

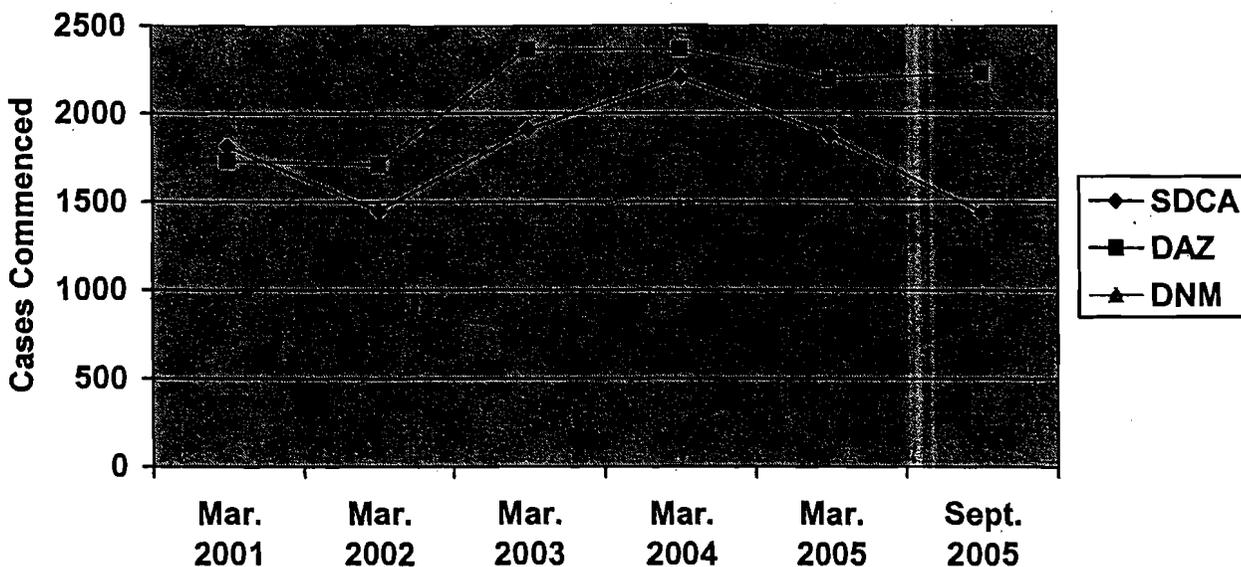
SDCA also employs about 50 contractors, many of which are supposed to provide support for the immigration caseload. The EARS report is critical about the use of contractors at SDCA and concludes that, in many instances, the contractors are needlessly consuming office resources without assisting in processing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

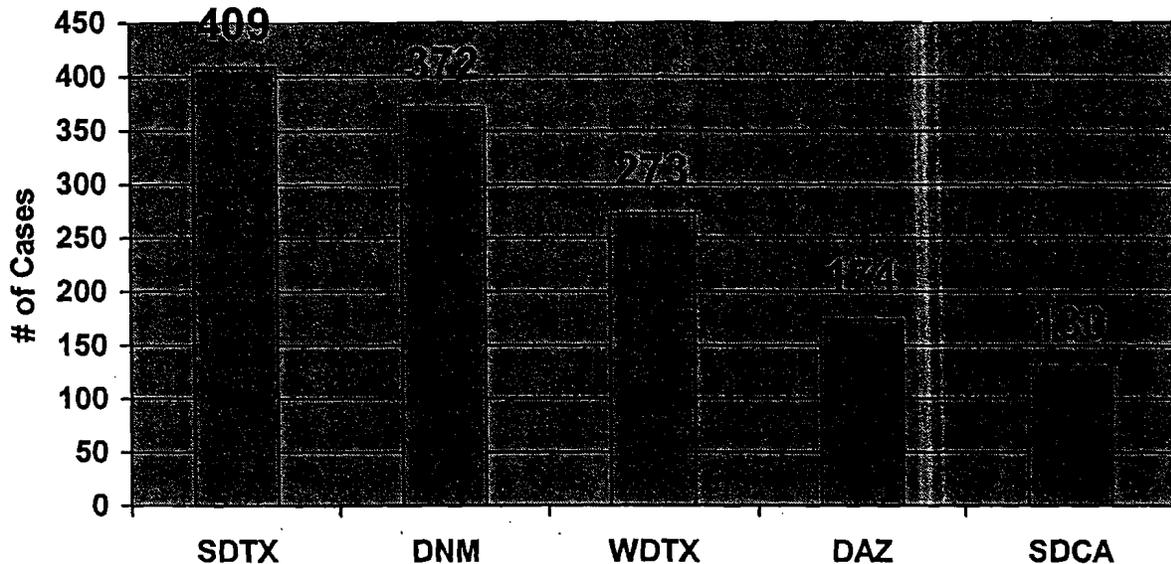


Data Source: United States Courts

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.

TO: Daniel Fridman
FROM: John Crews
SUBJECT: Increase in Immigration Prosecutions
img increase1.wpd
DATE: 19 Jun 06

As I begin to support your review of United States Attorney's Office operations with an eye towards substantially increasing the number of immigration related prosecutions there are a number of issues which I think should be considered. Those issues - in no particular order of significance after #1A and B - and some preliminary thoughts regarding them are as follows:

[1-A] *How fast do you want the increase to occur, and by how much?*

[1-B] *Is the increase in immigration related prosecutions that is desire specific to the Southwest Border (SWB) or does it include the entire USAO community?*

As even a cursory review of the statistical data shows, the five immediate SWB districts prosecute the overwhelming bulk of the immigration related offenses.^{1, 2}

There were 335 smuggling (8 U.S.C. 1324) cases filed nationally during the first five weeks of the weekly surveys (starting 12 May through 16 June 06). Of those Texas Southern (TXS) filed 75 cases (22 %); Texas Western (TXW) filed 52 cases (15 %); New Mexico (DNM) filed 13 cases (4 %); Arizona (DAZ) filed 58 (16%) and California Southern (CAS) filed

¹ In reviewing the material styled "Current Status of the Nation's Immigration Prosecutions" recently submitted to the DAG office I noted a statistical anomaly. While substantially correct, the information will need to be caveated that some slight revisions will be made.

² When I refer to data and percentages I am looking at the first five (05) weeks of statistical data.

TO: Daniel Fridman
RE: Increase in Immigration Prosecutions
21 June 2006

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71 (21%). Collectively those 5 districts accounted for 78% of the smuggling cases filed. 742 defendants were charged in those cases; by district that figure is as follows: TXS - 150 defendants (20 %); TXW - 89 defendants (11 %); DNM - 13 defendants (2 %); DAZ - 114 defendants (15%); and CAS - 120 defendants (17%). The five immediate SWB border districts accounted for 65% of the smuggling defendants.

During this time frame there were 3,520 Entry Without Inspection (EWI, 8 U.S.C. 1325(a)) cases filed. All but a handful were filed as misdemeanors. The SWB border districts filed 92% of the EWI cases. By district the breakdown is TXS - 1,189 (33%); TXW - 1,487 (39%); DNM - 168 (5%); DAZ - 458 (13%); and CAS - 71 (2%).

Nationally 1,855 re-entry cases (8 U.S.C. 1326) were filed. The SWB border districts filed 73 % of those cases. By district the data shows TXS filed 293 cases (15%); TXW filed 284 cases (15%); DNM filed 167 cases (9%); DAZ filed 558 cases (30%); and CAS filed 82 cases (4%).

During this five week reporting cycle there were 133 fraudulent document cases (18 U.S.C. 1546) cases against 189 defendants. This is a seldom used statute by the SWB offices. The defendants that are violating this statute can often be charged under either more serious charges, or ones that are easier to prove and carry a roughly equivalent penalty. TXS filed 1 case against 1 defendant; TXW filed 1 case against 5 defendants; DNM filed 3 cases against 4 defendants; and DAZ and CAS filed no cases using this statute.

DAG000002111

TO: Daniel Fridman
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The first question to be answered is how fast to do you want the increase to occur?³ The answer to that question will direct both follow questions and impact on the answers to those questions.

A more gradual increase in the number of criminal immigration prosecutions is easier to plan for but makes a less dramatic and immediate statement.

If budgets permitted the funding of open positions, either across the USAO community nationally, or along the immediate Southwest Border, an increase in immigration prosecutions could be planned for. It would, however, likely take 6-12 months before AUSAs and support staff were hired to handle the additional caseload.

It is important to remember that the border, and the districts, have various factors which make each unique. San Diego is a large city, and is immediately adjacent to another large city in Mexico (Tijuana). This makes CAS different than other SWB districts. Arizona currently accounts for approximately half of all Border Patrol seizures. DNM, TXW, and TXS all have large stretches of border that are largely unpopulated, while TXS at the same time has a number of urban areas adjacent to the border (Laredo, and the Rio Grande Valley area of McAllen/Harlingen/Brownsville); and TXW has one (El Paso).

³ AUSAs and support staff are, however, only one part of the equation. Even if the DHS officers (ICE agents, CBP agents, BP agents, etc) were cross designated as Deputy U.S. Marshal's that still doesn't solve the bedspace issues, or the impact on the USMS budget (transportation costs, housing costs (\$60+ a day per prisoner according to figures published by the Office of the Federal Detention Trustee). The impact on the court family (Judges, staff, Probation & Pretrial, FPDs and CJA, etc) also has to be considered, or at the very least, the AOUSC advised that there may be developments which will impact them.

DAG000002112

TO: Daniel Fridman
RE: Increase in Immigration Prosecutions
21 June 2006

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However, remember that circumstances change. The border can be analogized to a water balloon - when enforcement squeezes the border in one area the border bulges somewhere else. To maintain maximum flexibility the Department may wish to consider having new AUSAs sign mobility agreements⁴ as well as seeking an amendment to 28 USC 542⁵ which would authorize the AG to move AUSAs from one district to another without requiring the AUSA to become licensed in a new jurisdiction.⁶

If the Department desires a more immediate increase in criminal immigration prosecutions, particularly along the SWB border, arrangements will need to be made for additional lawyers and support staff to be detailed to the border offices.⁷ There are, however, finite limitations to the number of staff that can be placed in the current offices along the SWB border, see Appendix One, *infra*. In most SWB offices the AUSAs and the support staff in those offices have little capacity to substantially increase the number of cases that they are already

⁴ Of course so called "move money" is another budget expense.

⁵ Such a subsection might read "(c) Any individual appointed as an Assistant United States Attorney may be transferred from one district to another if the Attorney General determines such a transfer is in the public's interest. Any Assistant United States Attorney who is transferred from one district to another, or from one Department of Justice component to another will be automatically admitted to the bar of the United States District Court where the attorney is practicing."

⁶ Given the breadth of 28 U.S.C. 530b there is little reason to require AUSAs to become licensed in a particular jurisdiction.

⁷ For additional information please refer to Appendix One, *infra*.

DAG000002113

TO: Daniel Fridman
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prosecuting. A commitment by DHS to supply Special AUSAs without concomitant support staff resources will strain already overburdened staff.⁸

After deciding on how quickly the USAO community is expected to increase the number of criminal immigration prosecutions the follow on question of where are the additional cases to be prosecuted needs to be answered. The easiest place to increase the number of prosecutions is along the five SWB districts. The offices and related court institutions and defense bar are already well acquainted with the subject matter. There are also already substantial federal immigration law enforcement officers in the area.⁹ This makes the SWB USAO's and court institutions as well as the law enforcement community qualitatively different from most other areas.

