

## NOTES

### FAST TRACK TO DEPORTATION: STREET DEALERS AND COOPERATIVE FEDERALISM IN SAN FRANCISCO

On the evening of October 16, 2024, Javier Estrada stood near the corner of Van Ness and Market Street in San Francisco.<sup>1</sup> He was twenty-one years old.<sup>2</sup> Born in Honduras and without legal status in the United States,<sup>3</sup> Javier “made the dangerous trip to [the] country” months before “in hopes of earning funds to help his family [back in Honduras] to survive.”<sup>4</sup> At around 9:52 p.m., a stranger approached Javier and asked for “[f]orty” of the “[c]lean.”<sup>5</sup> Javier hunched behind a wall and rummaged through a satchel, emerging with a plastic bag of a white, chalk-like substance.<sup>6</sup> Javier handed the stranger two chunks.<sup>7</sup> The undercover San Francisco Police Department officer handed Javier two twenty-dollar marked bills.<sup>8</sup> By 9:55 p.m., Javier was under arrest.<sup>9</sup> It was his first.<sup>10</sup> Thirteen days later, a federal judge sentenced Javier to time served plus one business day for possession with intent to distribute fentanyl.<sup>11</sup> Now a convicted felon subject to deportation, Javier was released the next day into Department of Homeland Security custody.<sup>12</sup> Two weeks had elapsed since his arrest.<sup>13</sup>

Javier’s case is part of an experiment in cooperative federalism. Faced with a seemingly intractable fentanyl crisis and ineffective state court prosecutions, San Francisco officials reached out to the federal government for help in 2023. That fall, federal and local law enforcement partnered to bring street dealers to federal court. Under the ensuing early disposition or fast-track sentencing program, the U.S. Attorney’s Office for the Northern District of California prosecutes low-level fentanyl and methamphetamine dealers — nearly all of whom are

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<sup>1</sup> Criminal Complaint ¶¶ 12–13, *United States v. Estrada*, No. 24-cr-00551 (N.D. Cal. filed Oct. 18, 2024), Dkt. No. 1.

<sup>2</sup> United States’ Sentencing Memorandum and Motion for Joint Change of Plea and Sentencing at 3, *Estrada*, No. 24-cr-00551 (filed Oct. 23, 2024), Dkt. No. 10.

<sup>3</sup> *Id.*

<sup>4</sup> Defendant’s Sentencing Memorandum at 2, *Estrada*, No. 24-cr-00551 (filed Oct. 23, 2024), Dkt. No. 11.

<sup>5</sup> Criminal Complaint, *supra* note 1, ¶ 13. “Clean” is a street term for fentanyl. *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* ¶ 17.

<sup>10</sup> Defendant’s Sentencing Memorandum, *supra* note 4, at 3.

<sup>11</sup> Judgment in a Criminal Case at 1–2, *United States v. Estrada*, No. 24-cr-00551 (N.D. Cal. filed Oct. 29, 2024), Dkt. No. 15.

<sup>12</sup> See United States’ Sentencing Memorandum and Motion for Joint Change of Plea and Sentencing, *supra* note 2, at 3.

<sup>13</sup> See Criminal Complaint, *supra* note 1, ¶ 12; Judgment in a Criminal Case, *supra* note 11, at 1–2.

Honduran men without legal status in the United States.<sup>14</sup> For a quick plea and waiver of rights, these defendants are offered time served followed by “near-certain deportation.”<sup>15</sup> “[S]treet dealer[s]” with “limited criminal history”<sup>16</sup> are not “traditional federal case[s]”<sup>17</sup> and “would not ordinarily [be] prosecuted” in federal court.<sup>18</sup> But local prosecutors, constrained by sanctuary city laws, cannot secure deportations. Federal prosecutors thus bring cases like Javier’s to accomplish what local prosecutors cannot: remove dealers from San Francisco’s streets by removing them from the United States.

Outcome disparities between federal and state adjudication of street crime are well recognized.<sup>19</sup> In fact, such disparities drive criminal federalism, as prosecutors elevate cases to federal court to circumvent local constraints.<sup>20</sup> Yet the fast-track program’s use of deportation — a civil collateral consequence — adds a twist. A close look at San Francisco’s fast-track program reveals that it undermines fundamental federal and local policies. First, by treating deportation as a criminal penalty, the program disregards the federal policy of reducing unwarranted sentencing disparities between similarly situated defendants. Second, it sidesteps San Francisco’s sanctuary city commitments. This case study adds to the robust literature on criminal federalism. San Francisco’s fast-track program illustrates how evaluating cooperative prosecution programs requires looking not only at which crimes are federalized or what federal disparities are leveraged, but also at how those choices interact with — and distort — each sovereign’s policy goals.

Part I of this Note turns to San Francisco and explains the background, mechanics, and purpose of San Francisco’s fast-track program. Part II surveys the scholarly debate over cooperative criminal federalism as well as the consideration of collateral consequences. Using an original dataset of Northern District of California fast-track defendants, Part III observes that the program leads to severe disparities at odds with congressional sentencing policy. Part IV argues that the fast-track program circumvents San Francisco’s sanctuary city policy. Finally, the Conclusion considers whether the fast-track program is justified despite these costs.

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<sup>14</sup> See N.D. Cal. Fast-Track Defendants 2024 (Sep. 28, 2025) (unpublished dataset) (on file with the Harvard Law School Library).

<sup>15</sup> Defendant’s Sentencing Memorandum, *supra* note 4, at 2.

<sup>16</sup> United States’ Sentencing Memorandum and Motion for Joint Change of Plea and Sentencing at 1, *United States v. Maldonado-Turcios*, No. 24-cr-00336 (N.D. Cal. filed July 5, 2024), Dkt. No. 21.

<sup>17</sup> *Id.* at 1–2.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> See Lauren M. Ouziel, *Legitimacy and Federal Criminal Enforcement Power*, 123 YALE L.J. 2236, 2238 & n.2 (2014) (collecting sources).

<sup>20</sup> *Id.* at 2246–47.

## I. SAN FRANCISCO'S FAST-TRACK PROGRAM

The fast-track program is a tailored response to several challenges plaguing San Francisco. This Part takes a close look at the city. It first examines the social and political context that gave rise to San Francisco's fast-track program. Next, it describes how the program works. Finally, it explains how deportation drives fast-track sentencing.

### A. *The Problem*

San Francisco has long lived with concentrated poverty, homelessness, and drug use — particularly in the Tenderloin<sup>21</sup> neighborhood that historically “served as [a] de facto containment zone[]” for social ills.<sup>22</sup> The fentanyl crisis, however, strained San Francisco's permissive drug culture.<sup>23</sup> Overdose deaths crept up with the introduction of synthetic fentanyl in the mid-2010s.<sup>24</sup> Then they exploded during the Covid-19 pandemic.<sup>25</sup> San Francisco's overdose death rate spiked to double the national average.<sup>26</sup> From 2020 to 2022, 2,017 people died from accidental overdoses in San Francisco<sup>27</sup> — nearly twice the number of Covid-19 deaths in the city over the same time period.<sup>28</sup> These deaths were clustered in the Tenderloin,<sup>29</sup> where city officials tolerated open-air drug markets.<sup>30</sup>

Tolerance ended in 2022. Mayor London Breed declared a state of emergency to “take back [the] Tenderloin.”<sup>31</sup> Voters recalled progressive

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<sup>21</sup> The U.S. Attorney's Office defines the Tenderloin as encompassing both “the historic Tenderloin District and much of the South of Market neighborhood.” United States' Sentencing Memorandum and Motion for Joint Change of Plea and Sentencing, *supra* note 2, at 4. This Note adopts this definition.

<sup>22</sup> Chronicle Editorial Board, Editorial, *S.F. Treats the Tenderloin like a Containment Zone. A Bill to End that Isn't Quite Ready for Prime Time*, S.F. CHRON. (July 19, 2025), <https://www.sfchronicle.com/opinion/editorials/article/san-francisco-homeless-bill-20772748.php> [https://perma.cc/Y528-RYG4].

<sup>23</sup> See German Lopez, *San Francisco's “Pro-Drug Culture,”* N.Y. TIMES (Jan. 31, 2024), <https://www.nytimes.com/2024/01/31/briefing/san-francisco-addiction.html> [https://perma.cc/X8WJ-PDH4]; *Mayor Lurie Ends Distribution of Fentanyl Smoking Supplies Without Counseling and Treatment*, SF.GOV (Apr. 2, 2025), <https://www.sf.gov/news-mayor-lurie-ends-distribution-of-fentanyl-smoking-supplies-without-counseling-and-treatment> [https://perma.cc/DUG2-RQUF].

<sup>24</sup> Christian Leonard & Yoohyun Jung, *51 People Died in July in San Francisco from Accidental Overdoses*, S.F. CHRON. (Aug. 26, 2025, at 08:25 PT), <https://www.sfchronicle.com/projects/san-francisco-drug-overdose-deaths> [https://perma.cc/22HA-89TZ].

<sup>25</sup> *Id.*

<sup>26</sup> Lopez, *supra* note 23.

<sup>27</sup> See Leonard & Jung, *supra* note 24.

<sup>28</sup> See *COVID-19 Deaths*, SF.GOV (Oct. 6, 2025), <https://www.sf.gov/data--covid-19-cases-and-deaths> [https://perma.cc/X9UM-V9XM].

<sup>29</sup> Leonard & Jung, *supra* note 24.

<sup>30</sup> See Trisha Thadani et al., *A Disaster in Plain Sight*, S.F. CHRON. (Feb. 2, 2022, at 19:30 PT), <https://www.sfchronicle.com/projects/2022/sf-fentanyl-opioid-epidemic> [https://perma.cc/M7H7-D7XF].

<sup>31</sup> Eric Westervelt, *Mayor Declares a State of Emergency in San Francisco's Tenderloin District*, NPR (Feb. 2, 2022, at 05:13 ET), <https://www.npr.org/2022/02/02/1077522592/mayor-declares-a-state-of-emergency-in-san-franciscos-tenderloin-district> [https://perma.cc/HU8M-BRFK].

