United States Senate
Committee on the Judiciary

Hearing on:
"Immigration"
Monday, April 3, 2006, at 10:00 a.m.
Senator Dirksen Office Building
Dirksen 226
Washington, D.C. 20510

Written Testimony of
John M. Roll
United States District Judge
District of Arizona
Evo A. DeConcini U.S. Courthouse
405 W. Congress, Suite 5190
Tucson, Arizona 85701-5053

INTRODUCTION

I enthusiastically support the concept of all appeals from the Board of Immigration Appeals ("BIA") being consolidated in the Federal Circuit Court of Appeals. Consolidation of BIA appeals in the Federal Circuit would result in national standards being applied in these cases. It would also benefit the Ninth Circuit, which presently has over 6,500 BIA appeals on its docket.

HAVING BIA CASES HEARD BY A SINGLE CIRCUIT COURT IS SOUND POLICY

Currently, Board of Immigration Appeals (BIA) cases are heard by a number of federal circuit courts, with the largest proportion heard by the Ninth Circuit.

It has been proposed that BIA appeals be consolidated for review by the Federal Circuit Court of Appeals.

If these appeals were to be referred to the Federal Circuit for consideration, a more uniform national case law would likely develop in this area.

Consolidating all immigration appeals before the United States Court of Appeals for the Federal Circuit will produce a level of consistency and uniformity currently absent in the way federal appellate courts approach immigration appeals. Given the enormous volume of immigration appeals currently pending before the circuit courts, we cannot continue to allow cases to be resolved under different standards of review, or different interpretations of the substantive law.

For example, depending on your geographic location, there are varying levels of deference given to an Immigration Judge's finding of fact and adverse credibility determination. There are currently over 12,000 immigration appeals pending before the federal circuit courts; an immigration judge's finding of fact in one geographic location should not be reviewed with a different standard than an immigration judge's finding of fact in another geographic location. This problem was highlighted in the Ninth Circuit case, *Kaur v. Ashcroft*, 379 F.3d 876 (9th Cir. 2004) (Tallman, J., dissenting). Another more substantive example would be to look at the law regarding the retroactive application of § 241(a)(5) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(a)(5). Section 241(a)(5) is the reinstatement provision of the INA; it provides that a prior order of removal may be reinstated against an alien who has illegally re-entered the United States. It also bars such alien from applying for any form of relief under Chapter 12 of Title 8. Seven circuits, including the First, Third, Fourth, Fifth, Eighth, Tenth, and Eleventh, have all held that

§ 241(a)(5) applies retroactively, thereby allowing the government to reinstate a prior deportation and exclusion order of aliens who happened to unlawfully reenter the United States before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. In comparison, both the Ninth and the Sixth Circuits have held that § 241(a)(5) does not apply retroactively.

Finally, there is another important issue that has raised differing views among the circuits. This issue is whether an alien-parent, who does not personally have a well-founded fear of persecution, may derivatively seek asylum based on the possible persecution of the alien's United States-citizen child. The Seventh Circuit, in *Oforji v. Ashcroft*, 354 F.3d 609 (7th Cir. 2003), denied such a claim. Nevertheless, under Ninth Circuit case law, there is support for such an argument. *See Abebe v. Gonzales*, 432 F.3d 1037 (9th Cir. 2005); *Tchoukhrova v. Gonzales*, 404 F.3d 1181 (9th Cir. 2005).

Adjudicating immigration appeals before one court will strengthen jurisprudence in this area of the law and produce consistent standards applied uniformly nationwide.

Furthermore, the Federal Circuit would unquestionably soon have an expertise in addressing these appeals, unmatched by any other circuit.

Depending upon whether all pending BIA appeals are transferred to the Federal Circuit or only future BIA appeals, the impact on the two circuits with the largest number of BIA appeals would be quite apparent. For example, the Ninth Circuit has over 6,500 BIA appeals currently pending before it. The Second Circuit Court of Appeals has another 2,000 BIA appeals on its docket.

Although some opposition to this proposal has been based on the argument that the Federal Circuit, in Washington, D.C., is inaccessible to litigants and attorneys, the Federal Circuit can sit at any location in the United States where any of the various circuit courts are authorized to sit. 28 U.S.C.§ 48. Federal Circuit panels could sit regularly in the busiest cities.

The Ninth Circuit Court of Appeals copes with the enormous number of BIA appeals through the use of staff attorneys. Certainly the Federal Circuit could utilize similar resources.

Obviously, additional judgeships would be needed for the Federal Circuit. No referral of BIA cases should commence until such judgeships are provided for.

In addition to such consolidation serving sound public policy, another important benefit would be derived therefrom. The Ninth Circuit Court of Appeals, which is currently

suffering from a staggering caseload, would benefit by the removal of BIA appeals from its docket.

THE CONSOLIDATION OF BIA APPEALS IN THE FEDERAL CIRCUIT WOULD GIVE THE NINTH CIRCUIT MUCH RELIEF

It is undeniable that the Ninth Circuit's population and caseload are vastly disproportionate to those of all other circuits.

Caseload.

The Ninth Circuit currently has pending nearly 17,000 appeals. Although the Ninth Circuit is but 1 of 12 geographical federal circuit courts, it has 28% of all pending federal appeals. (See Attachment A).

Consolidation of BIA appeals in the Federal Circuit, including pending cases, would reduce the Ninth Circuit's caseload by over 6,500 cases.

At the end of September 2005, there were 6,583 filed appeals from the Board of Immigration Appeals in the Ninth Circuit out of a total of over 16,000 filed appeals. (See Attachment B). If the Ninth Circuit were to schedule oral argument for these appeals as they are filed, it would overwhelm the circuit and cause needless delay in other important pending appeals. Direct criminal and habeas corpus claims in which the petitioner is imprisoned are time sensitive matters that also require efficient resolution. Appeals of preliminary injunctions also must be handled in an expedited manner. The Ninth Circuit is running out of resources to effectively handle over half the immigration appeals of this nation while still providing prompt and just adjudication of the cases which make up the rest of its docket. Transferring BIA appeals to the Federal Circuit would not only allow these immigration appeals to be more effectively and efficiently resolved, but it would free the Ninth Circuit to concentrate on appeals in other matters where delay also jeopardizes the rights and freedom of parties to those appeals.

