



OPERATION STREAMLINE FACT SHEET

July 21, 2009

Operation Streamline in the Spotlight

During the January 15, 2009 confirmation hearing of Attorney General-designate Eric Holder, Senator Jon Kyl (Arizona) attempted to secure a pledge of additional resources for Operation Streamline. Serious concerns about the true impact of Operation Streamline call out for further study before the program can be continued, let alone expanded.

What is “Operation Streamline”?

Operation Streamline is a Bush Administration program implemented in 2005 ordering federal criminal charges for every person who crosses the border illegally. In other words, it is a “zero tolerance” border enforcement program that targets even first time undocumented border-crossers. Instead of routing non-violent individuals caught crossing the border into civil deportation proceedings, Operation Streamline forces undocumented migrants through the federal criminal justice system and into U.S. prisons. Those who are caught making a first entry are prosecuted for misdemeanors punishable by up to 6 months in prison, and those who reenter after deportation may be prosecuted for felonies punishable by up to 20 years in prison. Under this fast-track program, a federal criminal case with prison and deportation consequences is resolved in 2 days or less.¹

What are the concerns?

Operation Streamline diverts scarce resources from core law enforcement priorities and community safety, and strains U.S. courts, particularly in the Southwest. Federal judges, prosecutors, and defenders report that the explosion in immigration prosecutions siphons resources from other criminal prosecutions. Rather than spending time prosecuting serious crimes, including gun and drug trafficking and organized crime, federal lawyers now spend much of their time on misdemeanor illegal entry cases. Local communities are left to deal with more dangerous crimes that are now routinely referred to state and county officials. Local law enforcement often lacks the finances or authority to prosecute these cases effectively. Operation Streamline politicizes prosecutorial decisions and calls into question the priorities and judgment of the Department of Homeland Security (DHS), the Department of Justice (DOJ) and United States Attorneys.

Who is speaking out against Operation Streamline?

Martha Vazquez, Chief Judge for the U.S. District Court for New Mexico, bluntly summed up the problems with Operation Streamline, “We were obviously alarmed because where would we put our bank robbers? Our rapists? Those who violate probation?”²

Carol C. Lam, United States Attorney for the Southern California District until Justice Department officials ousted her in 2007 for not prosecuting enough illegal immigrants, supported choosing high-impact cases over cases that simply “drove the statistics.” She also lamented training opportunities lost when young prosecutors are diverted away from complex litigation involving wiretaps and money laundering statutes and towards immigration crimes. “That’s not good law enforcement,” she said.³

David Gonzalez, U.S. Marshal for Arizona, illustrated the burden placed on federal courthouses and jails by Operation Streamline: “If [Streamline] was all we were doing, that would be fine. But we also have to deal with other federal prisoners in Southern Arizona and all other prisoners federal agencies bring in.”⁴ Heather E. Williams, First Assistant Federal Public Defender, District of Arizona, told Congress that “Operation Streamline may well be one of the least successful, but most costly and time-consuming ways of discouraging [illegal] entries and re-entries.”⁵

State and Local officials underscore the enormous criminal caseload shrugged off by Operation Streamline. Arizona Attorney General Terry Goddard said, “I have seen a national abdication by the Justice Department.”⁶ The chief criminal deputy county attorney in Santa Cruz County, AZ, said county prosecutors had begun declining federal case referrals out of necessity and the county attorney for Pima County, AZ, which includes Tucson, cited financial downturns in her jurisdiction when stating she did not know how much longer she would be able to take on federal cases.⁷

What are the facts?

During the Bush Administration, the annual count of federal criminal prosecutions for immigration offenses more than quadrupled while federal prosecutions of other crimes substantially decreased.⁸ Between 2003 and 2008, white-collar prosecutions fell by 18 percent, weapons prosecutions shrank by 19 percent, organized crime prosecutions fell by 20

percent, public corruption prosecutions dropped by 14 percent, and drug prosecutions declined by 20 percent.⁹ Alternatively, nearly 80,000 immigration prosecutions were filed in fiscal year 2008, compared to 39,458 in the previous year and 16,310 in fiscal year 2001.¹⁰

Federal prosecution of immigration offenses has continued during the first months of Obama's administration. During the single month of April 2009, criminal immigration cases made up the majority of new federal criminal prosecutions nationwide – about 9,037 out of 17,180 – and outnumbered all white-collar, civil rights, environmental, drug-related and other criminal cases combined.¹¹ DHS accounted for 59 percent of all crimes referred to prosecutors during that month.¹² Just five of the country's 94 federal districts (So. Cal., NM, AZ, W. TX, and So. TX) handle 75 percent of all criminal cases in federal district courts nationwide.¹³

What is the solution?

