

# Overwhelmed federal courts ask Congress for more judges



The Judicial Conference of the United States has recommended four new judgeships for the Southern District of California, which currently has 13. New judges could be accommodated in San Diego's neighboring courthouses downtown, officials said. (Hayne Palmour IV/ The San Diego Union-Tribune)

## A House subcommittee hearing stressed crushing caseloads and due process delays across the country, including San Diego

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Overwhelming caseloads, substantial litigation delays and spiraling costs have prompted Congress to take a fresh look at expanding the number of judges sitting on lower federal courts.

In a hearing Wednesday held by the House Committee on the Judiciary, both congress members and witnesses, including those from San Diego, characterized the situation as a crisis that has been decades in the making.

“For 20 years-plus we’ve been in a judicial emergency,” Chief District Judge Kimberly Mueller of the Eastern District of California testified to the Subcommittee on Courts, Intellectual Property, and the Internet.

The Judicial Conference of the United States — the policymaking body of the federal courts — has proposed that Congress create 65 new permanent judgeships across certain district courts to provide relief to 663 existing positions, as well as convert eight temporary seats to permanent. California should get 23, the conference said, including four in the Southern District of California, which encompasses San Diego and Imperial counties.

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The proposal, backed by progressive legal organizations, is not as controversial as the idea of expanding the U.S. Supreme Court and appears to have some bipartisan support — including from subcommittee member Rep. Darrell Issa, R-Vista, who sponsored a similar bill in 2018 that would have added 52 new judgeships.

However, he and other Republicans stressed that backing such a measure would likely come with a compromise that would perhaps spread the appointments over current and future presidential election cycles so as not to flood the courts with President Joe Biden appointees.

The last major boost to the federal bench came with legislation in 1990. Since then, the number of case filings has swelled while the number of district judges assigned to hear them has remained relatively stagnant.

The situation is no different in San Diego, which has authorization for 13 active judges, bolstered by 14 magistrate judges, nine senior judges and the occasional visiting judge.

Since 2003, the last time Congress added judgeships locally, case filings have risen by 17 percent, testified District Judge Larry Burns, who recently stepped down as chief to assume senior status in the district.

When considering weighted caseloads — an assessment that determines the amount of time each case type takes to complete — the Southern District in 2019 handled well above the national average, 634 cases per judge versus 535. The goal is around 430.

The crushing caseloads have been exacerbated by vacancies on the bench — Biden currently has five to fill locally — and a considerable backlog of civil cases stalled by the COVID-19 pandemic.

“Our criminal caseload is absolutely staggering here,” Burns explained to the subcommittee, noting the district’s nexus to the U.S.-Mexico border. From 2017 to 2019, criminal filings rose 30 percent, much of it stemming from the Trump administration’s push to prosecute misdemeanor illegal entries into the U.S.

“The effects of the increase in our caseload have been profound and have inexorably led to delay in the handling of cases — particularly civil cases,” Burns said.

If new judges are approved, Burns said additional courtrooms and office space could be carved out of San Diego’s existing neighboring courthouses, as well as the facility in El Centro.

The Judicial Conference has also recommended adding five new judgeships to the 29 existing seats on the 9th U.S. Circuit Court of Appeals.

Issa and others said Wednesday that considering an expansion should not go without a discussion on restructuring the behemoth circuit, the largest in the nation, which encompasses California, eight other western states and two U.S. territories.

Brian Fitzpatrick, a professor at Vanderbilt Law School in Tennessee, testified that the 9th Circuit has long been subject to complaints pertaining to its size, backlog and liberal bent. That political balance has been shifting, though, with recent Republican appointments. The 9th Circuit currently has 13 GOP-nominated active judges and 16 appointed by Democrats.

“We are close to parity in the 9th Circuit now. Therefore, this may be an opportune time for Congress to make changes without obvious partisan implications helping one side or another,” Fitzpatrick said. “I’m optimistic now is the time to do the work that should’ve been done long ago.”