Decisional Time.

According to the latest statistics from the Administrative Office of the U.S. Courts, unquestionably as a result of the enormous caseload, the Ninth Circuit is now dead last in decisional time, when measured from the time of filing of notice of appeal to disposition. This is, of course, the only time period of importance to litigants. The Ninth Circuit is 2 months slower than the next slowest circuit in decisional time using this measurement. (See

Attachment C).

Population.

The Ninth Circuit presently contains over 58 million people. This represents one-fifth of the population of the United States. The Ninth Circuit has 27 million more people than the next largest circuit. (See Attachment D). This vast population unquestionably contributes to the Ninth Circuit's disproportionate caseload.

Judgeships.

Because of the confluence of an enormous circuit population and circuit caseload, the current Ninth Circuit has 28 authorized active circuit judgeships and is in need of at least 7 more. The next largest circuit has 17 active circuit judgeships; the average circuit has less than 13 active circuit judgeships.

With 7 more authorized active circuit judgeships, the Ninth Circuit would have twice as many judgeships as the next largest circuit and nearly three times as many judgeships as most other circuits.

Limited en banc.

Because the Ninth Circuit has so many judges, it, alone of all federal circuits, must sit en banc with fewer than all active circuit judges. Until this year, 11 active circuit judges participated in "limited" or "mini-" en banc hearings. When the Commission on Structural Alternatives for the Federal Courts of Appeals ("White Report") was issued on December 18, 1998, it commented that few en banc cases were closely decided. (White Report, at 35). However, that is certainly no longer the case. Since the White Report was issued, more than 1/3 of all Ninth Circuit en banc decisions have been by 6-5 or 7-4 margins.

The recent change in Ninth Circuit rule, resulting in 15 active circuit judges now sitting "en banc," is still 13 less than the number of authorized active circuit judges for the Ninth Circuit. Former U.S. Supreme Court Justice Sandra Day O'Connor wrote to the White Commission in 1998 that an en banc hearing with less than all active circuit judges participating could not serve the purpose of a full en banc hearing. (See Attachment E).

Reversals by Supreme Court.

In 1998, U.S. Supreme Court Justice Antonin Scalia wrote to the White Commission, pointing out that the Ninth Circuit is the most reversed circuit and the most unanimously reversed circuit. (See Attachment F).

Since the White Report was issued, the Ninth Circuit has continued to be the most reversed circuit. Perhaps even more strikingly, since the White Report was issued, the Ninth Circuit has been unanimously reversed nearly 60 times. (See Attachment G). Most of these cases were never heard en banc by the Ninth Circuit.

Post-White Report increase in population and caseload.

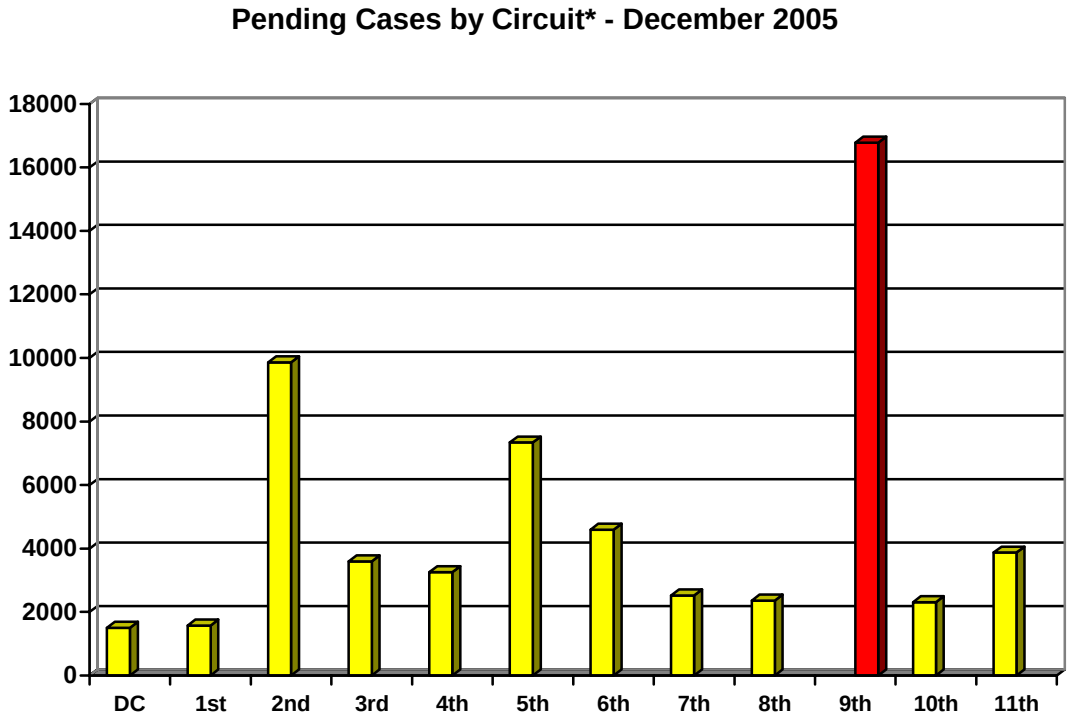
While the Ninth Circuit now has nearly 17,000 pending appeals and decides the law for a population of 58 million people, when the White Report was issued in 1998, the Ninth Circuit's caseload was about 8,600 appeals and the population in the Ninth Circuit was 51,453,880. (White Report, at 27, 32).