More information on the true impact of Operation Streamline is required. DHS should temporarily suspend Operation Streamline, pending completion of a comprehensive review of DHS and DOJ criminal operations. Suspending Operation Streamline would not prevent federal prosecutors from initiating illegal entry prosecutions in individual cases in which prosecutors believe such charges are appropriate. Review must include:

- Study of numbers of federal prosecutions of white collar crimes, organized crimes, environmental crimes, civil rights crimes, drug trafficking, human smuggling, and other crimes between 2005 and 2009
- Study of federal convictions obtained under Operation Streamline including number of non-violent immigration offenses
- Comparison of rates of federal prosecutions and convictions in districts along the southern border in relation to other districts nationwide
- Interviews with criminal defense attorneys who have represented defendants charged under Operation Streamline, including review of the opportunity of arrestees to consult with immigration attorneys prior to conviction, and the ratio of defendants to defense attorneys
- Interviews with the U.S. Marshal Service, federal court judges and court personnel regarding the effect of increased illegal entry prosecutions
- Reporting on lengths of imprisonment, names, and locations of prisons used for those arrested under Operation Streamline
- Cost calculations for detentions, prosecutions, and incarcerations under Operation Streamline
- Interviews with individuals subject to prosecution under Operation Streamline regarding the process as well as treatment in custody prior to being Streamlined.
- Study on the impact of Operation Streamline on individuals who may be eligible to remain because of valid asylum/withholding/CAT claims.

¹ Amended Written Statement of Heather E. Williams, First Assistant Federal Public Defender, District of Arizona - Tucson, June 25, 2008, Before the United States House of Representatives, Subcommittee of Commercial and Administrative Law, Oversight Hearing on the "Executive Office for United States Attorneys," available at <http://judiciary.house.gov/hearings/pdf/Williams080625.pdf>, at 4.

² "Southwest Border Courts Swamped With Immigration-Related Felony Cases," Associated Press, FOX News, Apr. 27, 2007, available at <http://www.foxnews.com/story/0,2933,268961.00.html>.

³ "Push on Immigration Crimes Is Said to Shift Focus", Solomon Moore, New York Times, January 11, 2009, available at <http://www.nytimes.com/2009/01/12/us/12prosecute.html?pagewanted=1>.

⁴ "What's Clogging the Courts? Ask America's Busiest Judge," Russell Goldman, ABC News, July 23, 2008, available at <http://abcnews.go.com/TheLaw/Story?id=5429227>

⁵ "Immigration Prosecutions Hit New High", Spencer S. Hsu, Washington Post, June 2, 2008, available at http://www.washingtonpost.com/wp-dyn/content/article/2008/06/01/AR2008060102192_pf.html Amended Written Statement of Heather E. Williams, at 22.

⁶ Moore, "Push on Immigration Crimes Is Said to Shift Focus."

⁷ Moore, "Push on Immigration Crimes Is Said to Shift Focus."

⁸ Transactional Records Access Clearinghouse, Syracuse University, Jan. 12, 2009, available at <http://trac.syr.edu/tracreports/crim/201/>

⁹ Moore, "Push on Immigration Crimes Is Said to Shift Focus."

¹⁰ Transactional Records Access Clearinghouse, January 12, 2009.

¹¹ Transactional Records Access Clearinghouse, Immigration Prosecutions for April 2009, available at <http://trac.syr.edu/tracreports/bulletins/immigration/monthlyapr09/fil/>.

¹² Transactional Records Access Clearinghouse, Prosecutions for April 2009, available at <http://trac.syr.edu/tracreports/bulletins/overall/monthlyapr09/fil/>.

¹³ Goldman, "What's Clogging the Courts? Ask American's Busiest Judge."

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