

## Warehousing the Poor: How Federal Prosecution Initiatives like “Operation Streamline” Hurt Immigrants, Drive Mass Incarceration and Damage U.S. Communities

by Geoffrey Boyce and Sarah Launius

**Editors’ note:** Startlingly absent from most discussions of immigration reform, the Obama administration’s Operation Streamline is a mass prosecution initiative currently underway along the U.S.-Mexico border. In this issue of *DifferenTakes*, Arizona-based immigration rights researchers and activists Geoffrey Boyce and Sarah Launius expose how Operation Streamline is blurring the line between the U.S. criminal justice and civil immigration systems, violating basic rights, and criminalizing immigrants.

Betsy Hartmann and Anne Hendrixson

Attend any immigrant rights protest in the United States and one is likely to encounter signs and slogans to the effect that “immigrants are not criminals!” Although such statements are meant to convey that immigrants don’t deserve the exceptional violence of detention and deportation, they miss the mark and risk reinscribing the very exclusions on which immigration law is premised. This is illustrated by “Operation Streamline,” a mass prosecution initiative now underway in eight of the nine U.S. Border Patrol sectors along the U.S. border with Mexico.<sup>1</sup> Operation Streamline points

out the degree to which the lines have become blurred between the U.S. criminal justice and civil immigration systems, generating untold damage to U.S. communities and raising overwhelming barriers to individuals’ eligibility for immigration relief and reform. To understand contemporary immigration enforcement, we need to look at how criminal law and immigration law work together, and situate the Obama administration’s unprecedented deportation record within a larger context of mass incarceration.

### Streamlining repression

On the brisk morning of Friday, October 11, 2013, a group of activists in Tucson, Arizona interdicted two buses operated by the private security company G4S as they shuttled 70 individuals from a nearby Border Patrol detention facility to the Federal courthouse in downtown Tucson. After stopping the buses, a dozen individuals locked themselves to their wheels to prevent their moving forward, while another group chained themselves together to block the entrance to the court building.

This protest was intended to expose “Operation Streamline.” Although relatively unknown in much of the country, Streamline is just one of several federal prosecutorial initiatives designed to attach criminal penalties to immigration-related



A publication of the

**Population and Development Program**

CLPP • Hampshire College • Amherst, MA 01002

413.559.5506 • <http://popdev.hampshire.edu>

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offenses, representing a significant shift away from the civil, administrative procedures through which immigration has traditionally been governed.<sup>2</sup> As a result of these developments, immigration-related cases today outpace all other federal criminal cases *combined*, and more than half of all those entering federal prison are Latino.<sup>3</sup>

Operation Streamline began in 2005 in the U.S. Border Patrol's Del Rio Sector. Originally, the idea of the program was to inaugurate a "zero tolerance" approach involving mandatory criminal prosecution of all those whom the Border Patrol apprehended within a defined spatial area.<sup>4</sup> By 2008 Streamline had expanded to the Border Patrol's Yuma, Laredo, Tucson and El Paso Sectors. Today Streamline is active in eight of the nine sectors in the U.S. southwest.

Individuals prosecuted under Streamline are typically charged with "illegal entry," a misdemeanor under 8 U.S. Code Section 1325 punishable by up to 180 days in prison, or "illegal re-entry," a felony under 8 U.S. Code Section 1326, punishable by up to two years for most defendants or 20 years for anyone previously convicted of an "aggravated felony" in the United States.<sup>5</sup> Often individuals are charged under both statutes, in what attorneys call a "flip-flop" agreement; by accepting a plea for the lesser charge, prosecutors agree to drop the greater.

Among other things, Streamline enables the movement of massive numbers of individuals through the criminal process, in minimal time. In Tucson, 70 people are processed each day, their charges read and rights explained in unison. One by one, these individuals plead guilty, and are sentenced from time served to 180 days in prison for "illegal entry" to the United States.

This is the basis for the moniker "Streamline." Through the program, a criminal process that would typically take months is completed for dozens of individuals in a single court hearing lasting only a few hours. The results undermine due process in ways that are deeply unsettling.