District Attorney (D.A.) Chesa Boudin.<sup>32</sup> His replacement, Brooke Jenkins, promised to crack down on open-air drug markets and hold criminals accountable.<sup>33</sup>

Despite the policy shift, the drug problem overwhelmed local law enforcement. A cohort of Honduran migrants had “taken over” the Tenderloin’s open-air drug markets.<sup>34</sup> Most of these Honduran dealers were from the Siria Valley region.<sup>35</sup> They served as low-level distributors for Mexican cartels.<sup>36</sup> These street dealers lived across the bay in Oakland and commuted to the Tenderloin “like [they were] going to a job.”<sup>37</sup> The number of Honduran dealers on San Francisco’s streets is unknown.<sup>38</sup> Yet city officials tacitly acknowledged that most dealers were Honduran.<sup>39</sup> The trend was “impossible to ignore.”<sup>40</sup> Because these Honduran dealers operated like independent contractors, law enforcement could not dismantle the network with selective arrests.<sup>41</sup>

Sanctuary city policies also tied city law enforcement’s hands. Local laws prevent San Francisco officials from “assist[ing] in the enforcement of Federal immigration law” unless required by state or federal law.<sup>42</sup> Law enforcement generally cannot honor Immigration and Customs Enforcement (ICE) detainers — requests to hold a person beyond their ordinary release from local jail to give ICE time to pick them up.<sup>43</sup> Nor can they inform ICE of a person’s release date.<sup>44</sup> Drug dealers prosecuted in state court were released back onto San Francisco’s streets regardless of immigration status.<sup>45</sup>

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<sup>32</sup> Michael Barba & Jonah Owen Lamb, *SF’s New DA: Brooke Jenkins, Ex-Prosecutor Who Led Chesa Boudin Recall, Named His Successor*, S.F. STANDARD (July 7, 2022, at 13:22 PT), <https://sfstandard.com/2022/07/07/sfs-new-da-brooke-jenkins-ex-prosecutor-who-led-chesa-boudin-recall-named-his-successor> [<https://perma.cc/85P4-AGNA>].

<sup>33</sup> *See id.*

<sup>34</sup> Megan Cassidy & Gabrielle Lurie, *This Is How San Francisco’s Open-Air Drug Dealers Work*, S.F. CHRON. (July 10, 2023, at 09:40 PT), <https://www.sfchronicle.com/projects/2023/san-francisco-drug-trade-how-dealers-work> [<https://perma.cc/BA57-MZQN>].

<sup>35</sup> Megan Cassidy & Gabrielle Lurie, *This Is the Hometown of San Francisco’s Drug Dealers*, S.F. CHRON. (Sep. 27, 2024, at 10:56 PT), <https://www.sfchronicle.com/projects/2023/san-francisco-drug-trade-honduras> [<https://perma.cc/UEJ4-HMH6>].

<sup>36</sup> Cassidy & Lurie, *supra* note 34.

<sup>37</sup> *Id.* (quoting Mayor Breed).

<sup>38</sup> *See* Cassidy & Lurie, *supra* note 35 (noting that many dealers “cycle discreetly between their home country and the U.S.,” and San Francisco law enforcement does not keep or publicize data on arrestee country of origin). The *San Francisco Chronicle* “estimate[d] that more than 200 Honduran migrants ha[d] been charged with drug dealing” between 2022 and summer 2023. *Id.*

<sup>39</sup> *See id.*; Mallory Moench, *S.F. Mayor Breed Apologizes for Comments About Hondurans and Drug Dealing*, S.F. CHRON. (Oct. 20, 2022, at 17:27 PT), <https://www.sfchronicle.com/bayarea/article/S-F-Mayor-Breed-apologizes-for-comments-about-17523048.php> [<https://perma.cc/N6MV-XGTQ>].

<sup>40</sup> Cassidy & Lurie, *supra* note 34 (quoting a public defender).

<sup>41</sup> *Id.*

<sup>42</sup> S.F., CAL., ADMIN. CODE § 12H.2 (2025).

<sup>43</sup> *Id.* § 12L.3.

<sup>44</sup> *Id.* § 12H.2.

<sup>45</sup> *See* Cassidy & Lurie, *supra* note 35.

So, city officials looked to the federal government. In March 2023, Mayor Breed wrote to Ismail Ramsey, the new U.S. Attorney for the Northern District of California under the Biden Administration.<sup>46</sup> While San Francisco faced numerous public safety challenges, Mayor Breed was “most concerned about the sheer volume of drug dealing on [the city’s] streets.”<sup>47</sup> “[W]e need help from the Federal government . . . to arrest and prosecute drug dealers,” she implored.<sup>48</sup>

### B. The Solution

The federal government took up the invitation. In November 2023, U.S. Attorney Ramsey stood at a press conference beside an eclectic group of local, state, and federal officials.<sup>49</sup> Ramsey announced the All Hands on Deck initiative, which had been underway since August.<sup>50</sup> All Hands on Deck is a partnership among federal, state, and city agencies “to change the basic cost/benefit analysis for fentanyl dealers.”<sup>51</sup> Under the new program, the federal government would ramp up investigations of suppliers as well as prosecute street dealers.<sup>52</sup> Low-level dealers would now be held accountable in federal court.

Key to the initiative is fast-track sentencing.<sup>53</sup> Congress sanctioned early disposition or fast-track programs in the 2003 PROTECT Act.<sup>54</sup> Designed for the “exceptional volume” of criminal immigration cases in southwestern border states, fast-track programs strive to conserve scarce judicial resources by swiftly resolving cases.<sup>55</sup> With prior authorization from the U.S. Attorney General, a federal prosecutor may offer a defendant a reduced sentence in return for a quick plea and waiver of procedural rights.<sup>56</sup>

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<sup>46</sup> Letter from London N. Breed, Mayor, S.F., to Ismail J. Ramsey, U.S. Att’y, N. Dist. of Cal. (Mar. 27, 2023), <https://sfpublicsafety.news/wp-content/uploads/2024/03/Mayor-letter-to-USA-NDCA.pdf> [<https://perma.cc/ULK3-AQNR>].

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Press Release, U.S. Att’y’s Off., N. Dist. of Cal., U.S. Attorney and Federal Law Enforcement Officials Assemble with State Law Enforcement Officers and Local Dignitaries in Show of Unity Against Fentanyl Trafficking in the Tenderloin District of San Francisco (Nov. 2, 2023), <https://www.justice.gov/usao-ndca/pr/us-attorney-and-federal-law-enforcement-officials-assemble-state-law-enforcement> [<https://perma.cc/44NU-LLDG>].

<sup>50</sup> Megan Cassidy, *New Details Show How Feds Are Cracking Down on S.F. Drug Markets by Going After Low-Level Dealers*, S.F. CHRON. (Nov. 3, 2023, at 16:10 PT), <https://www.sfchronicle.com/crime/article/sf-drug-market-crackdown-tenderloin-feds-18460329.php> [<https://perma.cc/6VPJ-D58P>].

<sup>51</sup> Press Release, U.S. Att’y’s Off., *supra* note 49.

<sup>52</sup> *Id.*

<sup>53</sup> *See id.*

<sup>54</sup> Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, § 401(m)(2)(B), 117 Stat. 650, 675.

<sup>55</sup> Memorandum from James M. Cole, Deputy Att’y Gen., on Dep’t Pol’y on Early Disposition or “Fast-Track” Programs 1 (Jan. 31, 2012), <https://www.justice.gov/sites/default/files/dag/legacy/2012/01/31/fast-track-program.pdf> [<https://perma.cc/JT28-L8HL>].

<sup>56</sup> *Id.*

All Hands on Deck includes a fast-track program for Tenderloin street dealers with limited criminal histories.<sup>57</sup> These dealers wind up in federal court in one of three ways<sup>58</sup>: First, dealers are caught within steps of federal property.<sup>59</sup> Second, they are arrested in joint operations between federal and state law enforcement.<sup>60</sup> Finally, federal prosecutors also pluck cases directly from state court.<sup>61</sup> The D.A. has designated a Special Assistant U.S. Attorney to refer state cases to federal court.<sup>62</sup> Sometimes, defendants are arrested by federal agents at San Francisco's Hall of Justice when they appear for their state court dates.<sup>63</sup>

After levying federal charges,<sup>64</sup> the U.S. Attorney's Office offers these defendants a fast-track plea. In addition to an "unusually quick[]"<sup>65</sup> guilty plea, the defendant is asked to "waive a plethora of rights"<sup>66</sup>: the right to seek pretrial release from custody; the right to indictment; the right to challenge the stop and search; and, frequently, the right to challenge release into immigration custody.<sup>67</sup> In exchange, the defendant and government enter into a binding plea agreement<sup>68</sup> for a time-served plus one-day sentence with a series of conditions, including a three-year stay-away order from the Tenderloin and supervised release.<sup>69</sup> This time-served offer is hard to refuse for defendants caught red-handed by undercover law enforcement.<sup>70</sup> The parties also request the court waive

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<sup>57</sup> See Press Release, U.S. Att'y's Off., *supra* note 49; United States' Sentencing Memorandum and Motion for Joint Change of Plea and Sentencing, *supra* note 2, at 1–2.

<sup>58</sup> Cassidy, *supra* note 50.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Press Release, S.F. Pub. Def., SF Public Defenders Condemn Latest Courthouse Arrest of 9-Months-Pregnant Woman (Nov. 1, 2024), <https://sfpublicdefender.org/2024/11/01/10371> [https://perma.cc/PZB3-AWX8].

<sup>63</sup> See Cassidy, *supra* note 50; see also, e.g., Defendant's Sentencing Memorandum at 3, United States v. Paz-Archada, No. 24-cr-00581 (N.D. Cal. filed Nov. 27, 2024), Dkt. No. 15.

<sup>64</sup> Fast-track defendants are charged with possession with intent to distribute fentanyl and/or methamphetamine under 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). See, e.g., Criminal Complaint, *supra* note 1, ¶ 1.

<sup>65</sup> Defendant's Sentencing Memorandum at 5, United States v. Gonzalez-Soto, No. 24-cr-00560 (N.D. Cal. filed Nov. 11, 2024), Dkt. No. 16.

<sup>66</sup> *Id.* at 4.

<sup>67</sup> See, e.g., *id.* at 4–5.