CONCLUSION

At the present time, public policy commends a consolidation of BIA appeals in the Federal Circuit. Thank you for the opportunity to present my comments to you regarding these very important measures.

Attachment

A



Circuit	Pending Appeals
D.C	1,500
1st	1,575
2nd	9,862
3rd	3,599
4th	3,253
5th	7,340
6th	4,596
7th	2,520
8th	2,357
9th	**16,782**
10th	2,310
11th	3,875

*Based on United States Courts Statistical Tables for the period ending December 30, 2005.

Attachment

B

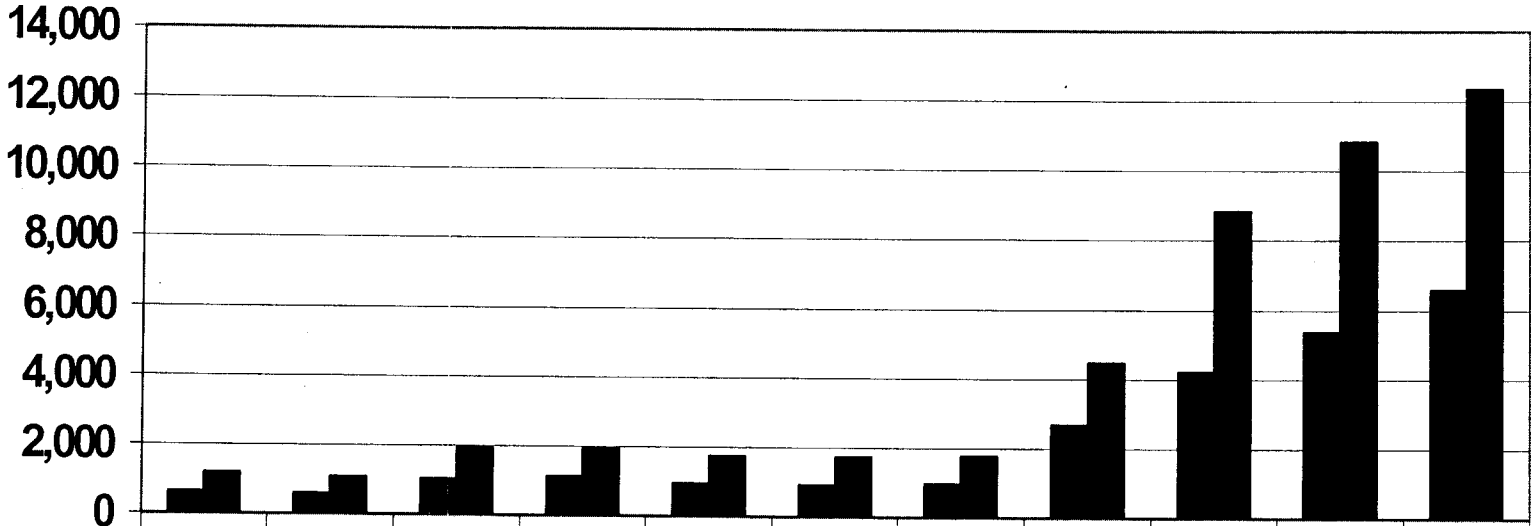
United States Court of Appeals for the Ninth Circuit
Court Year Filings for the period ending December 31, 2005 (District & Casetype / BIA)

Dist/Casetype	AK	AZ	C.CA	Ea.CA	No.CA	So.CA	GU	HI	ID	MT	NV	NM	S.CT. NM	OR	E.WA	W.WA	TOTAL
CIVIL	45	233	755	200	475	137	6	74	36	78	206	2	0	266	43	268	2,824
CRIMINAL:	61	347	664	106	114	349	21	94	39	157	178	10	0	105	158	161	2,564
Other:	12	24	90	18	29	26	3	12	5	20	13	0	0	20	17	16	305
Sentence:	20	118	192	26	42	162	7	28	13	65	38	2	0	36	80	37	866
Conviction:	9	33	18	5	6	46	1	7	5	19	25	3	0	13	8	10	208
Sent/Convct:	20	172	364	57	37	115	10	47	16	53	102	5	0	36	53	98	1,185
AGENCY:	9	282	3,020	12	2,286	514	4	56	7	5	169	0	0	71	4	300	6,739
of agency BIA:	**6**	**275**	**3,008**	**4**	**2,181**	**506**	**4**	**53**	**5**	**3**	**166**	**0**	**0**	**66**	**0**	**280**	**6,557**
PRISONER	37	227	890	464	326	157	7	45	45	45	177	1	0	164	44	150	2,779
ORI.Proc.	16	72	308	114	100	61	4	13	12	10	33	2	0	36	22	68	871
Bnkrptcy-DC	0	13	32	6	6	4	0	6	2	0	13	0	0	3	5	10	100
BAP	1	9	35	4	10	1	0	0	5	0	6	0	0	1	0	4	76
TAX	0	11	13	0	15	2	0	3	1	3	4	0	0	2	0	9	63
MISC.Proc.	3	10	16	4	26	3	0	6	2	2	1	0	0	5	0	15	93
																	16,109
TOTAL:	172	1,204	5,733	910	3,358	1,228	42	297	149	300	787	15	0	653	276	985	16,109

