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**ENFORCEMENT WITHOUT FOCUS:
Non-Violent Offenders Caught in the U.S. Immigration Enforcement System**

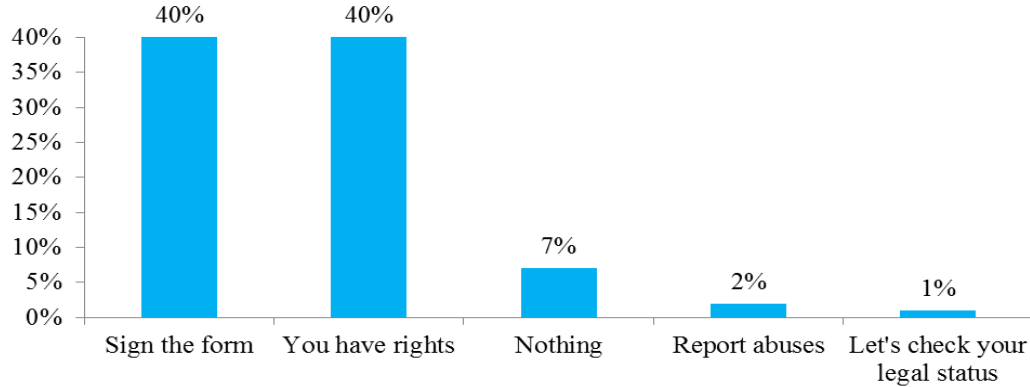
Since the Department of Homeland Security (DHS) was created in 2003, its immigration-enforcement agencies—Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE)—have been officially devoted to the protection of U.S. national security and the prevention of terrorist attacks. However, much of the work done by CBP and ICE on a day-to-day basis involves apprehending and deporting non-violent immigrants who have only committed immigration offenses such as unlawful entry or re-entry into the United States. The highly punitive treatment of these immigration offenders serves no national-security purpose and is not an effective deterrent.¹

A new report released by the University of Arizona’s Center for Latin American Studies identifies three enforcement programs that have contributed significantly to an over-emphasis on low-priority targets: Operation Streamline, the Alien Transfer and Exit Program (“lateral repatriation”), and Secure Communities. The [report](#), *In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security*, is based on data from the Migrant Border Crossing Study. During 2010, 2011, and 2012, a team of researchers from the United States and Mexico conducted survey interviews with 1,113 recent deportees about their experiences crossing the border, being apprehended by U.S. authorities, and being repatriated to Mexico.² The surveys yield new insight into the conduct and consequences of U.S. immigration-enforcement programs.

Operation Streamline

Operation Streamline is basically a mass trial for border-crossers that convicts between 40 and 80 people per hearing for “illegal entry,” which is a misdemeanor offense. A group lawyer is provided for defendants, but the limited time and complicated arrangement has raised concerns about the quality of legal counsel. The ineffectiveness of legal counsel in this setting is apparent from the survey interviews. When asked “What did your lawyer tell you about your rights?,” 40% of recent deportees said they were simply instructed to sign the form and not fight the charges against them; 40% were informed that they have legal rights; 7% were told nothing or could not understand what was said to them; 2% were asked to report any abuses against them, and 1% were checked for their actual legal status {Figure 1}. No one mentioned the prospect of being paroled while waiting for resolution of an immigration case.³

Figure 1:
"What did your lawyer tell you about your rights?"

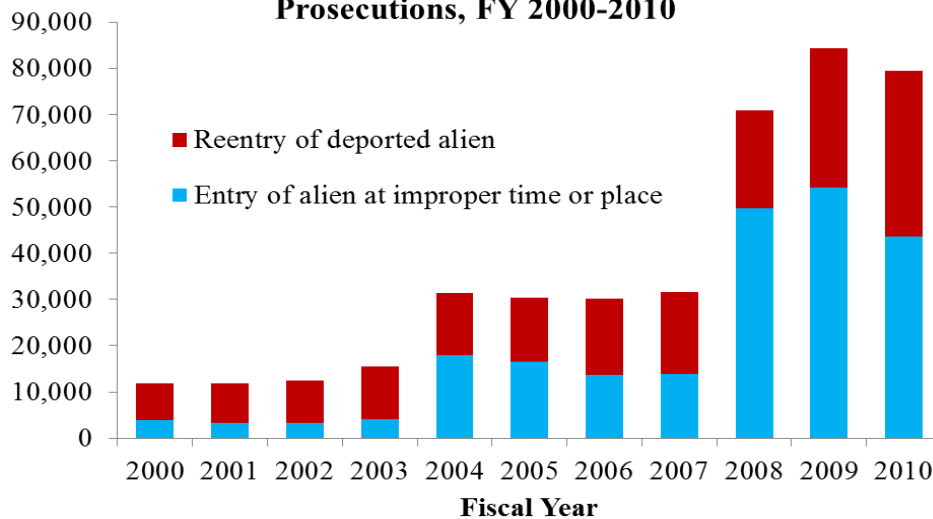


Source: Jeremy Slack, et al., *In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security* (Tucson, AZ: Center for Latin American Studies, University of Arizona, March 2013), p. 30.