Two different United States Attorney's (Eric Melgren, District of Kansas, and Alice Martin, Northern District of Alabama) have caused me to become aware of a recent shift in priorities within the Immigration and Customs Enforcement (BICE) component of DHS. ICE has apparently instructed its inland offices to respond when notified that local law enforcement

⁸ Reactive cases are support staff intensive. Many SWB Supervisory AUSAs have advised their respective United States Attorney's that they have a more pressing need for staff than they do lawyers. The Department may wish to reconsider the ratio of legal assistants and paralegals to AUSAs for offices that have large reactive dockets.

⁹ Along most of the SWB the bulk of the criminal immigration cases are made by Border Patrol Agents (BPAs), a semi-free standing component within the Customs and Border Protection (CBP) directorate in DHS. Additionally, the vast majority of any new BPA's will be assigned to the SWB. Any staffing level increases based on the number of BPAs should also be cognizant that BPAs are also responsible for substantial number of narcotics related cases, as are CBP inspectors at some of the Ports of Entry (POEs).

DAG000002114

TO: Daniel Fridman
RE: Increase in Immigration Prosecutions
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officers have detained aliens suspected of being in the United States illegally. To ensure officer safety two ICE Special Agents (S A's) are always dispatched. This policy shift has degraded the ability of many of the ICE offices to provide investigatory support to criminal cases. If continued this policy shift will impact the ability of many inland USAOs to substantially increase the number of criminal immigration prosecutions.

After answering the first two questions [(1) how fast does the Department want the number of prosecutions increased and by how much; and (2) where does the Department want the increase to occur, along the SWB or nationally] there are a variety of collateral issues that arise.

[2] *Fast Tracks*

The ODAG should expect that additional USAOs will request fast track authorizations if the number of immigration prosecutions rises.

[3] *Intake/Threshold Levels*

Many USAOs have preset intake thresholds. Along the SWB all of the USAO's have intake thresholds regarding immigration prosecutions. Because most of the SWB offices usually have a blanket acceptance of any prosecutable¹⁰ case which meets their intake thresholds it will be difficult to increase the number of immigration cases without addressing the intake thresholds of the offices. Because of the presence of large numbers of BPAs the SWB USAOs would be

¹⁰ There are variety of factors which impact upon the viability of any proposed prosecution.

DAG000002115

TO: Daniel Fridman
RE: Increase in Immigration Prosecutions
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most able to quickly increase the number of immigration prosecutions. A paucity of federal criminal immigration officers in other parts of the country will impede the ability of other USAOs to substantially increase the number of immigration prosecutions. The cross training or designation of other federal, state, and local authorities participating in identity theft task forces as well as document and benefit fraud task forces, state drivers license personnel, Social Security OIG agents, State Department Bureau of Diplomatic Security agents, Department of Labor agents, and others could result in some incremental increase in the number of immigration related prosecutions. Another potential source of good cases is from Weed & Seed, PSN, and related anti-gang initiatives and task forces. This goal will, however, be impeded by the so called 'sanctuary' policies of many local and state governments. These policies preclude many police and related governmental agencies from either inquiring regarding the immigration status of individuals as well as prohibiting the reporting of the same to federal authorities. One way to ensure assistance would be to tie any DOJ and DHS grants, including terrorism related monies, to full compliance and assistance in criminal and administrative immigration law enforcement activities.

If I can provide any assistance to you during this project please contact me at your convenience.

END

DAG000002116

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Thursday, June 22, 2006 5:23 PM
To: Otis, Lee L
Subject: talker re sdca.doc

Attachments: talker re sdca.doc

Let me know if you need more info -- feel free to cut it down.

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



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(34 KB)

Response re: SDCA

Of course, our U.S. Attorneys are doing everything they can to enforce the law, and at the same time, they must establish priorities to ensure that they accomplish the mission of the Department of Justice.

- Immigration enforcement is one many important priorities the Department of Justice has established.
- Other equally important missions include prosecution of online child predators, prosecution of firearms offenses and violent crimes, prosecution of drug trafficking organizations such as those that manufacture and distribute methamphetamine, health care fraud prosecutions, and corporate fraud prosecutions.

San Diego is California's second largest city and the seventh largest city in the country – so you can imagine that immigration is one of many challenges facing the city.

- 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.
- By some estimates, Border Patrol made 140,000 immigration arrests in the Sector last year.

The local courts do not have the capacity to handle 140,000 individual cases, and neither does the U.S. Attorney's Office.

- So we must prioritize the cases and prosecute the most egregious violators so that we can achieve the greatest impact with limited resources.
- To increase the efficiency of the offices, we have authorized fast-track programs to cut the amount of time it takes to process an immigration prosecution.

Southern California has prosecuted some major immigration cases in the last few weeks.

- In the last five weeks, Southern California accounted for 21% of all alien smuggling cases filed nationally.
- On June 7, 2006, SDCA unsealed complaints against a Customs and Border Patrol Officer who was being paid by a major alien smuggling organization to allow the smugglers to cross the Otay Mesa point of entry with carloads of aliens.
 - In addition to the officer, 8 individuals, including two leads of smuggling organizations were arrested.
- In a separate case with similar facts, on June 8, 2006, a 15 count indictment was unsealed against another CBP Officer and seven other defendants.
 - The Officer was taking bribes and using his official position to permit alien smugglers to bring in aliens across the border at San Ysidro.

DAG000002118

By targeting prosecutorial resources to take down smuggling organizations and aliens with serious criminal histories, we can have the greatest impact while maintaining our commitment to the other equally important missions of the Department.

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Friday, June 23, 2006 5:25 PM
To: Mercer, Bill (ODAG); Elston, Michael (ODAG); Tenpas, Ronald J (ODAG)
Subject: Fw: Congressman Issa's Request for a Meeting

Attachments: tmp.htm

FYI. I'll help Rebecca with this, but we should talk about it soon.

Dan

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

From: Smith, David L. (USAEO)
To: Seidel, Rebecca; Scott-Finan, Nancy
CC: Fridman, Daniel (ODAG); Otis, Lee L; Crews, John (USAEO); Voris, Natalie (USAEO); Harrigan, Shane (USACAS)
Sent: Fri Jun 23 17:19:55 2006
Subject: FW: Congressman Issa's Request for a Meeting



tmp.htm (4 KB)

Rebecca an Nancy,

Rep. Issa has contacted the SDCA to seek a meeting with USA Lam in early July. I understand that Carol is presently out of the country and will be for at least another week.

Presumably he would ask her what resources she needs to achieve "zero tolerance" on immigration and she would be limited to urging him to support the President's budget. Still, with appropriate talking points, I see this as an opportunity to ratchet down the venom coming from Issa. Carol may be able to create a relationship with Issa in a face to face setting that she could not do otherwise.

Let us know what the thinking is on this and whether you will be responding to Issa's staff.

Thanks

Dave

>
>

From: Porter, Brenda (USACAS)
> **Sent:** Friday, June 23, 2006 4:59 PM
> **To:** Smith, David L. (USAEO)
> **Cc:** Harrigan, Shane (USACAS)
> **Subject:** Congressman Issa's Request for a Meeting
>
> Mr. Smith,
>
> We wanted you to be aware of a phone call we received today from Don
> McKinney of Congressman Darrell Issa's office, requesting to schedule
> a meeting between Congressman Issa and United States Attorney Carol
> Lam. Mr. McKinney said that the Congressman will be in town on July 6
> and he would like to see if the U.S. Attorney is available to meet
> that afternoon -- he referred to the meeting as a
> "needs/assessment-type meeting." (The House is having hearings on the

> Immigration Bill on July 5, 2006, in San Diego). I believe you are
> familiar with the history between Congressman Issa and our office. At
> this time, I was planning to call Mr. McKinney and state that we must
> notify the Department to get this cleared, and that he should expect
> another call with a reply, but at this time, we could not schedule a
> meeting. I will await your reply for further guidance regarding this
> matter.

>

> Thank you,

>

> Brenda Porter

> Administrative Assistant to

> United States Attorney Carol C. Lam

> Southern District of California

> (619) 557-5892

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Friday, June 23, 2006 5:28 PM
To: Seidel, Rebecca
Cc: Mercer, Bill (ODAG); Elston, Michael (ODAG)
Subject: Fw: Congressman Issa's Request for a Meeting

Attachments: tmp.htm

Rebecca -

I'm prepared to help you with this. I have a lot of the relevant stats and reports in hand. We should talk on Monday.

Dan

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

From: Smith, David L. (USAEO)
To: Seidel, Rebecca; Scott-Finan, Nancy
CC: Fridman, Daniel (ODAG); Otis, Lee L; Crews, John (USAEO); Voris, Natalie (USAEO); Harrigan, Shane (USACAS)
Sent: Fri Jun 23 17:19:55 2006
Subject: FW: Congressman Issa's Request for a Meeting



tmp.htm (4 KB)

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> Brenda Porter
> Administrative Assistant to
> United States Attorney Carol C. Lam
> Southern District of California
> (619) 557-5892

Fridman, Daniel (ODAG)

From: Crews, John (USAEO)
Sent: Wednesday, June 28, 2006 3:32 PM
To: Seidel, Rebecca; Scott-Finan, Nancy; Smith, David L. (USAEO)
Cc: Fridman, Daniel (ODAG); Otis, Lee L; Voris, Natalie (USAEO); Harrigan, Shane (USACAS)
Subject: RE: Congressman Issa's Request for a Meeting

Attachments: tmp.htm



tmp.htm (6 KB)

If it happens, which is probably a good idea in one way or another; someone from OLA or here out to go. JGC.

>
>

From: Smith, David L. (USAEO)
> **Sent:** Wednesday, June 28, 2006 3:15 PM
> **To:** Scott-Finan, Nancy; Seidel, Rebecca
> **Cc:** Crews, John (USAEO); Voris, Natalie (USAEO); Harrigan, Shane
> (USACAS); Otis, Lee L; Fridman, Daniel (ODAG)
> **Subject:** RE: Congressman Issa's Request for a Meeting

>
> Rebecca or Nancy,

>
> We need to give SDCA some guidance on this. Issa's staff wants to
> come over to the USAO next week to meet, per the below. I understand
> that Carol (who is still out of the country, until tomorrow) is not
> overly inclined to meet but would like to have her senior managers
> meet with Issa's staff. It is not clear yet if Issa himself plans to
> come, though he might.

>
> Dave

>

From: Smith, David L. (USAEO)
> **Sent:** Friday, June 23, 2006 5:20 PM
> **To:** Scott-Finan, Nancy; Seidel, Rebecca
> **Cc:** Crews, John (USAEO); Voris, Natalie (USAEO); Harrigan, Shane
> (USACAS); Otis, Lee L; Fridman, Daniel (ODAG)
> **Subject:** FW: Congressman Issa's Request for a Meeting

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> Sent: Friday, June 23, 2006 4:59 PM
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> Subject: Congressman Issa's Request for a Meeting

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> Brenda Porter
> Administrative Assistant to
> United States Attorney Carol C. Lam
> Southern District of California
> (619) 557-5892

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Wednesday, June 28, 2006 5:29 PM
To: Mercer, Bill (ODAG)
Subject: FW: Congressman Issa's Request for a Meeting

Attachments: tmp.htm



tmp.htm (5 KB)

I want to make sure you are in the loop on this. Rep. Issa wants to meet with Carol Lam re: SDCA.

