

**Testimony before the U.S. House Judiciary Committee
Subcommittee on Courts, Intellectual Property, and the Internet**

Hearing on “The Need for New Lower Court Judgeships, 30 Years in the Making”

Kimberly J. Mueller
Chief Judge, Eastern District of California
U.S. District Court



February 24, 2021

10:00 a.m.

Rayburn House Office Building

Chairman Johnson, Ranking Member Issa and Members of the Subcommittee:

Good morning, and thank you for the opportunity to appear and to appear remotely from my chambers in Sacramento, California. I am Kim Mueller, Chief Judge for the Eastern District of California.

Just over ten years ago, I took the oath prescribed by law to begin my service as a U.S. District Judge, swearing to “administer justice without respect to persons, and do equal right to the poor and to the rich.”¹ Just over a year ago, I became chief judge of our court, adding to my duties the responsibility to help my colleagues discharge theirs. The bottom line of my testimony today is that we cannot fulfill our obligations without congressional action to create new judgeships. We urgently ask for your help to meet the needs of the public we serve.

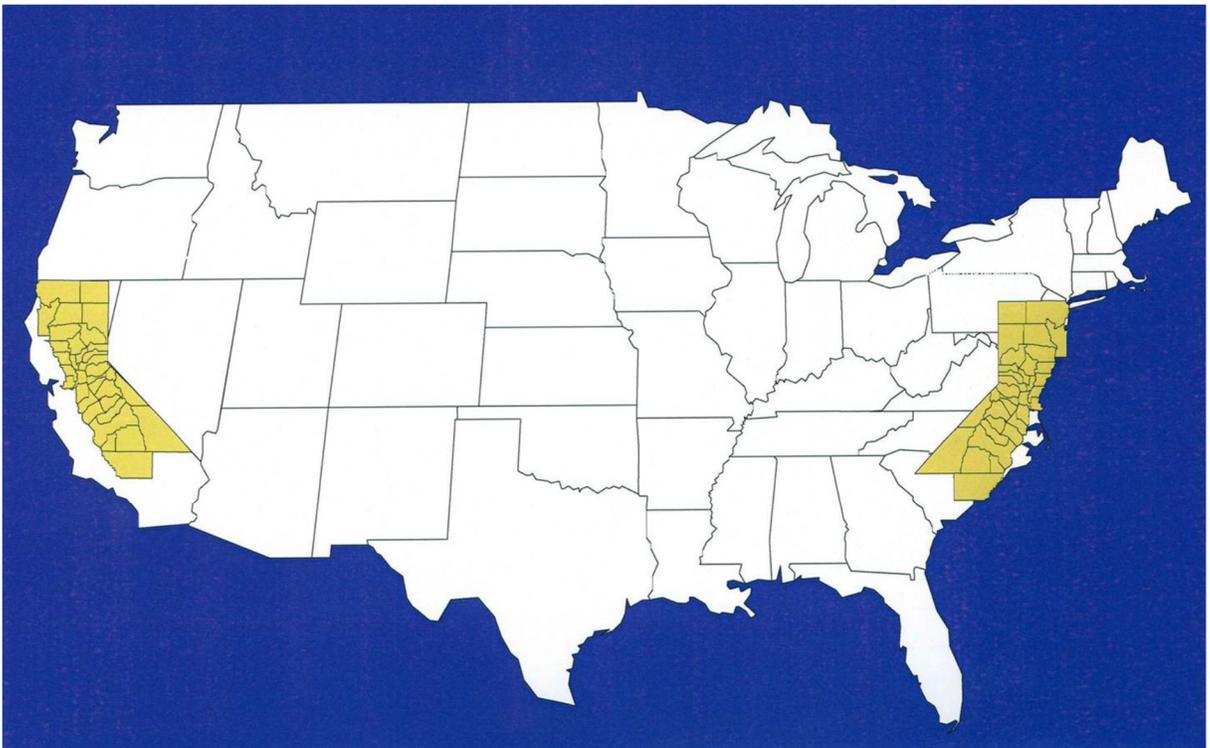
I occupy one of the Eastern District’s 6 permanent authorized district judgeships; that number 6 has not changed since 1978.² Our need for more judgeships dates to that year, and so is more than 40 years in the making. Nationally today, the average caseload per judgeship is 734; our average caseload per judgeship is 1,224. Nationally, the average population per district judgeship is 435,135; our population per judgeship is 1,362,560 and growing. For at least 20 years, we have qualified for judicial emergency status. A decade ago, Justice Anthony M. Kennedy weighed in to note our need for more judgeships, observing our district judges then were “struggling with this caseload,” and that “their dedication must be recognized.” My colleagues and I are unreservedly committed to fulfilling our oaths of office but the simple truth is that we cannot keep pace with the workload that arises from our district’s wide expanse.

¹ 28 U.S.C. § 453.

² A seventh judgeship was established on a temporary basis in 1990 by 104 Stat. 5089. Unfortunately, that judgeship expired in 2004.