<sup>68</sup> E.g., United States' Sentencing Memorandum at 1, *Gonzalez-Soto*, No. 24-cr-00560 (filed Nov. 12, 2024), Dkt. No. 15. Under FED. R. CRIM. P. 11(c)(1)(C), parties may agree to a specific sentence that "binds the court once the court accepts the plea agreement."

<sup>69</sup> E.g., United States' Sentencing Memorandum, *supra* note 68, at 8.

<sup>70</sup> For example, Angel Reyes initially declined a fast-track plea then pled guilty on the eve of trial. See Order Vacating Briefing Schedule and Converting Pretrial Conference to Change of Plea Hearing at 1, United States v. Reyes, No. 24-cr-00282 (N.D. Cal. filed Dec. 10, 2024), Dkt. No. 112; Defendant's Sentencing Memorandum and Motion for Downward Variance at 1, *Reyes*, No. 24-cr-00282 (filed Mar. 5, 2025), Dkt. No. 117. He received a twenty-four-month sentence instead of time served. Judgment in a Criminal Case at 2, *Reyes*, No. 24-cr-00282 (filed Mar. 12, 2025), Dkt. No. 119.

the presentence report to expedite sentencing.<sup>71</sup> Often, the plea and sentencing are held on the same day.<sup>72</sup> For defendants not legally in the United States — nearly all fast-track defendants<sup>73</sup> — the plea to possession with intent to distribute will result in “deport[ation] by operation of law.”<sup>74</sup> The time-served plus one-day sentence enables the U.S. Marshals to coordinate with ICE to ensure the defendant is released into ICE custody for removal proceedings.<sup>75</sup>

“The Fast Track program is not deportation-dependent . . . .”<sup>76</sup> The U.S. Attorney’s Office claims that “a defendant’s status in the United States plays no role in the government’s determination whether that defendant is offered a Fast Track plea.”<sup>77</sup> Yet the program almost exclusively scoops up immigrants without legal status. Seventy-two defendants who accepted fast-track pleas were sentenced in 2024, the first full year of the program.<sup>78</sup> At least sixty-seven were from Honduras.<sup>79</sup> Two fast-track defendants — both of whom had Honduran codefendants — were United States citizens.<sup>80</sup> The other seventy defendants lacked legal status.<sup>81</sup> As the next section explains, deportation drives San Francisco’s fast-track program.

### C. *The Rationale*

At the All Hands on Deck announcement, U.S. Attorney Ramsey explained that dealers who viewed the Tenderloin as “a convenient and risk-free marketplace” fueled San Francisco’s fentanyl crisis.<sup>82</sup> Law enforcement sought to change the game: The “federal ‘adoption’ of state

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<sup>71</sup> *E.g.*, United States’ Sentencing Memorandum, *supra* note 68, at 2.

<sup>72</sup> *E.g.*, *id.*

<sup>73</sup> N.D. Cal. Fast-Track Defendants 2024, *supra* note 14.

<sup>74</sup> United States’ Supplemental Sentencing Memorandum at 2, United States v. Cruz-Garcia, No. 24-cr-00290 (N.D. Cal. filed July 23, 2024), Dkt. No. 16. A noncitizen convicted of a felony drug offense is automatically deportable, 8 U.S.C. § 1227(a)(2)(B)(i), subject to mandatory detention, *id.* § 1226(c)(1), and permanently inadmissible to the United States, *id.* § 1182(a)(2)(A)(i).

<sup>75</sup> *See* United States’ Sentencing Memorandum and Motion for Joint Change of Plea and Sentencing at 4, United States v. Zapata Pena, No. 24-cr-00018 (N.D. Cal. filed Jan. 24, 2024), Dkt. No. 11.

<sup>76</sup> United States’ Sentencing Memorandum, *supra* note 68, at 7 n.3.

<sup>77</sup> *Id.*

<sup>78</sup> N.D. Cal. Fast-Track Defendants 2024, *supra* note 14. Not all defendants who accept a fast-track plea receive a fast-track sentence. Judges Donato and Alsup categorically reject fast-track pleas. *See id.* This number therefore includes cases in which the judge either actually rejected or indicated he would reject the fast-track plea, thus leading the parties to amend their plea agreement. Still, most judges accept fast-track plea agreements. *Id.* Fifty-eight of these seventy-two defendants received a fast-track sentence. *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*; *see* Defendant Kervin Alexander Ventura’s Sentencing Memorandum at 7 n.4, United States v. Ventura, No. 24-cr-00528 (N.D. Cal. filed Oct. 9, 2024), Dkt. No. 22; Defendant Michael Faber’s Sentencing Memorandum at 1, United States v. Faber, No. 24-cr-00571 (N.D. Cal. filed Dec. 11, 2024), Dkt. No. 38.

<sup>81</sup> N.D. Cal. Fast-Track Defendants 2024, *supra* note 14.

<sup>82</sup> Press Release, U.S. Att’y’s Off., *supra* note 49.

cases [would] raise the stakes by holding drug dealers accountable in the federal system.”<sup>83</sup> Yet the fast-track program does not impose long sentences. Rather, the key difference between state and federal prosecution is deportation. The program treats civil deportation like a criminal penalty. It rests on the theory that quick and certain deportations will “disrupt[] and deter[]” fentanyl dealing in San Francisco.<sup>84</sup>

The fast-track program strives to alter the “cost/benefit analysis” for Honduran dealers.<sup>85</sup> Most Hondurans travel to the United States to escape poverty and violence.<sup>86</sup> But high-paying, legal jobs are difficult to find for non-English speakers with limited education and no Social Security numbers.<sup>87</sup> A few see drug dealing as a lucrative alternative. As the *San Francisco Chronicle* reported, drug dealers in San Francisco can make up to \$350,000 a year.<sup>88</sup> The successful dealers build mansions back in Honduras, which serve as visible lures to San Francisco’s streets.<sup>89</sup> As one former dealer explained: “San Francisco gives me the money, the free money.”<sup>90</sup>

Prosecutors maintain that state court sanctions fail to offset these incentives.<sup>91</sup> Dealers prosecuted in state court face little time incarcerated. Judges tend to release defendants on their own recognizance pre-trial, even with open cases or previous convictions for the same conduct.<sup>92</sup> Nor do final dispositions lead to significant sentences. Defendants are placed in diversion programs, plead to misdemeanor accessory-after-the-fact, or, if convicted of drug distribution, are incarcerated for a handful of months.<sup>93</sup> Upon release, defendants are not deported. Some Honduran dealers choose San Francisco because its sanctuary city policy

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<sup>83</sup> *Id.*

<sup>84</sup> Transcript of Proceedings at 8, *United States v. Valle-Acosta*, No. 23-cr-00346 (N.D. Cal. filed Dec. 27, 2023), Dkt. No. 33.

<sup>85</sup> Press Release, U.S. Att’y’s Off., *supra* note 49.

<sup>86</sup> Cassidy & Lurie, *supra* note 34.

<sup>87</sup> A former Honduran drug dealer told a reporter: “I searched in many, many, many places . . . to see if they would give me a job, and they told me no, that you have to have . . . your Social (Security documentation) and everything. I spent a few days without working, without doing anything . . . . And then you have to pay rent and all that.” Cassidy & Lurie, *supra* note 35.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> See Press Release, U.S. Att’y’s Off., *supra* note 49; Alec Regimbal, *DA Brooke Jenkins Lays Blame on “Judges” for San Francisco’s Worsening Drug Crisis*, SFGATE (Aug. 4, 2023), <https://www.sfgate.com/politics/article/jenkins-blames-judges-for-fueling-sf-drug-crisis-18279532.php> [<https://perma.cc/H75E-WGA7>].

<sup>92</sup> Cassidy & Lurie, *supra* note 35.

<sup>93</sup> *Id.*; see, e.g., United States’ Sentencing Memorandum and Motion for Joint Change of Plea and Sentencing, *supra* note 75, at 3 (noting that the defendant’s prior arrests for drug dealing had resulted in probation for a misdemeanor accessory-after-the-fact plea and diversion to drug court with charges dismissed upon completion).

ensures they will remain in the United States.<sup>94</sup> Prosecutors decry this “catch-and-release” system, under which undeterred drug dealers leave state court to return to the streets.<sup>95</sup>

Prosecutors hope to break this cycle through deportation. The fast-track program aspires to “remove[] the largest number of defendants, as fast as possible” so that “every arrested defendant is *gone* from the[] block and unable to contribute further to the disorder” in the Tenderloin.<sup>96</sup> Deportation does just that. Fast-track pleas effectively remove dealers from the community without expending finite resources on lengthy adjudications or periods of incarceration.<sup>97</sup> Deportation also has deterrence dividends. Since fast-track defendants plead to an aggravated felony, merely stepping back into the United States subjects them to imprisonment for up to twenty years for illegal reentry.<sup>98</sup> It also “sends a significant message to [defendants’] communit[ies] [in Honduras] that traveling to the United States to look for whatever work may be available, even if it is selling drugs, is not a viable option.”<sup>99</sup> While judges do not order deportation as part of the criminal judgment, it is not a silent factor.<sup>100</sup> Prosecutors,<sup>101</sup> defense attorneys,<sup>102</sup> and judges<sup>103</sup> are explicit that deportation is the primary punishment under the program.

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<sup>94</sup> Cassidy & Lurie, *supra* note 35. One dealer told the reporter that “because they don’t deport, that’s the problem. . . . Many look for San Francisco because it’s a sanctuary city. You go to jail and you come out.” *Id.*

<sup>95</sup> Transcript of Proceedings, *supra* note 84, at 6; *see* Regimbal, *supra* note 91.

<sup>96</sup> United States’ Supplemental Sentencing Memorandum, *supra* note 74, at 2.

<sup>97</sup> *See* Defendant’s Sentencing Memorandum and Request for Downward Variance at 5, United States v. Flores-Murillo, No. CR 23-0409 (N.D. Cal. filed Apr. 2, 2024), Dkt. No. 26.

<sup>98</sup> *See* 8 U.S.C. § 1326(b)(2); *see* United States’ Sentencing Memorandum and Motion for Joint Change of Plea and Sentencing, *supra* note 75, at 4.

<sup>99</sup> Defendant’s Sentencing Memorandum and Request for Downward Variance, *supra* note 97, at 6.

<sup>100</sup> *See, e.g.*, Judgment in a Criminal Case, *supra* note 11, at 2, 3.

