



# IMMIGRATION POLICY CENTER

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## **New Data on Federal Court Prosecutions Reveal Non-Violent Immigration Prosecutions Up, Organized Crime, Drugs and Weapons Charges Down**

The Transactional Records Access Clearinghouse (TRAC) reports that [federal immigration prosecutions rose](#) to record levels during fiscal year (FY) 2009. In the past, federal court resources were appropriately allocated to pursue immigration-related prosecutions against individuals with criminal backgrounds.<sup>1</sup> Recently, however, priorities have shifted, and large numbers of federal immigration prosecutions have focused on non-violent border crossers, creating the appearance that immigrants are committing more crimes. However, the fact is -- the federal government's shift in resources has meant spending billions of dollars prosecuting non-violent immigration violators while more serious criminals involved in drugs, weapons, and organized crime face a lower probability of prosecution.

Immigration prosecutions now account for more than half (54 percent) of all federal criminal filings. During the first nine months of FY 2009, there were 67,994 new federal immigration prosecutions; TRAC projects the total FY 2009 immigration prosecutions to be around 90,659.<sup>2</sup> Assuming these projections hold, this represents a 14.1% increase from FY 2008.<sup>3</sup> Concurrently, the number of federal prosecutions for *non immigration-related* crimes has actually dropped over the past 5 years.<sup>4</sup>

The dramatic increase in criminal prosecutions can be traced in large part to Operation Streamline, a DHS program which mandates federal criminal prosecution and subsequent imprisonment of all persons caught crossing the border unlawfully.<sup>5</sup> A [new report](#) by the Warren Institute at the University of California at Berkeley highlights the impact of Operation Streamline on immigration enforcement and on immigrants.<sup>6</sup>

The new information about federal prosecutions and Operation Streamline highlight four areas of concern:

- The number of immigration prosecutions has continued to increase and now make up 54 percent of all federal criminal prosecutions.
- While immigration prosecutions continue to rise, other federal criminal prosecutions have decreased. The prioritization of immigration has made it difficult for law enforcement agents to pursue other more serious crimes.

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- The mandatory prosecution of immigrants for nonviolent immigration crimes has artificially increased prosecution numbers. Operation Streamline along the U.S.-Mexico border is responsible for a large share of the prosecutions.
- Because of the rapid increase in prosecutions due to Operation Streamline, many persons being prosecuted are not given adequate due process.
- The increased number of prosecutions is not a solution to U.S. immigration problems and has not had a significant impact on the illegal immigrant population. Operation Streamline has not worked as a deterrent.

### **What types of federal immigration crimes are being prosecuted?**

- Immigration prosecutions make up 54 percent of all federal criminal prosecutions. The most prosecuted federal immigration crimes in FY 2009 were for immigrants caught *entering the United States at an improper time or place*, totaling approximately 40,000. Between 2002 and 2008, prosecutions for first time illegal entry in border district courts increased 330% from 12,411 to 53,697.<sup>7</sup>
- *Illegal reentry of a deported alien* accounted for nearly 22,000 prosecutions in FY 2009.<sup>8</sup>
- In contrast, potential smuggling charges were brought less frequently. TRAC found 2,980 prosecutions for *bringing in and harboring certain aliens*, and 106 prosecutions for *aiding and abetting an illegal entry*.<sup>9</sup>
- Only 13 employers in 8 cases were prosecuted in 2009 for employing unauthorized workers.<sup>10</sup>
- 85% of the prosecutions originated with Customs and Border Protection (CBP). Immigration and Customs Enforcement (ICE) accounted for 13% of the prosecutions.<sup>11</sup>

### **What crimes are NOT being prosecuted?**

- Immigration prosecutions now account for over one half of all federal prosecutions, while federal prosecutions of non immigration-related crimes have decreased. According to TRAC, in the last 24 years, no other category has ever played such a dominant role in overall federal prosecutions
- In FY 2008 non-immigration prosecutions totaled 77,713, compared to 81,608 in 2004. The level of federal non-immigration criminal prosecutions has actually dropped even further when population increases are taken into account..<sup>12</sup>
- Drug prosecutions currently represent approximately 16 percent of the total number of federal prosecutions. At their height during the 1997 war on drugs, drug prosecutions made up only 37 percent of all prosecutions.<sup>13</sup>