Dan

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

From: Smith, David L. (USAEO)
Sent: Wednesday, June 28, 2006 3:15 PM
To: Seidel, Rebecca; Scott-Finan, Nancy
Cc: Fridman, Daniel (ODAG); Otis, Lee L; Crews, John (USAEO); Voris, Natalie (USAEO); Harrigan, Shane (USACAS)
Subject: RE: Congressman Issa's Request for a Meeting

Rebecca or Nancy,

We need to give SDCA some guidance on this. Issa's staff wants to come over to the USAO next week to meet, per the below. I understand that Carol (who is still out of the country, until tomorrow) is not overly inclined to meet but would like to have her senior managers meet with Issa's staff. It is not clear yet if Issa himself plans to come, though he might.

Dave

>
>

From: Smith, David L. (USAEO)
> **Sent:** Friday, June 23, 2006 5:20 PM
> **To:** Scott-Finan, Nancy; Seidel, Rebecca
> **Cc:** Crews, John (USAEO); Voris, Natalie (USAEO); Harrigan, Shane
> (USACAS); Otis, Lee L; Fridman, Daniel (ODAG)
> **Subject:** .FW: Congressman Issa's Request for a Meeting
>
> Rebecca and Nancy,
>
> Rep. Issa has contacted the SDCA to seek a meeting with USA Lam in
> early July. I understand that Carol is presently out of the country
> and will be for at least another week.
>
> Presumably he would ask her what resources she needs to achieve "zero
> tolerance" on immigration and she would be limited to urging him to
> support the President's budget. Still, with appropriate talking
> points, I see this as an opportunity to ratchet down the venom coming
> from Issa. Carol may be able to create a relationship with Issa in a
> face to face setting that she could not do otherwise.
>
> Let us know what the thinking is on this and whether you will be
> responding to Issa's staff.
>

> Thanks

>

> Dave

>

>

>

> From: Porter, Brenda (USACAS)
> Sent: Friday, June 23, 2006 4:59 PM
> To: Smith, David L. (USAEO)
> Cc: Harrigan, Shane (USACAS)
> Subject: Congressman Issa's Request for a Meeting

>

> Mr. Smith,

>

> We wanted you to be aware of a phone call we received today from Don
> McKinney of Congressman Darrell Issa's office, requesting to schedule
> a meeting between Congressman Issa and United States Attorney Carol
> Lam. Mr. McKinney said that the Congressman will be in town on July 6
> and he would like to see if the U.S. Attorney is available to meet
> that afternoon -- he referred to the meeting as a
> "needs/assessment-type meeting." (The House is having hearings on the
> Immigration Bill on July 5, 2006, in San Diego). I believe you are
> familiar with the history between Congressman Issa and our office. At
> this time, I was planning to call Mr. McKinney and state that we must
> notify the Department to get this cleared, and that he should expect
> another call with a reply, but at this time, we could not schedule a
> meeting. I will await your reply for further guidance regarding this
> matter.

>

> Thank you,

>

> Brenda Porter
> Administrative Assistant to
> United States Attorney Carol C. Lam
> Southern District of California
> (619) 557-5892

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Thursday, June 29, 2006 7:31 PM
To: Voris, Natalie (USAEO); Seidel, Rebecca
Subject: RE: Congressman Issa's Request for a Meeting

Ok, we'll schedule a meeting. As far as you know, nothing has yet been set up between Issa and Lam, right?

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

From: Voris, Natalie (USAEO)
Sent: Thursday, June 29, 2006 6:46 PM
To: Seidel, Rebecca; Fridman, Daniel (ODAG)
Subject: Re: Congressman Issa's Request for a Meeting

For eousa, john crews and david smith.

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

From: Fridman, Daniel (ODAG) <Daniel.Fridman2@usdoj.gov>
To: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Sent: Thu Jun 29 18:44:16 2006
Subject: RE: Congressman Issa's Request for a Meeting

Rebecca and Natalie -

The DAG would like to have a meeting on this soon to discuss our approach to the meeting. Let me know who from your components would be the best people to participate.

Dan

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

From: Smith, David L. (USAEO)
Sent: Wednesday, June 28, 2006 3:15 PM
To: Seidel, Rebecca; Scott-Finan, Nancy
Cc: Fridman, Daniel (ODAG); Otis, Lee L; Crews, John (USAEO); Voris, Natalie (USAEO); Harrigan, Shane (USACAS)
Subject: RE: Congressman Issa's Request for a Meeting

Rebecca or Nancy,

We need to give SDCA some guidance on this. Issa's staff wants to come over to the USAO next week to meet, per the below. I understand that Carol (who is still out of the country, until tomorrow) is not overly inclined to meet but would like to have her senior managers meet with Issa's staff. It is not clear yet if Issa himself plans to come, though he might.

Dave

>
> **From:** Smith, David L. (USAEO)
> **Sent:** Friday, June 23, 2006 5:20 PM
> **To:** Scott-Finan, Nancy; Seidel, Rebecca
> **Cc:** Crews, John (USAEO); Voris, Natalie (USAEO); Harrigan, Shane
> (USACAS); Otis, Lee L; Fridman, Daniel (ODAG)

> Subject: FW: Congressman Issa's Request for a Meeting
>
> Rebecca and Nancy,
>
> Rep. Issa has contacted the SDCA to seek a meeting with USA Lam in
> early July. I understand that Carol is presently out of the country
> and will be for at least another week.
>
> Presumably he would ask her what resources she needs to achieve "zero
> tolerance" on immigration and she would be limited to urging him to
> support the President's budget. Still, with appropriate talking
> points, I see this as an opportunity to ratchet down the venom coming
> from Issa. Carol may be able to create a relationship with Issa in a
> face to face setting that she could not do otherwise.
>
> Let us know what the thinking is on this and whether you will be
> responding to Issa's staff.

> Thanks

> Dave

> From: Porter, Brenda (USACAS)
> Sent: Friday, June 23, 2006 4:59 PM
> To: Smith, David L. (USAEO)
> Cc: Harrigan, Shane (USACAS)
> Subject: Congressman Issa's Request for a Meeting

> Mr. Smith,

> We wanted you to be aware of a phone call we received today from Don
> McKinney of Congressman Darrell Issa's office, requesting to schedule
> a meeting between Congressman Issa and United States Attorney Carol
> Lam. Mr. McKinney said that the Congressman will be in town on July 6
> and he would like to see if the U.S. Attorney is available to meet
> that afternoon -- he referred to the meeting as a
> "needs/assessment-type meeting." (The House is having hearings on the
> Immigration Bill on July 5, 2006, in San Diego). I believe you are
> familiar with the history between Congressman Issa and our office. At
> this time, I was planning to call Mr. McKinney and state that we must
> notify the Department to get this cleared, and that he should expect
> another call with a reply, but at this time, we could not schedule a
> meeting. I will await your reply for further guidance regarding this
> matter.

> Thank you,

> Brenda Porter
> Administrative Assistant to
> United States Attorney Carol C. Lam
> Southern District of California
> (619) 557-5892

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Wednesday, July 05, 2006 10:45 AM
To: Mercer, Bill (ODAG)
Subject: Re: Congressman Issa

Ok, I'll circle back with Rebecca and make sure that we keep an eye on this.

Dan

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

From: Mercer, Bill (ODAG)
To: Fridman, Daniel (ODAG)
Sent: Wed Jul 05 10:29:09 2006
Subject: Fw: Congressman Issa

Sent from my BlackBerry Wireless Handheld

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

From: Moschella, William
To: Elston, Michael (ODAG); Mercer, Bill (ODAG)
Sent: Wed Jul 05 10:19:38 2006
Subject: FW: Congressman Issa

FYI -- I sent this earlier from blackberry but it did not go through.

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

From: Lam, Carol (USACAS)
Sent: Friday, June 30, 2006 10:28 PM
To: Moschella, William; Seidel, Rebecca
Subject: Congressman Issa

Will, Rebecca,

At my request, Congressman Issa called me this afternoon. I told him that I am still awaiting DOJ authority to meet with him, but that I wanted to be able to reassure DOJ that any discussion we had would be constructive and made in good faith, in light of the past statements he has made about our office and me personally. He emphasized that any such discussion would be "off the record" and "not for attribution," but he also said that he would not change his public statements in any way because of our meeting -- that is, he would not use anything I told him in a public statement, but he continues to believe I am not allocating my resources appropriately and that I should be prosecuting as many coyotes as I can. He also said that Congress has allocated money specifically for this purpose (he referenced money that Congress had approved for human trafficking) and he said that I should be using those resources to prosecute more alien smugglers. I said that if his impression is that our office has received additional resources, that impression is incorrect, and that my understanding is that because U.S. Attorneys Offices did not receive all the funding from Congress that the President requested last year, the shortfall has had to be shared by all the U.S. Attorneys offices. I said what we could really use is his support of the President's budget request. He would like to know more about our budget numbers; I made no assurance to him that I could provide any of that to him.

I tried to explain some of the other ways we deal with the alien smuggling problem (ie, through 1326 cases, prosecuting corrupt border

patrol agents, etc), but he remained fairly fixated on the coyote issue. Despite my explanation that prosecuting hundreds of coyotes only to have them receive 30- or 60-day sentences is an inefficient use of attorney resources, I don't think he is inclined to give up the coyote stand yet. In light of our phone conversation, he did not think we have to meet next week, and we could use a couple of weeks to gather additional information. My impression is that he may no longer be interested in meeting with me.

Please let me know if you want me to take any additional action with respect to Congressman Issa.

Carol

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Thursday, July 06, 2006 11:49 AM
To: Brand, Rachel
Cc: Bounds, Ryan W (OLP)
Subject: RE: Issa Questions and Response

Rachel -

Thanks for the heads up.

Dan

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

From: Brand, Rachel
Sent: Thursday, July 06, 2006 11:07 AM
To: Mercer, Bill (ODAG); Elston, Michael (ODAG); Fridman, Daniel (ODAG)
Cc: Bounds, Ryan W (OLP)
Subject: FW: Issa Questions and Response

Fyi - this is unfortunate. CBP witness at the field hearing in California bashing USAOs for rate of immigration prosecutions.

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

From: Seidel, Rebecca
Sent: Thursday, July 06, 2006 11:04 AM
To: Bounds, Ryan W (OLP); Brand, Rachel
Subject: RE: Issa Questions and Response

CBP prepped him before the hearing, but not clear as to what he was prepped on, they won't know till folks get back from Texas (not sure why). But he has been spoken to after the hearing as to why what he said was inappropriate (Tiffany mentioned something like "stay in your own lane" which didn't sound strong enough for me).

I a going to try to reach out ot CPB leg too.

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

From: Bounds, Ryan W (OLP)
Sent: Thursday, July 06, 2006 9:44 AM
To: Brand, Rachel; Seidel, Rebecca
Subject: RE: Issa Questions and Response

I take it afterward.

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

From: Brand, Rachel
Sent: Thursday, July 06, 2006 9:43 AM
To: Bounds, Ryan W (OLP); Seidel, Rebecca
Subject: RE: Issa Questions and Response

After the hearing or before?

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

From: Bounds, Ryan W (OLP)
Sent: Thursday, July 06, 2006 9:21 AM
To: Brand, Rachel
Subject: Fw: Issa Questions and Response

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

From: Seidel, Rebecca
To: Bounds, Ryan W (OLP)
Sent: Thu Jul 06 09:20:03 2006
Subject: Re: Issa Questions and Response

Spoke to Tiffany yesterday. She said the witness has been spoken to.

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

From: Bounds, Ryan W (OLP)
To: Seidel, Rebecca
Sent: Thu Jul 06 09:15:02 2006
Subject: Fw: Issa Questions and Response

See below--did you get any response from DHS/OLA re prep of the witness?