<sup>101</sup> *See, e.g.*, United States’ Sentencing Memorandum and Motion for Joint Change of Plea and Sentencing at 4, United States v. Caseres-Gonzales, No. 24-cr-00539 (N.D. Cal. filed Oct. 25, 2024), Dkt. No. 12 (arguing that “a lengthy prison sentence as contemplated by the advisory Guidelines is unnecessary” despite the defendant’s history of drug dealing “considering . . . the likelihood that he will be removed from the United States”); Transcript of Proceedings at 9, United States v. Diaz-Cruz, No. 23-cr-00430 (N.D. Cal. filed Dec. 19, 2023), Dkt. No. 20 (“They’re going straight into ICE custody. They’re subject to being deported. Those are real consequences.”).

<sup>102</sup> *See, e.g.*, Defendant’s Sentencing Memorandum and Request for Downward Variance at 8–9, United States v. Vasquez, No. 24-cr-00196 (N.D. Cal. filed Apr. 2, 2024), Dkt. No. 21 (“[T]he entire point of the government’s Fast Track program [is] to sentence defendants with very little or no criminal history to short sentences, then deport these individuals with three years of supervision and the threat of a prior conviction.”); Defendant’s Sentencing Memorandum at 5, United States v. Silvas-Velasquez, No. 24-cr-00303 (N.D. Cal. filed June 11, 2024), Dkt. No. 15 (“For [the defendant], deportation to the place he risked his life to flee is the ultimate consequence flowing from the conviction in this case.”).

<sup>103</sup> *See, e.g.*, Transcript of Proceedings at 22, United States v. Mendoza, No. 24-cr-00238 (N.D. Cal. filed June 11, 2024), Dkt. No. 30 (finding a time-served sentence appropriate “especially given

Certainly, deportation is not the only consequence. Fast-track defendants spend weeks or months in pretrial detention.<sup>104</sup> They are also subject to three years of supervised release and a stay-away order from the Tenderloin.<sup>105</sup> Yet these punishments play second fiddle to deportation. The fast-track program strives to get defendants to sentencing and into ICE custody “as fast as possible.”<sup>106</sup> Time spent in U.S. Marshals’ custody is incidental. Supervised release and the stay-away order are also only the backup plan if recidivist defendants return to San Francisco.<sup>107</sup>

Deportation is also not the only difference between federal and state courts. Local prosecutors struggle with securing pretrial detention and speedy drug-distribution convictions.<sup>108</sup> With the fast-track program, federal prosecutors breeze through these challenges. However, the fundamental critique of state court is that short periods of incarceration and judicial orders to stay out of the Tenderloin do not deter these dealers.<sup>109</sup> On its face, the fast-track program replicates the same problem it is trying to address by expeditiously shuffling defendants through the court system and back onto the streets. Only by taking deportation into account does the program produce substantially different outcomes. When prosecutors talk about raising the stakes in federal court, they are mainly talking about deportation.

## II. COOPERATIVE PROSECUTION PROGRAMS AND COLLATERAL CONSEQUENCES

San Francisco’s fast-track program is one of many cooperative prosecution programs across the country. Its focus on deportation, though, adds a twist to these existing programs.

States are the primary law enforcers. They possess the general police power and bear the ultimate responsibility for public safety.<sup>110</sup> For the United States’s first century, the federal government had little role in this decentralized system of law enforcement.<sup>111</sup> But since the Civil

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that we expect [the defendant] will be removed immediately from the United States to the Honduras”); Transcript of Proceedings, *supra* note 101, at 23 (“See, [the fast-track program] is a gimmick to get around the D.A.’s refusal to . . . turn anybody over to ICE.”).

<sup>104</sup> See N.D. Cal. Fast-Track Defendants 2024, *supra* note 14.

<sup>105</sup> See United States’ Sentencing Memorandum and Motion for Joint Change of Plea and Sentencing, *supra* note 16, at 6.

<sup>106</sup> See United States’ Supplemental Sentencing Memorandum, *supra* note 74, at 2.

<sup>107</sup> See United States’ Sentencing Memorandum and Motion for Joint Change of Plea and Sentencing, *supra* note 16, at 6.

<sup>108</sup> See Regimbal, *supra* note 91.

<sup>109</sup> See Transcript of Proceedings, *supra* note 84, at 6.

<sup>110</sup> See *United States v. Lopez*, 514 U.S. 549, 567 (1995) (refusing “to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States”).

<sup>111</sup> See Sara Sun Beale, *Federalizing Crime: Assessing the Impact on the Federal Courts*, 543 ANNALS AM. ACAD. POL. & SOC. SCI. 39, 40 (1996).

War, federal criminal jurisdiction has progressively expanded.<sup>112</sup> In the 1960s and '70s, Congress passed a slew of new criminal statutes “targeting organized crime, illegal drugs, and violence.”<sup>113</sup> While acknowledging that making “traditionally local criminal conduct . . . a matter for federal enforcement” raises constitutional concerns,<sup>114</sup> the Supreme Court largely upheld the ballooning of federal criminal law under an expansive reading of the Commerce Clause.<sup>115</sup> Federal criminal law now largely overlaps with state criminal law.<sup>116</sup>

Without meaningful legal limitations, what cases should be brought in federal court is a policy question.<sup>117</sup> Despite sweeping federal jurisdiction, the vast majority of crimes are still prosecuted at the state level.<sup>118</sup> Federal prosecutors pick and choose which cases to elevate to federal court. Some crimes seem a natural fit. Offenses that implicate federal interests and those that exceed state competency are generally accepted by scholars and the Supreme Court as appropriate for federal prosecution.<sup>119</sup> But federal prosecution of “wholly local activity”<sup>120</sup> — crimes that states can and do handle as a matter of course — has garnered sharp debate amongst scholars and courts.<sup>121</sup>

Since the mid-1980s, cooperative prosecution programs have been a cornerstone of federal prosecution of street crime.<sup>122</sup> During that tough-on-crime period, the federal government sought to insert itself into street-crime law enforcement.<sup>123</sup> Formal cooperative programs emerged as the overlap of state and federal jurisdiction enabled law enforcement to leverage advantages of both systems.<sup>124</sup> Federal law enforcement agencies alone lack “the resources [and] capability to engage in street-level enforcement.”<sup>125</sup> Federal officers do not patrol a beat, respond to

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<sup>112</sup> See *id.* at 40–44.

<sup>113</sup> *Id.* at 42.

<sup>114</sup> *Jones v. United States*, 529 U.S. 848, 858 (2000) (quoting *United States v. Bass*, 404 U.S. 336, 350 (1971)).

<sup>115</sup> William Partlett, *Criminal Law and Cooperative Federalism*, 56 AM. CRIM. L. REV. 1663, 1667–70 (2019).

<sup>116</sup> See Stephen F. Smith, *Federalization's Folly*, 56 SAN DIEGO L. REV. 31, 35 (2019).

<sup>117</sup> Erin C. Blondel, *The Structure of Criminal Federalism*, 98 NOTRE DAME L. REV. 1037, 1074 (2023).

<sup>118</sup> Smith, *supra* note 116, at 37.

<sup>119</sup> Blondel, *supra* note 117, at 1056–57.

<sup>120</sup> *Perez v. United States*, 402 U.S. 146, 157 (1971) (Stewart, J., dissenting) (“I think the Framers of the Constitution never intended that the National Government might define as a crime and prosecute such wholly local activity through the enactment of federal criminal laws.”).

<sup>121</sup> Ouziel, *supra* note 19, at 2246.

<sup>122</sup> See generally MALCOLM L. RUSSELL-EINHORN, U.S. DOJ, NAT’L INST. OF JUST., *FIGHTING URBAN CRIME: THE EVOLUTION OF FEDERAL-LOCAL COLLABORATION* (2003) (chronicling the rise of federal-local law enforcement programs). Street crimes are episodic gun, drug, and violent offenses. Ouziel, *supra* note 19, at 2245 n.27.

<sup>123</sup> See RUSSELL-EINHORN, *supra* note 122, at 6.

<sup>124</sup> See *id.* at 2–3.

<sup>125</sup> Partlett, *supra* note 115, at 1664 n.11.

911 calls, or integrate into local communities.<sup>126</sup> Instead, they must rely on local police departments' "knowledge and expertise"<sup>127</sup> as "the only entities whose tentacles reach every street corner."<sup>128</sup> In return for federal involvement, local law enforcement benefits from not only increased resources, but also different substantive and procedural rules.<sup>129</sup>

Take Project Exile, one of the first formal cooperative programs, which began in the 1990s in Richmond, Virginia, to tackle a high violent crime rate.<sup>130</sup> Under that program, local police would notify federal agents anytime they found a gun on patrol.<sup>131</sup> Together, they would then decide whether to take the case federal.<sup>132</sup> To local and federal officials, federal prosecution offered several advantages over state prosecution, namely, pretrial detention, harsh mandatory minimum sentences, and "exile[]" to distant federal prisons.<sup>133</sup> Project Exile seemed to work: Violent crime rates dropped and the program was heralded as a success.<sup>134</sup> It was just the beginning. In 2001, President Bush went national with Project Safe Neighborhoods,<sup>135</sup> still in effect in all ninety-four federal judicial districts.<sup>136</sup> Since then, cooperative prosecution programs have become a staple of federal law enforcement.

As Project Exile demonstrates, cooperative prosecution programs emerge from a difference between federal and state courts. Federal prosecutors take up street crimes not to replicate the outcome that a state court would yield, but to obtain a different one. On the whole, defendants in federal court "fare worse."<sup>137</sup> They face higher conviction rates, longer sentences, disadvantageous procedural rules, and deep government pockets.<sup>138</sup> Critics see that pattern as a fatal flaw.<sup>139</sup> They accuse federal prosecutors and their state counterparts of "forum shop[ping]."<sup>140</sup> Similarly situated defendants in the same locality experience dramatically different outcomes based on the unchecked

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<sup>126</sup> See Ouziel, *supra* note 19, at 2283.

<sup>127</sup> *Id.* at 2262.

<sup>128</sup> Daniel C. Richman, *Federal Criminal Law, Congressional Delegation, and Enforcement Discretion*, 46 UCLA L. REV. 757, 786 (1999).

<sup>129</sup> See RUSSELL-EINHORN, *supra* note 122, at 3.

