



## **Neither Meritorious Nor Reasonable: Operation Streamline and its Effects on the Courts and Law Enforcement on the Border**

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Operation Streamline is a costly and draconian program that seeks to prosecute all unlawful border crossers in federal criminal courts. Instead of routing immigration violators through civil removal proceedings in immigration court, Operation Streamline first forces undocumented migrants through the federal criminal justice system and into U.S. prisons. At the conclusion of their criminal proceedings, Streamline defendants are handed back to the Department of Homeland Security (DHS) for civil immigration proceedings. Since its inception in the Del Rio, Texas, Border Patrol Sector in 2005 under the Bush Administration, Streamline has expanded to cover most of the southwest border.

Operation Streamline has fundamentally altered DHS border enforcement practices. Before Streamline, Border Patrol agents routinely returned first-time border crossers to their home countries, or handed them to Immigration and Customs Enforcement (ICE) to face removal charges in the civil immigration system. Pre-Streamline, U.S. Attorney's Offices near the border typically prosecuted only those migrants with criminal records or those who made repeated attempts to unlawfully cross the border.<sup>1</sup> Today, under Operation Streamline, costly federal prosecutions of thousands of non-dangerous migrants dominate the southwest court districts.<sup>2</sup> Operation Streamline strips prosecutorial discretion from U.S. Attorneys, requiring the criminal prosecution of all undocumented border crossers, regardless of their individual circumstances.<sup>3</sup> In effect, Operation Streamline politicizes prosecutorial decisions, forcing prosecutions as a matter of partisan immigration policy rather than prioritizing how best to deter or punish criminal activity.

The Border Patrol claims that Operation Streamline is an effective deterrent against unlawful entry to the United States.<sup>4</sup> However, these claims are factually unsubstantiated. Long-term studies of migration flows demonstrate that increases and declines in illegal crossings more closely track U.S. economic cycles than immigration enforcement strategies.<sup>5</sup> Even allowing for some deterrent effect from enforcement measures, there is no evidence that those intending to cross the border illegally have knowledge that their actions may lead to criminal prosecution and jail time. Federal public defenders in the southwest largely report that their clients have little prior information about the prosecutions, and even less about the consequences in terms of their possible future immigration options.<sup>6</sup>

### **Effects on the Federal Courts**

As a direct result of Operation Streamline, immigration-based criminal prosecutions now constitute more than half of *all* federal prosecutions nationwide.<sup>7</sup> Department of Justice statistics show that during the Bush Administration, annual criminal prosecutions for immigration offenses more than quadrupled.<sup>8</sup> DHS accounted for 62% of all crimes referred to prosecutors. Of the 94 federal districts, the five in the southwest handled 75% of criminal cases in federal district courts nationwide.<sup>9</sup>

Unfortunately, this trend continued into the Obama Administration. In 2009, of 169,612 total federal prosecutions, 91,899 were for immigration charges; 92% of immigration-based prosecutions were for entering the country without authorization, as opposed to fraud, identity

theft, smuggling people, or hiring illegal workers.<sup>10</sup> The majority of defendants facing petty immigration prosecutions are simply migrants who have crossed the border illegally to work or reunite with family; few of them have any criminal history.

Because Operation Streamline sweeps in so many people, some federal courts in border regions have resorted to holding *en masse* hearings and sentencing, with up to 80 defendants prosecuted in the space of a couple hours.<sup>11</sup> Individual defendants in those hearings may have met with a defense attorney for less than 20 minutes, and their guilty pleas with potential prison and deportation consequences will be resolved in two days or less.<sup>12</sup> In December 2009, the Ninth Circuit Court of Appeals ruled that the *en masse* proceedings in Tucson violated the federal rules of criminal procedure, and instructed the Arizona courts to slow down.<sup>13</sup> The Ninth Circuit ruled that federal procedure required each defendant to be addressed and given the opportunity to answer individually, not collectively, as the Tucson court was doing. Still, prosecutions have continued at record numbers.

