

OPERATION STREAMLINE:

Drowning Justice and Draining Dollars along the Rio Grande

Green Paper

JULY 2010



Grassroots
LEADERSHIP

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*This **green paper** is a discussion document intended to stimulate debate and launch a dialogue on Operation Streamline. A green paper presents a range of ideas and is meant to invite interested individuals or organizations to contribute views and information. It will be followed by a white paper, or final report by Grassroots Leadership. Please send your critique, commendation, questions or suggestions for expansion to Bob Libal at blibal@grassrootsleadership.org or comment on our Operation Streamline blog at www.grassrootsleadership.org.*

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Executive Summary

Operation Streamline, a policy begun in 2005 by the Department of Homeland Security (DHS) in conjunction with the Department of Justice (DOJ), mandates that nearly all undocumented immigrants apprehended near the southern border in designated areas be detained and prosecuted through the federal criminal justice system, a dramatic departure from previous practices when most immigration cases were handled exclusively within the civil immigration system. According to the Department of Homeland Security's Operation Streamline press release:

“Those aliens who are not released due to humanitarian reasons will face prosecution for illegal entry. The maximum penalty for violation of this law is 180 days incarceration. While the alien is undergoing criminal proceedings, the individual will also be processed for removal from the United States.”¹

Operation Streamline's key component is that it mandates that immigrants crossing the border in designated areas be arrested, detained while awaiting trial, prosecuted with a misdemeanor or felony charge, incarcerated in the federal justice system, and finally deported. On December 16, 2005, The Department of Homeland Security (DHS) launched Operation Streamline along a section of the Texas-Mexico border near Del Rio, Texas, spanning a total of 210 miles.² Operation Streamline has spread to other areas along the U.S.-Mexico border, including much of Arizona and Texas.

Operation Streamline has exposed undocumented immigrants crossing the southern border to unprecedented rates of incarceration; overburdened the federal criminal justice system in the districts where it has been implemented; and added enormous costs to the American taxpayer while providing a boon to the for-profit private prison industry.

The extent of the program is so sweeping that by 2009, 54% of all federal prosecutions nationwide were for immigration offenses.³ The effect is more pronounced in border districts. In April 2010, prosecutions of unauthorized entry and re-entry alone accounted for 84% of all prosecutions in the Southern District of Texas, which includes Houston.⁴

Since Operation Streamline began in 2005, there has been a 136% increase in prosecutions for unauthorized entry and an 85% increase in prosecutions for unauthorized re-entry in the Western and Southern Districts of Texas. More than 135,000 migrants have been criminally prosecuted in these two border districts since 2005 under the two sections of the federal code that make unauthorized entry and re-entry a crime.⁵ Operation Streamline has funneled more than \$1.2 billion into the largely for-profit detention system in Texas, driving the expansion of private prisons along the border. Operation Streamline has significantly increased the caseload of public defenders and federal judges while radically increasing the number of individuals incarcerated for petty immigration violations in for-profit private prisons and county jails throughout Texas.

Data in this report show an increase in criminal prosecutions of undocumented border-crossers even as the estimated number of migrants to the United States has dropped.⁶ In 2009, two border districts in Texas prosecuted 46,470 immigrants, representing approximately 186 entry and re-entry prosecutions a day for federal courts along the border. Proponents of Operation Streamline argue that it has deterred illegal entry. However, research conducted amongst migrants in the United States indicates that the decreased migration has largely been caused by the economic downturn, while the ironic impact of beefed-up border enforcement has been to deter migrants from returning to their countries of origin during the recession.⁷

Operation Streamline: Drowning Justice and Draining Dollars along the Rio Grande presents facts, figures, and testimony highlighting the human and financial costs Operation Streamline exacts on migrants, the federal judiciary, and the detention system in Texas. The recommends report recommends the repeal of Operation Streamline. Successor policies to Operation Streamline addressing undocumented border crossers should return jurisdiction over immigration violations to civil immigration authorities, reduce the use of detention for border crossing violations, and promote and promote a pathway for legal and reasonable means for immigrants to obtain legal status in the United States.

OPERATION STREAMLINE:

Drowning Justice and Draining Dollars along the Rio Grande

Criminal Prosecution of Migrant Border-Crossers

Operation Streamline shifts immigration enforcement from civil immigration authority to federal criminal jurisdiction. According to the Department of Homeland Security's Operation Streamline press release:

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Operation Streamline's key component is that it mandates that most immigrants crossing the border in designated areas be arrested, detained while awaiting trial, prosecuted with a misdemeanor or felony charge, incarcerated in the federal justice system, and finally deported.

On December 16, 2005, The Department of Homeland Security (DHS) launched Operation Streamline along a section of the Texas-Mexico border near Del Rio, Texas, spanning a total of 210 miles.⁹ Operation Streamline has spread to other areas along the U.S.-Mexico border, including 120 miles near Yuma, Arizona (2006), 171 miles near Laredo, Texas (2007),¹⁰ the Rio Grande Valley of Texas (2008)¹¹, and a spin-off program called the Arizona Denial Prosecution Initiative, which covers a 15-mile area near Tucson, Arizona.¹²

The policy, driven by U.S. Customs and Border Protection's (CBP) Border Patrol and U.S. Attorneys, has shifted standard immigration policy to a process of criminalization and incarceration. Operation Streamline also impacts other government agencies, including Immigration and Customs Enforcement's (ICE) Detention and Removal Operations, federal pretrial services, Federal Public Defenders, and court systems, and the U.S. Marshals Service. Before Operation Streamline's implementation, immigration enforcement agencies had discretion over when and if undocumented immigrants would be referred for criminal prosecution, and prosecutors had discretion over whom to prosecute.

Operation Streamline largely eliminated this prosecutorial discretion. As a result,

immigration proceedings are no longer adapted to circumstances of individual migrants raising concern about the impact on human and legal rights of affected immigrants. Operation Streamline also strains enforcement resources, detrimentally impacting the operations of the justice system by failing to meet institutional needs and realities. Operation Streamline represents a clear shift in immigration policy to broad-based criminalization of immigrants. As this report will show, the dramatic increase in prosecution and incarceration of border-crossers has expanded the for-profit private prison system along the southern border of the United States.

Proponents of Operation Streamline argue that it has deterred illegal entry. This report explains that Operation Streamline's deterrent effect has simply not been demonstrated. Additionally, data in this report show an increase in criminal prosecutions of undocumented border-crossers even as the estimated number of migrants to the United States has dropped.¹³ In 2009, two border districts in Texas prosecuted 46,470 immigrants, representing approximately 186 entry and re-entry prosecutions a day for federal courts along the border. However, research conducted amongst migrants in the United States indicates that the decreased migration has largely been caused by the economic downturn, while the ironic impact of beefed-up border enforcement has been to deter migrants from returning to their countries of origin during the recession.¹⁴ Additionally, as Princeton Sociologist Douglas Massey testified to the Senate Judiciary Committee,

Data clearly indicate that Mexican immigration is not and has never been out of control. It rises and falls with labor demand and if legitimate avenues for entry are available, migrants enter legally. The massive militarization of the border and resumption of mass deportations occurred despite the fact that rates of undocumented migration were falling and the perverse consequence was that these actions lowered the rate of return migration among those already here.¹⁵

