	2002	2003	2004	2005	2006***
1 Alabama, Middle	1	4	3	3	6	3
2 Alabama, Northern	9	10	20	17	15	6
3 Alabama, Southern	0	2	1	11	5	7
4 Alaska	11	9	7	11	3	2
5 Arizona	1,614	1,717	2,016	1,888	1,494	729
6 Arkansas, Eastern	3	5	5	6	11	6
7 Arkansas, Western	23	28	34	29	29	18
8 California, Central	140	273	200	206	190	67
9 California, Eastern	323	341	346	154	194	87
10 California, Northern	212	116	160	86	69	34
11 California, Southern	1,035	726	777	804	422	197
12 Colorado	52	79	93	103	109	58
13 Connecticut	6	17	8	6	8	4
14 Delaware	3	5	8	10	17	8
15 District of Columbia	11	12	21	18	17	6
16 Florida, Middle	71	90	92	134	186	111
17 Florida, Northern	3	5	2	8	17	4
18 Florida, Southern	152	123	112	127	123	43
19 Georgia, Middle	9	5	8	10	3	1
20 Georgia, Northern	105	75	80	78	38	27
21 Georgia, Southern	3	4	12	8	7	2
22 Guam	7	5	8	2	1	1
23 Hawaii	11	5	1	3	3	5
24 Idaho	33	61	82	72	68	36
25 Illinois, Central	13	18	12	11	12	13
26 Illinois, Northern	58	63	96	63	52	22
27 Illinois, Southern	8	8	16	8	16	5
28 Indiana, Northern	0	1	1	4	7	3
29 Indiana, Southern	8	7	9	7	7	5
30 Iowa, Northern	41	46	56	58	54	27
31 Iowa, Southern	41	59	51	56	61	24
32 Kansas	46	56	60	91	85	30
33 Kentucky, Eastern	6	9	15	23	18	6
34 Kentucky, Western	9	8	16	12	9	4
35 Louisiana, Eastern	8	23	18	20	21	26
36 Louisiana, Middle	1	3	7	3	2	3
37 Louisiana, Western	2	12	7	9	18	3
38 Maine	10	10	6	8	20	6
39 Maryland	19	31	36	28	31	17
40 Massachusetts	47	42	40	31	29	12
41 Michigan, Eastern	14	14	26	34	31	13
42 Michigan, Western	32	36	42	50	45	16
43 Minnesota	16	13	14	13	19	15
44 Mississippi, Northern	3	1	3	0	2	1
45 Mississippi, Southern	5	15	17	16	18	5
46 Missouri, Eastern	10	28	38	28	39	13
47 Missouri, Western	13	26	35	35	30	21
48 Montana	14	16	27	30	49	10
49 Nebraska	50	59	92	48	71	28
50 Nevada	140	176	187	103	99	50

DAG000002061

District	2001	2002	2003	2004	2005	2006***
51 New Hampshire	7	3	10	14	3	3
52 New Jersey	28	30	28	33	25	16
53 New Mexico	632	1,108	1,308	1,267	1,607	800
54 New York, Eastern	95	96	108	75	54	30
55 New York, Northern	33	50	48	84	51	22
56 New York, Southern	67	79	116	140	169	45
57 New York, Western	19	24	26	30	37	22
58 North Carolina, Eastern	14	17	20	23	20	6
59 North Carolina, Middle	40	30	36	55	46	13
60 North Carolina, Western	7	10	18	28	41	13
61 North Dakota	17	13	31	33	43	11
62 Northern Mariana Islands	0	0	0	0	0	0
63 Ohio, Northern	10	26	20	34	32	12
64 Ohio, Southern	3	5	10	15	14	3
65 Oklahoma, Eastern	0	1	0	0	3	0
66 Oklahoma, Northern	1	6	4	4	0	0
67 Oklahoma, Western	6	8	10	2	8	4
68 Oregon	294	216	258	196	174	104
69 Pennsylvania, Eastern	49	46	38	54	48	19
70 Pennsylvania, Middle	18	13	12	28	17	9
71 Pennsylvania, Western	7	3	7	12	28	16
72 Puerto Rico	94	65	59	90	73	36
73 Rhode Island	27	18	14	13	16	14
74 South Carolina	15	19	19	23	22	12
75 South Dakota	13	10	10	20	17	12
76 Tennessee, Eastern	23	44	66	41	24	8
77 Tennessee, Middle	12	13	24	26	25	11
78 Tennessee, Western	8	10	14	8	10	4
79 Texas, Eastern	39	49	58	51	61	30
80 Texas, Northern	99	112	223	147	129	60
81 Texas, Southern	1,212	1,569	1,964	2,443	2,912	1,444
82 Texas, Western	1,135	1,099	1,461	1,598	1,981	981
83 Utah	187	161	204	227	230	112
84 Vermont	2	7	8	12	10	1
85 Virgin Islands	17	7	8	9	17	12
86 Virginia, Eastern	21	44	36	47	48	22
87 Virginia, Western	3	7	6	12	6	5
88 Washington, Eastern	134	155	136	122	95	85
89 Washington, Western	29	17	15	20	20	13
90 West Virginia, Northern	2	1	1	4	4	1
91 West Virginia, Southern	2	2	2	3	1	0
92 Wisconsin, Eastern	2	14	29	34	18	10
93 Wisconsin, Western	2	9	9	10	12	7
94 Wyoming	11	15	26	19	20	24
All Districts	8,887	9,728	11,523	11,689	12,051	5,892

*Caseload data extracted from the United States Attorneys' Case Management System.

**Data includes any and all criminal cases/defendants where 8 U.S.C. 1326 (Reentry of Deported Aliens) was brought as any charge against a defendant.

***FY 2006 numbers are actual data through the end of March 2006.