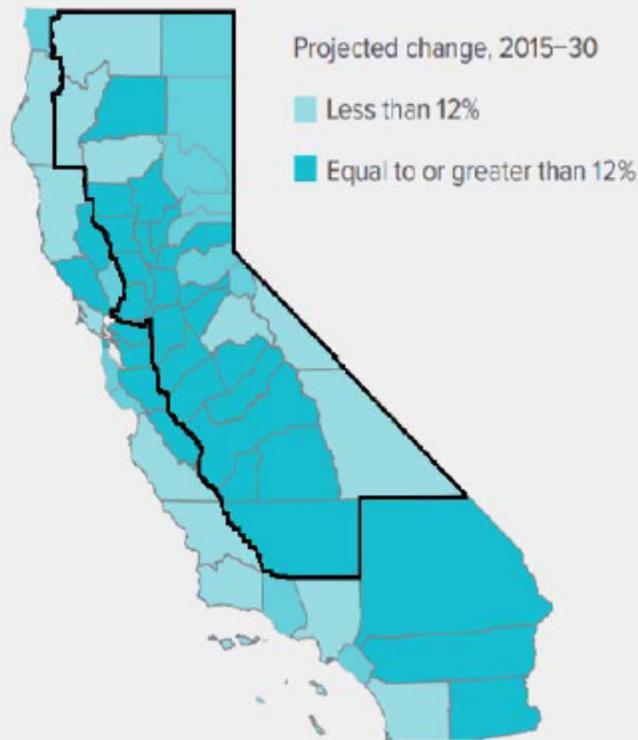
At least five new judgeships are needed to meet our court’s needs. Making matters worse, two of our judgeships are not filled currently, and have been vacant for more than a year each. Until those existing judgeships are filled we have one district judge presiding over all the federal cases in our Fresno courthouse, handling two full caseloads. While we are not alone, and we know of several other districts with similarly urgent needs, we are a poster child for illustrating that justice delayed is in fact justice denied when there are insufficient judges to decide cases.

Our need arises from our geography and demography: The Eastern District embraces 34 counties in California’s Central and Sacramento Valleys, with main courthouses in Sacramento and Fresno, and additional courthouses in Bakersfield, Redding and Yosemite National Park. We are equivalent in size to about half the entire Eastern Seaboard of the United States. Thirteen Members of Congress represent portions of our district.



The total population of the area we serve is approaching 8.4 million people, and 5 cities in our district are among the fastest growing in the state: Folsom, Roseville, Merced, Rocklin and Clovis. Bakersfield and Sacramento are not far behind. The nature of our terrain and our population growth feed caseload growth. We feature swaths of federal lands, major agricultural operations and water projects, and the state capital is located in Sacramento; we also host many low and moderate income communities, 20 adult prisons and 4 federal prisons, one of which is in the process of closing. As our population rises, the number of criminal and civil cases my colleagues and I are called on to resolve also climbs, with no end in sight. The numbers speak for themselves: In 1978, the last time we were authorized a new judgeship, our population was approaching 4 million. In 1992, the first year for which we have caseload data, the population had reached approximately 5.5 million, and the caseload was 530 per judgeship. In 2000, the population was nearly 6.5 million and the caseload had reached 835 per judgeship. In 2010, the population equaled 7.6 million and the caseload spiked to a staggering 1,434 per judgeship with large numbers of civil and criminal mortgage fraud cases spawned by the Great Recession. As of December 2019, with our population approaching 8.4 million, our caseload per judgeship had evened slightly but was still at the excessive level of 1,262 per judgeship. Today, accounting for our two vacancies, the actual number on the ground is a mind-boggling 1,839 per active district judge.

INLAND AREAS WILL EXPERIENCE FASTER POPULATION GROWTH



SOURCE: California Department of Finance projections.

I will not dwell on the numbers today, except to illustrate key points, because the mathematical case for new judicial resources in our district is well documented. Rather, I would like to focus on what the scarcity of judgeships means, practically speaking, for litigants and the public generally, for our court, our district judges and the essential staff that support us. In doing so, I will review first the nature of our work as federal trial judges. I will then explain three symptoms of our district's frayed judicial infrastructure: a Sisyphus Syndrome, Languishing Litigation, and Unsustainability.

First Principles: The Core Duties of a Federal Trial Court and Its District Judges

Federal trial courts are the foundation of the federal court system. A person who wants to bring a federal case will usually begin with a filing in our clerk's office. When the Government believes a federal crime has been committed, a defendant must answer in our court. Our job is certainly not to make the law, but we are tasked with applying the laws written by the United States Congress, and must follow the interpretations of federal law made by the Supreme Court and the Court of Appeals for our Circuit. When the answer to a question of law is not yet clearly established, we create the records that the courts above us review in determining the law. The sooner we resolve these cases the sooner certainty can be achieved in our system that treasures the rule of law. The overwhelming caseloads that my colleagues and I carry delay justice for parties to a lawsuit and the community at large. For cases not appealed, long times to disposition mean criminal cases are drawn out, evidence grows stale, witness memories fade, attorneys' fees rise, litigants agonize and try not to lose patience. As a California resident, with traffic congestion all around, I see our court as a metered onramp to the federal court highway where the metering light turns red almost immediately once a case is filed and changes to green only intermittently thereafter.

Federal district judges are generalist judges. While our courts are courts of limited jurisdiction, we are expected to handle both criminal and civil cases and master a wide range of subject matters when jurisdiction is present. Ideally we are nimble, and able to move from case to case, learning the law as we need to and developing the factual record so as to dispense justice fairly.

Federal district judges, like all federal judges, must explain our decisions to demonstrate they are reasoned decisions, reached by applying the law according to our oaths to uphold the

Constitution and the law, without respect to persons. Reasoned explanations are the touchstone to maintaining public trust, which is essential to a federal court's proper functioning. At times, we can explain our decisions from the bench in an oral pronouncement. Most often, the nature of our cases requires a well-written explanation to make certain our factual findings and legal reasoning are clear to all.