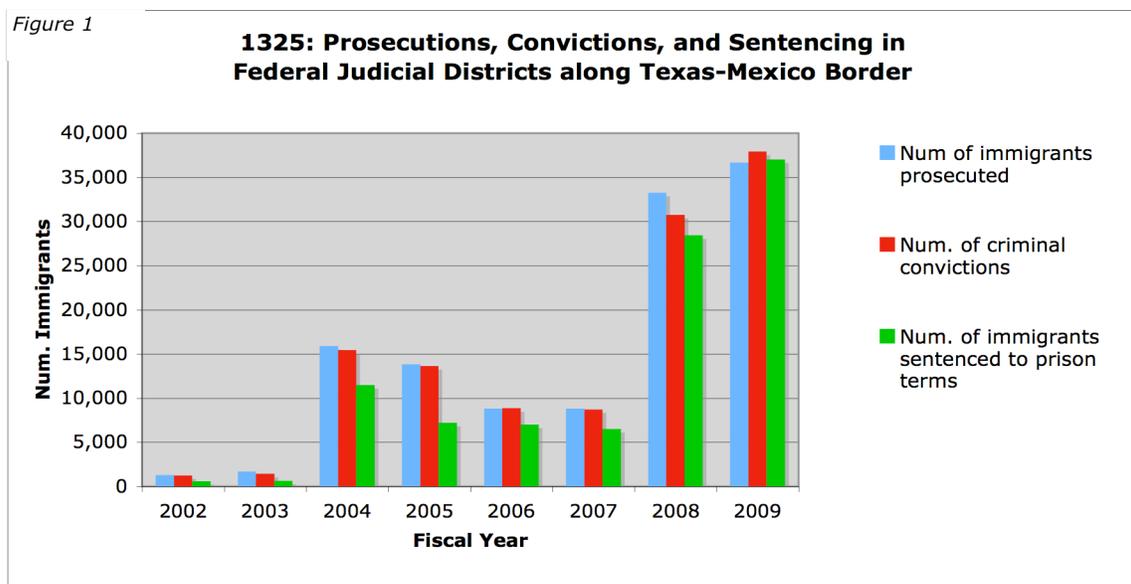
While the effectiveness of Operation Streamline in deterring illegal entry has not been proven, the program's devastating effect on families is clear, and the unreasonable burden it has placed on federal agencies is demonstrable. Despite opposition from judges, federal defenders, advocacy and legal organizations and warnings of the program's detrimental effect on due process rights, this program, first initiated by the Bush Administration, has gone unchecked by the Obama Administration.

Undocumented Immigrant Criminalization: U.S. Code Title 8, Sections 1325 & 1326

The implementation of Operation Streamline has corresponded with dramatic increases in the number of immigrants criminally prosecuted and detained solely for entering the United States without documentation. In 2009, two border districts in Texas prosecuted 46,470 immigrants for the entry and re-entry charges, representing approximately 186 entry and re-entry prosecutions a day for federal courts along the border. Since Operation Streamline began in 2005, there has been a 136% increase in prosecutions for unauthorized entry and an 85% increase in prosecutions for unauthorized re-entry in the Western and Southern districts of Texas. This also represents a staggering 2,722% increase in prosecutions for entry, and a 267% increase in prosecutions for re-entry, compared to corresponding data for 2002.¹⁶

These increases indicate a dramatic shift in federal judicial priorities towards prosecution of immigrants prosecuted solely for crossing the border. In 2009, 54% of all federal prosecutions were for immigration offenses, a record high.¹⁷

Two sections of the federal code are commonly used in criminal prosecutions of



unauthorized border-crossers near the border. Section 1325, “Improper entry by alien,” is generally used against those who are entering the country the first time. Section 1326, “Reentry of removed aliens” is levied against those who have are apprehended re-entering the country after a previous deportation.

Section 1325, outlines several specific situations in which one might attempt to

enter the United States without documentation, and provides maximum penalties for each of them.¹⁸ The penalties range from a small fine to five years in prison. Data from the Syracuse University's Transactional Records Access Clearinghouse (TRAC) website indicates some Section 1325 cases are prosecuted as felonies, and most are prosecuted as misdemeanors.¹⁹ For further illustration of Section 1325 prosecutions, convictions and sentencing over time, see Figure 1²⁰.

As can be expected after an increase in convictions for illegal entry, there has also been an increase in prosecutions involving the U.S. Code, Title 8, Section 1326, "Reentry of Removed Aliens."²¹ Unlike 1325, Section 1326 is always prosecuted as a felony and carries much harsher punishment. The maximum penalty attached to 1326 is twenty years. Figure 2²² shows a sharp increase in the number of 1326 prosecutions in recent years.

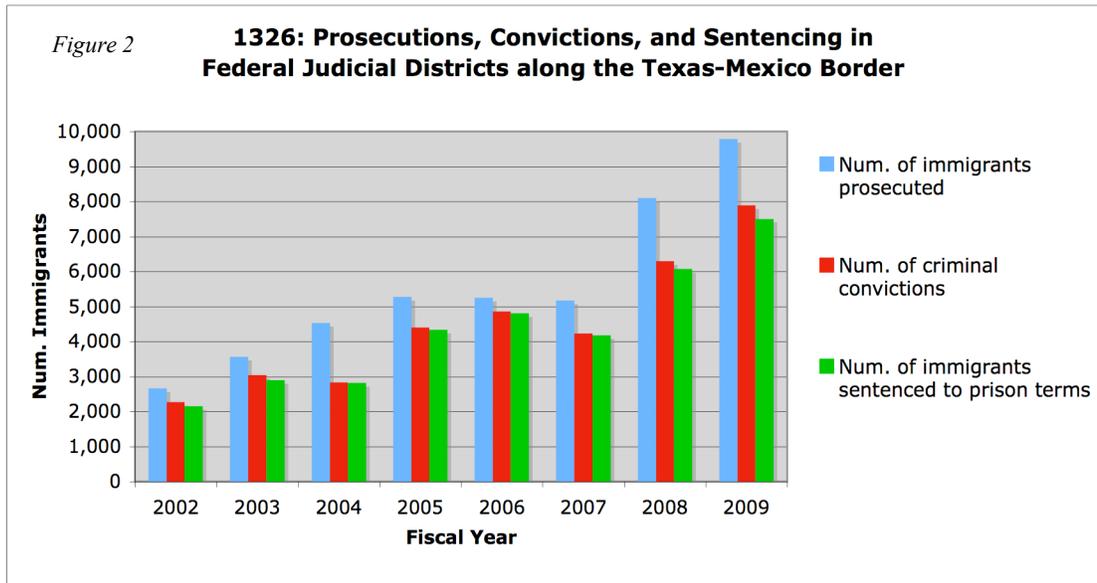
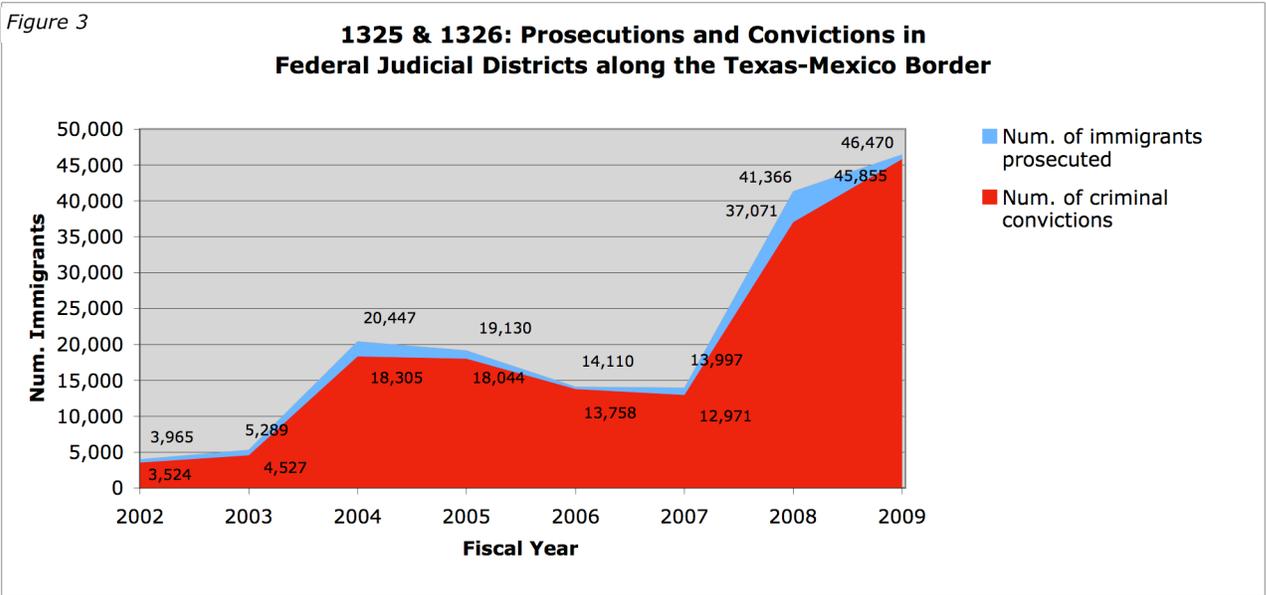