<sup>130</sup> See Partlett, *supra* note 115, at 1673-75.

<sup>131</sup> *Id.* at 1674.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 1675.

<sup>134</sup> See *id.*

<sup>135</sup> *Id.* at 1676-77.

<sup>136</sup> *Project Safe Neighborhoods*, U.S. DOJ, <https://www.justice.gov/psn> [<https://perma.cc/V9TP-FQ34>].

<sup>137</sup> Steven D. Clymer, *Unequal Justice: The Federalization of Criminal Law*, 70 S. CAL. L. REV. 643, 647 (1997).

<sup>138</sup> See Ouziel, *supra* note 19, at 2247-68.

<sup>139</sup> See Blondel, *supra* note 117, at 1075 n.280 (citing various examples of critics).

<sup>140</sup> Sara Sun Beale, *Too Many and Yet Too Few: New Principles to Define the Proper Limits for Federal Criminal Jurisdiction*, 46 HASTINGS L.J. 979, 1004 (1995).

discretion of prosecutors.<sup>141</sup> Defendants are subjected to a “cruel lottery”<sup>142</sup> that violates the spirit, if not the letter, of equal protection.<sup>143</sup> Critics argue that the disparities between federal and state outcomes are not only unfair to defendants but also violate principles of federalism by serving as an “end-run” around local and state policy.<sup>144</sup> Cooperative prosecutions “undermine political accountability by circumventing regulation in line with the views of the ‘local electorate.’”<sup>145</sup> Voters are deprived of “meaningful ways of controlling their own street-level criminal law policy”<sup>146</sup> as state and federal prosecutors can simply opt out by electing a federal forum.<sup>147</sup> Yet, where critics see disparities, proponents see “comparative advantage[s].”<sup>148</sup> The federal system lends legitimacy to criminal justice,<sup>149</sup> greater resources, and procedural advantages such as grand juries.<sup>150</sup> Under this view, federal courts “supplement[] and correct[] inevitable enforcement breakdowns” in the state system — not displace them.<sup>151</sup> Whether necessary intervention or unwarranted interference, these scholars agree that forum differences drive federal prosecution of street crime.<sup>152</sup>

Like other cooperative prosecution programs, San Francisco’s fast-track program is spurred by a federal difference: the near-certainty of deportation. Deportation, however, is not a traditional federal comparative advantage. The traditional advantages of the federal criminal justice system are “[h]igher rates of pretrial detention,” “[m]ore favorable rules of evidence,” “[m]ore favorable rules of procedure,” “[h]arsher sentences and more of [those] sentence[s] served,” and “[g]reater resources available.”<sup>153</sup> These are structural features of the federal criminal justice system.

But deportation is not. Rather, deportation is a collateral consequence of conviction. Collateral consequences are “state-imposed civil

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<sup>141</sup> See *id.* at 1001–02.

<sup>142</sup> *Id.* at 997.

<sup>143</sup> See Clymer, *supra* note 137, at 675–97.

<sup>144</sup> Ouziel, *supra* note 19, at 2247; see also *Jones v. United States*, 529 U.S. 848, 859 (2000) (Stevens, J., concurring) (“The fact that petitioner received a sentence of 35 years in prison when the maximum penalty for the comparable state offense was only 10 years illustrates how a criminal law like this may effectively displace a policy choice made by the State.” (citation omitted)).

<sup>145</sup> Partlett, *supra* note 115, at 1686 (quoting *New York v. United States*, 505 U.S. 144, 169 (1992)).

<sup>146</sup> *Id.* at 1687.

<sup>147</sup> See Beale, *supra* note 140, at 1004.

<sup>148</sup> Lisa L. Miller & James Eisenstein, *The Federal/State Criminal Prosecution Nexus: A Case Study in Cooperation and Discretion*, 30 LAW & SOC. INQUIRY 239, 247 (2005). See Blondel, *supra* note 117, at 1042 n.31, for scholars making this argument.

<sup>149</sup> See generally Ouziel, *supra* note 19 (arguing that federal prosecutions lend legitimacy to the enforcement of street crime).

<sup>150</sup> See John C. Jeffries, Jr., & John Gleeson, *The Federalization of Organized Crime: Advantages of Federal Prosecution*, 46 HASTINGS L.J. 1095, 1108–11 (1995).

<sup>151</sup> Blondel, *supra* note 117, at 1037.

<sup>152</sup> See Ouziel, *supra* note 19, at 2247.

<sup>153</sup> Miller & Eisenstein, *supra* note 148, at 248.

penalties . . . triggered by criminal convictions.”<sup>154</sup> They are wide-ranging,<sup>155</sup> from disenfranchisement<sup>156</sup> to the revocation of a license to train guide dogs.<sup>157</sup> Although collateral consequences are not imposed by a court, they lurk “as a secret sentence” behind every conviction.<sup>158</sup> Deportation has special salience amongst collateral consequences. In *Padilla v. Kentucky*,<sup>159</sup> the Supreme Court characterized it as “enmeshed” and “intimately related to the criminal process”<sup>160</sup> given the severity of the penalty and because “removal [is] nearly an automatic result for a broad class of noncitizen offenders.”<sup>161</sup>

Prosecutors are free to consider collateral consequences in the exercise of their discretion.<sup>162</sup> In fact, some scholars and defense attorneys argue that prosecutors *should* consider collateral consequences to avoid disproportionate and arbitrary punishment.<sup>163</sup> The Supreme Court assumed as much in *Padilla*, suggesting that “informed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea-bargaining process” as “the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties.”<sup>164</sup> California law, in fact, requires prosecutors to “consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution.”<sup>165</sup> State court drug offenses are therefore often pled to the innocuous-sounding offense of accessory after the fact, an “immigration neutral disposition[,]” rather than a drug charge.<sup>166</sup>

But prosecutorial discretion is a two-way street. Prosecutors may also prosecute to enforce collateral consequences. For instance, under a “no amnesty” policy, prosecutors in Maricopa County, Arizona, selected

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<sup>154</sup> Eisha Jain, *Prosecuting Collateral Consequences*, 104 GEO. L.J. 1197, 1199 (2016).

<sup>155</sup> See *National Inventory of Collateral Consequences*, NAT’L INST. OF JUST. (Nov. 13, 2018), <https://nij.ojp.gov/topics/articles/national-inventory-collateral-consequences-conviction> [<https://perma.cc/SC5D-EHTF>] (cataloging 44,000 federal and state collateral consequences nationwide).

<sup>156</sup> *Felony Disenfranchisement*, SENT’G PROJECT (2014), <https://www.prisonpolicy.org/scans/sp/Felony-Disenfranchisement-Laws-in-the-US.pdf> [<https://perma.cc/D52B-LGWF>].

<sup>157</sup> CAL. CODE REGS. tit. 16, § 2291 (2025).

<sup>158</sup> Gabriel J. Chin & Richard W. Holmes, Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 CORN. L. REV. 697, 700 (2002).

<sup>159</sup> 559 U.S. 356 (2010).

<sup>160</sup> *Id.* at 365.

<sup>161</sup> *Id.* at 366.

<sup>162</sup> See Jain, *supra* note 154, at 1228.

<sup>163</sup> See *id.* at 1199.

<sup>164</sup> 559 U.S. at 373.

<sup>165</sup> CAL. PENAL CODE § 1016.3(b) (West 2025).

<sup>166</sup> United States’ Sentencing Memorandum, *supra* note 68, at 7; see KATHY BRADY, LEGAL IMMIGRANT RES. CTR., HOW TO DEFEND IMMIGRANTS CHARGED WITH DRUG OFFENSES 4 (2023), <https://www.ilrc.org/sites/default/files/2023-02/How%20To%20Defend%20Immigrants%20Charged%20with%20Drug%20Offenses%202023.pdf> [<https://perma.cc/6R6T-5L6P>] (advising defense counsel to seek a plea for “[a]ccessory after the fact” as it is “never . . . a controlled substance offense (CSO) for immigration purposes, even if the underlying felony was a CSO”).

charges with an aim of maximizing immigration consequences.<sup>167</sup> As Professor Eisha Jain recognizes, the consideration of collateral consequences “extends” “the already-long arm of prosecutorial discretion . . . well beyond the criminal law [to] . . . a range of important public policy decisions.”<sup>168</sup> It allows prosecutors to circumvent criminal procedure and “impose their own public policy preferences.”<sup>169</sup> By leveraging collateral consequences, prosecutors wear the hats of both criminal and civil policymakers.

Put together, the fast-track program is a criminal cooperative prosecution program that leverages a civil collateral consequence. It is a powerful combination. The fast-track program magnifies the concerns about prosecutorial discretion present in both cooperative prosecution programs and collateral consequences. Working together, federal and state prosecutors cherry-pick not only which forum’s substantive and procedural rules govern, but also which civil consequences flow from conviction. The result is a bespoke system of criminal justice, with its own procedures and theories of punishment. As the following Parts demonstrate, this redesigned system upsets deliberate policy decisions at both the federal and local levels.

### III. UNWARRANTED DISPARITIES IN FEDERAL SENTENCING

Congress overhauled federal sentencing in 1984. It established uniform sentencing policy for uniform national criminal laws. San Francisco’s fast-track program takes a different approach. By factoring in deportation, the program institutionalizes severe disparities in sentencing policy and outcomes.

The Sentencing Reform Act of 1984<sup>170</sup> defined the purposes of sentencing in 18 U.S.C. § 3553(a) and imposed mandatory sentencing guidelines to further them.<sup>171</sup> The “first and foremost goal of the” reform “was to alleviate the perceived problem of federal criminal sentencing disparity.”<sup>172</sup> Before the guidelines, federal judges exercised “almost wholly unchecked and sweeping powers”<sup>173</sup> that led to “a wild array of sentencing judgments without any semblance of . . . consistency.”<sup>174</sup> Philosophical differences between judges led to disparate sentences for

<sup>167</sup> MARICOPA CNTY. ATT’Y’S OFF., 2007 ANNUAL REPORT, at 4 (2007), <https://maricopacountyattorney.org/Archive.aspx?ADID=62> [<https://perma.cc/44PM-ZSWW>].

<sup>168</sup> Jain, *supra* note 154, at 1244.

<sup>169</sup> *Id.* at 1202–03.