## Common objections to Streamline

Legal scholars and human rights advocates have raised several prominent objections to the nature and mechanics of Operation Streamline.<sup>6</sup>

First and foremost, the operation of mass trials represents a significant assault on constitutionally protected due process for all criminal defendants. By trying immigrants in groups, there is significant pressure to conform, and many accept a plea without understanding the court process or the consequences this may carry.<sup>7</sup> Immigrants are usually processed through Streamline immediately

following an arduous journey through the desert, which may result in compromised health and fatigue. Writes geographer Andrew Burridge:

"It is doubtful that most truly understand what they are agreeing to, often encountering the U.S. court system for their first time, dealing with an interpreter, and being rushed through the system... It is not uncommon for defendants to speak a language other than Spanish (such as an indigenous dialect), and so they are forced to rely on their limited Spanish skills without an interpreter. Further, most are told to accept pre-written deals whether they truly believe they are guilty or not. Significantly, to date almost no one has pleaded innocent to the charges."<sup>8</sup>

Allegations of procedural misconduct are frequently followed by the dropping of charges in order to avoid time-consuming investigation. This diminishes the possibility of using the courts to deter procedurally problematic or abusive law enforcement practices. For example, because Streamline defendants are arrested by immigration authorities, they are not routinely "Mirandized"; yet information provided during questioning or detention is routinely introduced in court.

Objections have also been raised related to defendants' right to effective counsel. In some courts, defense attorneys may represent as many as 80 clients at once.<sup>9</sup> Meetings between clients and attorneys are typically limited to between five minutes and a half an hour – hardly adequate for investigating possible defenses, such as asylum or derived citizenship through a U.S. citizen parent or grandparent (in 2010 a total of 82 illegal entry and re-entry defendants were later found to be U.S. citizens).<sup>10</sup> Many defense attorneys are unfamiliar with immigration law and do not consider the adverse immigration effects of a Streamline plea.

Finally, the fifth and sixth amendments guarantee the same protections and due process for *all* criminal defendants in the United States. That Streamline establishes a separate and unequal criminal justice process for immigrants is a clear form of discrimination based on alienage.

The objections so far discussed have primarily to do with law, rights and procedure. Yet to fully appreciate the effects of a program like Streamline, it is important to take a "global" look at the program, and consider how these prosecutions ripple through communities across the United States.

## A war on immigrants

The U.S. Border Patrol claims that criminal prosecution acts as a deterrent to undocumented immigration, and

has contributed to a steady decline in migrant apprehensions since 2005.<sup>11</sup> There are good reasons to be skeptical of this claim. For example, researchers at the University of Arizona recently interviewed 1,000 recently repatriated migrants in northern Mexico, and found that fully 25 percent of deportees intend to cross again in seven days, while 56 percent intend to return at some point in the future.<sup>12</sup> For the 28 percent who consider the U.S. their home, this number jumps to 70 percent. Indeed, it is questionable the degree to which criminal conviction or incarceration could eliminate one's desire to reunite with a spouse, parent, child, or the rest of one's community – and many of those prosecuted through Streamline are long-term U.S. residents who for a variety of reasons have become separated from their homes and loved ones.<sup>13</sup>

In 2011, a total of 61,990 individuals were prosecuted for “illegal entry” or “re-entry” in U.S. jurisdictions using some version of Operation Streamline.<sup>14</sup> Those convicted under Streamline will have a criminal record in the United States, which alone may prevent their ever returning legally. Human Rights Watch reports:

“Once convicted of illegal entry, including through a mass-prosecution program like Operation Streamline, a migrant who attempts to reenter the U.S. illegally is more likely to be prosecuted for illegal reentry because he or she now has a criminal record. With each new crossing and arrest, the criminal sanction becomes increasingly harsh.”<sup>15</sup>

This dynamic feeds a circular narrative put forward by the Department of Homeland Security, which claims that their immigration enforcement activities prioritize “dangerous criminals” and “recent border crossers.” Between FY 2009-2012 the Obama administration deported 1.6 million people.<sup>16</sup> In 2011, 20 percent of cases involving prior criminal convictions were for immigration offenses like illegal entry.<sup>17</sup>