- Between 2003 and 2008, prosecutions of “white collar” crimes fell by 18%, weapons prosecutions decreased 19%, organized crime prosecutions fell by 20%, public corruption prosecutions dropped 14%, and drug prosecutions declined by 20%.<sup>14</sup>

### **Why have federal immigration prosecutions increased?**

- Before 2005, CBP voluntarily returned first time border crossers or formally removed them through the civil system. Federal prosecutions were used almost exclusively for individuals with previous criminal records or repeat crossers. Operation Streamline -- instituted in Del Rio, Texas in 2005 and later expanded to other areas -- shifted this practice by eliminating prosecutorial discretion and requiring that all unlawful border crossers be prosecuted in federal criminal court and imprisoned if convicted, regardless of their immigration history.<sup>15</sup> Those who are caught entering the U.S. illegally for the first time are prosecuted for misdemeanors punishable by up to 6 months in prison.
- Most Operation Streamline defendants are migrants from Mexico or Central America who have no prior criminal convictions and who have attempted to cross the border in search of work or to reunite with family in the United States.<sup>16</sup>
- Operation Streamline is only active in specific areas along the border including the Del Rio, Yuma, Laredo, Rio Grande Valley, Tucson and El Paso Border Patrol Sectors.<sup>17</sup>
- The link between Operation Streamline and federal prosecution rates can be seen in the judicial districts near these enforcement zones. The Southern District of Texas prosecutes the most immigration crimes, with 23,000 in FY 2009, up 22.1% from FY 2008.<sup>18</sup> The District of Arizona was second with 16,477, up 39.7% from FY 2008.<sup>19</sup>

### **How much do increased prosecutions and Operation Streamline cost?**

- The Department of Justice has asked for a \$231.6 million increase in funding for FY 2010 to support enforcement along the southwest border and Operation Streamline. \$8.1 million of this is for new attorneys to help adjudicate Operation Streamline cases, and \$144 million of this increase is for new U.S. Marshals and construction of new courthouse space to adjudicate these cases.<sup>20</sup>

### **What are the other problems with Operation Streamline?**

- According to a report by the Warren Institute, court appointed attorneys are often forced to represent up to 80 clients in one hearing.<sup>21</sup> This means that these attorneys usually have a half hour or less to meet with each client, often having to conduct group interviews or condense the interview to less than five minutes, which is not enough time to advise clients, particularly when the consequences may eliminate the ability to ever reside legally within the U.S.<sup>22</sup> As a result of increased caseloads, judges are forced to conduct hearings en masse, with up to 80 defendants pleading guilty at a time, potentially depriving them of due process.<sup>23</sup>

- Operation Streamline was created to deter migrants from crossing the border illegally. However, many migrants are unaware of Operation Streamline and the consequences of a felony charge on their record, so the deterrent capacity of the program is questionable.<sup>24</sup>
- Furthermore, immigration flows generally coincide with the economy, not government programs. The general decline began in 2000, not in 2005 when the program was implemented. Interviews with migrants revealed that the economy and increased costs of immigration were the primary factors in the decline.<sup>25</sup>
- According to the Warren Institute, Operation Streamline creates a number of unintended effects, including: 1) more professional smugglers are used to cross the border because of the increased risk; 2) crossings happen at more remote and dangerous areas because of this risk of getting caught; 3) migrants are entering through legal ports of entry using false documents rather than risking their lives crossing the border; and 4) circular migration is being reduced because family members cannot risk the trip home and are forced to remain in the U.S. once they are here.<sup>26</sup>
- Operation Streamline also makes it more difficult to identify and prosecute human trafficking and drug smuggling because it channels law enforcement funding and attention toward the apprehension and prosecution of low-level offenders, rather than on those running the smuggling rings.<sup>27</sup>

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<sup>1</sup> Schmitt, Glenn, [Overview of Federal Criminal Cases Fiscal Year 2008](#), U.S. Sentencing Commission, FN 13, December, 2009. [http://www.ussc.gov/general/20091230\\_Data\\_Overview.pdf](http://www.ussc.gov/general/20091230_Data_Overview.pdf).

<sup>2</sup> [Immigration Prosecutions at Record Levels in FY 2009](#), Transactional Records Access Clearinghouse, September 21, 2009. <http://trac.syr.edu/immigration/reports/218/>.