Federal district judges are the only officers with the authority, under the Constitution, to try a federal felony case or accept a felony defendant's change of plea, within a reasonable period of time. If a defendant is convicted or pleads guilty, we have the exclusive power and duty to impose a sentence sufficient but not greater than necessary to achieve the goals of federal criminal law. It is the district judge to whom a defendant has the solemn right to make his or her case before sentencing.

We are the only judges with the authority to review and authorize, if warranted, wiretap investigations allowing for monitoring of phone and text communications.

And these are just examples of our many duties.

In the Eastern District of California our judges honor these first principles and are deeply committed to meeting the high standards required to vindicate them. We are proud to be a collegial court, and I have had the privilege of working side by side with colleagues appointed by six Presidents, of both parties.

Despite our best efforts over the last many years, our attempts to do our jobs properly are at a breaking point with justice delayed daily in tangible ways not typically understood by the general public.

Sisyphus Syndrome

In my first year as a district judge, it did not take long for the realization to set in that the attempt to satisfy all of the first principles was a daunting task. My law clerks and I dove in and paddled as fast as we could to get on top of our cases, but still felt we were drowning. To make light of our challenge, I printed out for each clerk a clip art image of Sisyphus, the ancient Greek king condemned eternally to roll a massive stone up a hill only to have it roll back when he reached the top. I didn't think of our workload as punishment, but our labors did seem Sisyphean. They still do, ten years on with the numbers worsening.

And the consequence, despite our diligence, is disheartening: the Eastern District is at the bottom of list for time to disposition of criminal cases, currently 93rd out of 94 districts. Our time to disposition of civil cases is stretching out well past the goal of 3 years, with cases requiring trial often waiting 5 years or more. For a losing party with the right to challenge one of our decisions on appeal, I can only imagine the frustration, given the inability to see the road sign marking the destination ahead.

Table D-6.
U.S. District Courts—Median Time Intervals From
Commencement to Termination for Criminal Defendants
Disposed of, by District, During the 12-Month Period Ending
March 31, 2020

National Rank	Circuit and District	Total	
		Number	Median
94	NY,E	631	20.5
93	CA,E	587	19.1
92	PR	1,327	17.3
91	PA,M	514	16.9
90	MO,W	718	15.0
89	NV	477	15.0
88	IL,N	749	14.9
87	TN,M	301	14.9
86	PA,W	460	14.9
85	AR,E	557	14.8

As generalist judges, we scramble to learn the law as our particular cases require, without giving any case short shrift. But many federal cases involve complex facts and legal issues. Our court ranks in the top 10 in the nation for percentage of our caseload that consists of nonprisoner civil rights cases. We hear environmental cases with massive administrative records, hotly disputed water cases, many civil rights and employment discrimination cases, wage and hour class actions and our fair share of business litigation over contract disputes and claimed intellectual property theft. We are called on to resolve many Constitutional clashes in cases challenging federal or state executive or legislative actions. In these cases a party often seeks preliminary injunctive relief, asking us to move its case to the top of the list given some urgency, with a proposed law scheduled to take effect and impact peoples' lives, economic markets, water use or wildlife. When we take up these motions and give them the attention they deserve, other cases filed earlier must wait.

In issuing decisions as key to the public trust, we are highly productive: Combined, our district judges disposed of at least 5,238 cases last year, averaging 873 per judgeship or 1,310 per each of our 4 active district judges. Current numbers show us as second most productive in our Circuit and eighth nationwide, without any hazard pay. We are a good return on the public's investment and yet, with 4,263 civil cases and 410 felony cases filed during the same time frame, we are fighting a losing game – as Lucy says to Ethel in the unforgettable Chocolate Factory scene one law clerk reminded me of recently. (I promise we are not eating the chocolates, metaphorically speaking!)

As the only judges who hear federal felony cases, our active district judges currently average 328 pending criminal defendants. But averages mask the reality on the ground: in Fresno where one district judge is handling two caseloads, and where we have a particularly high

number of criminal cases, our most recently monthly report shows 714 defendants pending before that one judge. That number is despite the judge's having resolved more than 55 defendants' cases in that same month, a high number by any measure. At the same time, that judge is handling a steady stream of wiretap applications.

In January of this year, hope springing eternal, I asked my excellent permanent law clerk to step back and assess where I was with my caseload after a year as Chief Judge. Specifically, I said, how much (more) do I need to do each week to get on top of my cases? He responded with some metrics showing I would need to issue between 20 and 30 orders a week, at least a third of which would resolve hard legal issues or address emerging areas of law with little precedent to guide me. Each matter requires me to carefully consider dozens if not hundreds of pages of briefing by the parties, and often much lengthier evidentiary submissions. And I must prepare explanations for my decision, which often requires hours of work and careful thinking for each order. This on top of the time needed for my budgeting and personnel administrative responsibilities as Chief Judge, preparing for and presiding over matters in court including civil and criminal trials, weekly criminal calendars, civil scheduling conferences, civil law and motion hearings, evidentiary hearings and cases specially set for hearings outside the normal schedule. In other words, there is no way for me to do this as a single judge with my caseload. So he concluded by encouraging me to spend time informing those who need to know about our need for more judgeships to get our essential work done in a timely manner. Thank you for allowing me to follow his recommendation here today. I promise I am returning to work immediately following this hearing, with a remote bench trial scheduled to begin later today.

If our district is authorized the 5 additional judgeships required to meet our legal mandates, I am certain my colleagues and I would be able to carry an average caseload – nothing

less – and with new colleagues we would catch up and be able to deliver timely justice to civil litigants, criminal defendants and their families as well as the communities affected by our judgments.