<sup>170</sup> Pub. L. No. 98-473, tit. II, ch. 2, 98 Stat. 1987 (codified as amended in scattered sections of 18 and 28 U.S.C.).

<sup>171</sup> 18 U.S.C. § 3553(a), (b).

<sup>172</sup> Kenneth R. Feinberg, *Federal Criminal Sentencing Reform: Congress and the United States Sentencing Commission*, 28 WAKE FOREST L. REV. 291, 295 (1993); *see* 18 U.S.C. § 3553(a)(6) (requiring judges to consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct”).

<sup>173</sup> MARVIN E. FRANKEL, CRIMINAL SENTENCES: LAW WITHOUT ORDER 5 (1972).

<sup>174</sup> *Id.* at 7.

otherwise similar cases.<sup>175</sup> With the guidelines, Congress sought to bring some semblance of predictability and rationality to sentencing by assuring that the “[f]ederal criminal justice system . . . adhere[d] to a consistent sentencing philosophy.”<sup>176</sup> Under the resulting system, judges sentence based upon the severity of the crime and specified characteristics of the defendant.<sup>177</sup>

Reducing unwarranted disparities requires, first, “determin[ing] which differences are warranted.”<sup>178</sup> The guidelines, therefore, include the types of factors that should be considered in crafting a sentence.<sup>179</sup> Congress contemplated departures from the resulting guideline range where the “court finds that there exists an aggravating or mitigating circumstance . . . not adequately taken into consideration . . . in formulating the guidelines.”<sup>180</sup> Departures may be warranted only in these “unusual” or “atypical” cases.<sup>181</sup>

Since *United States v. Booker*,<sup>182</sup> the guidelines are advisory rather than mandatory.<sup>183</sup> Yet they still exist as “the starting point and the initial benchmark”<sup>184</sup> and play a “significant role” in achieving the congressional goals of “[u]niformity and proportionality in sentencing.”<sup>185</sup> Judges must properly calculate the applicable guideline range at sentencing and “take them into account when sentencing.”<sup>186</sup>

The guidelines do not take collateral consequences into account as a relevant sentencing consideration.<sup>187</sup> In fact, there is a circuit split on whether and to what extent 18 U.S.C. § 3553 permits federal judges to consider collateral consequences.<sup>188</sup> While *Padilla* suggests prosecutors may consider deportation in plea bargaining, the Court did not address how deportation factors into sentencing policy.<sup>189</sup> Immigration consequences are not “unique” or “atypical” such that they might warrant a departure from the sentence imposed on otherwise similarly situated

<sup>175</sup> Paul J. Hofer, Kevin R. Blackwell & R. Barry Ruback, *The Effect of the Federal Sentencing Guidelines on Inter-Judge Sentencing Disparity*, 90 J. CRIM. L. & CRIMINOLOGY 239, 240 (1999).

<sup>176</sup> S. REP. NO. 98-225, at 59 (1983).

<sup>177</sup> See U.S. SENT’G GUIDELINES MANUAL § 1B1.1 (U.S. SENT’G COMM’N 2024).

<sup>178</sup> Marc Miller, *Purposes at Sentencing*, 66 S. CAL. L. REV. 413, 424 (1992).

<sup>179</sup> See generally U.S. SENT’G GUIDELINES MANUAL, *supra* note 177.

<sup>180</sup> 18 U.S.C. § 3553(b)(1).

<sup>181</sup> U.S. SENT’G GUIDELINES MANUAL, *supra* note 177, ch. 1, pt. A, introductory cmt. 4(b).

<sup>182</sup> 543 U.S. 220 (2005).

<sup>183</sup> *Id.* at 226–27. *Booker* held that mandatory guidelines violate a defendant’s Sixth Amendment right to a jury trial. *Id.*

<sup>184</sup> *Gall v. United States*, 552 U.S. 38, 49 (2007).

<sup>185</sup> *Molina-Martinez v. United States*, 578 U.S. 189, 193 (2016).

<sup>186</sup> *Booker*, 543 U.S. at 264; see 18 U.S.C. § 3553(a)(4).

<sup>187</sup> See U.S. SENT’G GUIDELINES MANUAL, *supra* note 177, § 1B1.1.

<sup>188</sup> Olivia Johnnene, Note, *Collateral Consequences of Conviction: The Current Inequality in Courts’ Consideration of the “Side Effects” of Federal Sentencing*, 29 SUFFOLK J. TRIAL & APP. ADVOC. 229, 239–44 (2024).

<sup>189</sup> *Id.* at 236–37.

defendants. Rather, immigration consequences are ubiquitous and, for controlled substance felony convictions, required.<sup>190</sup>

Crafting a program around immigration consequences, then, is not just a tailored variance from the guidelines based on individual circumstances. It is a unilateral revision of what factors are relevant to sentencing. San Francisco’s fast-track program institutionalizes a new and different sentencing philosophy — exactly the issue Congress tried to stamp out with the guidelines.

It comes as no surprise, then, that the fast-track program’s focus on deportation creates large disparities in sentencing. This author uses publicly available docket filings to create an original dataset for fast-track defendants sentenced in 2024 — the first full year of the program — that includes total time served and applicable guideline ranges.<sup>191</sup> Defendants sentenced under a fast-track plea served, on average, forty-three total days in custody.<sup>192</sup> This time was primarily served waiting disposition.<sup>193</sup>

Compare that to national averages. Since *Booker*, federal sentences for narcotics offenses trend below the guideline ranges.<sup>194</sup> To provide judges real sentencing data for similarly situated defendants, the U.S. Sentencing Commission now publishes a Judiciary Sentencing Information (JSIN) tool with data on the sentences actually imposed.<sup>195</sup> Using this tool, the author compares the actual sentence a fast-track defendant served to the national average for a similarly situated defendant in the years 2020 to 2024. The results are stark: Fast-track defendants served *nine percent* of the average sentence of a similarly situated defendant.<sup>196</sup>

This level of disparity is not inherent in a fast-track program. In 2003, Congress sanctioned early disposition programs.<sup>197</sup> These programs incentivized defendants to waive rights with the promise of a reduced sentence.<sup>198</sup> There is therefore disparity baked in: Defendants offered an expedited plea benefit from a shorter sentence than those who

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<sup>190</sup> See *supra* note 74.

<sup>191</sup> N.D. Cal. Fast-Track Defendants 2024, *supra* note 14.

<sup>192</sup> *Id.* Sentencing Commission staff use federal custody dates to determine the length of a “time served” sentence. See *Judiciary Sentencing Information (JSIN)*, U.S. SENT’G COMM’N, <https://jsin.usc.gov/analytics/saw.dll?Dashboard> [<https://perma.cc/34KL-8VBP>]. This time likewise excludes state custody.

<sup>193</sup> N.D. Cal. Fast-Track Defendants 2024, *supra* note 14.

<sup>194</sup> U.S. SENT’G COMM’N, STATISTICAL INFORMATION PACKET: FISCAL YEAR 2024, NORTHERN DISTRICT OF CALIFORNIA 16 (2024), <https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2024/can24.pdf> [<https://perma.cc/374S-T7QP>].

<sup>195</sup> *Judiciary Sentencing Information (JSIN)*, *supra* note 192.

<sup>196</sup> N.D. Cal. Fast-Track Defendants 2024, *supra* note 14.

<sup>197</sup> See *supra* notes 54–56 and accompanying text.

<sup>198</sup> Albert Llosas Barrueco, Note, *Fast-Tracking United States v. Booker: Why Judges Should Not Fix Fast Track Disparities*, 6 CONN. PUB. INT. L.J. 65, 74 (2006).

were not. Congress, though, cabined the degree of disparity by limiting downward departures to four levels.<sup>199</sup>

These early disposition programs sowed confusion and criticism. Programs for illegal reentry — the primary use — were not authorized in every district.<sup>200</sup> Defendants in districts without such programs argued that courts should nevertheless impose reduced sentences to mitigate unwarranted disparities with defendants in early disposition districts.<sup>201</sup> After *Booker*, circuit courts split over whether judges could consider early disposition disparities in sentencing.<sup>202</sup> Scholars also criticized the premise of the programs for undermining the guidelines' principles and fostering disparities solely based on the location of arrest.<sup>203</sup> In response, DOJ revised its early disposition policy in 2012.<sup>204</sup> For illegal-reentry programs, it “establish[ed] uniform, baseline eligibility requirements . . . regardless of where [a] defendant is prosecuted” to preserve the guidelines' role “as a means to achieve reasonable sentencing uniformity.”<sup>205</sup>

Yet the disparities criticized under these illegal-reentry early disposition programs were significantly smaller than those created in San Francisco. San Francisco's fast-track program does not adhere to the four-level departure Congress authorized in the PROTECT Act. Rather, it consistently reduces any sentence to time served. Under illegal-reentry early disposition programs, non-fast-track defendants served sentences roughly *one-and-a-half to two times* longer than those of similarly situated fast-track defendants.<sup>206</sup> In contrast, defendants serve *eleven times* longer sentences on average nationally than those of similar fast-track defendants sentenced under San Francisco's program.<sup>207</sup> San Francisco's fast-track program fosters uniquely severe disparities. This difference between illegal-reentry early disposition programs and San Francisco's fast-track program is one of sentencing philosophy. The illegal-reentry defendants were offered a marginal reduction on a

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<sup>199</sup> See Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, § 401(m)(2)(B), 117 Stat. 650, 675.

<sup>200</sup> Memorandum from James M. Cole, *supra* note 55, at 2.

<sup>201</sup> Thomas E. Gorman, Comment, *Fast-Track Sentencing Disparity: Rereading Congressional Intent to Resolve the Circuit Split*, 77 U. CHI. L. REV. 479, 499 (2010).

<sup>202</sup> See *id.* at 499–508. The Ninth Circuit held that courts could not consider early disposition disparities at sentencing as Congress authorized these programs and “a district judge [cannot] take into account his disagreements with congressional policy.” *United States v. Gonzalez-Zotelo*, 556 F.3d 736, 741 (9th Cir. 2009).