It is important to note that, while a first offense for unlawful entry carries a maximum six-month sentence, those who are convicted now have a criminal record based solely on an immigration offense that will exclude them from legal residence or entry. Moreover, if they are apprehended again, they will be charged with a felony for illegal re-entry and sentenced to a maximum two-year sentence, although sentencing varies widely by district and judicial discretion. However, upon asking recent deportees what they understood about their sentence, only 71% mentioned that they would face some amount of jail time if they returned to the United States.⁴

The changes in prosecution brought about by Operation Streamline account for much of the increase in deportation of “criminal aliens,” simply because of the rise in immigration offenders whose activities were previously considered administrative offenses. Criminal prosecutions for illegal entry increased from 3,900 cases to 43,700 between Fiscal Year (FY) 2000 and FY 2010, and during the same period prosecutions for illegal re-entry increased from 7,900 to 35,800 {Figure 2}. Roughly 48% of all immigration prosecutions now come from illegal entry and 44% from illegal re-entry.⁵

Figure 2: Lead Charges for Criminal Immigration Prosecutions, FY 2000-2010



Source: Transactional Records Access Clearinghouse, Syracuse University, "Illegal Reentry Becomes Top Criminal Charge," June 10, 2011.

Court records show that Operation Streamline has not resulted in more prosecutions of human smugglers and drug traffickers, but only in more prosecutions of undocumented migrants. The program overburdens the federal courts and fails to provide due process to many who may have a legal right to residency. Moreover, Streamline represents a violation of the U.S. Constitution by trying people en masse rather than as individuals. And, once people have been convicted in Operation Streamline, they have criminal records—meaning they will be incarcerated the next time they are apprehended.⁶

The Alien Transfer and Exit Program (ATEP): Lateral Repatriation

ATEP is another enforcement program with the explicit directive of breaking up smuggling networks. Under ATEP, the Border Patrol transfers apprehended migrants to a different sector along the border, sending them to unknown and unfamiliar territory. ATEP sends people away from the busiest point of undocumented crossing—the Arizona-Sonora region—to other areas where fewer people cross. One issue of great concern surrounding ATEP is the increase in deportation to Mexico’s northeastern border, where drug-fueled violence has had a huge impact on migrants. About 30,000 more deportations than apprehensions now occur in this region. ATEP separates groups traveling together who rely on one another for safety. Since there are *coyotes* all along the border, sending people to unknown areas only makes the experience of dealing with *coyotes* more dangerous. Moreover, ATEP appears to have no impact on whether or not people will cross again.⁷

Secure Communities (S-Comm)

[Secure Communities](#) is a DHS program designed to identify immigrants in U.S. jails who are deportable under immigration law. Under S-Comm, participating jails submit arrestees’ fingerprints not only to criminal databases, but to immigration databases as well, thereby allowing ICE to access information on individuals held in jails.⁸ S-Comm, and interior enforcement programs in general, target people who are already settled in the United States and have established a life here. For instance, almost half of the deportees who were removed from

the country through S-Comm stated that their home is in the U.S., compared to only one quarter of the other deportees. S-Comm deportees have also spent an average of 8.6 years in the U.S. (versus 6.1 for the other deportees), and are more likely to have U.S.-citizen children (31% of S-Comm deportees versus 20% of other deportees).⁹

S-Comm has little impact on deportees' plans to return to their families in the United States. Moreover, the program has the unfortunate effect of turning law-enforcement officers into immigration officials. Whenever undocumented immigrants are victims of crimes, they must be prepared for possible deportation if they come in contact with a police officer. This hinders the ability of the police force to solve crimes, which generally requires a cooperative relationship with the community. While most S-Comm deportees end up removed from the country after simple traffic violations, the damage to communities is more profound, creating deep rifts between the community and all police authorities.¹⁰

Conclusion

Border security cannot be achieved by programs that punish non-violent immigration offenders. We must re-examine why we allocate so many resources to imposing criminal sentences and punishments on people with no previous criminal history or who have committed only minor legal infractions. Moreover, we must make distinctions among different categories of criminal offenses and provide relief for people who have criminal histories purely because of immigration violations. Otherwise, we are needlessly destroying the lives and families of people who call the United States home.

Endnotes

¹ See Fernanda Santos, "[Immigration in Spotlight as Senators Tour Arizona](#)," *New York Times*, March 27, 2013.

² Jeremy Slack, Daniel E. Martínez, Scott Whiteford, and Emily Peiffer, [In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security](#) (Tucson, AZ: Center for Latin American Studies, University of Arizona, March 2013), pp. 9-10.

³ *Ibid.*, p. 30.

⁴ *Ibid.*, p. 29.

⁵ Transactional Records Access Clearinghouse, Syracuse University, "[Illegal Reentry Becomes Top Criminal Charge](#)," June 10, 2011.

⁶ Jeremy Slack, Daniel E. Martínez, Scott Whiteford, and Emily Peiffer, [In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security](#) (Tucson, AZ: Center for Latin American Studies, University of Arizona, March 2013), p. 31.

⁷ *Ibid.*, p. 33.

⁸ Immigration Policy Center, [Secure Communities: A Fact Sheet](#) (Washington, DC: American Immigration Council, November 2011).

⁹ Jeremy Slack, Daniel E. Martínez, Scott Whiteford, and Emily Peiffer, [In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security](#) (Tucson, AZ: Center for Latin American Studies, University of Arizona, March 2013), p. 34.

¹⁰ *Ibid.*