In the meantime, we are pushing that very big rock up the hill of our caseload, only to have it roll back over us just when we think we are making progress toward the summit.

Languishing Litigation

Fundamentally of course this is not about us, the judges. It is about the function we serve as public servants entrusted to make critically important decisions affecting life and liberty, health and opportunity, property and the economy. Our foremost duty is to the law, to uphold the rule of law and in so doing provide all parties with their day in court and a result they will accept as fair regardless of win or loss. The justice delayed in the Eastern District often obscures the fairness of the result.

In criminal cases, the long times to disposition are exacerbated for those criminal defendants detained pending trial. While the Bail Reform Act provides for pretrial release wherever possible, flight risk and dangerousness concerns can support pretrial detention. In the Eastern District our pretrial detention rate, excluding illegal aliens, currently is 56.7 percent, higher than the national average of 51.8 percent, and reflecting the large number of cases involving firearms, controlled substances including fentanyl and methamphetamine distribution and large marijuana grows on federal land.

In civil cases, while districtwide our time to disposition is lengthy, the circumstances in Fresno are particularly dire. When our situation began to worsen just over a year ago, with our two vacancies, the one District Judge there issued a Standing Order to inform the civil and criminal bars of his case management plans, given that he had assumed responsibility for two

caseloads. The dockets for one caseload is separately identified as assigned to “NONE.” Regarding civil cases, the judge noted his preference for oral argument for all civil motions, to allow the court “to more fully grasp the parties’ positions and permit[] the parties to address the court’s concerns without the need for supplemental briefing.” But, he lamented, “such hearings on civil law and motion matters will no longer be feasible.” Copies of this district judges’ standing orders are included here as **Exhibit A**. Since February 2020, all civil matters before that judge, who is buried in backlog, have been submitted without argument. Additionally, no new civil trial dates have been set before that judge. Without resolution, those on both sides of these cases live with the uncertainty, lives and incomes and reputations often hanging in the balance, closure or vindication out of reach.

In our Sacramento courthouse as well, while not all civil motions are submitted, most are. Despite my pledge to hear all civil motions when I became a district judge, I learned quickly the impossibility of meeting that goal. I hold civil law and motion calendar typically every three weeks, hearing motions that could dispose of a case entirely, those that might be resolved efficiently with a bench order and other choice priority matters. Still, I submit far more matters on paper briefing alone, without hearing, than feels appropriate. This year alone, I have submitted dozens of matters in which a party sought a hearing.

Earlier this year, one of my Sacramento colleagues, a veteran federal district judge and former state court judge, has begun providing parties in certain matters with courtesy notices when he feels he has no choice but to continue a matter to a later date. He has issued the notices in cases including those in which parties are requesting time-sensitive preliminary relief, with language to the following effect: “Considering the overwhelming caseload in the Eastern

District of California and the complexity of the issues involved in the case, the Court requires an additional period of time to consider this motion in advance of hearing.”

I asked my courtroom deputy clerk for her sense of how parties are affected by our unacceptable delays. The courtroom deputy is a judge’s public face to the litigants, managing a court’s calendar, handling litigants’ questions, running interference to ensure the judge avoids impermissible ex parte contacts – a sort of air traffic controller or, in the Eastern District of California, emergency room triage nurse. Without hesitation, my deputy said: “Class action settlements, for one.” When parties settle a class action, they typically bring to the court a proposal for approval, and the court holds at least one hearing, before final approval. The judge cannot simply rubber stamp a proposal: Federal Rule of Civil Procedure 23 requires the court’s approval, and provides for due process protections for class members. Even if the same standards apply to a judge’s review of each proposed settlement, the review must be tailored and particularized. Too often the time between the parties’ submission of a proposed settlement and the court’s approval drags on, not because the judge is vacillating; rather the matter is waiting its turn to move to the top of the stack of matters awaiting decision. Because distribution of settlement funds awaits the judge’s signature, and the funds are meaningful to class members, the courtroom deputy receives repeated while still respectful requests for the judge to expedite the matter. All she can say, truthfully, is that the judge will get to it when she can. And she must convey this while worrying that the attorneys and parties she hears from feel ignored or that the court doesn’t care, even as she knows that behind the scenes “we are working tirelessly to keep the wheels of justice turning.”

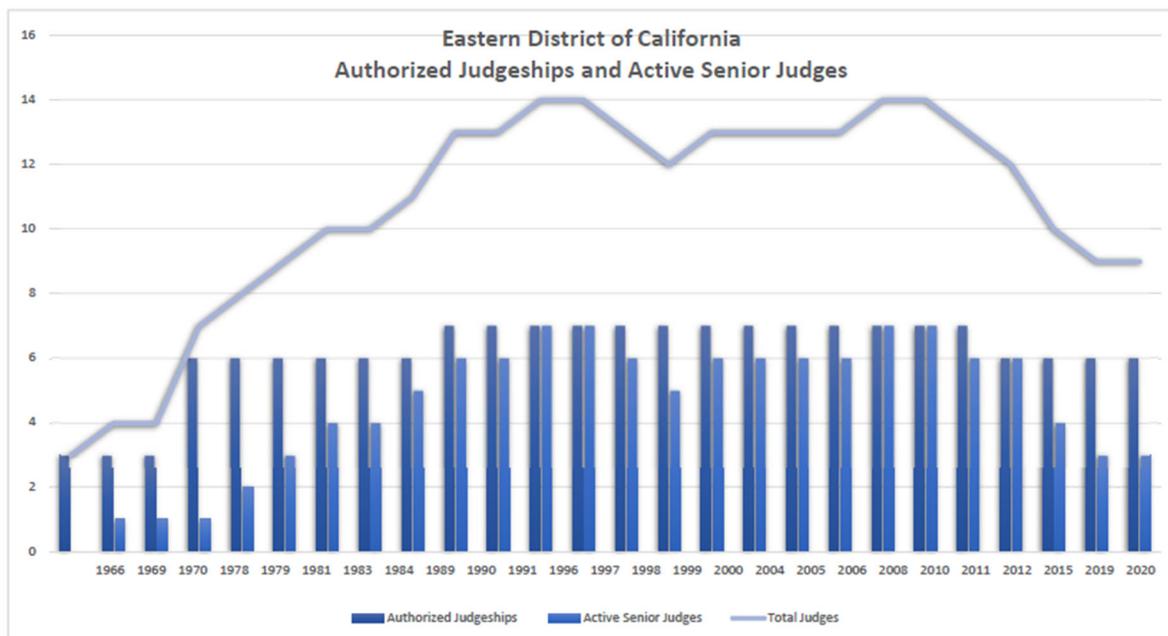
All of the examples provided here are good examples notwithstanding the coronavirus pandemic. Unquestionably, the pandemic has made things even worse, for now and for the