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

From: Michael_P_Moreland@who.eop.gov
To: Bounds, Ryan W (OLP); Brand, Rachel
Sent: Thu Jul 06 09:10:23 2006
Subject: FW: Issa Questions and Response

It's up to you guys whether you want to raise this at Deputies today, but it sounds like DHS' prep of the Border Control Sector Chief wasn't up to snuff (perhaps because they didn't prep him at all). Maybe a sector chief isn't an "Administration witness," strictly speaking, but it seems to me he's way out of line criticizing DOJ for prosecution rates and calling for uniform national prosecution intake standards. Another DHS triumph.

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

From: Rebecca.Seidel@usdoj.gov [mailto:Rebecca.Seidel@usdoj.gov]
Sent: Wednesday, July 05, 2006 1:47 PM
To: Tiffany.Kebodeaux@dhs.gov; Don.Kent@dhs.gov; Moreland, Michael P.
Cc: Sarah.E.Roland@usdoj.gov; Ryan.W.Bounds@usdoj.gov; Otis, Lee (SMO); Natalie.Voris@usdoj.gov
Subject: FW: Issa Questions and Response
Importance: High

see below. Who prepped the Border Patrol for this hearing? Who is he to say what prosecution standards should be? If you aren't already watching, you can stream it on C-Span.org

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

From: Crews, John (USAE0)
Sent: Wednesday, July 05, 2006 1:34 PM
To: Seidel, Rebecca; McHenry, Teresa; Voris, Natalie (USAE0)
Cc: Smith, David L. (USAE0); Hahn, Paul (USAE0); Roberts, Tom; Campbell, Benton
Subject: RE: Issa Questions and Response

He just did it again. He was asked a question by a Republic Congresswoman from Tennessee. He suggested uniformity in national intake criteria. He said that cases which were declined earlier had been prosecuted as 8 USC 1326 defendants rather than 1324 defendants. However now they weren't being prosecuted. JGC.

From: Crews, John (USAE0) [mailto:John.Crews@usdoj.gov]
Sent: Wednesday, July 05, 2006 1:19 PM

To: Seidel, Rebecca; Voris, Natalie (USAEO); McHenry, Teresa
Cc: Smith, David L. (USAEO); Hahn, Paul (USAEO); Roberts, Tom
Subject: Issa Questions and Response
Importance: High

Listening to HJC field hearing now ongoing on CSPAN.

Congressman Issa, vice chair of the committee having the hearings, asked questions regarding the prosecutions guidelines of SDCA. Congressman Issa made reference to the station report he's made reference to in the past, and which he referenced in his recent letter to Ms. Lam. Congressman Issa said wasn't it true that only 6% of the individuals apprehended were prosecuted for alien smuggling.

Border Patrol Sector Chief Darryl Griffen said that USAO SD CA changed prosecution guidelines in December, 2004, he believed on December 7, 2004. Griffen said in the year prior to that time his office had taken for prosecution some 367 aliens transporters, mostly guides. The intake guidelines changed, and in the remainder of that fiscal year they had prosecuted 5. Chief Griffen went on to say that it was his understanding each USA had discretion to set his or her own intake guidelines; and that these varied between each judicial district. Griffen went on to suggest that there be uniform national intake guidelines.

JGC

CC: Frisone

10 JULY 2006
FROM: MRCAL

Immigrant

Mercer, Bill (ODAG)

From: Otis, Lee L
Sent: Wednesday, November 23, 2005 5:22 PM
To: Mercer, Bill (ODAG)
Subject: FW: Southern District immigration crime prosecutions - Media Request for Information Related to Press Release of U.S. Representative Darrell Issa



tmp.htm



Immigration Stats.pdf



SDCA Stats.pdf

This is what EOUSA came up with as material that would be responsive to the press inquiry I mentioned regarding the Issa letter. Still looking for the stuff I promised to get you--I know it's somewhere in my office.

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

From: Smith, David L. (USAEO)
Sent: Wednesday, November 23, 2005 5:12 PM
To: Smith, Kimberly A
Cc: Otis, Lee L; Voris, Natalie (USAEO)
Subject: FW: Southern District immigration crime prosecutions - Media Request for Information Related to Press Release of U.S. Representative Darrell Issa

Kim,

Attached are the LIONS stats in response to the reporter's questions below. I believe we should only provide data in response to questions Nos. 1 and 4 below. Note that in this LIONS data parlance, "Matters" means investigations, i.e., non-public data. "Cases" means a matter that has been charged, i.e., there is a charging document now and the case is no longer in the investigation phase.

As to No. 1: Total number of SDCA immigration criminal prosecutions, this should be interpreted as "cases filed" and is:

00	01	02	03	04
05	2116	1907	1921	2463
	2527	1473		

We can give out this data. Note that I have taken this from the "immigration" category code chart, which includes cases under 8 USC 1324, 1325 and 1326 plus some misc others. (First chart attached, last page.) I can explain that more fully in a telephone call. The drop in 2005 is because SDCA revamped their pros guidelines and fewer cases met the threshold. I can flesh that out further on the phone as well.

As to No. 2: cases referred for prosecution: That may be interpreted as "matters received." See same chart. This is not a public number and we do not typically give it out. We should not do so in this case. Note similar drop in cases referred, again due, I believe, to change in SDCA pros guidelines.

No. 3: Cases accepted and declined. "Matters terminated" is roughly equal to cases declined. Same chart. This is not a public number and we should not give it out in this case. Note that "matters received" includes all the cases referred in a given year, while "matters terminated" includes matters that may have been pending for several years and were terminated in that year.

No. 4: Disposition of 1324, 1325 and 1326. I would interpret this as

"total defendants guilty," which lists the number of individual defendants found guilty. The requested stat for "cases" is misleading, since people forget that many cases have multiple defendants. We would have to be clear that we are providing defendants rather than cases. This is public info we can give. See second chart for specific pages on 1324, 1325 and 1326.

	00	01	02	03
04	05			
1324 411	476	376	557	
506	560			
1325 812	515	581	764	
883	504			
1326 553	904	602	698	
623	404			

We should not provide responses to the other inquiries.

Dave

<<Immigration Stats.pdf>> <<SDCA Stats.pdf>>

>
>

> From: Smith, David L. (USAEO)
> Sent: Thursday, November 17, 2005 11:13 AM
> To: Tone, Barbara (USAEO); Tripodo, Joe (USAEO)
> Cc: Scott-Finan, Nancy; Smith, Kimberly A; Hahn, Paul (USAEO);
> Voris, Natalie (USAEO)
> Subject: FW: Southern District immigration crime prosecutions -
> Media Request for Information Related to Press Release of U.S.
> Representative Darrell Issa
>
> Barbara,
>
> Per the below, can you pull cases filed and dispositions (including
> sentencing ranges) for SDCA under 8 USC 1325 and 1326. (I believe
> Joe has already provided the 1324 stats last week for something else.)
> This would basically respond to request numbers 1 and 4 below. I
> don't think we should give anything else.
>
> Paul, do you agree?
>
> I will give Tom Mrozek, the CDCA press guy, a call to see what they
> provided already.
>
>
> Thanks
> Dave
>
>
>

> From: Peak, Steve (USACAS)
> Sent: Wednesday, November 16, 2005 6:20 PM
> To: Smith, David L. (USAEO)
> Cc: Clark, Stephen (USACAS); Harrigan, Shane (USACAS); Hartman,
> Debra (USACAS)
> Subject: FW: Southern District immigration crime prosecutions -
> Media Request for Information Related to Press Release of U.S.
> Representative Darrell Issa
>
> Dave:
>

> Per our telephone conversation this afternoon, I am forwarding an
> email message that our Media Coordinator, Debra Hartman
> (619-557-5275), received from a reporter from a Riverside County,
> California newspaper called The Press-Enterprise. Apparently, the
> newspaper serves the district of U.S. Representative Darrell Issa and
> the reporter, Sharon McNary, has been writing about immigration
> issues. As you can see by the email string, reporter McNary is
> seeking information which she believes is needed to write about Rep.
> Issa's concerns about our office's immigration prosecutions. McNary
> also called me about this issue and I referred her to Ms. Hartman.

>
> McNary is seeking the following information about our office's
> immigration criminal prosecutions for each of the fiscal years 2000
> through 2005:

>
> (1) the total number of immigration criminal prosecutions;
>
> (2) the number of cases referred for prosecution;
>
> (3) the number of cases accepted and declined for prosecution;
>
> (4) the disposition of cases for each of the following three charges:
>
> 8 USC 1325 - Immigration-improper entry by aliens
> 8 USC 1326 - Immigration-reentry of removed aliens
> 8 USC 1324 - Immigration-bringing in/harboring aliens
>
> (5) confirmation about the accuracy of statements attributed to me or
> the U.S. Attorney in Rep. Issa's press releases.

>
> Specifically, she wants to know whether:

>
> (a) our office "announced late last year that" [we] "would scale
> back prosecutions of alien smugglers";
>
> (b) I said that "[o]ur resources are limited and we have
> numerous and competing enforcement priorities to consider and meet";
>
> (c) our office "had stated prior to this policy that it had
> neither the manpower nor funding to prosecute any but the most
> egregious cases of smuggling."

>
> (6) whether the U.S. Attorney or I had made public statements in
> recent years about:

>
> (a) the priority given to prosecuting human smuggling cases;
>
> (b) the availability of money and resources to prosecute such
> cases.

>
> (7) what criteria are used by our office for deciding which 8 USC 1324
> (bringing in/harboring alien) cases to prosecute, and how those
> criteria have changed in the past year or so.

>
> Apparently, reporter McNary has also contacted the U.S. Border Patrol
> (USB), San Diego Sector and made similar inquiries. In the attached
> message (which was forwarded to us for guidance in preparing a
> response), McNary asked USB for the following information:

>
> (1) what are the guidelines used by the USB to present a human
> smuggling case for criminal prosecution by the SAO?
>
> (2) have those guidelines changes over the past 5 years?
>
> (3) how many cases have been presented over each of the last 5 years?

> (4) How many have been accepted / rejected over that time period?
>
> We intend to recommend that USB not release or describe their
> prosecution guidelines and, particularly, not release or describe our
> prosecution guidelines, but that it is their decision as to how to
> respond, consistent with USB and DHS policy. In this regard, we are
> hesitant to discuss our prosecution guidelines at all with the media.
>
> We have learned that reporter McNary has also contacted the USAO, CDCA
> and made similar inquiries. According to their Media Coordinator,
> Thom Mrozek, they have already provided some limited statistical
> information to McNary, which we are informed came from LIONS.
>
> We have been informed previously that the Department may make
> statistical information gathered through LIONS available to the media
> or academia in some cases. We are unclear whether we are authorized
> to provide the media with LIONS information directly. Since we have
> found that the information reported in LIONS is categorized
> differently from the format in which have been asked to provide, we
> are concerned that our numbers might be inconsistent with what the
> Department might have already produced or might produce in the future.
> Our preference would be for the Department to release such data,
> particularly in light of the ongoing contact it is having with Rep.
> Issa on the general issue of the Department's immigration-related
> prosecutions policy and our district's handling of such cases.
> However, in light of the fact that the USAO, CDCA has already released
> some information, we don't want to appear to be hiding information,
> particularly since we believe we are aggressively and effectively
> prosecuting such cases.
>
> Please consider this information and give us your guidance at your
> earliest convenience. Thanks.