U.S. District Court Judge Sam Sparks sits in the Western District of Texas, where immigration crimes constitute 80% of the federal criminal docket.<sup>14</sup> Judge Sparks expressed his frustration with Streamline in a recent court order, where he demanded that federal prosecutors justify their decisions to prosecute migrants: “The expenses of prosecuting illegal entry and re-entry cases (rather than deportation) is simply mind-boggling. The U.S. Attorney’s policy of prosecuting all aliens presents a cost to the American taxpayer at this time that is neither meritorious nor reasonable.”<sup>15</sup> The Department of Justice has estimated that housing those convicted under Streamline costs between \$7 million and \$10 million each month.<sup>16</sup> This does not include detention costs prior to convictions, nor other costs associated with the program, such as defense attorneys, judicial time and resources, and personnel costs associated with the courts, prosecutors, and U.S. Marshals.

## **Effects on Law Enforcement**

Operation Streamline diverts scarce resources from core law enforcement priorities and community safety. All along the border, federal judges, prosecutors, and defenders report that the explosion in immigration prosecutions siphons resources from other criminal prosecutions. Congresswoman Zoe Lofgren has received many complaints from federal agents. “They’ve pulled so many U.S. attorneys off drug crimes and organized crime caseloads that federal agents are trying to get help from local district attorneys because they can’t wait six weeks for a wiretap order,” she said.<sup>17</sup> Rather than spending time prosecuting gun and drug trafficking and organized crime, federal prosecutors and defenders now spend much of their time on misdemeanor illegal entry cases. Judicial records in Arizona show that while prosecutions for illegal entry and re-entry have increased, smuggling prosecutions have decreased.<sup>18</sup> During Operation Streamline’s inaugural year in Arizona, federal prosecutions involving marijuana dropped 26%; firearms and explosives fell 21%; prosecutions of violent offenses declined 17%; forgery and counterfeiting dropped 63%; and prosecutions for larceny and theft decreased 28%.<sup>19</sup>

When the federal government forgoes its traditional criminal prosecution responsibility, local communities are left to fill the gap. Dangerous crimes, including drug and gun smuggling and organized crime, are now routinely declined by federal prosecutors and instead referred to state

and county officials.<sup>20</sup> The county attorney for Pima County, AZ, which includes Tucson, said she did not know how much longer she would be able to take on federal cases.<sup>21</sup> Arizona Attorney General Terry Goddard said, “I have seen a national abdication by the Justice Department.”<sup>22</sup>

## **Effects on U.S. Attorneys, Public Defenders and Court Resources**

Operation Streamline drains time and resources from federal public defenders, prosecutors, U.S. Marshals, and court personnel. The U.S. Marshals report that their immigration workload has grown so drastically that it is difficult for them to meet their other obligations of providing security to judges and witnesses and transporting federal prisoners.<sup>23</sup> Public defenders in Arizona have managed to avert burn-out by distributing cases to attorneys appointed under the Criminal Justice Act, and because the court has capped the number of defendants per defense lawyer.<sup>24</sup> In Del Rio, TX, however, a single defense attorney can represent up to 80 Streamline defendants in one hearing. In Las Cruces, NM, where Judge Robert Brack has been dubbed “America’s Busiest Judge” for prosecuting more than 18 times more defendants in 2008 than the national average, the court has still had to transfer other felony cases to Albuquerque to make room for its immigration docket.<sup>25</sup>

## **Lingering Concerns**

A steady stream of data shows that the federal government’s rigid desire to criminally prosecute undocumented migrants for illegal entry has overshadowed concerns for community safety and security. As immigration prosecutions have increased, prosecutions of other, more serious crimes have declined. Judicial and law enforcement resources are stretched to capacity with immigration-related offenses.

Meanwhile, critical information about Operation Streamline is missing. Firstly, DHS claims that Streamline is an important deterrent, but any evidence that may exist to back up this claim has not been made public. Without hard data linking Streamline prosecutions to an actual deterrent effect, the program cannot be justified. Secondly, the costs are considerable, but have not been fully measured. Supporting Streamline requires extra expense in the form of appointed defense attorneys, U.S. Marshals, special assistant prosecutors, judges and court personnel, incarceration in state and federal prisons, etc. These immense fiscal burdens are not clearly accounted for in either the DOJ or DHS budget. Perhaps the most difficult question to answer is the impact of Streamline in terms of its opportunity costs: the government’s inability to prosecute more serious crimes in order to make way for the crushing immigration caseload. Finally, there are important legal questions left unanswered. How is due process assured for border crossers who are considered for prosecution under Streamline? To what extent is prosecutorial independence compromised? How do Streamline defendants enforce their right to effective assistance of counsel when their cases are pushed through the court so quickly? How does DOJ oversee prosecutions under this program? Without answers to these questions, Operation Streamline remains a reckless and wasteful program.

