

1st Circuit

U.S. v. Thurston, 2003 WL 21782339, *23, No. 02-1966 (1st Cir. Aug 4, 2003) (vacating sentence, reversing downward departure based on good works and purported disparity, and remanding for imposition of the statutory maximum sentence of sixty months in prison and for imposition of an appropriate fine in case involving conspiracy to defraud medicare of over \$5 million)

U.S. v. Gendraw, 2003 WL 21730594, No. 02-2099 (1st Cir. Jul 28, 2003) (affirming denial of defendant's motion for a downward departure because designation as a career criminal did not overstate defendant's criminal history)

2nd Circuit

U.S. v. Kim, 2003 WL 22391190, No. 03 Cr. 413(RPP) (S.D.N.Y. Oct. 20, 2003) (in plea agreement, defendant pleads guilty to aggravated assault and both sides agree to not seek departure from guideline range. Court however found that offense did not fit definition of aggravated assault and recalculates base-level for offense and recalculates sentence, with an overall change in guideline level being three lower than the original. In opinion, Court states that members of the Court are "being squeezed between adherence to their moral conscience and these Guidelines: on the one hand, we must sentence in accordance with the law, yet as members of whatever religious group we may belong to, we must render a fair and just sentence based on the unique facts with which we are sometimes confronted.") ([Link to Opinion and Order](#))

3rd Circuit

U.S. v. Lester, 2003 WL 21489720, No. CRIM.A.03-0033 (E.D. PA June 20, 2003) (denying diminished capacity departure for defendant, convicted of two counts of transporting child pornography in interstate commerce, on basis of an obsessive-compulsive personality disorder and a sexual addiction, even though defendant had engaged in substance abuse, which did not contribute to the offense conduct, no actual violence or serious threat of violence was involved, and defendant did not present so severe a threat that any sentence below the Guidelines would endanger the public)

4th Circuit

U.S. v. Carter, 2003 WL 21760511, No. 02-5001(4th Cir. Jul 21, 2003) (affirming upward departure to fifty-four months imprisonment for uttering forged securities on the ground that defendant's conduct resulted in "reasonably foreseeable, substantial non-monetary harm" to her former employer, an encouraged departure under U.S.S.G. ' 2F1.1, comment. (n.11(a))

6th Circuit

U.S. v. Camejo, 333 F.3d 669 (6th Cir. 2003) (in assault case, affirming upward departure for underrepresentation of criminal history and remanding for consideration of downward departure for defendant who had been detained for two years as an immigration detainee where district court

believed it did not have authority to depart on this ground)

8th Circuit

U.S. v. Flores, 2003 WL 21673619, No. 02-3380 (8th Cir. Jul 18, 2003) (in LSD trafficking offense, affirming upward departure to career offender designation from a mandatory 10-year sentence to 235 months based on fact that criminal history category IV for 18-year old defendant underrepresented the severity of past conduct and likelihood of recidivism)

U.S. v. Swick, 334 F.3d 784, 789 (8th Cir. 2003) (case involved conviction for tampering with consumer products where defendant had placed needles in food products & committed perjury at trial; court reversed 17-month downward departure for post-offense rehabilitation based on defendant's decision to stop abusing alcohol and his successful completion of alcohol treatment and aftercare, where defendant's conduct by refraining from alcohol and subjecting himself to periodic drug/alcohol testing was merely complying with the conditions of his pretrial release)

U.S. v. Dyck, 334 F.3d 736 (8th Cir. 2003) (vacating and remanding for resentencing downward departure granted to defendant who had illegally reentered the country after having been deported with an aggravated felony because defendant's criminal history category did not significantly overrepresent the seriousness of his criminal history, as fact that defendant's prior drug-trafficking conviction could be used both to enhance his base offense level and to compute his criminal history category did not create special circumstance which would warrant downward sentencing departure; sentencing court could not consider extent of defendant's role in prior offense in granting downward sentencing departure; and defendant's purported lack of criminal intent in reentering country was invalid basis for granting downward departure).

