

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
501 I STREET, SUITE 15-220
SACRAMENTO, CA 95814

Chambers of
KIMBERLY J. MUELLER
Chief United States District Judge

(916) 930-4260

By U.S. Mail & Facsimile

June 22, 2020

Senator Kamala D. Harris
United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510
Fax (202) 224 - 2200

RE: Eastern District of California's Judicial Emergency Exacerbated by
the Coronavirus Disease-2019 (COVID-19) Pandemic

Dear Senator Harris:

We write to request your urgent attention to the Eastern District of California's longstanding and now even greater need for additional judgeships. We implore Congress to authorize the five (5) new judgeships for which we qualify. The need for these new judgeships is well-established, and has been growing for more than forty years. And the need will remain even after our two current judicial vacancies are filled. The costs of our underfunded judicial infrastructure have been laid bare by COVID-19. The additional wear and tear hinders the federal trial court striving to serve the nearly 8.5 million people in the 34 counties embraced by the Eastern District of California, including those counties in California's San Joaquin and Sacramento Valleys.

In a nutshell, the number of authorized judges has failed to keep pace with our District's growth. And, indeed even before the outbreak of COVID-19 our circumstances were dire:

- Our current authorization of 6 active judgeships – including two current vacancies – is less than half the number authorized for the two other California districts with equivalent or lesser population, the Northern and Southern Districts respectively. Even if our two vacancies are filled at some point soon, we still will qualify for the five additional district judgeships, as the Judicial Conference has once again recommended in its most recent report to Congress.
- We also have far fewer judgeships in relation to population compared to other equivalently sized districts nationwide, including the Eastern District of Michigan, Massachusetts, Maryland and the Northern District of Georgia.
- Our growing population will further skew these disparities in the near future. Five cities in the Eastern District are on the California Department of Finance’s newly-released top ten list of the fastest-growing in the state: Folsom, Roseville, Merced, Rocklin and Clovis. Bakersfield and Sacramento are not far behind.
- The District continues to carry the highest caseload per judgeship compared to all California federal trial courts and all trial courts within the Ninth Circuit Court of Appeals, measured both using average weighted numbers assigned by the Administrative Office of the U.S. Courts (800 as of the end of 2019) and actual pending cases (1,241 for same time period).
- We have held this dubious distinction for at least 20 years, repeatedly qualifying for emergency status defined as more than 600 weighted filings per judgeship.
- Prior to COVID-19, the District faced a serious imbalance regarding criminal cases: Since 1984 the number of Eastern District prosecutors has increased nearly five-fold while the number of authorized judgeships has decreased by one, with the cessation of a temporary judgeship in November

2004. This imbalance exists against a landscape of the highest violent crime rate per capita – .47% – of any other federal district in California. It also means that time to disposition of criminal cases, even with their priority status, has lagged the nation.

A more complete picture of our District’s pressing needs, even before anyone had heard of COVID-19, is painted in our 2021 Biennial Survey of Article III Judgeships Response and a few select supporting graphs, attached to this letter. Add to the above COVID-19, and here are the highlights of the worsening picture we can see so far:

- Since March, when we closed our courthouses to the public and suspended jury trials, our judges have continued more than 100 trials – 51 criminal trials and 56 civil trials –, with no clarity yet on when we will be able to safely resume seating juries representative of the community. Every trial date continued means resolution of the case is further delayed, with a growing number of trials to be reset once we can safely resume.
- Also since mid-March, we have seen a steady stream of emergency filings including new types of matters: at least 103 motions seek immediate release from pretrial or post-sentencing confinement in light of COVID-19, and 86 motions are for urgent preliminary injunctive relief challenging, for example, executive orders and election procedures. These matters have taken substantial time away from our pre-existing caseloads and continue to do so. Our Clerk of Court reports that overall, since the beginning of the year, our nonprisoner civil matters are holding relatively steady at more than 1,000 filings, with the emergency motions up by 42 percent from 110 to 190.
- One stark illustration of our inability to keep up is our criminal caseload. On April 16, 2020, the Judicial Council of the Ninth Circuit Court of Appeals granted us a suspension of the time limits provided by the Speedy Trial Act, 18 U.S.C. § 3161(c), for a period of time not to exceed one year, as allowed by 18 U.S.C. § 3174(b). This suspension is based on our Chief Judge’s

certification that in criminal cases the Eastern District is unable to comply with the Speedy Trial Act time limits set forth in § 3161(c) due to our pre-existing emergency circumstances as exacerbated by the COVID-19 pandemic. The Judicial Council's approval of our request, conveyed to Congress in April, also is attached.

- Our inability to keep abreast of our criminal caseload is particularly grave in our Fresno Division, where we have the most criminal cases per judgeship and where our two vacancies exist. We have only one District Judge assigned there for now to cover two full caseloads and handle incoming wiretaps, working entirely remotely.
- As are other courts, we are doing our best to stay on top of our cases old and new, holding essential hearings virtually using telephone and videoconferencing. Conducting proceedings in this way is very challenging under the best of circumstances, placing significant burdens on support staff. It also is likely making it impossible to maintain our historic high levels of productivity, which in the past have placed us at the top of Circuit and nationwide lists measuring rates of case terminations.

We have developed a plan for phased resumption of full court operations, pegged to public health metrics. While we hope to move toward resumption soon, there is no guarantee we will be able to, given the reports that COVID-19 continues to spread within our district. Even once we can return to our courthouses, we will need significant time to regroup, and ensure work stations and courtrooms are set up for distancing and deep disinfection. We will have all of those continued trials to reset, with likely rationing of one trial at a time in our two large ceremonial courtrooms and resulting ripple effects throughout calendars and case dockets. Our preexisting backlog of motions and old cases will have grown given the influx of emergency motions. Even if our two vacancies are filled sometime this year, as we hope, our District will continue to be seriously understaffed as we work to restore some semblance of normalcy post-pandemic.

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If we can provide further information or answer any questions, please do not hesitate to let us know.

Thank you for your consideration.

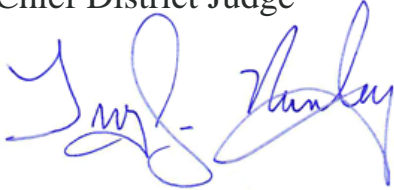
Sincerely yours,



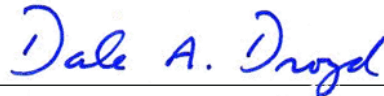
Kimberly J. Mueller
Chief District Judge



John A. Mendez
U.S. District Judge



Troy L. Nunley
U.S. District Judge



Dale A. Drozd
U.S. District Judge



William B. Shubb
Senior U.S. District Judge



Anthony W. Ishii
Senior U.S. District Judge



Morrison C. England, Jr.
Senior U.S. District Judge

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Attachments: 2021 Biennial Survey of Article III Judgeships Response
Judicial Council Approval of Judicial Emergency

cc: Judicial Selection Committee (E.D. Cal.)