> Steven A. Peak
> Assistant United States Attorney
> Deputy Chief, General Crimes Section
> Chief, Intake Unit
> United States Attorney's Office
> Southern District of California
> 880 Front Street, Room 6293
> San Diego, California 92101-8893
> 619-557-6932 / 619-557-6026/7381 (Fax)
> E-Mail: steve.peak@usdoj.gov

> CONFIDENTIALITY NOTICE: This communication with its contents and
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> delete the email, any attachments, and all copies from your computer.

> << Message: FW: Border Patrol questions >>

> -----Original Message-----

> From: [smcnary \[mailto:smcnary@pe.com\]](mailto:smcnary@pe.com)
> Sent: Friday, November 11, 2005 9:55 AM
> To: 'debra.hartman@us.doj.gov'
> Subject: Southern District immigration crime prosecutions

> Debra -- Looks like I used an incorrect e-mail for you the first time
> I sent this.
> Sharon

> -----Original Message-----

> From: [smcnary \[mailto:smcnary@pe.com\]](mailto:smcnary@pe.com)

> Sent: Thursday, November 10, 2005 3:50 PM
> To: debrahartman@us.doj.gov
> Subject: Southern District immigration crime prosecutions
>
> Debra --
>
> Thank you for your help this afternoon. Per your suggestion, I'm
> requesting detailed information on the prosecution of immigration
> cases in the Southern District of California and making the same
> request of the Central District, which includes our circulation area.
> Optimally, I would like to interview U.S. Attorney Carol Lam about the
> issue of prosecuting coyotes. I'm working on a deadline for early next
> week, and thanks in advance for your help.
>
> In a January 2005 letter to Rep. Darrell Issa, Assistant Attorney
> General William E. Moschella said, "The number of alien smuggling
> offenses in violation of 8 U.S.C. 1324 charged by the United States
> Attorneys' Offices in the Southwest Border Districts in fiscal year
> 2004 represents an approximate increase of 49 percent from the number
> for alien smuggling offenses charged in fiscal year 2001."
>
> I'm looking for the specific numbers from the Southern District that
> went into his assertion.
>
> For each of the fiscal years 2000 through 2005, I request the
> following information:
>
> Number of total immigration criminal prosecutions in the Southern
> District for each year 2000-2005
>
> I also request information on the number of cases referred each fiscal
> year 2000-2005 for prosecution, number of cases accepted and declined
> for prosecution, and the disposition of cases for each of the
> following three charges:
>
> 8 USC 1325 Immigration-improper entry by aliens
> 8 USC 1326 Immigration-reentry of removed aliens
> 8 USC 1324 Immigration-bringing in/harboring aliens
>
> Rep. Darrell Issa issued a press release in June 2005 stating, "Late
> last year, the U.S. Attorney's office in San Diego announced that they
> would scale back prosecutions of alien smugglers. "Our resources are
> limited and we have numerous and competing enforcement priorities to
> consider and meet," said Assistant U.S. Attorney Steven Peak"
>
> Issa's press release also stated, "The U.S. Attorney's office had
> stated prior to this policy that it had neither the manpower nor
> funding to prosecute any but the most egregious cases of smuggling."
>
> Are those statements accurate? What public statements have been made
> in recent years by U.S. Attorney Carol Lam or Assistant U.S. Attorney
> Steve Peak about the priority given to prosecuting human smuggling
> cases, and about the money and resources available to prosecute such
> cases?
>
> Additionally, I'd like to know what criteria are used by the Southern
> District U.S. Attorney's office for deciding which 8 USC 1324
> (bringing in/harboring alien) cases to prosecute, and how those
> criteria have changed in the past year or so.
>
> Thanks for your assistance.
>
> Sharon McNary
> reporter
> The Press-Enterprise
> (951) 368-9458
> smcnary@pe.com

10 JULY 2004
FROM MEMOR



CC: Friedman

U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 514-2121

MEMORANDUM FOR: Courtney Elwood
Deputy Chief of Staff and Counselor

Bill Mercer
Principal Associate Deputy Attorney General

FROM: Natalie A. Voris
Associate Counsel to the Director

DATE: November 23, 2005

SUBJECT: Alien Smuggling Thresholds in Southwest Border Districts

In response to your recent inquiry about United States Attorneys' Offices immigration prosecution policies, I have compiled data that was generated by EOUSA in late 2004. This data consists of prosecution guidelines and intake thresholds for alien smuggling cases (8 U.S.C. 1324).¹

The District of Arizona will generally prosecute alien smuggling cases involving six or more aliens; cases (without regard to number of aliens) in which there is evidence of physical injury or extreme danger to those individuals being smuggled; cases involving child smuggling; and cases involving defendants who are caught actually guiding defendants across the border for financial gain. Because of the current large caseloads, the Tucson office is currently declining most § 1324 cases unless the aliens were placed in some risk.

The Southern District of California will generally prosecute alien smuggling cases involving twelve or more aliens for financial gain; cases in which the defendant was an organizer/leader of a smuggling organization for financial gain; cases in which the defendant has a serious criminal record; and cases (without regard to number of aliens) where there is evidence of bodily injury or in which the defendant was involved in a dangerous/violent/inhumane activity. The District generally declines to prosecute defendants who were caught smuggling a

¹ Prosecution guidelines and intake thresholds, whether written or unwritten, are used for internal deliberative purposes only. The Department has routinely refrained from releasing such information to Congress, the Judiciary, or the public, primarily because of the risk that potential targets may gain access to such information. The districts that responded to EOUSA's request to provide this information emphasized that their internal guidelines and thresholds should not be disclosed, and provided the information to EOUSA with our assurances that it would be used for internal Department use only.

DAG000002140

family member and where there were no aggravated circumstances at the time of arrest.

The District of New Mexico will generally prosecute alien smuggling cases involving six or more aliens smuggled for profit, in which two or more material witnesses are available. The district normally does not prosecute juvenile smugglers.

The Southern District of Texas will generally pursue alien smuggling cases in which five or more aliens are being brought into this country for commercial gain. If there are fewer than five, the district considers whether there are aggravating circumstances that require prosecution. These aggravating circumstances may be such things as reckless endangerment to the aliens, prior felony conviction(s), or prior history of transporting aliens as well as consideration for special interest aliens.

In addition to these prosecutions, the Southern District of Texas views those who "traffic" in human lives more severely. The delineation between smuggling and trafficking is clear and unequivocal. Those who traffic for the purposes of prostitution, bondage, or slavery will be prosecuted, even if the number being brought into the country is fewer than five.

The Western District of Texas will prosecute alien smuggling cases involving the transportation of six or more aliens (five in El Paso). Traditionally, the district pursues only cases involving commercial or financial gain, and prefers not to prosecute cases involving the transportation of the defendant's family members, subject to the six or more alien standard, as it would be very rare for someone to transport six members of their own family.

The Western District of Texas also prosecutes all alien smuggling cases involving the reckless endangerment of the aliens, including fleeing from officers, regardless of the number being transported, and defendants who have prior transporting convictions without regard to the number in the current load.

The border offices prosecute all alien smuggling cases occurring at the points-of-entry (POEs) of aliens (regardless of number) being brought into the United States for the purpose of commercial advantage, in part, because the statute provides for a minimum mandatory of three years, and also because these cases usually involve counterfeit documents or false claims to citizenship.

Amendment to 8 U.S.C. § 1326

This amendment would revise 8 U.S.C. § 1326 (1) to provide for mandatory minimum sentences for certain criminal aliens who re-enter the United States; (2) to delete any reference to an aggravated felony; (3) to make clear that the intent requirement for an offense of illegal reentry or attempted reentry is general, not specific; and (4) to provide that an alien may raise prior DHS approval to enter the United States as an affirmative defense.

Sec. XX

Section 1326 of Title 8 of the United States Code is amended by striking the existing provisions and inserting the following:

“§ 1326. Reentry of Removed Aliens

(a) Reentry after removal

Any alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter enters, attempts to enter, or is at any time found in the United States, shall be fined under title 18, imprisoned not more than 2 years, or both.

(b) Reentry of criminal offenders

Notwithstanding the penalty provided in subsection (a), in the case of an alien described in that subsection—

- (1) whose removal or departure was subsequent to conviction for three or more misdemeanors or for a felony, such alien shall be fined under title 18, imprisoned not more than 10 years, or both; or
- (2) whose removal or departure was subsequent to conviction for a felony for which the alien received a sentence of 30 months or more, such alien shall be fined under title 18, imprisoned not less than 2 years nor more than 10 years, or both; or
- (3) whose removal or departure was subsequent to conviction for a felony for which the alien received a sentence of 60 months or more, such alien shall be fined under title 18, imprisoned not less than 4 years nor more than 20 years, or both; or
- (4) whose removal or departure was subsequent to conviction for three felonies regardless of the sentence received, such alien shall be fined under title 18, imprisoned not less than 5 years nor more than 20 years, or both; or
- (5) whose removal or departure was subsequent to conviction for murder, rape, kidnaping, or an offense in Chapter 113B of title 18 (relating to terrorism), such alien

shall be fined under title 18, imprisoned not less than 5 years nor more than 20 years, or both.

(c) Reentry after repeated removal

Any alien who has been denied admission, excluded, deported, or removed three or more times and thereafter enters, attempts to enter, or is at any time found in the United States, shall be fined under title 18, imprisoned not less than 2 years nor more than 10 years, or both.

(d) Proof of prior convictions

The prior convictions described in subsection (b) are elements of those crimes and the penalties in those subsections shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to prove a prior conviction, and the trial of any offense under this section shall not be bifurcated for purposes of proving a prior conviction.

(e) Affirmative defenses

It shall be an affirmative defense to a violation of this section (1) that, prior to the alleged violation, the alien had sought and received the express consent of the Secretary of Homeland Security to reapply for admission into the United States, or (2) that, with respect to an alien previously denied admission and removed, such alien (A) was not required to obtain such advance consent under the Immigration and Nationality Act or any prior Act and (B) had complied with all other laws and regulations governing the alien's admission into the United States.

(f) Limitation on collateral attack on underlying removal order

In a criminal proceeding under this section, an alien may not challenge the validity of any prior removal order concerning the alien unless the alien demonstrates by clear and convincing evidence that—

- (1) the alien exhausted any administrative remedies that may have been available to seek relief against the order; and
- (2) the removal proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and
- (3) the entry of the order was fundamentally unfair.

(g) Reentry of alien removed prior to completion of term of imprisonment

Any alien removed pursuant to section 1231(a)(4) of this title who enters, attempts to enter, or is at any time found in, the United States (unless the Secretary of Homeland Security has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(h) Definitions and mens rea

For purposes of this section—

(1) The term 'attempts to enter' shall not refer to the intent of the alien to violate the law but shall refer to the general intent of the alien to enter the United States.

(2) The term 'felony' means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

(3) The term 'removal' includes any denial of admission, exclusion, deportation, or removal, or any agreement by which an alien stipulates or agrees to exclusion, deportation, or removal.

(4) The term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

To DAN F.

The South African government has made clear that it hopes the exile will be temporary. In May, the ruling African National Congress called for "the organization of free, peaceful and fair democratic elections" in Haiti and the "creation of conditions for the return of all exiles, including President Aristide."

Since Mr. Aristide's departure, an interim government has ruled Haiti under U.N. supervision. Presidential elections, originally scheduled for Nov. 13, have been postponed twice. The latest election date, announced last week, is Dec. 17. The Electoral Council, which is charged with organizing the vote, said Monday it has not approved the schedule.

IMMIGRATION:

8 Indicted On Human-smuggling Charges (WT)

By Jerry Seper

The Washington Times, November 25, 2005

Eight members of a California-based ring suspected of bringing as many as 100 illegal aliens a month into the United States have been indicted by a federal grand jury after a two-year investigation by U.S. Immigration and Customs Enforcement (ICE).