Source: AIMS, includes miscellaneous cases

Board of Immigration Appeals

September 30, 1995 - 2005

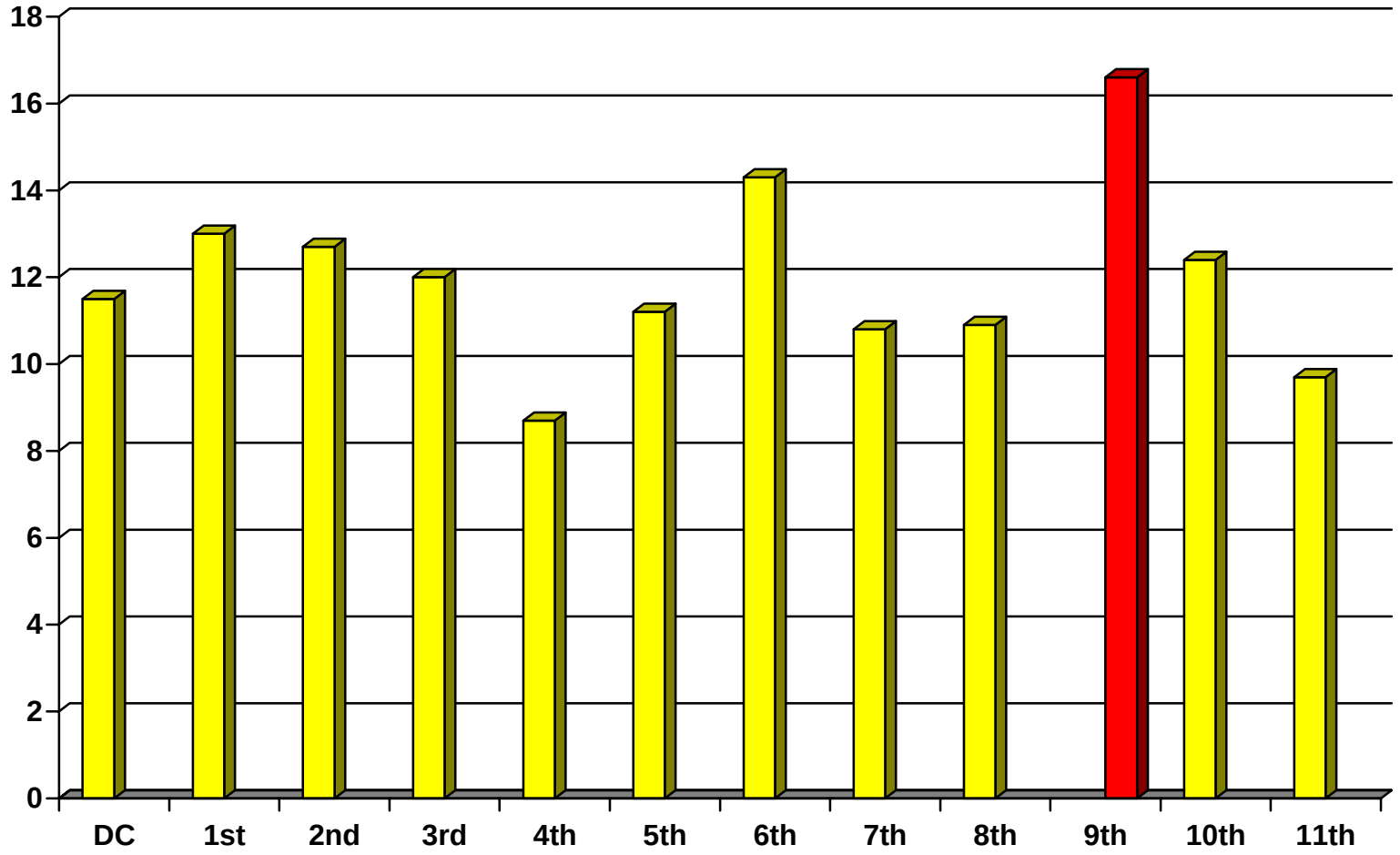


	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
9th Circuit	624	579	1,018	1,102	938	910	954	2,670	4,206	5,368	6,583
National	1,180	1,062	1,921	1,936	1,731	1,723	1,760	4,449	8,833	10,812	12,349

Attachment

C

Dispositional Time in Months - Circuit Courts, Dec. 2005*



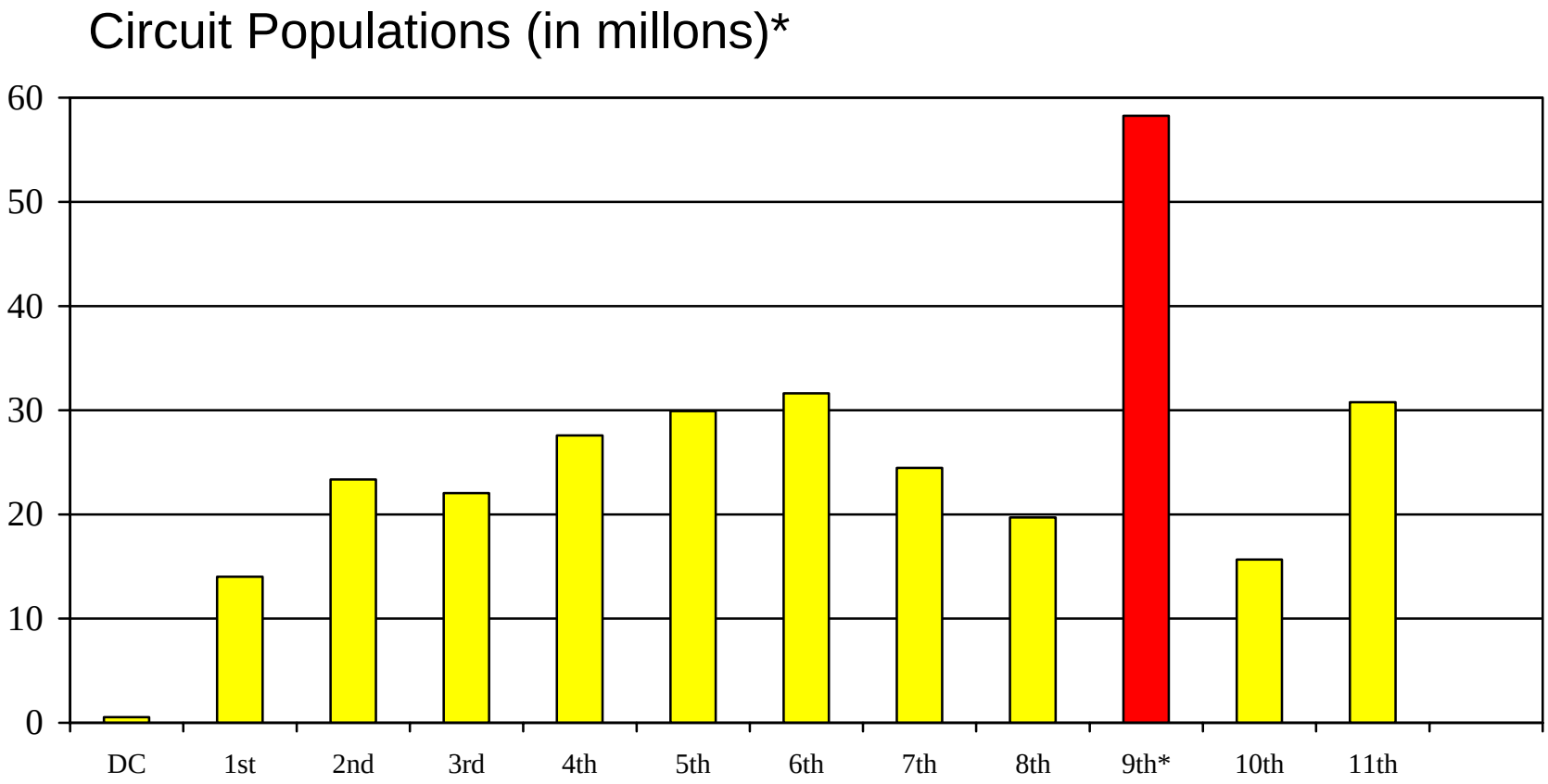
* Based on United States Courts Statistical Tables for the 12-month period ending December 31, 2005, Table B4.