U.S. v. Chesborough, 333 F.3d 872 (8th Cir. 2003) (affirming upward departure where defendant's criminal history score failed to reflect the seriousness of defendant's past criminal conduct, warranting an upward departure from the sentencing guidelines for defendant's conviction of being felon in possession of a firearm; presentence report reflected the fact that defendant was a recidivist criminal, who, during the last 45 years, had been convicted of approximately 20 crimes)

U.S. v. Agee, 333 F.3d 864, 865- 866 (8th Cir. 2003) (affirming upward criminal history departure for defendant convicted of being a felon in possession of a firearm)

U.S. v. Orchard, 332 F.3d 1133 (8th Cir. 2003) (seriousness of psychological harm to victim, defendant's abuse of relationship of trust, and his facilitation of further criminal act were all factors supporting upward departure from sentencing guidelines)

U.S. v. Tarantola, 332 F.3d 498, 500 (8th Cir. 2003) (affirmed upward departure for criminal history in felon-in-possession case)

U.S. v. Aguilar-Lopez, 329 F.3d 960 (8th Cir. 2003) (affirmed upward departure in reentry after deportation case on basis that criminal history category underrepresented his background)

U.S. v. Kirsch, No. 02-288(1) (D. Mn.) (PAM/RLE) (judge denies motion for downward departure on grounds that (1) case does not fall outside heartland of cases and (2) because “the day of the downward departure is past. Congress and the Attorney General have instituted policies designed to intimidate and threaten judges into refusing to depart downward, and those policies are working...the Court is scared to depart.”) ([Link to Statement of Reasons fro Imposing Sentence](#))

9th Circuit

U.S. v. Mendoza, No. CR 03-730 DT (C.D. Cal. Jan. 12, 2004) (Order issued on January 12, 2004 by Judge Dickran Tevrizian of the Central District of California which declared a portion of the PROTECT Act and Feeney Amendment unconstitutional. Judge Tevrizian concluded that Section 401(1)(2)and(3)(Report by Attorney General) and the AG's Memorandum of July 28, 2003, offends "judicial independence by allowing individual judges to be singled-out, threatened, intimidated and targeted." Section 401, the Judge wrote, "chills and stifles judicial independence to the extent that it is constitutionally prohibited. The chilling effect is sufficient to violate the separation of powers limitations of the United States Constitution." ([Link to Order](#))

U.S. v. Semsak, 2003 WL 21730615, No. 02-30153 (9th Cir. Jul 28, 2003) (affirming four-level upward departure in case where defendant, who drove a tractor-trailer drunk and collided with a car, killing its driver, pleaded guilty to involuntary manslaughter because of defendant's extraordinarily reckless conduct)

U.S. v. Guerrero, 333 F.3d 1078 (9th Cir. 2003) (remanding downward departure for aberrant behavior in MJ conspiracy case where district court did not make finding that defendant's case was both extraordinary and aberrant)

U.S. v. Mellert, No. CR 03-0043 MHP (N.D. Cal. Jul 30, 2003) (in opinion critical of the PROTECT Act's transfer of discretion and power from federal judges and the US Sentencing Commission to prosecutors and critical of prosecutors=plea practices where they agree to sentences which amount to departures expecting court to impose agreed sentence without supplying departure rationale or calling it a departure, Chief Judge grants downward departure for aberrant behavior in an Aextraordinary@case involving insider trading that involved a single phone call and a single transaction, without significant planning sentences defendant to community confinement for two months) ([Link to Memorandum \(Statement of Reasons\)](#))

U.S. v. Martinez-Lorenzo, No. CR 01-1102-WMB (C.D. Cal. Jul 1, 2003) (addressing prosecution's contention that the Feeney Amendment precludes the resentencing judge from considering new evidence/exercising discretion regarding defendant's request for a departure upon remand in a pre-Feeney offense/conviction/initial sentencing case) ([Link to Martinez-Lorenzo's Memorandum re: Resentencing Proceedings](#))

10th Circuit

U.S. v. Jones, 332 F.3d 1294 (10th Cir. 2003) (affirmed seven-level upward departure, where defendant had pleaded guilty to three counts of involuntary manslaughter; district court satisfied statutory requirement that it set forth with specificity, in written order of judgment, its reasons for departing from Sentencing Guidelines range; district court did not rely on impermissible factors in making "heartland" determination for upward departure; factors underlying upward departure were authorized by statute and justified by facts of case; and seven-level upward departure was appropriate)

U.S. v. Payne, 66 Fed.Appx. 805, 2003 WL 21259748 (10th Cir. 2003) (remanded for reconsideration of extent of departure where district court departed down 24 levels based on post-offense rehabilitation in case involving possession of an unregistered firearm)

U.S. v. VanLeer, 2003 WL 21545099, No. 2:03-CR-00137 PGC (D. Utah July 17, 2003) (Cassell, J.) (granted downward departure under lesser harms grounds for felon in possession case where defendant had pawned to use for subsistence after being released from prison where the firearm was one he had owned before he was convicted of felony; recently-appointed conservative judge also explains why discretion to depart is integral part of guidelines sentencing)