foreseeable future. Since March 2020, judges of our court have continued at least 176 trials, to be rescheduled once we can safely summon jury pools and convene the numbers of persons needed for a trial to go forward. Given that trial dates in new cases are not being set at all, the number of pending trials is even higher. Even as we look forward to a resumption of normal operations as soon as possible consistent with attention to public health, we are bracing for an increase in filings of the kinds of cases we know from experience will follow once the pandemic is suppressed: fraud, employment and bankruptcy cases to name a few.

Simply Put, Unsustainable

The Sisyphus effect and our languishing caseloads expose the deferred maintenance from which the Eastern District of California suffers. Their combined effect makes for a set of circumstances that is simply unsustainable, if justice is to be served.

The best indicator of the unsustainability of our work is the reduction in the number of district judges that decide to continue serving the court after reaching senior status. Historically, we have been able partially to balance our caseloads on the backs of senior judges who choose to remain without any added cost to the court. Contributing their significant wisdom, knowledge and experience, they draw their retirement pay with no supplement and as long as they maintain at least half a caseload they retain some law clerk support. Of course, in the Eastern District the reduction in caseload is all relative: a half a caseload is equivalent to a full caseload in most other courts, applying the nationwide average. Still, many district judges have stayed out of a love for the job and deep commitment to the law. For many years between 1989 and 2011, we had as many as six senior judges continuing to assist us. Since 2011, however, the number has fallen to 3, the lowest level since 1979. Of the two judges who took senior status most recently, only one has remained active, with the other taking inactive senior status and hearing no cases.



The judge who took inactive senior status is my immediate predecessor, Chief Judge Emeritus Lawrence J. O’Neill. Judge O’Neill served as a judicial officer of our court for 21 years—8 as a magistrate judge and 13 as a district judge—and before that was a Fresno County Superior Court Judge and Presiding Judge for 9 years, with prior professional experience as a police officer. Day in and day out, he arrived at his office by 5 a.m., using the early morning hours when all was quiet to chip away at his work. His efforts were prodigious, and invaluable in delivering justice in the heart of the Central Valley. Judge O’Neill is blunt about his reasons for leaving the bench as mirroring those of many others: “Most judges work harder and faster when faced with our kinds of caseloads. But the pace is simply unsustainable.” Judge O’Neill’s wife reports she feels lucky that he made it to retirement: she was certain he would suffer a heart attack during his time as a district judge. And after Judge O’Neill survived cancer his doctor confronted him, asking what exactly was causing the level of stress that his physical condition disclosed. At that point, the judge had to admit there was only one reasonable explanation: his

job as a judge of our court. Judge O'Neill has much to offer, and is sharing his knowledge and insights now with law students in his Evidence class at UC Irvine. As deserving as he is of his new life, his departure from the bench represents the loss of a significant investment that will take years to rebuild once a new judge is appointed to succeed him, no matter how qualified that new judge.

Only More Judgeships Can Ensure Justice on Time

Simply put, the only solution to the judicial emergency in the Eastern District of California is the creation of more district judgeships: 5 more judgeships specifically, to be filled by qualified judges to manage a fair share of our criminal and civil caseloads. Our need is nothing new: we have been saying we need anywhere from 2 to 7 new judgeships for many years. We said so again last year and the year before that, and we are saying so again this year.

As to those five judgeships, I can certify now that we have the district judge chambers available to house new judges immediately with no new construction costs. Given the longstanding projections showing our need for new judgeships, it was plainly obvious when our courthouses in Sacramento and Fresno were christened in 2000 and 2005 that we would need to house more judges; those courthouses were built on the assumption additional chambers would be needed when they opened. Twenty years later, the decision of retirement eligible judges to go inactive or step down from the bench means even more chambers are vacant. Given the down payment made in the form of those capital improvements, all that is needed now is the funding of the human infrastructure to ensure that all the litigants, plaintiffs and defendants, in our 34 counties and your 13 Congressional districts have their fair share of access to justice. These judgeships will ensure that instead of justice delayed, justice will be served.

Thank you very much for your consideration. I would be happy to answer any questions you have for me.

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EXHIBIT A

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Click here to enter text.,

Plaintiff,

v.

Click here to enter text.,

Defendants.

No. Click here to enter text.