These developments serve as a massive boon to the prison industry. This is indicated by data collected by Tucson’s “End Streamline Coalition,” a group seeking to pressure defense attorneys and court personnel to withdraw their participation from the Streamline program.<sup>18</sup> Randomly attending ten separate hearings, volunteers recorded a total of 693 individuals cumulatively sentenced to 61,720 days in prison. The average cost to the government of housing a Streamline defendant is \$79/day.<sup>19</sup>

Authors like Ruthie Gilmore and Michelle Alexander have discussed the damaging impacts of the United States’ so-called wars on “drugs” and “crime,” particularly for poor people and people of color.<sup>20</sup> Since the 1970s a confluence of punitive laws and racially-oriented policing have

led to an explosion of public and private prisons, widespread disenfranchisement, broken families and legalized discrimination. Operation Streamline must be situated in relation to these policies. For example, the very statutes under which Streamline defendants are prosecuted were first created and then strengthened through the 1988 Anti-Drug Abuse Act and the 1994 Violent Crime Control and Law Enforcement Act.

Streamline is itself rippling back through other areas of criminal law, including immigration and drug prosecutions. During the infamous 2008 Postville, Iowa immigration raid, the government took a similar mass-prosecution approach to convict workers of “identity theft”;<sup>21</sup> and there have been efforts to implement Streamline-like programs for drug prosecution in border-area jurisdictions like Pima County, Arizona.

## Conclusion

Under the immigration reform proposals currently being debated by Congress, those who’ve received a bar from re-entry based on a Streamline conviction will not qualify for any form of immigration relief. The 60,000-or-so presently convicted each year would remain separated from their loved ones, or subject to additional prosecution if encountered in the United States again.

Meanwhile, S.744, the 2013 Senate reform bill, would specifically mandate the *tripling* of Streamline prosecutions in Tucson alone.<sup>22</sup> This puts the lie to the idea that somehow, with immigration reform, federal authorities expect to reverse course on the trajectory of criminalization on which current policy is premised. And it also shows why arguments to the effect that “immigrants are not criminals” fail to appreciate the way that criminal law itself has become a significant instrument of immigration enforcement.

Efforts by scholars and activists to trace the connections between immigration enforcement and prison construction signal one positive step toward addressing this problem and building an inclusive social justice agenda. Such efforts should be expanded by recognizing the history of white supremacy and codified injustice that simultaneously shape and lend legitimacy to practices of mass deportation and mass incarceration.

Legislative reforms cannot begin to address the harm these policies inflict until authorities are no longer able to use past criminal conviction as a mandate for permanent exile and family separation. Programs like Operation Streamline must be ended. Anything short of this will exacerbate existing injustices and perpetuate long-term damage to U.S. families and communities.