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<sup>1</sup> Joanna Lydgate, “Assembly-Line Justice: A Review of Operation Streamline,” Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, UC Berkeley Law School, Jan. 2010, *available at* [http://www.law.berkeley.edu/files/Operation\\_Streamline\\_Policy\\_Brief.pdf](http://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf), at 1.

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- <sup>2</sup> Transactional Records Access Clearinghouse, "Bush Administration's Immigration Prosecutions Soar, Total of All Federal Filings Reaches New High," Syracuse Univ. Jan. 12, 2009, *available at* <http://trac.syr.edu/tracreports/crim/201/>.
- <sup>3</sup> CBP Press Release, "DHS Launches 'Operation Streamline II'" Dec. 16, 2005.
- <sup>4</sup> CBP Press Release, see footnote 2.
- <sup>5</sup> Immigration Policy Center, "Fewer Job Openings Equals Fewer Immigrants: Undocumented Immigration Slows Along With the U.S. Economy," Oct. 1, 2008.
- <sup>6</sup> Joanna Lydgate, see footnote 1, p. 7. The federal criminal record incurred by Streamline defendants means that they will in most cases be classified as criminal aliens, and many of them will be barred from ever entering the U.S. on a legal visa in the future.
- <sup>7</sup> Transactional Records Access Clearinghouse, "FY 2009 Federal Prosecutions Sharply Higher," Syracuse Univ.
- <sup>8</sup> Transactional Records Access Clearinghouse, see footnote 3.
- <sup>9</sup> Russell Goldman, "What's Clogging the Courts? Ask America's Busiest Judge," *ABC News*, Jul. 23, 2008.
- <sup>10</sup> Transactional Records Access Clearinghouse, see footnote 7.
- <sup>11</sup> Joanna Lydgate, see footnote 1, p. 13.
- <sup>12</sup> Amended Written Statement of Heather E. Williams, First Assistant Federal Public Defender, Dist. of Ariz., June 25, 2008, before the U. S. House of Representatives, Subcommittee of Commercial and Administrative Law, Oversight Hearing on the Executive Office for United States Attorneys.
- <sup>13</sup> *United States v. Roblero-Solis*, 588 F.3d 692 (9th Cir. 2009).
- <sup>14</sup> Transactional Records Access Clearinghouse, see footnote 3.
- <sup>15</sup> Court Order, U.S. District Court for the Western District of Texas, Feb. 5, 2010, *available at* <http://alt.coxnewsweb.com/statesman/pdf/02/0206sparks.pdf>.
- <sup>16</sup> Evan Pellegrino, "Factory justice? Illegal immigrants pushed through the system" *Green Valley News*, Apr. 20, 2010.
- <sup>17</sup> Solomon Moore, "Push on Immigration Crimes is Said to Shift Focus," *New York Times*, Jan. 11, 2009.
- <sup>18</sup> Joanna Lydgate, see footnote 1, p. 2.
- <sup>19</sup> Evan Pellegrino, "Factory justice? Illegal immigrants pushed through the system" *Green Valley News*, Apr. 20, 2010.
- <sup>20</sup> Department of Justice, Southwest Border Prosecution Initiative, *available at* <http://www.ojp.usdoj.gov/BJA/grant/southwest.html>.
- <sup>21</sup> Solomon Moore, see footnote 17.
- <sup>22</sup> Solomon Moore, see footnote 17.
- <sup>23</sup> Joanna Lydgate, see footnote 1, p. 10.
- <sup>24</sup> Joanna Lydgate, see footnote 1, p. 10.
- <sup>25</sup> Administrative Office of the U.S. Courts, "Report on the Impact on the Judiciary of Law Enforcement Activities Along the Southwest Border" Prepared for the U.S. House of Representatives and Senate Committees on Appropriations, Jul. 2008, p. 27.