ICE spokeswoman Jamie Zuieback said Wednesday that among those charged was the man suspected of leading the organization, Emilio Mayoraes, 42, who was arrested at his Anaheim, Calif., residence.

Also under indictment is Mauro Perez, 49, proprietor of the Aero Paris travel agency in Anaheim, Ms. Zuieback said. According to the indictment, Mr. Perez obtained plane tickets for the smuggling organization's clients, knowing the tickets were being used by illegal aliens.

"With this week's arrests, we have dismantled a major human-smuggling network operating in Orange and San Bernardino counties," said Kumar Kibble, an ICE agent in Orange County. "As this case shows, ICE is targeting not only the criminal networks directly responsible for the smuggling activity, but also those businesses that provide logistical support that helps further this highly lucrative illegal enterprise."

The Department of Homeland Security, which oversees ICE, has made human-trafficking operations a priority issue. The agency's fiscal 2006 budget adds 250 criminal investigators to better target the smuggling organizations.

Ms. Zuieback said the eight suspects were named in a five-count federal grand jury indictment handed up in U.S. District Court in Anaheim and unsealed late Tuesday, accusing them of conspiracy to transport and harbor illegal aliens. One of the defendants, Jose Luis de la Rosa-Hernandez, 34, also is charged with money laundering.

The spokeswoman said four of the eight suspects were taken into custody Tuesday morning by ICE agents in Orange County and that a fifth was arrested by ICE agents in Tucson, Ariz. Two of the accused are still being sought. The eighth suspect, she said, was arrested by U.S. Border Patrol agents in Arizona earlier on unrelated alien-smuggling charges.

ICE agents conducted searches at several California locations, including Ontario, where the smuggling ring is suspected of operating a drop house in a trailer park, Ms. Zuieback said. Investigators recovered laminating machines and other materials used to make fraudulent documents.

According to the indictment, the suspects arranged for aliens to be smuggled into the United States across the Arizona-Mexico border and taken to Southern California. After arriving in the United States, the majority of aliens were taken to drop houses in San Bernardino County, where they stayed until ringleaders made arrangements for final payment of smuggling fees or additional transportation.

Ms. Zuieback said, if convicted, the six in custody face a maximum penalty of 10 years in prison. The money-laundering charge, she said, carries a maximum sentence of 20 years.

Enforcement Lax, Issa Says (PE)

By Sharon McNary, Claire Vitucci

Press-Enterprise, November 25, 2005

The photos that line some U.S. Border Patrol station walls are like "Wanted" posters that help agents recognize suspected human smugglers among those caught sneaking across the border.

Each display, Rep. Darrell Issa said, is a wall of shame, evidence that human smugglers are too often released to smuggle again rather than held to face criminal charges and a prison cell.

Most Inland members of Congress have joined Issa in calling enforcement of immigration laws too lax. Issa blames the guidelines that federal prosecutors use to manage the number of cases they will bring against suspected immigrant smugglers.

But some who speak for the frontline law enforcers -- Border Patrol agents and federal prosecutors -- say that it's up to Congress to make systemic change by passing the right laws and providing enough money to do a better job.

Issa wants the government to increase the prosecution of coyotes, a slang term for human smugglers. In 2004, he began a letter-writing campaign to administration officials demanding to know why suspected smugglers who repeatedly have been caught and deported have not been prosecuted as criminals.

The prime example in Issa's coyote-crackdown campaign is Antonio Amparo-Lopez, who already had been arrested and deported to Mexico more than 20 times when Border Patrol agents from the Temecula station arrested him in November 2003. Undocumented immigrants were in the car with him but he was not prosecuted, Issa said.

Issa said he has been unable to get the government to explain why Amparo-Lopez has not been charged.

'Case After Case'

"It seems that case after case that I would have felt very strongly needed to be prosecuted, they don't end up being prosecuted," said Issa, R-Vista. His district includes portions of Riverside and San Diego counties. He has been especially critical of U.S. Attorney Carol Lam, who heads the San Diego-area Southern District.

Issa said failure to prosecute coyotes encourages them to keep smuggling people across the border.

"If there's no punishment for being a coyote, other than a couple of hours (incarceration) and the loss of the people in your trust... why wouldn't you do it the next day?" he said.

Two spokesmen for Lam's office declined to discuss recent changes in prosecution guidelines that govern which cases result in criminal charges. Guidelines, which vary from district to district, are kept confidential so criminals don't know which cases the government will pursue and which are low-priority.

Issa has proposed giving the U.S. Department of Justice \$5 million a year for four years to prosecute coyotes. His proposal passed the House and is now being considered by the Senate.

It is one part of a stream of immigration legislation flooding Congress. More than 60 bills are pending. One would fence the 2,000-mile border with Mexico, some would ratchet up enforcement, others would allow some undocumented immigrants to remain and work in the United States.

Criticism of Issa

"Congressman Issa is doing what every other congressman is doing, and that's ignoring the problem. They're coming up with temporary solutions," said Chris Bauder, president of the San Diego chapter of the National Border Patrol Council, the union that represents Border Patrol agents.

Better to stop U.S. businesses from hiring illegal workers in the first place, Bauder said.

"When you take away the jobs, you take away the pot of gold and secure it somewhere. The people will stop coming because they know the jobs are not there."

Immigration and Customs Enforcement does workplace enforcement, but it gives top priority to transportation and military sites vulnerable to terrorism, ICE spokeswoman Virginia Kice said.

In April, for example, ICE arrested 18 undocumented immigrants who worked for a contractor hired to maintain U.S. Navy ships in San Diego. The agency pursued 511 different workplace investigations in the fiscal year that ended in September, up from 465 in 2004.

'Demoralizing the Agents'

Steven Camarota, a Washington, D.C.-based researcher, said legislation that tackles just parts of the overall illegal-immigration problem, like increasing penalties for smugglers and extending the border fence, aren't enough.

"Politically, (Issa) doesn't want to anger the chambers of commerce, he doesn't want to anger Hispanic advocacy groups," said Camarota, of the Center for Immigration Studies, which favors stronger enforcement of immigration laws.

Illustration: Click to enlarge

Border Patrol agents say they are frustrated that many of the suspected human smugglers they apprehend are not prosecuted in federal court because their cases do not meet the strict minimum guidelines of federal prosecutors.

"It's one of the issues that is demoralizing the agents in the field," said T.J. Bonner, president of the National Border Patrol Council. "It doesn't do wonders for morale when the agents wind up wasting numerous hours doing paperwork to do the case when the prosecutors won't prosecute the case because of the guidelines."

Bonner, while declining to detail the guidelines, said the U.S. attorney's office for the San Diego-area Southern District of California changed them last year to limit the prosecution of smugglers only to those who are bringing in "double-digit" numbers of illegal immigrants.

Bonner said he doesn't understand why the U.S. attorney's office doesn't complain and ask for more funding.

"Don't just sit and mutely go along with the administration," Bonner said. "Make some noise. Take your case to the public because you work for the public and the public expects you're going to go put people in jail and not give a pass to somebody unless it's egregious."

Prosecution guidelines vary from district to district. They function as valves controlling the number of cases that immigration authorities may present to federal prosecutors, spokesmen for federal court districts in California and Arizona said.

"We just don't have the capacity to handle them all," said Daniel Knauss, chief assistant U.S. attorney in Arizona. He said his office prosecutes the worst cases in which illegal border-crossers, children or law-enforcement officers are put at risk or harmed.

"All prosecutors must make choices based on their own resources and what's going in their districts," said Knauss, a 33-year federal prosecutor. The 186,000-bed federal prison system couldn't possibly hold all the convicts if the government prosecuted every possible immigration lawbreaker, he said.

'You Make Choices'

"What you typically get in Congress is, 'We'll make it tougher,' " Knauss said, adding that such laws don't often come with additional money for enforcement. "It's a systemic problem," he said.

Pete Nunez served as the U.S. attorney for the Southern District under President Reagan. He said that during his watch, between 1982 and 1988, the office prosecuted virtually all smugglers.

But now, Nunez said, "there are so many immigration violations in every category, you can't possibly do it all. You make choices."

He said the emphasis now is on prosecuting criminal aliens – hammering them with more prison time for immigration violations before they're deported.

But Nunez said many just turn around and come in again.

"Immigration laws are the most flagrantly violated laws in the history of our country," Nunez said. "There are 11 million illegal immigrants here and nobody's even looking for them."

Nashua Man Pleads Guilty To Selling Fake "green Cards" (AP)

The AP, November 24, 2005

CONCORD, N.H. (AP) – A Nashua man has pleaded guilty to eight counts of selling fake "green cards" and Social Security cards to illegal immigrants, the U.S. Attorney's office said.

U.S. Immigration and Customs Enforcement agents arrested Aderci Dasilva, 35, and Gilmar Miranda, 33, on July 28 after an undercover investigation.

Miranda pleaded guilty Oct. 17, and on Tuesday, Dasilva also entered a guilty plea in U.S. District Court, prosecutors said.

Both men are scheduled for sentencing Jan. 24. Each faces up to 15 years in prison and fines of up to \$250,000.

Young Women Have No Notion Of Sexual Risks That Jobs Abroad Pose (PRAVDA)

Pravda, November 25, 2005

Fighting human trafficking, a really dangerous crime demands very tough measures

Representative of the justice department in the US Embassy in Moscow Terry Kinney said at the International Human Trafficking Conference held in Russia's Vladivostok that the criminal turnover of human trafficking is as high as with arms and drug smuggling.

On the post of the federal prosecutor in Chicago, Terry Kinney in 1996 investigated the case of Russian citizen Alex Mishulovich who had decoyed about 30 girls from the CIS into working in striptease clubs in the US. He promised the girls would be paid \$60,000 a year for working at night clubs, but in fact the girls were forced to do strip-tease, and Mishulovich seized all the money they earned. Later, two of the girls were sold in Chicago for \$15,000. Terry Kinney says the hardest thing about the case was to prove that the white slaves were kept in the place by force. And this is at the time when legislation on fighting human trafficking was adopted in the US. Alex Mishulovich was sentenced to 15 years of imprisonment for human trafficking.

Experts present at the conference in Vladivostok arrived at a conclusion that the problem could be partially solved if public organizations in different countries get united for fighting the problem. For the time being, girls seem to be absolutely unaware of all troubles they may face going abroad for work. Not only girls from province where the unemployment rate is very high but also women from large cities may get into a trap of human traffickers.

One girl, named only as Yelena, from a large city needed money and decided to work a waitress somewhere in China. There was an agency in her city recruiting women for work in China and it seemed to be quite reliable. The agency registered a tourist visa for Yelena, and the girl left for China together with other six girls. A company that received the girls in China on the Russia-China border ordered dinner for them and after the meal the Russian girls fell asleep. Yelena regained conscience in

TO: Natalie Voris
Daniel Fridman

FROM: John Grasty Crews, II
swb daz asil a.wpd

DATE: 26 July 2006

SUBJECT: Questions for District of Arizona Regarding Anti-Smuggling Initiative

On Monday, 24 Jul 06, I had occasion to speak with a number of individuals¹ from the District of Arizona (DAZ) regarding the questions posed to the District by the Office of Deputy Attorney General (ODAG) and the Department of Homeland Security (DHS). Prior to the conference call I spoke with the Honorable Paul Charlton, United States Attorney for the District of Arizona. Mr. Charlton made it clear that he and the DAZ supported the proposed initiative but that the ability of the DAZ to fully implement the initiative was contingent on resources.