<sup>3</sup> Ibid.

<sup>4</sup> [FY 2009 Federal Prosecutions Sharply Higher](#), Transactional Records Access Clearinghouse, December 21, 2009. <http://trac.syr.edu/tracreports/crim/223/>.

<sup>5</sup> [Surge in Immigration Prosecutions Continues](#), Transactional Records Access Clearinghouse, June 17, 2008. <http://www.trac.syr.edu/immigration/reports/188/>.

<sup>6</sup> Lydgate, Joanna, [Assembly-Line Justice: A Review of Operation Streamline](#), The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, January 2010, at 1. [http://www.law.berkeley.edu/files/Operation\\_Streamline\\_Policy\\_Brief.pdf](http://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf).

<sup>7</sup> Lydgate, Joanna, [Assembly-Line Justice: A Review of Operation Streamline](#), The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, January 2010, at 2. [http://www.law.berkeley.edu/files/Operation\\_Streamline\\_Policy\\_Brief.pdf](http://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf).

<sup>8</sup> [Immigration Prosecutions at Record Levels in FY 2009](#), Transactional Records Access Clearinghouse, September 21, 2009. <http://trac.syr.edu/immigration/reports/218/>.

<sup>9</sup> [Immigration Prosecutions at Record Levels in FY 2009](#), Transactional Records Access Clearinghouse, September 21, 2009. <http://trac.syr.edu/immigration/reports/218/>.

<sup>10</sup> [ICE Criminal Prosecutions Continue to Rise Under Obama](#), Transactional Records Access Clearinghouse, August 21, 2009. <http://trac.syr.edu/immigration/reports/216/>.

<sup>11</sup> [Immigration Prosecutions at Record Levels in FY 2009](#), Transactional Records Access Clearinghouse, September 21, 2009. <http://trac.syr.edu/immigration/reports/218/>.

<sup>12</sup> [FY 2009 Federal Prosecutions Sharply Higher](#), Transactional Records Access Clearinghouse, December 21, 2009. <http://www.trac.syr.edu/tracreports/crim/223/>.

<sup>13</sup> Ibid.

<sup>14</sup> Moore, Solomon, [Push on Immigration Crimes Is Said to Shift Focus](#), New York Times, January 11, 2009. <http://www.nytimes.com/2009/01/12/us/12prosecute.html?pagewanted=1>.

<sup>15</sup> [Statement of Heather E. Williams](#) before the U.S. House of Representatives Subcommittee of Commercial and Administrative Law, June 25, 2008. <http://judiciary.house.gov/hearings/pdf/Williams080625.pdf>.

<sup>16</sup> Lydgate, Joanna, [Assembly-Line Justice: A Review of Operation Streamline](#), The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, January 2010, at 3. [http://www.law.berkeley.edu/files/Operation\\_Streamline\\_Policy\\_Brief.pdf](http://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf).

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<sup>17</sup> [Securing America's Borders: CBP Fiscal Year 2009 in Review Fact Sheet](http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2009_news_releases/nov_09/11242009_5.xml), U.S. Customs and Border Protection, November 24, 2009. [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/archives/2009\\_news\\_releases/nov\\_09/11242009\\_5.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2009_news_releases/nov_09/11242009_5.xml).

<sup>18</sup> [Immigration Prosecutions at Record Levels in FY 2009](http://trac.syr.edu/immigration/reports/218/), Transactional Records Access Clearinghouse, September 21, 2009. <http://trac.syr.edu/immigration/reports/218/>.

<sup>19</sup> *Ibid.*

<sup>20</sup> Lydgate, Joanna, [Assembly-Line Justice: A Review of Operation Streamline](http://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf), The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, January 2010, at 11. [http://www.law.berkeley.edu/files/Operation\\_Streamline\\_Policy\\_Brief.pdf](http://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf).

<sup>21</sup> *Ibid.*, at 4.

<sup>22</sup> *Ibid.*, at 13.

<sup>23</sup> *Ibid.*, at 1.

<sup>24</sup> *Ibid.*, at 7.

<sup>25</sup> *Ibid.*, at 5.

<sup>26</sup> *Ibid.*, at 10.

<sup>27</sup> *Ibid.*, at 8.