Figure 3²³ shows the prosecution and conviction patterns of Sections 1325 and 1326, combined, in the Texas Southern and Western (border) districts.²⁴ The graph illustrates that prosecution of undocumented immigrants for these two offenses has dramatically increased over the last few years, to a record high, in 2009, of 46,470, in these two districts alone. This topped 2008's record high of 41,366 prosecutions, a figure more than twice that of any previous year in the history of the two districts. In 2009, 100% of those prosecuted for 1325 and 94% of those prosecuted for 1326 were convicted and now have permanent criminal records in the United States.²⁵ While access to legal means for entry into the United States is already beyond reach for most

Mexican and Central American immigrants, criminal records essentially guarantee immigrants prohibition from legal entry into the United States.

Recently released data indicates that referrals and prosecutions have not waned in the Obama administration. March and April 2010 saw prosecution levels referred from Customs and Border Patrol and Immigration and Customs Enforcement at levels comparable to the highest levels of Bush administration.²⁶



Impacts of Operation Streamline

The impacts of Operation Streamline have been dramatic. The policy has exposed undocumented immigrants crossing the southern border to unprecedented rates of detention, prosecution, and incarceration. Operation Streamline has overburdened the federal criminal justice system depriving migrants of due process rights through a process of *en masse* hearings. Since its implementation, Operation Streamline has driven detention expansion and more than \$1.2 billion into the largely for-profit private detention industry in Texas.

Federal Resources and Due Process:

Since there is little clear federal oversight of Operation Streamline (OS), there is no well-documented review of the resources that the policy consumes, financial or otherwise. However, far from streamlining the legal process, Operation Streamline has contributed to a massive increase in resources directed towards the criminal prosecution, incarceration, and detention of migrants previously processed only through the civil immigration system.

The most obvious resource expenditure is the time and money that goes into processing and detaining an increasing amount of immigrants under 1325 & 1326. This

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significant and increasing burden largely falls upon only five of the country’s 94 federal judicial districts, including South California, New Mexico, Arizona, West Texas and South Texas. In the Southern District of Texas, which includes Houston, prosecutions of 1325 and

1326 alone accounted for 84% of all prosecutions in April, 2010.²⁷ Melissa Wagoner, a spokesperson for the late Senator Ted Kennedy said, “Operation Streamline in its current form already strains the capabilities of the law enforcement system past its breaking point.”²⁸ Specifically, within the first six months of 2008, Operation Streamline districts in Arizona rapidly increased prosecutions from 40 to 70 per day, with a long-term goal of 100 per day, which would triple the court’s workload.²⁹ This use of resources has a number of consequences, including a shift in focus away from more serious violations of the law. According to TRAC, a failure to prosecute drug crime

referrals in Arizona was the result of

“serious stresses on some federal prosecutor offices. A likely major source for these strains is the powerful flood of immigration cases that has washed over the region and that at its peak in FY 2009 was two and a half times the level it was in FY 2007.”³⁰

The ACLU commented on this phenomenon in a report on Operation Streamline, stating, “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”.³¹ Furthermore, the courts are not the only governmental bodies whose resources are being drained. Another report demonstrated that U.S. Marshals stationed at the border are dealing with as many as 6,000 new immigration defendants each month, distracting them from their former duties of locating escaped prisoners.³²

An additional issue related to the strain on federal resources is the quality of representation defendants receive. Many critics of Operation Streamline have argued that the increased number of cases deprives lawyers of adequate time to prepare for cases, denying defendants the right to a fair trial.³³ In an interview with a team of public defenders in a Texas district, interviewees explained that 95% of their cases are misdemeanor entry (Section 1325) cases, totaling up to 180 cases per day.

The increase in clients has not been accompanied by an increase in public defenders; on the contrary, the defenders claimed that their office had not received any new employees within the last five years. Furthermore, with the rapid processing that is inherent in an overburdened system, attorneys are only able to meet with their clients for a maximum of five minutes each and must defend them in groups ranging in size from ten to seventy. These public defenders agree that this is a clear violation of due process, an observation shared by many legal bodies. As a policy brief from the Warren Institute at the University of California, Berkeley Law School (2009) states, “Despite their best efforts, it is extremely difficult to implement Operation Streamline without depriving migrants of procedural due process and effective assistance of counsel.”³⁴

The *en masse* hearings which have become a normal part of the Operation Streamline court environment conflict with Federal Rule of Criminal Procedure 11, which

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codifies the requirements a court must satisfy before accepting a guilty plea from a defendant. Among other requirements, the judge must *personally* address a defendant in order to determine if his or her plea was voluntary, and if the ramifications of the plea were made clear before it was made. When the judge addresses a group of 70 to 80 defendants at a time, such requirements are not met.³⁵

The financial burden of Operation Streamline falls on American taxpayers. While national numbers remain unknown, the information available suggests that Operation Streamline has a large financial burden. Reports from Arizona indicate that U.S. District Court pays \$6,000-12,000 per day to private attorneys, since public defenders simply cannot handle the high number of cases, to represent undocumented immigrants targeted by Operation Streamline. The costs for OS court procedures in Arizona have been estimated at \$10 million per month.³⁶ Additional Border Patrol and court staff associated with Streamline will also have a long-term financial cost to the government.

Unfortunately, fiscal information on the impact of Operation Streamline in Texas has not been well documented. However, the financial impact of detaining immigrants can be estimated using existing data on prosecutions and sentencing³⁷. Looking only at immigrants prosecuted in federal judicial districts along the Texas-Mexico border under 1325 or 1326, a total of 4,753,530 nights in detention were meted out in 2009 alone.

To ascertain the cost of detaining the immigrants convicted in Texas federal judicial districts along the border, we estimated a nightly cost of \$67.38 for each detainee, the average per diem rate paid by U.S. Marshals Service to all contracted facilities in 2008, combining both direct private contracts, Inter-governmental pass-through agreements, and state and local contracts³⁸. The 4,753,530 nights of sentencing handed out in Texas' south and west federal judicial districts alone cost over \$320 million in 2009.