The questions posed to the DAZ are as follows:

(1) THE THRESHOLD THEY CURRENTLY UTILIZE, IN TERMS OF NUMBERS AND PROOF:

Both Tucson and Phoenix use essentially the same intake criteria. Tucson serves much of the actual border area. Phoenix prosecutes cases arising in the Yuma area of Arizona, as well as being a major hub city for illegal alien trafficking and a significant urban center in its own right. Cases involving more than 25 smuggled aliens, or which involve endangerment to the smuggled aliens or child smuggling are prosecuted as felonies. The remainder, if accepted for prosecution, are prosecuted under the "flip/flop" fast track system. The "flip/flop" system allows the defendant to enter a plea to a misdemeanor but requires that the defendant serve some jail time.

¹ Participating in the call from Arizona was Ann Harwood (FAUSA), Pat Schneider (Crim Chief - Phoenix); Joe Koehler (AUSA - Immigration Expert, Phoenix); and another Deputy Chief; and from Tucson, the Acting Office Chief, and Immigration Supervisors.

DAZ reports that the majority of individuals offered the "flip/flop" plea take it. The district reports that only 12 defendants have rejected the "flip/flop" misdemeanor plea this year.

Recidivist drivers are required to plead to felonies.²

In the southern areas of Arizona where the majority of alien deaths occur in the summer DAZ has initiated the Guide Identification Team (GIT) program. The GIT process accepts all prosecutable³ cases involving alien smuggling offenses. The area under the GIT project is an area west of Tucson (including the Tohono O'odham (T/O) reservation) and south of Arizona Highway 8. The area is about 15% of the land mass of the state, and about half (50%) of the border area of the state. Under the GIT program loads as small as a one on one (1 defendant, 1 smuggled alien) are prosecuted in some circumstances. When applicable a defendant might be charged with a re-entry offense (8 U.S.C. § 1326) instead of a smuggling offense (8 U.S.C. § 1324).

DAZ also reports that the Border Patrol is receptive of the district's intake policy. It is worth noting that along the border the overwhelming majority of alien smuggling cases are initiated by, and prosecuted by, the Border Patrol, as distinct from Customs and Border Protection (CBP) officers at the Ports of Entry, or from Immigration and Customs Enforcement

² Note, however, that not all drivers are immediately referred for criminal prosecutions. For a variety of factors the agents might not request prosecution of a driver. However, if advised that a given defendant is a recidivist if previously unprosecuted defendant, the defendant will be required to plead to a felony.

³ This phrase encompasses a wide range of issues, including the exclusionary rule.

(ICE) agents.

The district has a standing or general order which requires the videotaped deposition of material witnesses. In Tucson they have about a month to get the videotaped depositions taken. In Phoenix they have about two weeks.⁴ Following the deposition the material witnesses are released and returned back to their country of origin.⁵ If the defendant does not stipulate to the release of the material witnesses the court will have a hearing and then generally release the witnesses a short time later.

DAZ reports that the most frequent smuggler/driver of a load vehicle is either a United States Citizen (USC), and often a Native American from the T/O reservation⁶, and frequently a methamphetamine abuser in search of an money. The load vehicles frequently have between 3 and 8 aliens.

(2) EXPERIENCE WITH ALIEN SMUGGLING TRIALS AND EVIDENCE NEEDED; THE COURT

DOCKET CALENDAR:

The DAZ is already a busy place. Calendar Year to Date (CYD) DAZ has prosecuted 859

⁴ There are significant expenses involved with videotaped depositions which are borne by the district. These include translators/interpreters, court reporter, and videographer. The more cases prosecuted, the money litigation expense money is required. \$500-\$1,000 per deposition is a good working figure.

⁵ In some cases DAZ will seek to have the material witness paroled into the United States. This may occur in instances involving rollovers, cases involving the potential of the death penalty, and the like.

⁶ This reservation straddles the U.S. - Mexico border.

cases in which the lead charge involved 8 U.S.C. § 1324. That breaks down to 470 in Tucson; 186 in Phoenix, and 203 in Yuma.⁷

If a defendant does not accept the plea offer it can take 6-12 months to get to trial. Trials last 2 days to a week, depending on the particulars of the case. Rollover cases and the like take longer.

In broad brush, to convict a defendant for transporting an alien under section 1324(a)(1)(A)(ii), the United States has to prove (1) that the aliens named in the indictment were not lawfully in the United States; (2) that the defendant knew or recklessly disregarded the fact that the aliens were not lawfully in the United States; and (3) and that the defendant knowingly transported the aliens in order to help them to remain in the United States illegally. [*United States v. Algwin*, 263 F.3d 979, 998 (9th Cir. 2001)].

At least two material witnesses are required, and this number can vary upwards depending on the particulars of a given case. If the case is one in which the prosecutors expect to release parole in the material witnesses additional individuals are designated as material witnesses. The agents and the prosecutors also have to ensure that any potential exculpatory witnesses and evidence is preserved. That can mean that additional individuals are held as defense material witnesses.

⁷ This includes GIT prosecutions. Most Yuma cases are ultimately transferred to Phoenix and handled by that office.

(3) # OF JUDGES AND CASELOAD:

There are eight (08) district judges, four (04) senior district judges, and five (05) magistrate judges in Phoenix. There are five (05) district judges in Tucson, two (2) senior district judges, and six (06) magistrate judges. Additionally, there is one (01) magistrate judge in Yuma, and one (1) magistrate judge in Flagstaff.

Data from the Calendar Year (CY) 2004 "Annual Report of Caseload Statistics"⁸ shows the federal court system in Arizona to be quite busy.

<u>Papers/Pleadings Filed⁹</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>03-04 % Change</u>
Phoenix	156,063	171,510	180,596	5.3
Tucson	109,179	122,416	128,106	4.6
Totals	265,239	203,026	308,702	5.0

<u>Criminal Filings Trend</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>03-04 % Change</u>
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Phoenix

Cases	1,424	1,422	1,489	4.7
Defendants	1,809	1,784	1,935	8.5

Tucson

Cases	2,236	2,721	2,981	9.6
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⁸ Obtained from the U.S. District Court website, and apparently the most recent year available.

⁹ Includes civil and criminal cases.

Defendants	2,833	3,359	3,601	7.2
DAZ Cases Total	3,660	4,143	4,470	7.9
DAZ Defendants Total	4,642	5,143	5,536	7.6

Immigration offenses made up 46.9% of the DAZ court caseload in CY 2004. The caseload per district judge in Arizona varied widely. Five district judges¹⁰ averaged more than 500 criminal cases per judge. The other 12 district judges averages around 150 criminal cases per judge.

(4) THE AVG. TIME IT TAKES A COYOTE CASE FROM ARREST TO SENTENCING;

6-12 months.

(5) THE NUMBER OF MATERIAL WITNESSES NEEDED;

2-8 depending on the nature of the case.

(6) THEIR SENSE OF THE NUMBER OF ADDED COYOTE PROSECUTIONS WOULD RESULT;

Tucson estimates that a fully implemented program by which all smugglers and/or drivers were prosecuted would result in an additional 2,000 cases a year. Phoenix would expect 1,000+ cases a year, more if individuals were prosecuted from every stash or drop house.

(7) WHETHER ALL/SOME ACCOMPANYING ALIENS MUST BE KEPT AVAILABLE FOR THE DEFENSE, AND IF SO, FOR WHAT TIME PERIOD;

Any potential defense witness must be retained. Defense material witnesses are processed in the same manner as other material witnesses.

¹⁰ I presume these are the five district judges in Tucson.

(8) WHAT THEY WOULD NEED IN TERMS OF SAUSAS:

Tucson has four AUSAs working full time on the GIT program. If fully implemented they would need an additional 8 SAUSAs, along with 4-5 paralegals, and 4+ legal assistants and at least one docketing clerk.¹¹ Phoenix estimated they would need 4 SAUSAs, 3-4 paralegals, 3-4 legal assistants, and at least one docketing clerk.

It is important to remember that DAZ has significant responsibilities in terms of Indian Country jurisdiction. The U.S. Attorney's Office is the only office authorized to prosecute felony offenses arising on the reservations. These murder, child abuse, rape, and related offenses have to be prosecuted. The district also has many reactive drug cases which would be unaddressed by state prosecutors if the cases were declined.

(9) HOW LONG A SAUSA TERM WOULD BE PRODUCTIVE; and

Based on their prior experience with SAUSAs DAZ believes that any SAUSAs should be detailed to the office 100%, and should remain at least one (01) calendar year, preferably two. Details of 3-6 months have been ineffective in the past. The detailees would not be assigned rollover or death cases.

(10) THEIR INSIGHT INTO WHAT LEVEL OF BUY-IN WE COULD ANTICIPATE FROM THE STATE PROSECUTORS, IF NEEDED, AS WELL AS THEIR UNDERSTANDING OF THE PITFALLS/BENEFITS OF THE STATE LAW.

¹¹ Without sufficient office staff and support personnel the additional of only lawyers as SAUSAs would not enable the district to implement program. Reactive cases require substantial staff resources.

The question makes reference to a new Arizona state statute:

§ 13-2319. Smuggling; classification; definition

A. It is unlawful for a person to intentionally engage in the smuggling of human beings for profit or commercial purpose.

B. A violation of this statute is a class 4 felony.

C. For the purposes of this section "smuggling of human beings" means the transportation or procurement of transportation by a person or an entity that knows or has reason to know that the person or persons transported or to be transported are not United States citizens, permanent resident aliens or persons otherwise lawfully in this state.

[AZ ST s 13-2319].

In sum, the estimation of the DAZ was that we should expect no assistance from state prosecutors, either in terms of SAUSAs or assistance. DAZ has offered to have state prosecutors made SAUSAs so that they (the state SAUSAs) could learn how to do alien smuggling cases. No state prosecutors offices have accepted the offer. One reason for this is that it would be difficult for a District Attorney to detail one or more ADAs to the USAO to prosecute these cases while at the same time asking for additional resources from his county board of supervisors.

The District Attorney's in the southern Arizona counties have issued blanket declinations, saying they will not enforce this statute. Only a few cases have been prosecuted elsewhere using this statute, with limited success. The state does not have a material witness deposition statute, a

way to house or detain alien witnesses, or experience with these kinds of cases. This mirrors the DAZ experience with Project Safe Neighborhoods (PSN). There have been no state SAUSAs under PSN in DAZ.

DAZ expects substantial judicial push-back if this program was instituted. The resistance would also come from the federal public defenders and appointed counsel community. DAZ is uncertain about the ability of the Marshal's Service to find sufficient bed space if this program was fully implemented.

My comments:

Both Senator Feinstein and Representative Issa have written to the Department complaining about the intake policies of USAO San Diego vis-a-vis alien smuggling cases. Public announcement or press articles regarding any this kind of initiative in Arizona could reasonably be expected to generate additional inquiries from them. It is not beyond possibility that there would additional pressure to implement similar programs in the other Southwest border districts as well.

Fridman, Daniel (ODAG)

From: Fridman, Daniel (ODAG)
Sent: Thursday, July 27, 2006 6:39 PM
To: Block, Jonathan
Subject: FW: SWB Attorney On-board change FY 2000 to FY 2006

Importance: High

Attachments: tmp.htm; SWB Attorney change FY 2000 to FY 2006.pdf



tmp.htm (2 KB)



SWB Attorney
change FY 2000 to..