TABLE B4. U.S. COURTS OF APPEALS
MEDIAN TIME INTERVALS IN MONTHS FOR CASES TERMINATED AFTER HEARING OR SUBMISSION, BY CIRCUIT
DURING THE TWELVE MONTH PERIOD ENDED DEC. 31, 2005

CIRCUIT	TOTAL CASES	FROM FILING NOTICE OF APPEAL TO FILING LAST BRIEF		FROM FILING LAST BRIEF TO HEARING OR SUBMISSION		FROM HEARING TO FINAL DISPOSITION		FROM SUBMISSION TO FINAL DISPOSITION		FROM FILING NOTICE OF APPEAL TO FINAL DISPOSITION		FROM FILING IN LOWER COURT TO FINAL DISPOSITION IN APPELLATE COURT	
		CASE	INTV	CASE	INTV	CASE	INTV	CASE	INTV	CASE	INTV	CASE	INTV
						ALL CASES							
TOTAL	30,849	15,948	5.6	19,910	4.3	9,090	2.2	21,759	.5	22,153	12.1	22,153	27.2
DISTRICT OF COLUMBIA..	484	176	8.2	283	3.2	243	2.1	241	.9	305	11.5	305	31.6
FIRST.....	1,059	684	6.9	788	1.8	401	2.7	658	1.8	839	13.0	839	31.5
SECOND.....	2,488	1,055	6.6	1,692	4.2	1,222	.6	1,266	.2	1,516	12.7	1,516	36.2
THIRD.....	2,367	1,279	5.5	1,590	3.9	524	3.0	1,843	2.1	1,771	12.0	1,771	29.9
FOURTH.....	2,769	930	4.7	1,163	3.5	406	2.6	2,363	.6	1,967	8.7	1,967	21.6
FIFTH.....	3,565	1,856	6.0	2,034	4.3	762	2.0	2,803	.4	2,905	11.2	2,905	21.6
SIXTH.....	2,997	1,838	6.6	2,148	5.8	1,125	2.0	1,872	1.3	2,347	14.3	2,347	29.3
SEVENTH.....	1,493	899	5.5	1,037	2.6	761	3.4	732	.3	1,194	10.8	1,194	27.9
EIGHTH.....	2,222	1,204	3.5	1,307	5.0	789	3.6	1,433	.3	1,777	10.9	1,777	24.2
NINTH.....	6,140	2,711	6.0	4,174	6.0	1,833	1.3	4,307	.2	3,437	16.6	3,437	33.0
TENTH.....	1,610	1,143	5.4	1,226	3.9	437	4.2	1,173	1.1	1,339	12.4	1,339	26.2
ELEVENTH.....	3,655	2,173	4.8	2,468	2.6	587	1.9	3,068	.9	2,756	9.7	2,756	23.4
						PRISONER PETITIONS							
TOTAL	4,329	2,224	6.3	2,224	4.4	916	2.1	3,413	.6	4,329	10.1	4,329	25.1
DISTRICT OF COLUMBIA..	53	12	13.5	12	2.2	7	2.0	46	1.0	53	9.6	53	23.6
FIRST.....	83	49	6.0	49	1.4	23	3.5	60	2.5	83	10.4	83	22.4
SECOND.....	294	206	10.1	206	3.5	141	.7	153	.3	294	14.9	294	44.1
THIRD.....	427	160	7.3	160	3.8	54	3.8	373	1.0	427	7.4	427	20.9
FOURTH.....	541	47	5.7	47	2.5	38	2.5	503	.3	541	5.4	541	17.0
FIFTH.....	346	150	5.3	150	5.1	56	1.9	290	.5	346	10.6	346	21.0
SIXTH.....	501	256	7.8	256	4.8	101	3.0	400	1.3	501	11.9	501	23.0
SEVENTH.....	275	151	7.2	151	2.3	73	3.4	202	.4	275	8.1	275	25.9
EIGHTH.....	314	121	4.4	121	5.5	52	3.1	262	.3	314	8.8	314	17.2
NINTH.....	810	637	6.9	637	5.7	293	1.2	517	.2	810	15.1	810	38.6
TENTH.....	304	210	4.7	210	3.5	37	4.5	267	1.7	304	9.5	304	23.1
ELEVENTH.....	381	225	5.2	225	2.6	41	1.6	340	.9	381	8.8	381	21.8

Attachment

D



*Based on U.S. Census population estimates.