Using US Marshals average yearly per diem rates, we were able to determine that, since 2005, criminal detention and incarceration of immigrants for 1325 and 1326 in Texas alone has cost the U.S. government more than \$1.2 billion.³⁹

For-Profit Private Prison Expansion and Federal Detention:

In Texas, Operation Streamline has greatly expanded the detention and incarceration of border-crossing immigrants in the custody of the United States Marshals Service and the Federal Bureau of Prisons. This detention has come at enormous cost to taxpayers – more than \$1.2 billion on Texas detention-costs alone associated with Operation Streamline.⁴⁰ Nearly all of that money has been distributed to a network of private detention centers and county jails operated for a profit. While sold to rural Texas counties as a development opportunity, the economic benefits to communities have often been illusory.

Migrants criminally prosecuted for 1325 or 1326 are detained before their trial in U.S. Marshals-contracted facilities, most often private prisons or county jails. After conviction, short-term prisoners often continue to serve their time in U.S. Marshals' custody while those sentenced to longer sentences for re-entering the country are incarcerated in Federal Bureau of Prisons (FBOP) or FBOP-contracted facilities.

As a result of Operation Streamline and similar programs, border-crossers are becoming the fastest growing part of the prison population.⁴¹ The growth of Operation Streamline-related detention centers in Texas has been significant, and the for-profit private prison industry has turned to rural communities along the U.S-Mexico border for expansion. As Appendix C indicates, more than 5,000 US Marshals-contracted private prison beds have been constructed in Texas since the onset of Operation Streamline. Figure 4 shows the expansion of detention beds in Texas from 2000 to 2010.

“Federal oversight of finances is rare, creating a situation in which for-profit private prison corporations are usually paid a set monthly fee by local governments, regardless of the number of people actually filling the prisons.”

The expanded criminal detention system created by Operation Streamline, along with an expanded civil immigration detention system, has created a large market for for-profit private prison corporations, such as the Corrections Corporation of America (CCA), the GEO Group (formerly Wackenhut) and Management and Training Corporation (MTC). These corporations have increasingly looked to immigrant detainees in federal custody for new opportunities to boost their bottom lines.⁴² As

journalist Tom Barry writes:

“The federal government’s escalating demand for immigrant prison beds saved CCA and other privates that had overbuilt speculative prisons. Over the past eight years, the prison giants CCA (\$1.6 billion in annual revenue) and GEO Group (\$1.1 billion) have racked up record profits, with jumps in revenue and profits roughly paralleling the rising numbers of detained immigrants.”⁴³

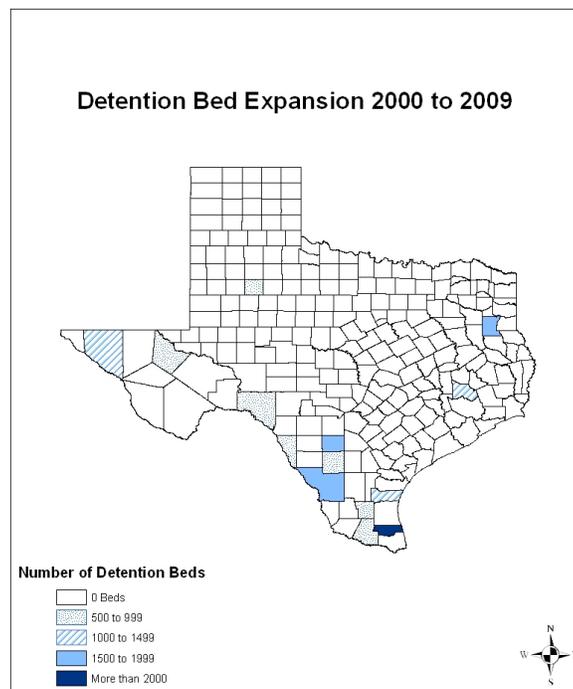
Unique security problems and operational deficiencies have plagued detention facilities operated by private prison corporations, companies that often hire officers and workers at wages significantly lower than public facilities and have been subject to chronic job vacancies, high rates of staff turnover, and operational problems. The Bureau of Justice Assistance reported private facilities operate at significantly lower staffing levels than public facilities, and that private facilities experience 49% more assaults on staff and 65% more inmate-on-inmate assaults than public facilities.⁴⁴ Data

collected by the Texas Senate Criminal Justice Committee revealed that the rate of correctional officer turnover at seven for-profit private prisons contracted by the state of Texas was 90% in 2008, compared to 24% at the state’s public prisons.⁴⁵

While often operated for a profit by private prison corporations, many U.S. Marshals and some Bureau of Prisons – contracted facilities are owned and financed by local governments. Using a quasi-governmental system to issue revenue bonds, corporations can often convince local officials (usually in economically depressed, rural areas) to finance and build prisons.

The economic benefits promised by expanding for-profit private prison companies often prove illusory. The only study to rigorously test the assumption that

Figure 4



Data Sources: Emerald Companies Location Directory, 2009. Location directory. Retrieved from: http://www.emeraldcompanies.com/location/soc_directory.htm.
The GEO Group, Inc. 2009. GEO Group locations. Retrieved from: http://www.thegroupinc.com/locations_nra.asp.
LCS Corrections Services, Inc. 2009. LCS Facility Information. Retrieved from: <http://www.lcsconnections.com/site2.php>.
Management & Training Corporation. 2009. Complete facilities list 2009. Retrieved from: <http://www.wildtrains.com/corrections/facilities.php>.
Walker, F. 2009. The Pecos Insurrection: How a private prison pushed immigrants to the brink. Texas Observer, October 2, 2009. Retrieved from: http://readout.prisoners.org/blog/activists2009/10/01_hovr_a_privat.html.

prison expansion contributes to economic growth revealed that prison expansion does not play a prominent role in economic growth, and that new prisons actually impede economic growth in rural areas.⁴⁶ Prisons consume many public resources and require significant infrastructure changes while creating an unattractive environment for projects like community colleges and public universities. Prisons thus have a negative multiplier effect, by consuming irretrievable public resources and impeding economic growth for the future. The study unequivocally concluded that comparable rural communities without prisons often perform better in the long-term than communities with prisons on a range of economic measures, including employment, job growth, average household wages, number of businesses, retail sales, number of housing units, and the median value of houses.⁴⁷

Human Costs of Operation Streamline

Operation Streamline and related border enforcement mechanisms have had tremendous human costs. The policy has resulted in extended detention and incarceration that disrupts not only the lives of migrants but also families and entire communities. In addition, criminal prosecutions can put at risk legal and human rights of affected migrants. According to the report *Assembly Line Justice*,

Some Operation Streamline defendants may also have defenses that are not identified because of the speed and *en masse* nature of the proceedings. These can include claims to immigration relief, such as eligibility for asylum, withholding of removal, relief under the Convention Against Torture, or adjustment of status . . . [Texas and Arizona offices] all cited examples of U.S. citizens and legal permanent residents they have represented in Operation Streamline court proceedings.⁴⁸

Border enforcement tactics have resulted in increasingly dangerous crossings along the Texas-Mexico border. Even as immigration has declined in recent years, U.S. Customs and Border Protection (CBP) reported 419 border-crossing fatalities as of December 2009, already surpassing 2008's 390 deaths.⁴⁹ Using a different metric, Mexico's Chamber of Deputies Commission on Population and Borders counted 725 crossing deaths in 2008. Annual death tolls on the border have steadily increased, beginning in 1994, indicating a correlation between migrant deaths while crossing the border from Mexico and strict border control enforcement.⁵⁰ According to a report by the National Foundation for American Policy,

Pointing to a rise in immigrant deaths, the Congressional Research Service (CRS) concluded, "This evidence suggests that border crossings have become more hazardous since the 'Prevention through Deterrence' policy went into effect in 1995, resulting in an increase in illegal migrant deaths along the Southwest border."⁵¹

Humanitarian activities have been unable to quell the rise in deaths despite various and laudable efforts to increase migrant access to water, medical attention, and emergency aid. Some humanitarian groups have even faced prosecution by state governments on such grounds as aiding and abetting⁵², further hindering their efforts and revealing local disregard for humanitarian needs of those crossing the border.