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

From: Bevels, Lisa (USAEO)
Sent: Thursday, July 27, 2006 1:33 PM
To: Fridman, Daniel (ODAG)
Cc: Parent, Steve (USAEO); Bratt, Keith (USAEO)
Subject: FW: SWB Attorney On-board change FY 2000 to FY 2006
Importance: High

Here is a chart that shows an overall increase in on-board AUSAs of 126 or 29% from FY 2000 to FY 2006. This includes the additional 25 AUSAs. Let me know if I can be of any further assistance.

Lisa Bevels
x41035

>
> _____
> **From:** Bratt, Keith (USAEO)
> **Sent:** Thursday, July 27, 2006 1:28 PM
> **To:** Bevels, Lisa (USAEO)
> **Cc:** Erickson, Michael (USAEO)
> **Subject:** SWB Attorney on-board change FY 2000 to FY 2006
>
> As requested.
>
> Keith
>
> <<SWB Attorney change FY 2000 to FY 2006.pdf>>

United States Attorneys
On-Board Attorney increase, FY 2000 to FY 2006 including impact of June 2006 Allocation
July 2006

		<u>Arizona</u>	<u>California, Southern</u>	<u>New Mexico</u>	<u>Texas, Southern</u>	<u>Texas, Western</u>	<u>Total</u>
FY 2000	DIRECT	84	75	39	108	78	384
	OCDEF	11	12	3	18	7	51
	Total, FY 2000	95	87	42	126	85	435
FY 2006 PP 13, ending 7/8/06	DIRECT	102	89	58	119	97	465
	OCDEF	13	16	5	25	12	71
	Total, FY 2006	115	105	63	144	109	536
FY 2000 - 2006 increase	DIRECT	18	14	19	11	19	81
	OCDEF	2	4	2	7	5	20
	Total, Increase	20	18	21	18	24	101
July 2006 allocation	DIRECT	4	4	3	4	5	20
	OCDEF	1	1	1	1	1	5
	Total, Increase	5	5	4	5	6	25
Total, 2006 plus July allocation	DIRECT	106	93	61	123	102	485
	OCDEF	14	17	6	26	13	76
	Total, Increase	120	110	67	149	115	561
FY 2006		561					
FY 2000		435					
Percent increase		29.0%					

Fridman, Daniel (ODAG)

From: Crews, John (USAEO)
Sent: Tuesday, August 29, 2006 2:05 PM
To: Fridman, Daniel (ODAG)
Cc: Parent, Steve (USAEO)
Subject: FW: Request from ODAG staff

Attachments: tmp.htm; 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

 tmp.htm (8 KB)	 imm1326_alpha.pdf (35 KB)	 18 usc 11-alpha.pdf (35 KB)	 18 usc 1001-alpha.pdf (35 KB)	 18 usc 1542-alpha.pdf (35 KB)	 18 usc 1543-alpha.pdf (35 KB)	 18 usc 1544-alpha.pdf (34 KB)
 18 usc 1546-alpha.pdf (36 KB)	 42 usc 408-alpha.pdf (31 KB)	 id-1028-alpha.pdf (36 KB)	 imm1324_alpha.pdf (34 KB)	 imm1325_alpha.pdf (34 KB)		

I think this what you wanted.

JGC.

> _____
> **From:** Slusher, Michelle (USAEO)
> **Sent:** Wednesday, June 21, 2006 5:17 PM
> **To:** Crews, John (USAEO)
> **Cc:** Tone, Barbara (USAEO)
> **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,
> Michelle
>
> <<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

> John Crews
> Attorney Advisor
> Counsel to the Director's Office (CTD)
> Executive Office for United States Attorney's
> Room 2254 Main Justice Building
> 950 Pennsylvania Ave., NW
> Washington, DC 20530
> 202.305.1214
> 202.353.3349

Direct Dial
Facsimile
Cellular

> John.Crews@usdoj.gov

E-Mail

TO: Courtney Elwood
John Nowacki
Steve Parent
Natalie Voris
Dan Fridman

FROM: John Grasty Crews, II
swb4.wpd

DATE: 05 September 2006

SUBJECT: Southwest Border Caseload

I discussed with Deputy Director Parent what actions he wanted to me to take following the meeting on Friday, 01 September 2006 regarding the potential allocation of Department of Homeland Security (DHS) lawyers as Special Assistant United States Attorney's (SAUSAs) along the Southwest Border (SWB) of the United States. Mr. Parent directed that I provide metrics regarding the caseload of the various United States Attorney's Offices (USAOs) along the SWB. Those USAO's are Texas Southern (TXS); Texas Western (TXW); New Mexico (NM); Arizona (AZ); and California Southern (CAS). To place the workload in context I have provided additional information regarding each office, as well as provided the national workload statistics.

The workload statistics are derived from the sixteen (16) weeks that offices have been reporting their caseload relating to 8 U.S.C. §§ 1324(a); 1324a; 1325; 1326; and 18 U.S.C. § 1546.

DAG000002161

Courtney Elwood
John Nowacki
Steve Parent
Natalie Voris
Dan Fridman

05 September 2006

National Statistics:¹

<u>1324 C's</u> ²	<u>1324D's</u> ³	<u>1325</u> ⁴	<u>1326</u> ⁵	<u>1546C's</u>	<u>1546D's</u>	<u>1324a</u> ⁶
968	1,756	11,524	6,200	381	464	2/2

Combined Southwest Border Statistics

<u>1324D's</u>	<u>1324C's</u>	<u>1325</u>	<u>1326</u>	<u>1546D's</u>	<u>1546C's</u>	<u>1324a</u>
791	1,333	10,755	4,797	37	47	0/0

Percentage of National Caseload⁷

81%	75%	93%	77%	9%	10%	0%
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¹ The statistics are based on week 1-16 of the data survey, ending on 25 August 2006. It should be noted that when the data was analyzed seven (07) non border districts had not yet reported their information. In the preceding 15 weeks these 7 districts have usually reported 0-2 cases per category. The absence of these 7 districts is not anticipated to make any meaningful statistical difference.

² Cases

³ Defendants

⁴ Assumed to be single defendant cases.

⁵ Assumed to be single defendant cases.

⁶ Cases and Defendants combined

⁷ Percentages were uniformly rounded down.

Courtney Elwood
John Nowacki
Steve Parent
Natalie Voris
Dan Fridman

05 September 2006

Texas Southern (TXS)

Texas Southern is based in Houston and has 5 staffed branch offices. In March, 2006 it was projected that TXS would use 234.06 FTE in fiscal year (FY) 2006.

<u>1324C's</u>	<u>1324D's</u>	<u>1325</u>	<u>1326</u>	<u>1546C's</u>	<u>1546D's</u>	<u>1324a</u>
219	343	3,263	964	3	3	0

Percentage SWB Caseload

27%	25%	30%	20%	8%	6%	0
-----	-----	-----	-----	----	----	---

Percentage National Caseload

22%	19%	28%	15%	>1%	>1%	0
-----	-----	-----	-----	-----	-----	---

Texas Western (TXW)

Texas Western is based in San Antonio and has 6 staffed branch offices. In March, 2006 it was estimated TXW would use 195.21 in FY 2006.

<u>1324C's</u>	<u>1324D's</u>	<u>1325</u>	<u>1326</u>	<u>1546C's</u>	<u>1546D's</u>	<u>1324a</u>
129	222	4,631	863	11	2	0

Percentage of SWB Caseload

16%	16%	43%	17%	29%	25%	0
-----	-----	-----	-----	-----	-----	---

Percentage of National Caseload

13%	12%	40%	13%	2%	2%	0
-----	-----	-----	-----	----	----	---

Courtney Elwood
John Nowacki
Steve Parent
Natalie Voris
Dan Fridman

05 September 2006

New Mexico (NM)

New Mexico is based in Albuquerque and has one staffed branch office. In March, 2006 it was estimated that NM would use 106.85 FTE in FY 2006.

<u>1324C's</u>	<u>1324D's</u>	<u>1325</u>	<u>1326</u>	<u>1546C's</u>	<u>1546D's</u>	<u>1324a</u>
29	80	391	421	4	6	0

Percentage of SWB Caseload

3%	6%	3%	8%	10%	12%	0
----	----	----	----	-----	-----	---

Percentage of National Caseload

2%	4%	3%	6%	1%	1%	0
----	----	----	----	----	----	---

Courtney Elwood
John Nowacki
Steve Parent
Natalie Voris
Dan Fridman

05 September 2006

Arizona

Arizona is based in Phoenix and has three staffed branch offices. In March, 2006 it was estimated that AZ would use 209.91 FTE in FY 2006.

<u>1324C's</u>	<u>1324D's</u>	<u>1325</u>	<u>1326⁸</u>	<u>1546C's</u>	<u>1546D's</u>	<u>1324a</u>
194	393	2,266	2,347	19	26	0

⁸ Many of these § 1326 cases are disposed of as misdemeanors under the approved early disposition program. Many § 1326(a)(1)&(2) [no significant criminal history], or § 1326 (b)(1) [non aggravated felony criminal history, see 8 U.S.C. § 1101(a)(43) for the statutory definitions of predicate 'aggravated felonies'], or some § 1326 (b)(2) [aggravated felony convictions] defending on caseload are offered a "flip flop" plea offer. If the defendant accepts the plea offer s/he pleads to a misdemeanor (8 U.S.C. § 1325) offense and the felony offense is dismissed or not filed.

During the discussion on Friday (01 Sep 06) a question was asked regarding the prerequisites for a felony charge in the case of a recidivist offender who has been found guilty of violating 8 U.S.C. § 1325(a) (Improper Entry by Alien)(popularly referred to "EWI or Entry Without Inspection"). By statute EWI is a Class "B" misdemeanor for first offenses. By statute subsequent EWI offenses can be punished as a felony. There is, however, a two year statutory maximum. The offense cases a base offense level of 8 under the Sentencing Guidelines. A jurisdictional requirement is a prior misdemeanor conviction under this section.

The jurisdictional authority for the felony EWI charge is, however, not dependent on a prior removal from the United States. Many defendant are also potentially liable under 8 U.S.C. § 1326 (Reentry of Removed Alien). A formal DHS removal is, however, a jurisdictional prerequisite. A "voluntary return" or "V R" does not qualify as a formal removal. Defendants charged under this statute face up to a two year statutory maximum sentence (8 U.S.C. § 1326(a)(1)&(2)); or a ten year maximum statutory sentence if they were convicted of a non aggravated felony prior to their formal removal (8 U.S.C. § 1326(b)(1)); or a twenty year statutory maximum sentence if they were convicted of an aggravated felony prior to their formal removal (8 U.S.C. § 1326(b)(2)). The Sentencing Guidelines provide for various sentencing increases depending on criminal history.

Courtney Elwood
John Nowacki
Steve Parent
Natalie Voris
Dan Fridman

05 September 2006

Percentage of SWB Caseload

24%	29%	21%	48%	51%	55%	0
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Percentage of National Caseload

20%	22%	19%	37%	4%	5%	0
-----	-----	-----	-----	----	----	---

California Southern (CAS)

California Southern is based in San Diego, and is largely run from that single office. In March, 2006 it was estimated that CAS would use 183.67 FTE in FY 2006. That figure does not include contractor personnel.

<u>1324C's</u>	<u>1324D's</u>	<u>1325</u>	<u>1326</u>	<u>1546C's</u>	<u>1546D's</u>	<u>1324a</u>
220	295	204	202	0	0	0

Percentage of SWB Caseload

27%	22%	1%	4%	0	0	0
-----	-----	----	----	---	---	---

Percentage of National Caseload

22%	16%	1%	3%	0	0	0
-----	-----	----	----	---	---	---

END