Attachment

E

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 23, 1998

Justice Byron R. White
Chair, Commission on Structured
Alternatives for the Federal
Courts of Appeals
Thurgood Marshall Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Dear Byron:

You have written to invite me to offer any thoughts or suggestions I might have regarding the Commission's work. My comments will doubtlessly echo those of others who have addressed the Commission, but I am pleased to offer some general observations.

Our nation has long been proud of its federal court system. The federal courts have traditionally been perceived as of the highest quality. The ability of the federal circuits to continue to perform work of the highest caliber, however, has recently been placed under the strain of a large number of unfilled vacancies. I serve as the Circuit Justice for the Ninth Circuit and, as you know, there are today seven unfilled vacancies on the Ninth Circuit Court of Appeals, and ten on its District Courts. These vacancies obviously have a negative effect on the ability of the Ninth Circuit to carry out its work in a timely manner. The Chief Justice has already spoken to this issue, and I share his concerns.

The pressures on the federal courts have been escalating rapidly because Congress has been enacting broad provisions under federal law criminalizing conduct historically regulated under state and local police powers. The result has been a significant expansion of federal court jurisdiction. All of this makes the work of your Commission very important indeed.

With respect to the Ninth Circuit in particular,

in my view the circuit is simply too large. It embraces nearly one-fifth of our nation's population. It handles roughly one out of every five appeals in the federal system. With 28 appellate judges, it is nearly twice the size of the next largest circuit. Because of its cumbersome size, the Ninth Circuit alone among the federal circuits is currently forced to use en banc panels comprised of eleven selected judges. See 92 Stat. 1663, Rule 35-3 (CA9 1994).

Such panels, representing less than one-half of the authorized number of judges, cannot serve the purposes of en banc hearings as effectively as do the en banc panels consisting of all active judges that are used in the other circuits. It is important to the federal system as a whole that the Courts of Appeals utilize en banc review to correct panel errors within the circuit that are likely to otherwise come before the Supreme Court. It is also important that every circuit review en banc its rules that are in conflict with other circuits in order to examine the wisdom of perpetuating the conflict. The Ninth Circuit resolved only eight out of 4,841 cases en banc in the twelve months ending September 30, 1997. During that same period, this court granted hearing on 25 cases from CA9, and summarily decided 20 more. These numbers suggest that the present system in CA9 is not meeting the goals of en banc review.

In my view, some division or restructuring of the Ninth Circuit seems appropriate and desirable. I have no particular suggestion regarding how that division should be drawn, but I hope that the Commission will take a fresh and independent look at the alternatives. It is human nature that no circuit is readily amenable to changes in boundary or personnel. We are always most comfortable with what we know, and it is unrealistic to expect much sentiment for change from within any circuit. The main difficulty I expect that the Commission may encounter when weighing the alternatives is the size in population of California, which, even if all alone, would continue to be the largest of the federal circuits. In some proposals I have seen it suggested that Arizona be placed with non-contiguous areas in the Pacific Northwest. I find that proposal troublesome. Perhaps Arizona could be placed in the Tenth Circuit, although I am aware that judges in the Tenth Circuit are opposed to such a change. Or perhaps California itself could be divided and placed within two

different circuits.

There are also other proposals for setting up separate divisions within CA9, or for setting up some district court appellate panels to handle most of the error correction part of the appellate review process. These approaches are untried but should be weighed along with the other options.

If you believe I can be of any more specific assistance, I will be pleased to respond. You have an unenviable task.

Sincerely,

Sandra Day O'Connor

Sandra Day O'Connor

Attachment

F

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE ANTONIN SCALIA

August 21, 1998

The Honorable Byron R. White
Chairman, Commission on Structural Alternatives
for the Federal Courts of Appeals
Thurgood Marshall Building
One Columbus Circle, N. E.
Washington, D. C. 20544

Dear Byron:

I have refrained from conveying to you my views concerning realignment of the Ninth Circuit, since I think it unlikely that I can contribute any fact or consideration that you and the distinguished members of your commission are not already aware of. However, after reading the thoughtful letter of Justice Kennedy—who does have special expertise on the subject—I find myself so thoroughly in agreement with his analysis that I must send along a seconding statement.

I will add to what he has said only two points: First, the function of en banc hearings—which the current size of the Circuit discourages, and the incomplete and random nature of its en banc panel deprives of predictability—is not only to eliminate intra-circuit conflicts, but also to correct and deter panel opinions that are pretty clearly wrong (which occasionally occur, of course, in any Circuit). The disproportionate segment of this Court's discretionary docket that is consistently devoted to reviewing Ninth Circuit judgments, and to reversing them by lop-sided margins, suggests that this error-reduction function is not being performed effectively. The following figures are compiled from the statistics maintained by the Clerk's Office:

October Term	Total SCt Cases Argued†	Argued From CA9	Reversed or Vacated	Unanimous	Two or Fewer Dissents	Unargued Summary Reversals
1997	94	17	14	10	13	0
1996	88	21	20	12	12	6
1995	90	12	10	4	10	2
1994	94	17	12	5	10	1
1993	95	14	12	9	10	0
1992	113	22	15	6	11	1

† excludes cases where writ of certiorari was dismissed as improvidently granted

My second point is that, in my judgment, this Court will have no difficulty sustaining whatever additional caseload will be created by the addition of a Circuit, and by the necessity of being especially prompt in resolving conflicts between the two Circuits containing California. (The latter necessity could be reduced by requiring an en banc hearing when either of the two Circuits wishes to depart from a holding of the other.) Indeed, it may well be that the new

Circuits' greater ability to perform what I have called the error-reduction function will result in a net decrease in our business from that part of the country. But if an increase does occur, our docket has been such in recent years that I am confident we can manage it. For all the very good reasons described by Justice Kennedy, the additional effort will be well spent.