AMENDED STANDING ORDER IN LIGHT
OF ONGOING JUDICIAL EMERGENCY IN
THE EASTERN DISTRICT OF CALIFORNIA

The judges of the United States District Court for the Eastern District of California have long labored under one of the heaviest caseloads in the nation even when operating with a full complement of six authorized District Judges.¹ Each of those six District Judges has regularly carried a caseload double the nationwide average caseload for District Judges. Even while laboring under this burden, the judges of this court have annually ranked among the top 10 districts in the country in cases terminated per judgeship for over 20 years. *See* Letter regarding Caseload Crisis from the Judges of the Eastern District of California (June 19, 2018), <http://www.caed.uscourts.gov/CAEDnew/index.cfm/news-archive/important-letter-re-caseload->

¹ For over a decade, the Judicial Conference of the United States has recommended that this district be authorized up to six additional judgeships. However, those recommendations have gone unacted upon. This is the case despite the fact that since the last new District Judgeship was created in the Eastern District in 1978, the population of this district has grown from 2.5 million to over 8 million people and that the Northern District of California, with a similar population, operates with 14 authorized District Judges.

1 crisis/. On December 17, 2019, District Judge Morrison C. England took Senior status. On
2 December 31, 2019, Senior District Judge Garland E. Burrell, Jr. assumed inactive Senior status.
3 On February 2, 2020, District Judge Lawrence J. O’Neill assumed inactive Senior status.² As a
4 result of these long anticipated events, the shortfall in judicial resources will seriously hinder the
5 administration of justice throughout this district, but the impact will be particularly acute in
6 Fresno, where the undersigned will now be presiding over all criminal and civil cases previously
7 assigned to Judge O’Neill as well as those already pending before the undersigned. As of the date
8 of this order, this amounts to roughly 1,100 civil actions and 625 criminal defendants. Until two
9 candidates are nominated and confirmed to fill this court’s two vacant authorized district
10 judgeships, this situation can only be expected to grow progressively worse.

11 The gravity of this problem is such that no action or set of actions undertaken by this court
12 can reasonably be expected to alleviate it. Nonetheless, this order will advise litigants and their
13 counsel of the temporary procedures that will be put in place for the duration of this judicial
14 emergency in cases over which the undersigned is presiding. What follows will in some respects
15 be contrary to the undersigned’s default Standing Order in Civil Actions,³ and may also differ
16 from the Local Rules of the Eastern District of California. To the extent such a conflict exists, the
17 undersigned hereby invokes the court’s authority under Local Rule 102(d) to issue orders
18 supplementary or contrary to the Local Rules in the interests of justice and case management.

19 **A. DESIGNATION OF CIVIL CASES**

20 As of February 3, 2020, all civil cases previously assigned to Judge O’Neill, and all newly
21 filed cases that will be assigned to his future replacement, will be unassigned. Those cases will
22 bear the designation “NONE” as the assigned district judge and will continue to bear the initials
23 of the assigned magistrate judge. Until new judges arrive, the undersigned will preside as the

24
25 ² In short, a Senior District Judge is one who has retired from regular active service, usually
26 based on age and length of service, but continues to preside over cases of a nature and in an
27 amount as described in 28 U.S.C. § 371(e). A Senior District Judge taking inactive status is one
28 who has ceased to perform such work.

³ The undersigned’s standing order in civil cases is available on the court’s website at
<http://www.caed.uscourts.gov/caednew/index.cfm/judges/all-judges/5017/>.

1 district judge in the cases so designated. Judge O’Neill’s chambers staff have remained in place
2 since his departure from the court. Accordingly, his remaining staff will continue to work on the
3 cases bearing the “NONE” designation and Courtroom Deputy Irma Munoz (559-499-5682;
4 imunoz@caed.uscourts.gov) will continue to be the contact person with respect to any questions
5 regarding those cases. Proposed orders in those cases are to be sent to
6 noneorders@caed.uscourts.gov. Finally, any hearings or trials before the undersigned in cases
7 bearing the “NONE” designation will be held in Judge O’Neill’s former courtroom, Courtroom
8 #4 on the 7th Floor at 2500 Tulare Street in Fresno, California.⁴

9 **B. CIVIL LAW AND MOTION**

10 It has been the strong preference of the undersigned over the past twenty-three years to
11 hear oral argument on all civil motions. In the undersigned’s experience, doing so allows the
12 court to more fully grasp the parties’ positions and permits the parties to address the court’s
13 concerns without the need for supplemental briefing. However, given the judicial emergency
14 now faced by this court, such hearings on civil law and motion matters will no longer be feasible.
15 Accordingly, all motions filed before the undersigned in civil cases will be deemed submitted
16 upon the record and briefs pursuant to Local Rule 230(g) without further action by the court.
17 This means that the hearing date chosen by the moving party will not be placed on the court’s
18 calendar; it will serve only to govern the opposition and reply filing deadlines pursuant to Local
19 Rule 230(c).

20 In cases bearing the “DAD” designation, hearings may be noticed for the first and third
21 Tuesdays of each month. In cases designated as “NONE,” hearings may be noticed for any
22 Tuesday through Friday. In the unlikely event that the court determines a hearing would be
23 helpful and feasible, the court will re-schedule a hearing date in accordance with its availability.
24 The parties are required to comply with Local Rule 230 and all other applicable rules and notice
25 requirements with respect to motions.

26 In addition to the motions already assigned to magistrate judges by operation of Local

27 _____
28 ⁴ When filing motions via CM-ECF to be heard by the district judge in “NONE” cases, the filer
should select “Courtroom 4” as the location for the hearing and “UnassignedDJ” as the judge.

