

Written testimony of Honorable Lourdes G. Baird, Central District of California, for the Public Hearing of the U. S. Sentencing Commission, September 23, 2003

In response to Judge Murphy's request to this court, Chief Judge Marshall asked me to represent the District Court of the Central District of California at this hearing. I am honored to share with the Commission the experience of the District Court in connection with the fast-track program which has been in place in our district since August, 2001.

Prior to the initiation of the fast-track program, the vast majority of criminal alien defendants were charged with a violation of 8 U.S.C. Section 1326, Re-entry of Removed Aliens. The typical defendant in this district had more than one prior deportation and at least one prior aggravated felony. The offense level under the Sentencing Guidelines for this group of defendants ranged from approximately 20 to 24 and criminal histories were typically a category of IV or higher. These cases rarely went to trial; however, extensive pretrial motion practice and contested sentencing hearings were common. At sentencing, defendants often argued for departures based on the inequality of sentences in the Central District of California compared to those in the adjoining Southern District of California, which had a fast track program in place. Prosecutions under 8 U.S.C. Section 1325, Improper Entry by Alien, were rare.

The fast track program initiated by the U. S. Attorney's Office offers defendants which fit the U. S. Attorney's selected profile a plea to two counts of 8 U.S.C. Section 1325, Improper Entry by Alien. The first count, a misdemeanor, carries a maximum sentence of 6 months and the second count, a felony, carries a maximum sentence of 24 months. The plea agreements are for binding 30-month sentences under Federal Rule of Criminal Procedure 11(e)(1)(C). As part of the plea agreement the defendants typically waive indictment, venue, statute of limitations, and the preparation of a Presentence Report. Typically, the guilty plea and sentencing occur during the same proceeding. In the two years since the initiation of the fast track program, the number of cases filed under U.S.C. Section 1325 has increased approximately 20 times compared to the two years prior to the initiation of the fast track program; and, in that same two years since the initiation of the program, the number of cases filed under U.S.C. Section 1326 has decreased by 1/3 compared to the two years prior to the initiation of the fast track program.

The fast track program in this district does not involve departures or any other manipulation of the Sentencing Guidelines by the Court. The program is

based upon the exercise of prosecutorial discretion in charging by the U. S. Attorney's Office and the court's acceptance of the binding plea agreement under Federal Rule of Criminal Procedure 11 (e)(1)(C). Attached is a copy of a letter from the United States Attorney to the Chief Judge of the district explaining the program in detail and the reasons for the institution of the program.

Thank you for the opportunity to present this perspective to you.