I wish you and colleagues success in your difficult task.

Sincerely,

Attachment

G

Summary of the Ninth Circuit's Reversal Rate by the Supreme Court

The reversal rate is compiled by Deborah Celle, Reference Librarian. It includes signed and per curiam opinions in which the decision issued is "reversed," "affirmed in part, reversed in part," or "vacated and remanded". It does not include summary dispositions.

Term	Cases Reviewed	Affirmed	Reversed	Reversal Rate
2005-2006* (opinions issued to date)	12 (13)	3	9 (10)	75% (77)
2005-2006* (all cases)	18	3	9 (10)	50% (56)
2004-2005	19	3	16	84%
2003-2004	25	6	19	76%
2002-2003	24	6	18	75%
2001-2002	18	4	14	78%
2000-2001	17	5	12	71%
1999-2000	10	1	9	90%
1998-1999	18	4	14	78%
1997-1998*	17	4	13 (14)	76% (82)
1996-1997*	21 (28)	1	20 (27)	95% (96)
1995-1996	12	2	10	83%
1994-1995	17	3	14	82%
1993-1994	15	4	11	73%
1992-1993	24	9	15	63%
1991-1992	13	4	9	69%
1990-1991	13	3	10	77%

Page last updated: February 28, 2006 Ninth Circuit Library Headquarters
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For info: **Emily Newman** (415) 556-9567 Web librarian: **Elaine Thomas**: (503) 326-8145

http://library.lb9.circ9.dcn/sct/sctframes.htm

LIST OF NINTH CIRCUIT CASES UNANIMOUSLY REVERSED BY THE SUPREME COURT, 1998-1999 TERM THROUGH 2005-2006 TERM

Term: 2005-2006 (9)

**U. S. v. Grubbs*, 377 F.3d 1072 (9th Cir. 2004), *rev'd*, 2006 WL 693453 (2006) (Justice Alito did not participate).

Dagher v. Saudi Refining, Inc., 369 F.3d 1108 (9th Cir. 2004), *rev'd*, *Texaco Inc. v. Dagher*, 126 S.Ct. 1276 (2006) (Justice Alito did not participate).

McDonald v. Domino's Pizza, Inc., 107 Fed. Appx. 18 (9th Cir. 2004), *rev'd*, 126 S.Ct. 1246 (2006) (Justice Alito did not participate).

Ministry of Defense and Support for Armed Forces of the Islamic Republic of Iran, 385 F.3d 1206 (9th Cir. 2004), *vacated per curiam by* 126 S.Ct. 1193 (2006).

**Collins v. Rice*, 365 F.3d 667 (9th Cir. 2004), *rev'd*, 126 S.Ct. 969 (2006).

**Chavis v. LeMarque*, 382 F.3d 921 (9th Cir. 2004), *rev'd*, *Evans v. Chavis*, 126 S.Ct. 846 (2006).

Olson v. U.S., 362 F.3d 1236 (9th Cir. 2004), *vacated by* 126 S.Ct. 510 (2005).

Espitia v. Ortiz, 113 Fed. Appx. 802, (9th Cir. 2004) *rev'd per curiam*, 126 S.Ct. 407 (2005).

Smith v. Stewart, 241 F.3d 1191 (9th Cir. 2001), *vacated per curiam by Schriro v. Smith*, 126 S.Ct. 7 (2005).

Term: 2004-2005 (10)

Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 380 F.3d 1154 (9th Cir. 2004), *vacated by* 125 S.Ct. 2764 (2005).

**Mena v. City of Simi Valley*, 332 F.3d 1255 (9th Cir. 2003), *vacated by* 125 S.Ct. 1465 (2005).

**Chevron USA v. Bronster*, 363 F.3d 846 (9th Cir. 2004), *rev'd*, 125 S.Ct. 2074 (2005).

Broudo v. Dura Pharmaceuticals, Inc., 339 F.3d 933 (9th Cir. 2003), *rev'd*, 125 S.Ct. 1627 (2005).

**Abrams v. City of Rancho Palos Verdes, Cal.*, 354 F.3d 1094 (9th Cir. 2004), *rev'd*, 125 S.Ct. 1453 (2005).

**Doe v. Tenet*, 329 F.3d 1135 (9th Cir. 2003), *rev'd*, 125 S.Ct. 1230 (2005).

Banaitis v. Commissioner, 340 F.3d 1074 (9th Cir. 2003), *rev'd sub nom. Commissioner v. Banks*, 543 U.S. 426 (2005).

Alford v. Haner, 333 F.3d 972 (9th Cir. 2003), *rev'd sub nom. Devenpeck v. Alford*, 125 S. Ct. 588 (2004) (Chief Justice Rehnquist took no part in the decision).

**KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 328 F.3d 1061 (9th Cir. 2003), *vacated by* 125 S. Ct. 542 (2004).

Roe v. City of San Diego, 356 F.3d 1108 (9th Cir.), *rev'd per curiam*, 125 S. Ct. 521 (2004).

Term: 2003-2004 (10)

**Newdow v. U. S. Congress*, 292 F.3d 597 (9th Cir. 2002), *amended by* 321 F.3d 772 (2003), *rev'd*, 124 S. Ct. 2301 (2004) (Justice Scalia took no part in the decision).

**United States v. Dominguez Benitez*, 310 F.3d 1221 (9th Cir. 2002), *rev'd*, 124 S. Ct. 2333 (2004).

Public Citizen v. Dep't of Transp., 316 F.3d 1002 (9th Cir. 2003), *rev'd*, 541 U.S. 752 (2004).

McNeil v. Middleton, 344 F.3d 988 (9th Cir. 2003), *rev'd per curiam*, 541 U.S. 433 (2004).