1 Rule 302(c), the undersigned now orders that the following categories of motions in cases bearing
2 “DAD” and “NONE” designations shall be noticed for hearing before the assigned magistrate
3 judge:

- 4 1. Motions seeking the appointment of a guardian *ad litem*;
- 5 2. Motions for class certification and decertification pursuant to Federal Rule of Civil
6 Procedure 23; and
- 7 3. Motions to approve minors’ compromises.⁵

8 The undersigned will surely refer other motions to the assigned magistrate judge for the issuance
9 of findings and recommendations by separate orders in particular cases.

10 **C. CIVIL TRIALS**

11 In the two civil caseloads over which the undersigned will be presiding for the duration of
12 this judicial emergency, there are currently trials scheduled through the end of 2021. It is
13 unlikely that those civil cases will be able to proceed to trial on the currently scheduled date
14 because criminal cases will take priority over civil cases once the courthouse reopens to the
15 public and the undersigned resumes trying cases.⁶ Given the enormous criminal caseload that is
16 pending before the undersigned and the fact that all civil and criminal trials set before the
17 undersigned have been continued throughout the ongoing pandemic, civil cases are not likely to
18 proceed to trial until mid-2021, if not later.⁷ Thus, the setting of new trial dates in civil cases
19

20 ⁵ Magistrate judges may resolve motions seeking the appointment of a guardian *ad litem* by way
21 of order, while all other motions may be resolved by issuance of findings and recommendations.
See 28 U.S.C. § 636(b)(1)(A).

22 ⁶ Pursuant to General Order No. 618 addressing the public health emergency posed by the
23 coronavirus (COVID-19) outbreak, all courthouses in this district are closed to the public and
24 jurors are not called for service in civil or criminal jury trials until further notice.

25 ⁷ Even in those instances where a trial date has been set, such trial dates will be subject to vacatur
26 with little to no advance notice due to the anticipated press of proceedings related to criminal
27 trials before this court, which have statutory priority over civil trials. In any civil action that is
28 able to be tried before the undersigned during the duration of this judicial emergency, the trial
will be conducted beginning at 8:30 a.m. Tuesday through Thursday. The court will have
calendars for criminal cases bearing a “DAD” assignment on Monday at 10:00 a.m. and for those
criminal cases bearing the “NONE” designation on Friday at 8:30 a.m.

1 would be purely illusory and merely add to the court’s administrative burden of vacating and re-
2 setting dates for trials that will not take place in any event. **Accordingly, for the duration of**
3 **this judicial emergency and absent further order of this court in light of statutory**
4 **requirements or in response to demonstrated exigent circumstances, no new trial dates will**
5 **be scheduled in civil cases assigned to “DAD” and “NONE” over which the undersigned is**
6 **presiding.**⁸ As such, scheduling orders issued in civil cases over which the undersigned is
7 presiding will not include a trial date. Rather, the final pretrial conference will be the last date to
8 be scheduled.⁹

9 Particularly in light of this judicial emergency, parties in all civil cases before the
10 undersigned are reminded of their option to consent to magistrate judge jurisdiction pursuant to
11 28 U.S.C. § 636(c). The magistrate judges of this court are highly skilled, experienced trial
12 judges. Moreover, because magistrate judges cannot preside over felony criminal trials, trial
13 dates in civil cases can be set before the assigned magistrate judge with a strong likelihood that
14 the trial will commence on the date scheduled.

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22 ⁸ Any party that believes exigent or extraordinary circumstances justify an exception to this order
23 in their case may file a motion seeking the setting of a trial date. Such motions shall not exceed
24 five pages in length and must establish truly extraordinary circumstances. Even where such a
25 showing is made, the parties are forewarned that the undersigned may simply be unable to
accommodate them in light of the court’s criminal caseload.

26 ⁹ Final pretrial conference dates may be later vacated and rescheduled depending on the court’s
27 ability to rule on dispositive motions that are filed. Moreover, in those “NONE” and “DAD”
28 designated civil cases with trial dates, the parties are hereby ordered not to file any pretrial
motions *in limine* prior to the issuance of the Final Pretrial Order and to do so only in compliance
with the deadlines set in that order.

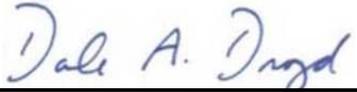
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CONCLUSION

These are uncharted waters for this court. The emergency procedures announced above are being implemented reluctantly. They are not, in the undersigned’s view, conducive to the fair administration of justice. However, the court has been placed in an untenable position in which it simply has no choice. There will likely be unforeseen consequences due to the implementation of these emergency procedures and the court will therefore amend this order as necessary.

IT IS SO ORDERED.

Dated: February 21, 2021


UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Click here to enter text.,

Plaintiff,

v.

Click here to enter text.,

Defendants.

No. 1: __cr__

STANDING ORDER IN LIGHT OF
ONGOING JUDICIAL EMERGENCY IN THE
EASTERN DISTRICT OF CALIFORNIA

The judges of the United States District Court for the Eastern District of California have long labored under one of the heaviest caseloads in the nation even when operating with a full complement of six authorized District Judges.¹ Each of those six District Judges has regularly carried a caseload double the nationwide average caseload for District Judges. Even while laboring under this burden, the judges of this court have annually ranked among the top 10 districts in the country in cases terminated per judgeship for over 20 years. *See* Letter regarding Caseload Crisis from the Judges of the Eastern District of California (June 19, 2018),

¹ For over a decade, the Judicial Conference of the United States has recommended that this district be authorized up to six additional judgeships. However, those recommendations have gone unacted upon. This is the case despite the fact that since the last new District Judgeship was created in the Eastern District in 1978, the population of this district has grown from 2.5 million to over 8 million people and that the Northern District of California, with a similar population, operates with 14 authorized District Judges.