It is easy to forget that behind the graphs and data in this report are people – real human beings who work, eat, sleep and love their families, many of which include members who are U.S. citizens. The following is a personal testimony from a woman whose family has been impacted by Operation Streamline.⁵³ Names have been removed

and some of the information in the following narrative has been changed to protect the family's identity.

My husband is a hardworking stonemason, and although he has never had papers in the US, he got a Tax ID so that we could pay taxes because it was the right thing to do. He was initially apprehended by ICE in 2005.⁵⁴ For the next four years, my



husband reported to this officer. The impact was minimal at that time.

However, in 2009, my husband had a driving incident and was summarily deported. He then traveled 1,100 miles from Honduras to Mexico and crossed the border into Texas, out of a love that is deeper than any words can express.

On his way back to the United States, my husband was apprehended. He did not call for four days and I was

beginning to believe that he had died along the way. I was sick with worry and could not fathom what had happened and what condition he was in. I was fearful that we would never see or speak with him again.

Now, the boys have been without their father for over 4 months and I am lucky if I get 2 calls a week from my husband, who is now at GEO Group's Rio Grande Detention Center, being charged with re-entering the country illegally. He says there is only one phone that works where he is and the calls are very expensive. All three of my children have slept in my room in my bed and have gone from active, well adjusted, social little boys to boys that now need therapy and have serious issues having to do with loss, trust, security, and who exhibit severe anxiety and withdrawal. It is beyond sad - it is unjust.

Financially it has put us on the brink of disaster. I am now a single mother and

on a single income and the debt is mounting. To have lost my best friend in the entire world, my closest confidant, the one I could rely on 24/7, and to be all alone in the world with three small boys who now need more than I have to give. What do you do?

I feel completely vulnerable without my husband in our home to protect us. For anyone who knows me, I am usually a very strong woman with a sense of confidence and security, I never knew before this summer how much of that actually is fostered by my relationship with my husband. The future that I had once dreamed of for my kids is now bleak and my heart is completely broken.⁵⁵

This woman's story illustrates the human impact of the broad-based criminalization of petty immigration offenses has had devastating consequences on the structure and financial stability of families. In discussing Operation Streamline with Congress, the costs for these families have gone conspicuously unmentioned. It is our hope that a review of Operation Streamline will take a more comprehensive and realistic view of the massive costs broad-based criminalization of undocumented immigrants imposes on families.

Federal Magistrate Court: Witnessing the Bench

From the perspective of a visitor in the Court

We sat at the benches of the Federal Magistrate Court in Laredo at 10:00 am on a Friday. Friday is the slowest day of the week, we were later informed. To our right sat three rows of Latino immigrants wearing translation headphones, watching intently as the judge addressed a group of eighteen folks. He asked if they understood their charges, which he called "some variation of illegal entry" (Section 1325), since he was addressing these people all at once and could not take the time to say each individual charge. The man sitting behind the bench followed his question by asking if they pled guilty or not guilty. In the front row, three defendants sat wearing orange jump suits and wrist shackles. These men were charged with Section 1326, reentry, and had been living in the GEO-run private prison known as the Rio Grande Detention Center for the past three to six months. The row of eighteen who stood in front of the judge agreed that they understood their charge by taking turns muttering "culpable." Judge Hacker then went down the line for the final time, asking if those in front of him understood the sentencing procedures. Point at one, "Sí, señor," then another, "Sí," and so on until all eighteen had spoken. He glanced at the translator for reassurance, and began the process of assessing criminal histories and handing down sentences.

"One prior apprehension for illegal entry...30 days"

"Prior apprehension within the last month...Why did you come back? The government could have brought a felony against you...ten days."

"Arrests for DUIs, driving without a license, 1 prior entry...You've been living in the US since 2003?...40 days."

"One drug arrest with deportation in Travis County...I know how they do things in Austin..."

The Public Defender asked Judge Hacker to give the man the benefit of the doubt regarding his arrest in Austin, as the court had not had time to actually retrieve the man's record before this hearing. As we sat on the benches, three men in suits behind us began whispering projections and taking bets on the sentences. One man began to chant "40 days! 40 days! 40 days!"

"30 days." The man behind us scoffed. The next nine sentences were given in bulk; time served for the group of seven with no prior apprehensions and five days for the two immigrants with one prior.

As we sat there, we wondered what the purpose of all this was. It had been thirty minutes since we arrived, and the judge had blazed through eighteen "criminal" cases. These people, with worn hands and feet, sad eyes and heads held high spent 1-40 days in jail and then were sent back to Mexico, Honduras or another country in Central America. The federal government spent 1-40 days and a half-hour of resources on these so-called criminals. And, as we wondered this, the group of people in the rows to our right stood and filed in front of the judge. 10:30. Round two.

Conclusion and Recommendations

Since its inception in 2005, Operation Streamline has overwhelmed the Federal court system with undocumented border-crossing immigration cases, led to the expansion of for-profit private detention facilities along the border, cost the American taxpayers billions of dollars, and caused untold human suffering among migrants and their families.

Grassroots Leadership's initial recommendations include that Janet Napolitano, Secretary of the Department of Homeland Security, exercise her administrative authority to repeal Operation Streamline. Successor policies to Operation Streamline addressing undocumented border crossers should:

- **Return jurisdiction over immigration violations to civil immigration authorities.**

The federal criminal courts are clogged with border crossers and are unable to justly hear and adjudicate cases *en masse*. Attorney General Eric Holder should direct U.S. attorneys to decline criminal prosecutions of simple entry and re-entry charges and return these cases to the civil immigration system.

- **End detention for border crossing violations.**

Ending criminal detention of border-crossers would dramatically reduce U.S. Marshals Service and Bureau of Prisons reliance on the for-profit detention industry and would save the Department of Justice and the U.S. taxpayers millions of dollars in the coming years.

- **Provide pathways for legal, affordable, and reasonable means for immigrants to obtain legal status in the United States.**

The deterrence policy of Operation Streamline is ineffective. New policies must provide legal pathways for border crossers seeking employment, family reunification, and asylum that are cost effective and timely.