**United States v. Flores-Montano*, 282 F.3d 699 (9th Cir. 2003), *rev'd*, 541 U.S. 149 (2004).

United States v. Galletti, 314 F.3d 336 (9th Cir. 2002), *rev'd*, 541 U.S. 114 (2004).

United States Postal Serv. v. Flamingo Indus., 302 F.3d 985 (9th Cir. 2002), *rev'd*, 540 U.S. 736 (2004).

United States v. Banks, 282 F.3d 699 (9th Cir. 2002), *rev'd*, 540 U.S. 31 (2003).

Yarborough v. Gentry, 320 F.3d 891 (9th Cir. 2003), *rev'd per curiam*, 540 U.S. 1 (2003).

Raytheon Co. v. Hernandez, 292 F.3d 1030 (9th Cir. 2002), *vacated by* 540 U.S. 44 (2003) (Justice Souter and Justice Breyer took no part in the decision).

Term: 2002-2003 (7)

Dastar Corp. v. Twentieth Century Fox Film Corp., 34 Fed. Appx. 312 (9th Cir. 2002), *rev'd*, 539 U.S. 23 (2003) (Justice Breyer took no part in the decision).

Black & Decker Disability Plan v. Nord, 296 F.3d 823 (9th Cir. 2001), *rev'd*, 538 U.S. 822 (2003).

**Inyo County v. Paiute-Shoshone Indians of the Bishop Cmty. of Bishop Colony*, 291 F.3d 549 (9th Cir. 2002), *vacated by* 538 U.S. 701 (2003).

City of Los Angeles v. David, 307 F.3d 1143 (9th Cir. 2002), *rev'd per curiam*, 538 U.S. 715 (2003).

Holley v. Crank, 258 F.3d 1127 (9th Cir. 2001), *vacated sub nom. Meyer v. Holley*, 537 U.S. 280 (2003).

Visciotti v. Woodford, 288 F.3d 1097 (9th Cir.), *rev'd per curiam*, 537 U.S. 19 (2002).

Packer v. Hill, 291 F.3d 569 (9th Cir.), *rev'd per curiam*, *Early v. Packer*, 537 U.S. 3 (2002).

Term: 2001-2002 (6)

**United States v. Ruiz*, 241 F.3d 1157 (9th Cir. 2001), *rev'd*, 536 U.S. 622 (2002).

Echazabal v. Chevron USA, Inc., 226 F.3d 1063 (9th Cir. 2000), *rev'd*, 536 U.S. 73 (2002).

Rucker v. Davis, 237 F.3d 1113 (9th Cir. 2001), *rev'd sub nom. Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002) (Justice Breyer took no part in the decision).

**United States v. Arvizu*, 232 F.3d 1241 (9th Cir. 2000), *rev'd*, 534 U.S. 266 (2002).

**United States v. Knights*, 219 F.3d 1138 (9th Cir. 2000), *rev'd*, 534 U.S. 112 (2001).

**Andrews v. TRW, Inc.*, 225 F.3d 1063 (9th Cir. 2000), *rev'd*, 534 U.S. 19 (2001).

Term: 2000-2001 (6)

**Nevada v. Hicks*, 196 F.3d 1020 (9th Cir. 2000), *rev'd*, 533 U.S. 353 (2001).

**United States v. Oakland Cannabis Buyers' Coop.*, 190 F.3d 1109 (9th Cir. 1999), *rev'd*, 532 U.S. 483 (2001) (Justice Breyer took no part in the decision).

**Shaw v. Murphy*, 195 F.3d 1121 (9th Cir. 1999), *rev'd*, 532 U.S. 223 (2001).

Bradshaw v. G & G Fire Sprinklers, 204 F.3d 941 (9th Cir. 1998), *rev'd sub nom. Lujan v. G & G Fire Sprinklers*, 532 U.S. 189 (2001).

Clark County Sch. Dist. v. Breeden, 232 F.3d 893 (9th Cir. 2000), *rev'd per curiam*, 532 U.S. 268 (2001).

Central Green Co. v. United States, 177 F.3d 384 (9th Cir. 1999), *rev'd*, 531 U.S. 425 (2001).

Term: 1999-2000 (3)

Ada v. Government of Guam, 179 F.3d 672 (9th Cir. 1999), *rev'd*, 528 U.S. 250 (2000).

International Ass's of Independent Tank Owners v. Locke, 148 F.3d 1053 (9th Cir. 1998), *rev'd*, 529 U.S. 89 (2000).

**U.S. v. Martinez-Salazar, 146 F.3d 653 (*9th Cir. 1998), *rev'd*, 528 U.S. 304 (2000).

Term: 1998-1999 (8)

**Kirkingburg v. Albertson's, Inc.*, 143 F.3d 1228 (9th Cir. 1998), *rev'd*, 527 U.S. 555 (1999).

El Paso Natural Gas Co. v. Neztsosie, 136 F.3d 610 (9th Cir. 1998), *rev'd*, 526 U.S. 473 (1999).

Aquirre-Aquirre v. I.N.S., 121 F.3d 521(9th Cir. 1997), *rev'd*, 526 U.S. 415 (1999).

Ward v. Management Analysis Co. Employee, 135 F.3d 1276 (9th Cir. 1998), *rev'd*, 526 U.S. 358 (1999).

**Gabbert v. Conn*, 156 F.3d 893 (9th Cir. 1998), *rev'd*, 526 U.S. 286 (1999).

Jacobson v. Hughes Aircraft Co., 105 F.3d 1288 (9th Cir.), *amended by* 128 F.3d 1305 (1997), *rev'd*, 525 U.S. 432 (1999).

Blue Fox Inc. v. Small Business Admin., 121 F.3d, 1357 (9th Cir. 1997), *rev'd*, 525 U.S. 255 (1999).

**Perkins v. City of West Covina*, 113 F.3d 1004 (9th Cir. 1997), *rev'd*, 525 U.S. 234 (1999).

* Decision includes one or more concurrences but no dissents.