<sup>203</sup> See, e.g., Stephanos Bibas, *Regulating Local Variations in Federal Sentencing*, 58 STAN. L. REV. 137, 145–48 (2005); Erin T. Middleton, Note, *Fast-Track to Disparity: How Federal Sentencing Policies Along the Southwest Border Are Undermining the Sentencing Guidelines and Violating Equal Protection*, 2004 UTAH L. REV. 827, 828.

<sup>204</sup> See Memorandum from James M. Cole, *supra* note 55, at 1.

<sup>205</sup> *Id.* at 2.

<sup>206</sup> See Gorman, *supra* note 201, at 510.

<sup>207</sup> N.D. Cal. Fast-Track Defendants 2024, *supra* note 14.

traditional guidelines sentence.<sup>208</sup> San Francisco fast-track defendants receive a sentence based primarily on a consideration entirely outside of guidelines policy.

San Francisco is experiencing the problems of competing sentencing philosophies. Defendants receive drastically different sentences based upon the timing of their pleas.<sup>209</sup> Defendants not offered fast-track pleas vociferously argue that they should nevertheless receive a time-served sentence.<sup>210</sup> There is a split, too, amongst federal judges in San Francisco. Two judges categorically reject fast-track pleas as too lenient.<sup>211</sup> They disagree with the premise that deportation is an adequate substitute for incarceration. Fast-track defendants assigned to these judges are incarcerated on average 248 days longer than fast-track defendants who draw another judge.<sup>212</sup> These types of disparities “make the law seem arbitrary, undercutting its perceived fairness and legitimacy.”<sup>213</sup>

Institutionalizing a competing judicial philosophy is different than case-by-case prosecutorial discretion, judge-by-judge variations, or even district-by-district trends. In a sentencing regime premised on national uniformity, San Francisco’s fast-track program cannot be evaluated in isolation. While San Francisco suffers acutely, the fentanyl crisis is not unique to the city.<sup>214</sup> National uniformity to a national problem would require *all* judges to factor in deportation for *all* defendants. But such an act would supplant Congress’s role in sentencing policymaking. As an unsanctioned exception, San Francisco’s fast-track program undercuts the uniformity and thus legitimacy of the entire system.

#### IV. EVADING SAN FRANCISCO’S SANCTUARY CITY POLICY

The fast-track program not only wreaks havoc on federal sentencing policy but also subverts local policy. In the 1980s, Central American refugees fled to the United States to escape civil wars.<sup>215</sup> The Reagan

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<sup>208</sup> See Gorman, *supra* note 201, at 489–90.

<sup>209</sup> See *supra* note 70.

<sup>210</sup> See, e.g., Defendant’s Reply to Government’s Sentencing Memorandum at 3, United States v. Zelaya-Archago, No. 23-cr-00437 (N.D. Cal. filed Apr. 15, 2024), Dkt. No. 25. While not argued, Ninth Circuit precedent may bar this consideration. See United States v. Gonzalez-Zotelo, 556 F.3d 736, 738 (9th Cir. 2009).

<sup>211</sup> On Rejection of Rule 11(c)(1)(C) Pleas in Fentanyl Dealer Cases at 1, United States v. Valle-Acosta, No. 23-cr-00346 (N.D. Cal. filed Dec. 20, 2023), Dkt. No. 31 (“I have rejected the [fast-track pleas] . . . as far too lenient.”); see Transcript of Proceedings at 9, United States v. Flores Murillo, No. 23-cr-00409 (N.D. Cal. filed Dec. 23, 2023), Dkt. No. 19 (“So how is it just that his punishment is . . . a couple weeks in jail and a flight home?”).

<sup>212</sup> See N.D. Cal. Fast-Track Defendants 2024, *supra* note 14.

<sup>213</sup> Bibas, *supra* note 203, at 139.

<sup>214</sup> See *Drug Overdose Deaths: Facts and Figures*, NAT’L INST. ON DRUG ABUSE (Aug. 2024), <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates#Fig2> [<https://perma.cc/UE5P-ELRU>].

<sup>215</sup> Marisa Lagos, *SF’s Long History as a Sanctuary City Faces Renewed Challenges Under Trump*, KQED (Feb. 19, 2025, at 09:05 PT), <https://www.kqed.org/news/12027607/sfs-long-history-as-sanctuary-city-faces-renewed-challenges-under-trump> [<https://perma.cc/W5UX-YC53>].

Administration refused to grant asylum.<sup>216</sup> In response, in 1989 San Francisco declared itself a “City and County of Refuge”<sup>217</sup> “to foster an atmosphere of trust and cooperation between the San Francisco Police Department and all persons, regardless of immigration status.”<sup>218</sup> Since then, San Francisco’s sanctuary status has become more than a law. It is a marker of identity and “a sacred part of who [San Francisco is] as a city and county.”<sup>219</sup>

Given its political importance, San Francisco politicians are reluctant to amend the policy to cooperate with ICE on drug offenses. In 2023, the San Francisco Supervisor for the Tenderloin neighborhood, Matt Dorsey, proposed a carve-out for individuals with a prior fentanyl-dealing felony conviction accused of another fentanyl-dealing, violent, or serious felony.<sup>220</sup> San Francisco already had an existing exception to its sanctuary policy for “[v]iolent” or “[s]erious” felonies.<sup>221</sup> Dorsey sought to add fentanyl dealing to that list. His proposal was more modest than the fast-track program, which sweeps up first-time dealers and virtually guarantees deportation. In contrast, Dorsey’s proposal would only permit city officials to honor ICE civil detainers for a second felony offense.<sup>222</sup> Yet City Hall left Dorsey out to dry.<sup>223</sup> The then-President of the Board of Supervisors explained that “the mayor and [Dorsey’s] 10 colleagues on the board . . . aren’t touching this with a 10-foot pole” because the proposal “would just split San Francisco in half.”<sup>224</sup> Even a minor exception to the sanctuary city policy was a political nonstarter.

Since then, city officials have publicly vowed to uphold its sanctuary policy. In response to President Trump’s ramped-up deportations, in January 2025, San Francisco officials rallied on the steps of City Hall to

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<sup>216</sup> *Id.*

<sup>217</sup> S.F., Cal., Ordinance 375-89 § 1(a) (Oct. 24, 1989) (codified as amended at S.F., CAL., ADMINISTRATIVE CODE § 12H.1 (2025)).

<sup>218</sup> *Id.* § 1(l).

<sup>219</sup> Joel Umanson, *D.A. Brooke Jenkins Reverses Position on Sanctuary Ordinance*, S.F. CHRON. (Mar. 9, 2023, at 15:43 PT), <https://www.sfchronicle.com/sf/article/d-a-brooke-jenkins-backs-sanctuary-ordinance-17828254.php> [<https://perma.cc/M87T-FPEZ>] (quoting Supervisor Hillary Ronen on a 2023 Board of Supervisors’ resolution that rejected D.A. Jenkins and DHS’s request for a one-time exception for two fugitives located abroad).

<sup>220</sup> News Release, Matt Dorsey, Supervisor, S.F. Bd. of Supervisors, Dorsey Seeks to Withdraw Sanctuary Protections from Fentanyl-Dealing Undocumented Immigrants (Feb. 14, 2023), [https://sfbos.org/sites/default/files/Dorsey\\_Seeks\\_To\\_Withdraw\\_Sanctuary\\_Protections\\_From\\_Fentanyl-Dealing\\_Undocumented\\_Immigrants.pdf](https://sfbos.org/sites/default/files/Dorsey_Seeks_To_Withdraw_Sanctuary_Protections_From_Fentanyl-Dealing_Undocumented_Immigrants.pdf) [<https://perma.cc/LUY5-GKT9>].

<sup>221</sup> S.F., CAL., ADMINISTRATIVE CODE §§ 12I.3(b), (d)(1) (2025). Violent and serious felonies include crimes like murder, assault with a dangerous weapon, robbery, arson, and rape. *Id.* § 12I.2(f); CAL. PENAL CODE §§ 667.5(c), 1192.7(c) (West 2025).

<sup>222</sup> News Release, Matt Dorsey, *supra* note 220.

<sup>223</sup> See Adam Shanks, *Dorsey, Alone, Continues Fight to Change S.F. Sanctuary Law*, S.F. EXAM’R (May 9, 2024), [https://www.sfxaminer.com/news/politics/dorsey-alone-continues-fight-to-change-s-f-sanctuary-law/article\\_66255f08-cf44-11ed-886b-278e42ee301a.html](https://www.sfxaminer.com/news/politics/dorsey-alone-continues-fight-to-change-s-f-sanctuary-law/article_66255f08-cf44-11ed-886b-278e42ee301a.html) [<https://perma.cc/6B6W-QQYU>].

<sup>224</sup> *Id.*

reaffirm the city’s sanctuary status.<sup>225</sup> “My office is doing nothing in coordination with any federal immigration enforcement whatsoever,” D.A. Jenkins told the crowd.<sup>226</sup> The same day, the Board of Supervisors unanimously passed a “[r]esolution reaffirming San Francisco’s commitment to uphold the City’s long standing Sanctuary City Ordinance.”<sup>227</sup> The City Attorney’s office also filed a lawsuit challenging President Trump’s Executive Order withholding federal funds from sanctuary cities.<sup>228</sup>

Yet, beneath the rhetoric, San Francisco officials readily relinquish autonomy to the federal government. They invite federal circumvention of their own sanctuary policy by supporting the fast-track program. The U.S. Attorney’s Office initially implemented the program after local officials sought federal help with combating the fentanyl crisis.<sup>229</sup> The D.A.’s Office provides Special Assistant U.S. Attorneys to refer state cases for federal prosecution.<sup>230</sup> This support continued after President Trump’s second election. San Francisco’s new mayor, Daniel Lurie, tacitly endorsed the program: “[The U.S. Attorney’s Office] deport[s] them . . . [T]hey have that right.”<sup>231</sup> D.A. Jenkins also affirmed that she would continue to work with federal prosecutors.<sup>232</sup>

Local cooperation with the fast-track program does not violate the letter of the law. San Francisco’s sanctuary ordinance forbids voluntary “assist[ance] in the enforcement of Federal immigration law,” not federal criminal law enforcement more generally.<sup>233</sup> The D.A. has responded forcefully to allegations that her office is “collu[ding] with the federal government to funnel people into immigration detention and deportation” on these grounds.<sup>234</sup> “Pleas and sentences in federal and state court

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<sup>225</sup> Sergio Quintana, “We Value Our Immigrant Communities”: San Francisco Leaders Reaffirm Sanctuary City Status, NBC BAY AREA (Jan. 28, 2025, at 17:11 PT), <https://www.nbcbayarea.com/news/local/san-francisco/sanctuary-city-status/3774450> [<https://perma.cc/344B-NYS8>].