Appendix A: Detailed Information on U.S. Code Title 8, Sections 1325 & 1326

Section 1325,⁵⁶ "Improper Entry by Alien," first introduced in 1952 and amended in the early 1990s, allows for criminal prosecution of persons entering or attempting to enter the United States through means not sanctioned by immigration officials. Section 1325 outlines several specific situations in which one might attempt to enter the United States without documentation, and it provides maximum penalties for each of them. The offenses and maximum sentences include:

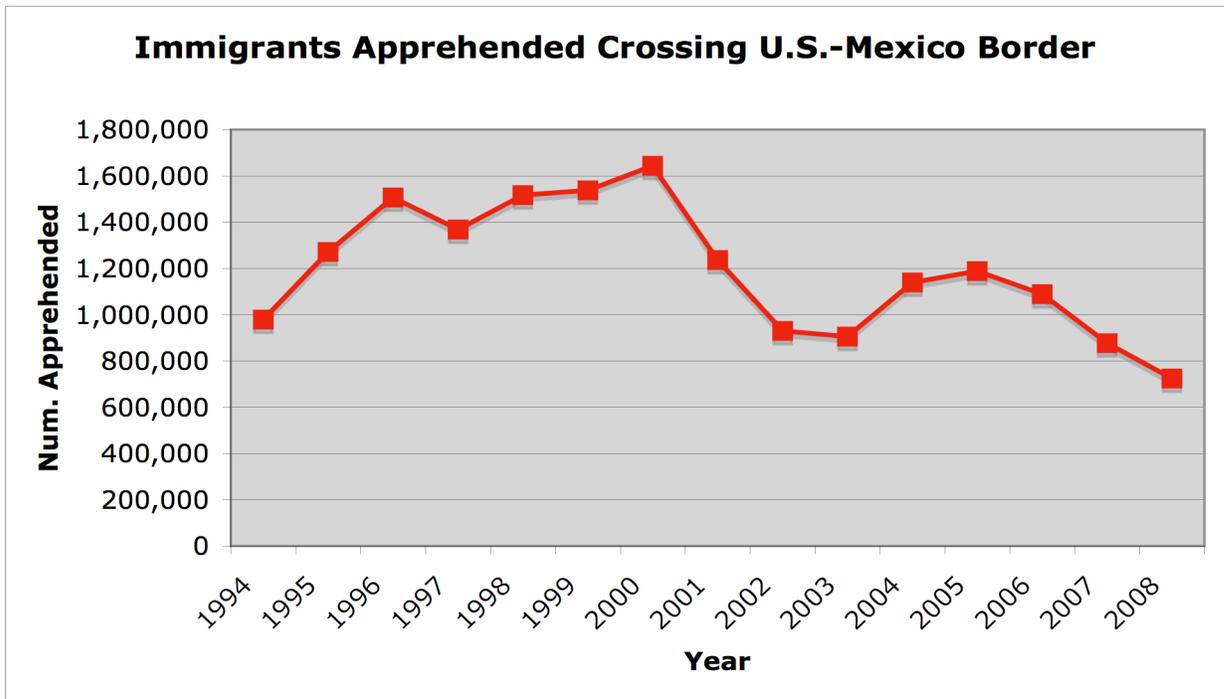
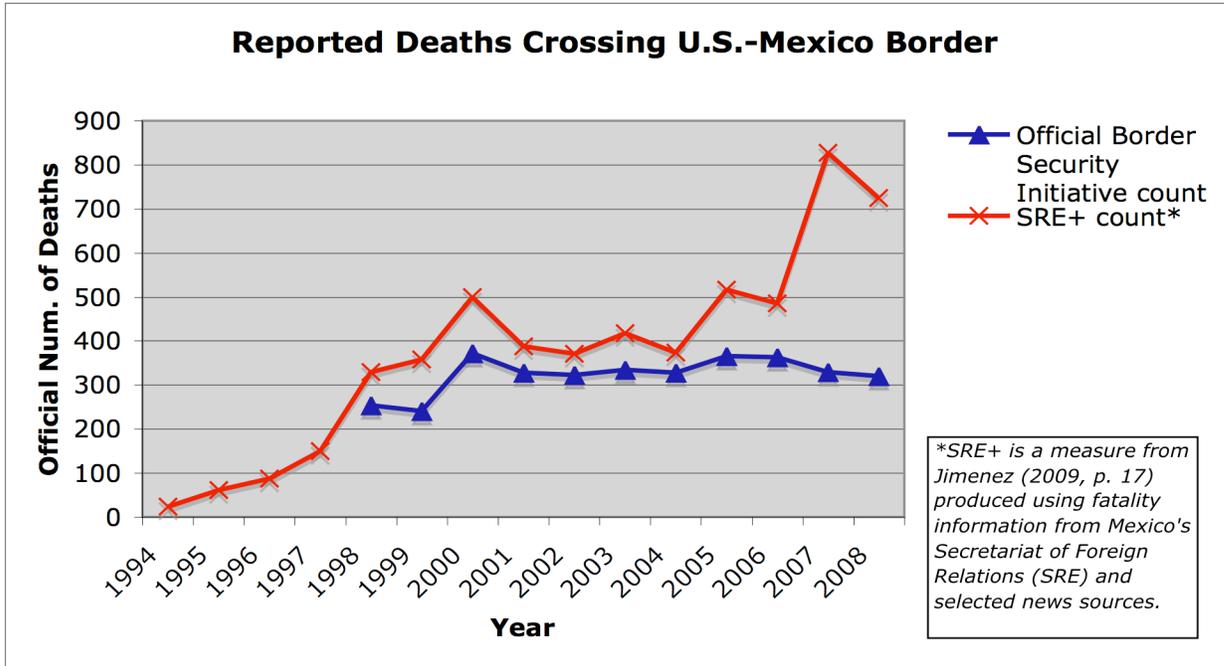
- A first offense of entering or attempting to enter the United States in areas not under the supervision of immigration officials (i.e. areas along the border where there are no customs and immigration centers) may result in up to six months in jail and/or a fine of \$50-250.
- A first offense of inhibiting the procedures of immigration officials through lying about one's citizenship status, refusing to be searched or inspected, and fleeing may result in up to six months in jail and/or a \$50-250 fine.
- A second offense of either violation described above may result in an up to two years in jail and/or a \$100-500 fine.
- Entering or attempting to enter the U.S. through marriage fraud may result in up to five years in prison and/or a \$250,000 fine.
- Entering or attempting to enter the U.S. by establishing a fraudulent business may result in up to five years in prison and/or fines outlined in another section of the U.S. Code.

Like 1325, section 1326⁵⁷ was originally enacted in 1952 and then heavily amended in the late 1980s and mid 1990s. Section 1326 deals specifically with those who have a prior immigration offense related to entry through means not sanctioned by immigration officials, including the following situations:

- A history of being deported or denied entry may result in up to two years in prison and/or a fine outlined in another section of the U.S. Code.
- A history of three misdemeanors or a felony (including a felony conviction for 1325) may result in up to ten years in prison and/or a fine outlined in another section of the U.S. Code.
- Fleeing and returning to the United States without completing a prior sentence results in completion of original sentence.

Under current law, undocumented immigrants may serve *two* years in prison for a felony conviction under Section 1325, and then serve *ten* years in prison for another attempt at reentry under Section 1326. If a migrant has a prior felony conviction for aggravated assault s/he may instead receive a sentence of *up to twenty* years in prison for reentering the United States. Rare prior to Operation Streamline, this type of sentencing has become more prevalent.