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## Notes

1. The U.S. Border Patrol's San Diego Sector is the only southwest Border Patrol sector that does not participate in some version of Operation Streamline.
2. In the U.S., immigration law is an entirely separate body of law from criminal law. This is important, as defendants in the immigration court system have significantly fewer protections than those in the criminal system, including the right to an attorney, *habeus corpus* and the presumption of innocence.
3. See Alistair Graham Robinson, Rachel Beaty, Jane Atkinson, and Bob Libal, "Operation Streamline: Costs and Consequences," 27. Austin, TX: Grassroots Leadership, 2012, Syracuse University. "Transactional Records Access Clearinghouse (Trac)." In "Going Deeper" tool. Syracuse, NY: Syracuse University, Prosecutions for 2011.; and Human Rights Watch. "Turning Migrants into Criminals: The Harmful Impact of U.S. Border Prosecutions." 82: Human Rights Watch, 2013.
4. Despite being billed as a "zero tolerance" program, in 2010 CBP only referred about 17 percent of apprehended migrants for prosecution under Streamline or related programs. See *Ibid.*
5. In 2012, 98% of illegal entry prosecutions and 77% of illegal reentry prosecutions were in the eight southwest Border Patrol sectors where Streamline is active. One of the most common "aggravated felony" charges against undocumented residents is "identity theft" stemming from using a false social security number for work.
6. See Jennifer Chacon, "Managing Migration through Crime," *Columbia Law Review Sidebar* 109, (2009): 135-48.; Joanna Lydgate, "Assembly-Line Justice: A Review of Operation Streamline." 16. Berkeley, CA: Earl Warren Institute on Race, Ethnicity & Diversity, Berkeley Law School, (2010); Edith Nazarian, "Crossing Over: Assessing Operation Streamline and the Rights of Immigrant Criminal Defendants at the Border," *Loyola of Los Angeles Law Review* 44, (2011): 1399-430.; and Katherine Brink, "Neglecting Due Process Rights of Immigrants in the Southwest United States," *University of Detroit Mercy Law Review* 89, (2012): 315-39.
7. Twice, the U.S. 9<sup>th</sup> Circuit Court has ruled aspects of the Streamline process unconstitutional, including the practices of addressing and having all 70 or 80 defendants plead guilty in unison (see *United States v. Roblero-Solis*, 2009; *United States v. Arqueta-Ramos*, 2013). Yet these rulings did not reverse the vast majority of convictions for those who had already been moved through the program, and have resulted in only minor modifications to courtroom procedures.
8. Andrew Burrige, "Differential Criminalization under Operation Streamline: Challenges to Freedom of Movement and Humanitarian Aid Provision in the Mexico-U.S. Borderlands," *Refuge* 26, no. 2 (2009): 78-91.
9. Lydgate cites an interview with William D. Fry, Supervisory Assistant Federal Public Defender in Del Rio, Texas, claiming that it is commonplace for a single attorney in this sector to represent all 80 Streamline defendants charged in a given court hearing. See Joanna Lydgate, "Assembly Line Justice."
10. Mark Motivans, "Immigration Offenders in the Federal Criminal System, 2010," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2012) <http://bjs.gov/index.cfm?ty=pbdetail&iid=4392>
11. See Perla Treviso, "'Operation Streamline' Takes Hard Line on Illegal Border Crossers," *Arizona Daily Star*, March 24, 2013. [http://azstarnet.com/news/local/border/operation-streamline-takes-hard-line-on-illegal-border-crossers/article\\_35cb6dc5-45e3-55e5-b471-c1dd2a72bc31.html](http://azstarnet.com/news/local/border/operation-streamline-takes-hard-line-on-illegal-border-crossers/article_35cb6dc5-45e3-55e5-b471-c1dd2a72bc31.html)
12. Jeremy Slack, Daniel Martínez, Scott Whiteford, and Emily Peiffer "In the Shadow of the Wall: Family Separation, Immigration Enforcement, and Security – Preliminary Data from the Migrant Border Crossing Study," Tucson, Arizona: Center for Latin American Studies, the University of Arizona, 2013.
13. Seth Freed Wessler, "Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years," *Colorlines* December 17, 2012; see also Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron "Immigration Enforcement in the United States: The Rise of a Formidable Machinery," Washington, D.C.: Migration Policy Institute, 2011, <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>
14. *Ibid.*; Syracuse University, "Transactional Records Clearinghouse."
15. Human Rights Watch, "Turning Migrants Into Criminals."
16. Immigration and Customs Enforcement, "Removal Statistics," 2013, <http://www.ice.gov/removal-statistics>
17. Department of Homeland Security, "Immigration Enforcement Actions: 2011," 2012, [http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement\\_ar\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf)
18. In 2013 the End Streamline Coalition launched a campaign in Tucson, Arizona to encourage Streamline defense attorneys to withdraw from participating in the program. For more information visit <http://endstreamline.wordpress.com/>
19. U.S. Department of Justice, "Prisoners in 2011," Washington, D.C.: Bureau of Justice Statistics, 2013 <http://www.bjs.gov/content/pub/pdf/p11.pdf>
20. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: the New Press, 2010); Ruthie Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Los Angeles: University of California Press, 2007).
21. The Supreme Court in *Flores-Figueroa v. United States* (2009) later ruled the application of federal "identity theft" to these workers to be unconstitutional.
22. S.744 would increase the number of individuals prosecuted in Tucson from 70 to 210 per day.