<sup>226</sup> Sylvie Sturm, *Public Defender Alleges Local-Federal Law Enforcement Partnership Defies SF Sanctuary Laws*, S.F. PUB. PRESS (Feb. 6, 2025), <https://www.sfpublicpress.org/public-defender-alleges-local-federal-law-enforcement-partnership-defies-sf-sanctuary-laws> [<https://perma.cc/N6AK-LS7T>].

<sup>227</sup> S.F. Bd. of Supervisors Res. 33-25 (Cal. 2025), <https://sfgov.legistar.com/LegislationDetail.aspx?ID=7096269&GUID=761B7651-887B-4CF9-8221-D3F7361728C4&Options=&Search> [<https://perma.cc/UWZ9-6UA2>].

<sup>228</sup> First Amended Complaint for Declaratory and Injunctive Relief ¶ 2, City & County of San Francisco v. Trump, No. 25-cv-01350 (N.D. Cal. filed Feb. 27, 2025), Dkt. No. 22. President Trump issued a similar Executive Order in his first term, which the Ninth Circuit rejected as unconstitutional. *Id.* (citing City & County of San Francisco v. Trump, 897 F.3d 1225 (9th Cir. 2018)).

<sup>229</sup> See *supra* notes 46–48 and accompanying text.

<sup>230</sup> See *supra* note 62 and accompanying text.

<sup>231</sup> Eliyahu Kamisher, *San Francisco’s Fentanyl Deportations Show Rare Unity with Trump*, BLOOMBERG (Dec. 23, 2024, at 11:45 ET), <https://www.bloomberg.com/news/articles/2024-12-23/san-francisco-s-fentanyl-deportations-show-rare-unity-with-trump> [<https://perma.cc/6AQL-KGUA>].

<sup>232</sup> *Id.*

<sup>233</sup> S.F., CAL., ADMINISTRATIVE CODE § 12H.2 (2025).

<sup>234</sup> Sturm, *supra* note 226 (quoting San Francisco Public Defender’s Assistant Chief Angela Chan).

do not include deportation or non-deportation as a term of any sentence,” the D.A. asserted in a statement.<sup>235</sup> “The Public Defender is lying and misleading the public by intentionally conflating ICE with normal federal investigations in the prosecution of drug dealing cases . . . .”<sup>236</sup>

But local cooperation does violate the spirit of the policy. The fast-track program does not involve “normal” federal investigations and prosecutions. The U.S. Attorney’s Office is prosecuting traditional state cases for the federal comparative advantage of deportation. Supporting federal fast-track prosecutions over state prosecutions is supporting deportation.

Cooperating with federal law enforcement to circumvent local laws is not unique to the fast-track program. It is a hallmark of cooperative prosecution programs. Project Exile skirted local limitations and was a perceived success. Project Exile, though, was overt about its objectives.<sup>237</sup> An extensive media campaign warned Richmond residents about the steep federal penalties they would now face.<sup>238</sup> In contrast, San Francisco city officials downplay or outright deny the purpose of the fast-track program.

San Francisco politicians get to have their cake and eat it too: removing the Tenderloin’s fentanyl dealers without political consequence. They face little pressure from aggrieved residents to amend San Francisco’s sanctuary laws because drug dealers are being deported. Nor do they face backlash — as Dorsey did in 2023 — for proposing an amendment to San Francisco’s sacred policy. It’s a win-win for the politicians. But it is a loss for the city’s residents. There could be a vigorous debate: A 2023 poll suggested 70% of San Francisco voters would support an exception for convicted fentanyl dealers.<sup>239</sup> Immigration rights groups decry such proposals as vilifying immigrants without addressing the causes of the fentanyl crisis.<sup>240</sup> Yet voters never had the opportunity to weigh in. Because the fast-track program operates in obscurity, most San Franciscans are unaware of the policy tradeoffs made in their name.

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<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> See Partlett, *supra* note 115, at 1674–75.

<sup>238</sup> See Daniel C. Richman, “Project Exile” and the Allocation of Federal Law Enforcement Authority, 43 ARIZ. L. REV. 369, 380 (2001).

<sup>239</sup> David Sjostedt, *San Francisco Voters Support Revoking Protections for Immigrant Fentanyl Dealers, Poll Shows*, S.F. STANDARD (May 2, 2023, at 16:12 PT), <https://sfstandard.com/2023/05/02/san-franciscans-support-revoking-sanctuary-protections-for-fentanyl-dealers-poll-shows> [https://perma.cc/6EB4-45R3].

<sup>240</sup> Annika Hom, *Dorsey Slammed for Proposal to Change Sanctuary City Policy*, MISSION LOC. (Feb. 28, 2023, at 21:00 PT), <https://missionlocal.org/2023/02/dorsey-slammed-for-proposal-to-change-citys-sanctuary-policy> [https://perma.cc/92M7-CQU8].

## CONCLUSION

Federal law enforcement does and should care about what is happening outside their offices. Local officials should seek help when they are struggling to provide basic public safety. With city residents overdosing on the sidewalks,<sup>241</sup> prosecutors could, in good faith, rationalize the fast-track program as a necessary, emergency measure.

Yet it does not seem to work. For one, it is unclear whether deportation is an effective crime-fighting tool. Starting in the spring of 2025, a handful of fast-track defendants returned to San Francisco and resumed drug dealing.<sup>242</sup> It is too soon to tell whether these are individual recidivists or reflect a larger trend. Nevertheless, they lend credence to fears that “a free trip home with no prison time” is inadequate deterrence.<sup>243</sup>

Crucially, the fast-track program is not an immigration program. Its success does not rise and fall on the number of deportations. The program is about putting a stop to the “death and destruction” that follows in the wake of fentanyl.<sup>244</sup> On that core measure, it is failing. San Francisco’s accidental drug overdose deaths peaked in 2023 with 810 deaths.<sup>245</sup> Twenty-twenty-four saw a “remarkable” 20% decline.<sup>246</sup> Then the trend reversed in 2025, with 361 deaths in the first half of the year.<sup>247</sup> The reason why is uncertain.<sup>248</sup> But the reversal shows that the fast-track program is no silver bullet to San Francisco’s fentanyl crisis. Rather, the program undermines significant federal and local policies without clear results.

The fast-track program was never the only option. Federal prosecutors could pursue street dealers following time-tested procedures and

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<sup>241</sup> Leonard & Jung, *supra* note 24.

<sup>242</sup> *Honduran Drug Dealer, Deported from San Francisco, Returned Immediately and Resumed Dealing Drugs, Court Told*, S.F. PUB. SAFETY NEWS (July 2, 2025, at 13:28 PT), <https://sfpublicsafety.news/honduran-drug-dealer-deported-from-san-francisco-returned-immediately-and-resumed-dealing-drugs-court-told> [<https://perma.cc/FMU3-XQEQ>]; *Another Deported Honduran Drug Trafficker Returns to San Francisco and Continues Drug Trafficking in Latest Blow to U.S. Attorney’s “Fast Track” Sentencing Scheme*, S.F. PUB. SAFETY NEWS (June 6, 2025, at 11:35 PT), <https://sfpublicsafety.news/another-deported-honduran-drug-trafficker-returns-to-san-francisco-and-continues-drug-trafficking-in-latest-blow-to-u-s-attorneys-fast-track-sentencing-scheme> [<https://perma.cc/8RN6-U52R>]; see also *Another Honduran Drug Dealer, Sent for “Fast Track” Deportation, Arrested Again in San Francisco*, S.F. PUB. SAFETY NEWS (June 16, 2025, at 10:49 PT), <https://sfpublicsafety.news/another-honduran-drug-dealer-sent-for-fast-track-deportation-arrested-again-in-san-francisco> [<https://perma.cc/6AK9-JWLC>] (returned to Tenderloin).

<sup>243</sup> On Rejection of Rule 11(c)(1)(C) Pleas in Fentanyl Dealer Cases, *supra* note 211, at 5.

<sup>244</sup> Press Release, U.S. Att’y’s Off., *supra* note 49.

<sup>245</sup> Leonard & Jung, *supra* note 24.

<sup>246</sup> Catherine Ho, *S.F. Overdose Deaths Hit “Remarkable” New Low*, S.F. CHRON. (Nov. 18, 2024), <https://www.sfchronicle.com/health/article/s-f-overdose-deaths-hit-remarkable-new-low-19926166.php> [<https://perma.cc/2Q47-DZ8Y>].

<sup>247</sup> See Leonard & Jung, *supra* note 24.

<sup>248</sup> Maggie Angst & Christian Leonard, *Why S.F.’s “Remarkable” Drop in Fatal Drug Overdoses Has Proved to Be Short-Lived*, S.F. CHRON. (July 6, 2025), <https://www.sfchronicle.com/sf/article/why-drug-overdoses-reversed-decline-20400862.php> [<https://perma.cc/4P3F-RLLH>].

policies. They could follow Project Exile's approach and publicize their intent to deport drug dealers through federal prosecutions to achieve greater deterrence. City officials could have pushed the Board of Supervisors to create an exception to the sanctuary city policy. Or they could have put the issue to the voters. These are not abstract choices. The fast-track program began under the Biden Administration and has quietly continued under the Trump Administration.<sup>249</sup> It is still in effect today.<sup>250</sup>

The fast-track program exposes the pitfalls of cooperative prosecution programs. Forum shopping is inevitable with overlapping federal-state criminal jurisdiction. But the federal advantage leveraged should be compatible with longstanding federal and local policies. Otherwise, cooperative programs substitute unbound prosecutorial discretion for the deliberative policymaking process.

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<sup>249</sup> See *Another Honduran Drug Dealer, Sent for "Fast Track" Deportation, Arrested Again in San Francisco*, *supra* note 242.

<sup>250</sup> Last verified November 2025. See Defendant's Sentencing Memorandum at 2, *United States v. Carranza*, No. 25-cr-00353 (N.D. Cal. filed Oct. 29, 2025), Dkt. No. 15.