Appendix B: Annual Deaths Crossing U.S.-Mexico Border as Compared to Apprehensions of Immigrants Attempting to Cross Border

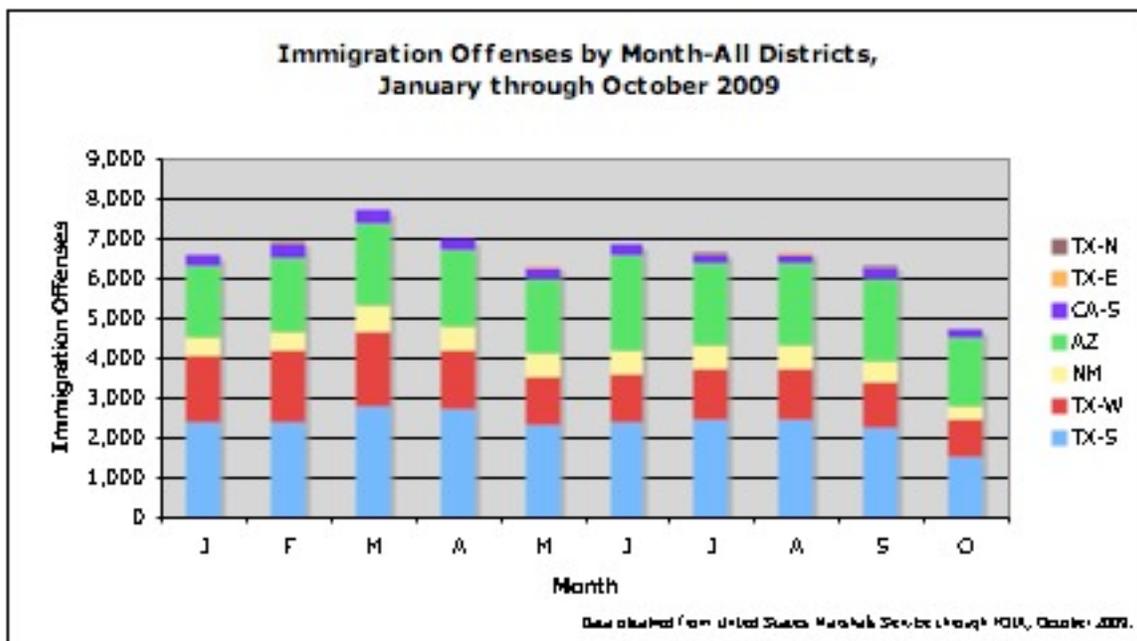
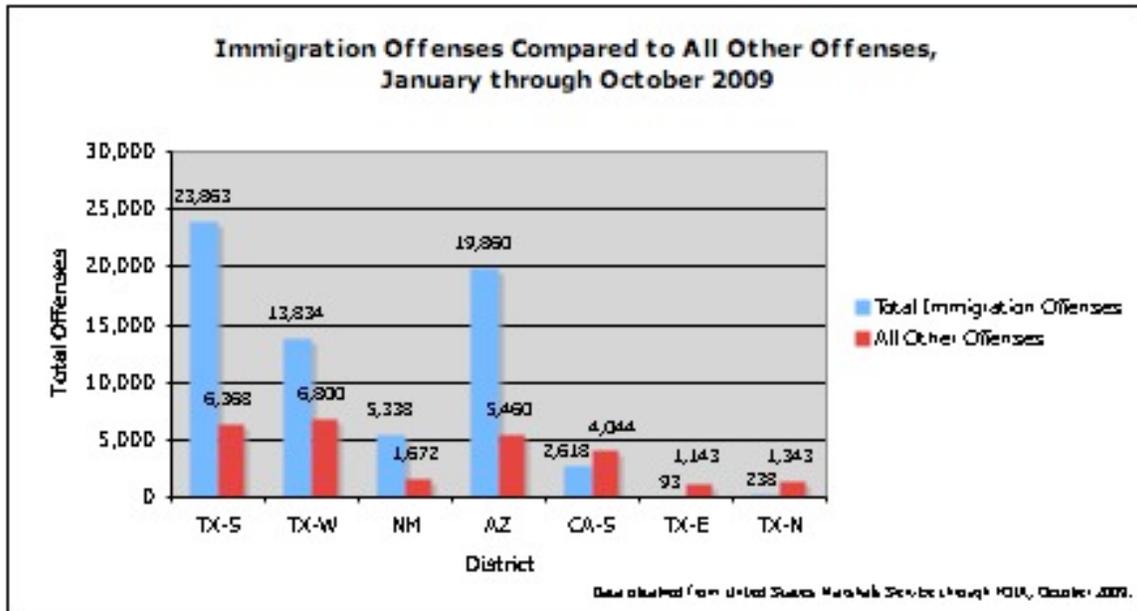


Data Source: Jimenez, M. (2009). *Humanitarian crisis: Migrant deaths at the U.S.-Mexico border*. San Diego: ACLU of San Diego & Imperial Counties and Mexico's National Commission of Human Rights

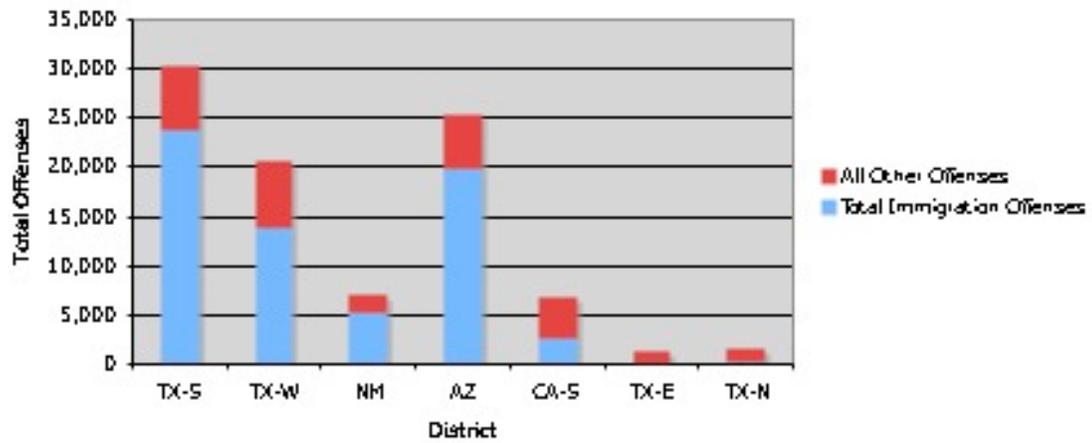
Appendix C: U.S. Marshals and FBOP Bed Expansion in Texas, 2000-2009

Year	County	Facility	New Beds	Operator	Contracting Agency (if any)
2001	Brooks	Brooks County Detention Center	539	LCS	USMS, FBOP, Kleberg County
2001	Hidalgo	East Hidalgo Regional Correctional	990	LCS	USMS, ICE, Hidalgo County
2003	Hudspeth	Hudspeth County Regional Correctional	1000	Emerald	USMS
2003	Willacy	Willacy County Regional Detention	540	MTC	USMS
2004	La Salle	La Salle County Detention	576	Emerald	USMS
2004	Reeves	Reeves County Detention Center III	960	GEO	FBOP
2004	Rusk	East Texas Multi-use Facility	1720	MTC	-
2005	Frio	South Texas Detention Center	1904	GEO	ICE
2006	Willacy	Willacy County Processing Center	3086	MTC	ICE
2007	Val Verde	Val Verde Correctional Center – expansion	576	GEO	USMS, ICE, Val Verde County
2007	Garza	Giles W. Dalby Correctional Facility	827	MTC	FBOP
2008	Maverick	Maverick County Detention Center	688	GEO	USMS
2008	Kleberg	Coastal Bend Detention Center	1056	MTC	USMS, Jim Wells & Kleberg County
2008	Montgomery	Joe Corley Detention Facility	1287	GEO	USMS
2008	Webb	Rio Grande Detention Center	1500	GEO	USMS
Total			17249		