1 <http://www.caed.uscourts.gov/CAEDnew/index.cfm/news/important-letter-re-caseload-crisis/>
2 On December 17, 2019, District Judge Morrison C. England took Senior status. On December
3 31, 2019, Senior District Judge Garland E. Burrell, Jr. assumed inactive Senior status. On
4 February 2, 2020, District Judge Lawrence J. O'Neill will assume inactive Senior status.² As a
5 result of these long anticipated events, the shortfall in judicial resources will seriously hinder the
6 administration of justice throughout the district, but the impact will be particularly acute in
7 Fresno, where the undersigned will now be presiding over all criminal and civil cases previously
8 assigned to Judge O'Neill as well as those already pending before the undersigned. As of the date
9 of this order, this amounts to roughly 1,050 civil actions and 625 criminal defendants. Until two
10 candidates are nominated and confirmed to fill this court's two vacant authorized judgeships, this
11 situation can only be expected to grow progressively worse.

12 The gravity of this problem is such that no action or set of actions undertaken by this court
13 can reasonably be expected to alleviate it. Nonetheless, this order will advise the parties and their
14 counsel of the temporary procedures that will be put in place for the duration of this judicial
15 emergency in cases over which the undersigned is presiding. To the extent any of the following
16 procedures are inconsistent with the Local Rules of the Eastern District of California, the
17 undersigned hereby invokes the court's authority under Local Rule 102(d) to issue orders
18 supplementary or contrary to the Local Rules in the interests of justice and case management.

19 **A. DESIGNATION OF CRIMINAL CASES**

20 As of February 3, 2020, all criminal cases previously assigned to Judge O'Neill, and all
21 newly filed cases that will be assigned to his future replacement, will be unassigned. Those cases
22 will bear the designation "NONE" as the assigned district judge. Until new judges arrive, the
23 undersigned will preside as the district judge in the cases so designated. Judge O'Neill's
24 chambers staff will remain in place for seven months following his departure from the court.
25 Accordingly, his remaining staff will continue to work on the cases bearing the "NONE"

26 _____
27 ² In short, a Senior District Judge is one who has retired from regular active service, usually
28 based on age and length of service, but continues to preside over cases of a nature and in an
amount as described in 28 U.S.C. § 371(e). A Senior District Judge taking inactive status is one
who has ceased to perform such work.

1 designation and Courtroom Deputy Irma Munoz (559-499-5682; imunoz@caed.uscourts.gov)
2 will continue to be the contact person with respect to any questions regarding those cases.
3 Proposed orders in these cases are to be sent to noneorders@caed.uscourts.gov. Finally, any
4 hearings or trials before the undersigned in cases bearing the “NONE” designation will continue
5 to be held in Judge O’Neill’s former courtroom, Courtroom #4 on the 7th Floor at 2500 Tulare
6 Street in Fresno, California.

7 **B. WEEKLY CRIMINAL CALENDARS**

8 The court will continue to hold weekly calendars in criminal cases bearing a “DAD”
9 assignment on Mondays at 10:00 a.m. in Courtroom #5. For those criminal cases bearing the
10 “NONE” designation, the weekly criminal calendar will be held on Fridays at 8:30 a.m. in Judge
11 O’Neill’s former courtroom, Courtroom #4.

12 Because the undersigned will be holding two criminal calendars most weeks and will be
13 presiding over trials Tuesdays through Thursdays, last minute filings by counsel can no longer be
14 accommodated. Any filings for the Monday calendar must be submitted no later than close of
15 business the Thursday before the hearing. Any filings for the Friday calendar must be submitted
16 no later than the close of business on the Wednesday before the hearing. Untimely filings may
17 well result in the matter being continued by the court at the time originally scheduled for hearing.

18 **C. CRIMINAL TRIALS**

19 All criminal trials in cases bearing the “DAD” or “NONE” designations will be conducted
20 commencing at 8:30 a.m. Tuesday through Thursday until conclusion, absent other order of the
21 court. Given the number of criminal cases and defendants that will now be pending before the
22 undersigned at any one time, Trial Confirmation Hearings will take on added significance.³ The
23 court is likely to find itself in the position of juggling several cases with overlapping trial
24 schedules and posing different Speedy Trial Act considerations. If a trial date is confirmed, the

25 _____
26 ³ In light of the anticipated congestion of the criminal trial calendar, by separate standing order
27 issued in all civil cases the undersigned has announced that for the duration of this judicial
28 emergency and absent further order of this court in light of statutory requirements or in response
to demonstrated exigent circumstances, no new trial dates will be scheduled in civil cases
assigned to “DAD” and “NONE” over which the undersigned is presiding.

1 court must act as if that case is in fact proceeding to trial. The undersigned urges the parties,
2 where there is doubt as to whether a trial date should be confirmed, to seek a brief continuance of
3 the trial confirmation hearing rather than to request a change of plea hearing immediately prior to
4 scheduled trial date.

5 **CONCLUSION**

6 These are uncharted waters for this court. The emergency procedures announced above
7 are being implemented reluctantly. They are not, in the undersigned's view, conducive to the fair
8 administration of justice. However, the court has been placed in an untenable position in which it
9 simply has no choice. There will likely be unforeseen consequences due to the implementation of
10 these emergency procedures and the court will therefore amend this order as necessary.

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