Appendix D: Additional Graphs and Data⁵⁸

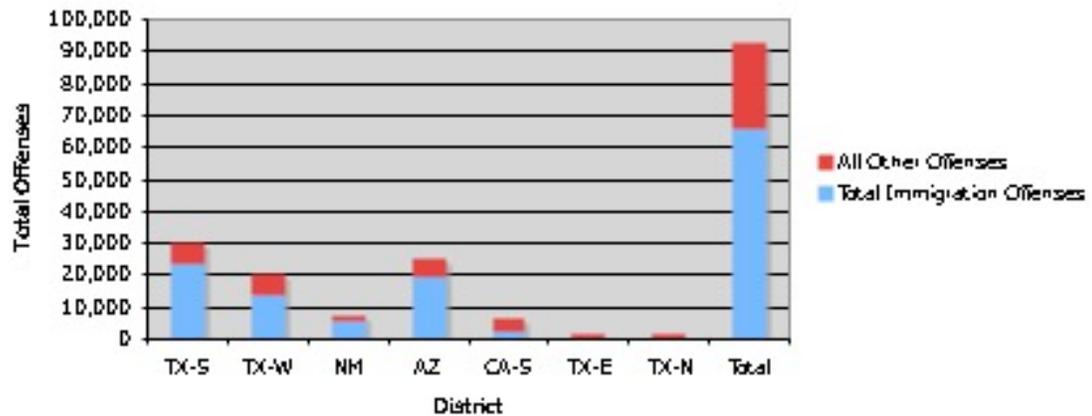


**Immigration as Percent of All Offenses by District,
January through October 2009**



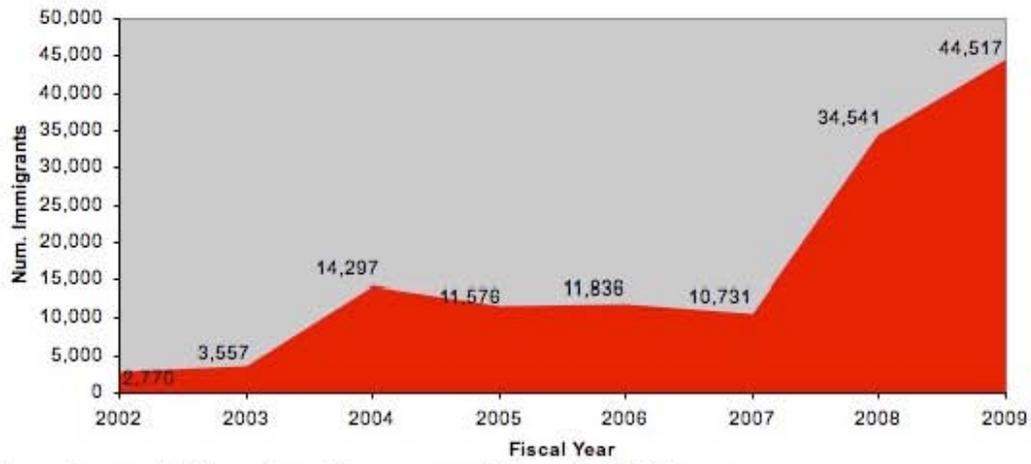
Data obtained from United States Marshals Service through FOIA, Quarter 2009.

**Immigration as Percent of All Offenses by District,
January through October 2009**



Data obtained from United States Marshals Service through FOIA, Quarter 2009.

1325 & 1326: Immigrants Sentenced to Prison, 2002-2009



* Length of sentence: In 2002, average length of prison sentence was 18.5 months; in 2009, 8.5 months.

Data Source: [Federal Records Access Clearinghouse](#), (2002), Prosecutors, Convictions and Sentencing to US Code, Title 2, Section 1325 and Section 1326, to Federal District Courts South and North West, Syracuse University, Retrieved from [http://iac.ny.edu/](#).

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- ² The Third Branch. (2008, July). Federal courts hit hard by increased law enforcement on border. *The Third Branch Newsletter of the Federal Courts*. Retrieved from http://www.uscourts.gov/ttb/2008-07/article02_1.cfm.
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- ¹³ Migration Policy Institute and BBC World Service. (2009). Migration and global recession. Retrieved from <http://www.migrationpolicy.org/pubs/MPI-BBCreport-Sept09.pdf>.
- ¹⁴ Immigration Policy Center. (2009). Keeping migrants here: recent research shows unintended consequences of U.S. border enforcement. Retrieved from: <http://www.immigrationpolicy.org/sites/default/files/docs/Keeping%20Migrants%20Here.pdf>.
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- ¹⁶ Data obtained through Transactional Records Access Clearinghouse. (2009). Prosecutions, Convictions and Sentencing for U.S. Codes Title 8, Section 1326, for Federal Districts Texas South and Texas West. Syracuse University. Retrieved through subscription from <http://trac.syr.edu/>.
- ¹⁷ Transactional Records Access Clearinghouse. (2010). Federal prosecutions sharply higher; surge driven by steep jump in immigration filings. Syracuse University. Retrieved from <http://trac.syr.edu/tracreports/crim/223/>.

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- ¹⁸ Information on Section 1325 taken from: Find Law, (2009). *8 U.S.C. 1325: US code - Section 1325: Improper entry by alien*. Retrieved from <http://codes.lp.findlaw.com/uscode/8/12/II/VIII/1325>
- ¹⁹ Transactional Records Access Clearinghouse. (2010). Criminal immigration prosecutions are down, but trends differ by offense. Syracuse University. Retrieved from <http://trac.syr.edu/immigration/reports/227/>.
- ²⁰ Transactional Records Access Clearinghouse. (2009). Prosecutions, Convictions and Sentencing for US Codes Title 8, Section 1325, for Federal Districts Texas South and Texas West. Syracuse University. Retrieved from: <http://trac.syr.edu/>.
- ²¹ Information on 1326 from: Find Law, (2010). *8 U.S.C. 1326: US code - Section 1326: Reentry of removed aliens*. Retrieved from <http://www.law.cornell.edu/uscode/8/1326.html>.
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- ²⁴ Transactional Records Access Clearinghouse. (2010). Criminal immigration prosecutions are down, but trends differ by offense. Syracuse University. Retrieved from <http://trac.syr.edu/immigration/reports/227/>.
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- ³⁷ Cost calculated as: immigrants sentenced to prison time multiplied by average sentence for lead charge in prosecuting district. Calculations on prison time were performed separately, by lead charge in each district, and then totaled. Data obtained through Transactional Records Access Clearing House. (2010). TRACfed. Retrieved through subscription at <http://tracfed.syr.edu/>.
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- ³⁹ See Footnote 37 for cost calculation. Per diem rate adjusted to Average Per Diem Rate Paid by year as described at <http://www.justice.gov/ofdt/perdiem-paid.htm>.
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⁵³ Personal communication. December 1, 2009.

⁵⁴ Authors' note: It can take up to ten years for a U.S. citizen's spouse to obtain citizenship status. The couple in this narrative was married for eight years before ICE apprehended the man.

⁵⁵ Authors' note: Since this woman was interviewed, her husband has been sentenced to 27 months in prison for re-entry. He will likely serve this sentence in Texas and be deported immediately upon completion. The family will never legally be reunited.

⁵⁶ Information on Section 1325 taken from: Find Law, (2010). *8 U.S.C. 1325: US code - Section 1325: Improper entry by alien*. Retrieved from <http://codes.lp.findlaw.com/uscode/8/12/II/VIII/1325>.

⁵⁷ Information on Section 1326 taken from: Find Law, (2010). *8 U.S.C. 1326: U.S. Code - Section 1326: Reentry of removed aliens*. Retrieved from <http://codes.lp.findlaw.com/uscode/8/12/II/VIII/1326>.