

Operation Streamline: No Evidence that Criminal Prosecution Deters Migration

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Introduction

In April 2018, Attorney General Jeff Sessions issued a memo announcing a “zero-tolerance” policy that directed federal prosecutors to criminally prosecute all immigrants found entering the country without authorization.¹ The memo portrayed this policy, aimed at deterring unauthorized immigration, as an “updated approach” to immigration enforcement.² Indeed, some aspects of it—most notably, the forcible separation of immigrant children from parents who face criminal prosecution—are unprecedented.³ But the memo also noted that a similar approach had been tried before.

In fact, vast resources had already been directed to the federal criminal prosecution and incarceration of immigrants apprehended entering the country without authorization through a program known as Operation Streamline, which began in 2005 and operated along the Southwest border of the United States as recently as 2014. The U.S. Department of Homeland Security (DHS) points to statistics showing that apprehensions of immigrants crossing the border without authorization declined for several years after Operation Streamline was launched as evidence that the program achieved its intended effect of deterring unauthorized immigration to the United States.⁴ As the government moves to revive and expand Operation Streamline, citing its purported deterrent effect as justification, the question of whether this program actually succeeded in decreasing the number of people attempting to cross the border without authorization has taken on greater importance.

The analysis presented in this report shows that, contrary to DHS’s premise, there is no evidence to support the conclusion that Operation Streamline succeeded in deterring unauthorized border crossings, nor that it had any effect whatsoever on immigrants’ decisions to come to the United States. Operation Streamline did, however, have serious negative consequences for the federal criminal justice system, as well as for tens of thousands of immigrants.

What was Operation Streamline?

Launched in 2005 in Texas, and replicated along much of the Southwest border over the next five years, Operation Streamline was an effort by the federal government to discourage unauthorized immigration by requiring, in most cases, federal criminal prosecution of people apprehended crossing the border without authorization.⁵ This was a significant departure from previous practice, in which most immigrants had their cases heard by civil immigration courts with federal prosecution reserved for the most serious immigration-related crimes, and for people with prior removals who were apprehended reentering the country. By diverting cases to criminal court, Operation Streamline subjected immigrants to incarceration in federal prisons before deportation—a consequence that cannot be imposed by civil immigration courts. The vast majority of immigrants prosecuted under Operation Streamline ultimately pled guilty to “illegal entry” (8 U.S.C. §1325, a misdemeanor) or “illegal reentry” (8 U.S.C. §1326, a felony) and served sentences of varying lengths in federal prison, after which they were deported.⁶

Among the most striking features of Operation Streamline was that it significantly curtailed prosecutorial discretion—a hallmark of the U.S. criminal justice system—by mandating criminal prosecution of immigrants charged with entering or reentering the United States without authorization.⁷ Instead of having the flexibility to focus resources on serious immigration crimes, federal prosecutors were faced with thousands of new cases each year—up to 80 or 90 per day in some courts—concerning immigrants charged with entering or reentering without authorization. The sheer volume of these prosecutions overwhelmed some federal courts, even leading to the declaration of a judicial emergency in Arizona.⁸

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The history of Operation Streamline

Operation Streamline began in 2005 as a local solution to a localized problem. Before 2005, DHS, and its predecessor the Immigration and Naturalization Service (INS), processed undocumented immigrants crossing into the United States along the Southwest border differently depending on their national origin, immigration history, and criminal background.^a People from Mexico who were deported were generally returned there through a rapid process known as Voluntary Return, while non-Mexican immigrants were removed through civil proceedings in immigration court.^b Immigrants who were thought to pose a threat because of their criminal histories, suspected involvement in smuggling, or repeated border crossings were referred to the federal criminal justice system for prosecution, incarceration, and deportation.^c Though unauthorized entry and reentry into the United States have been federal crimes since the mid-1900s, they were prosecuted far less frequently before 2005.^d

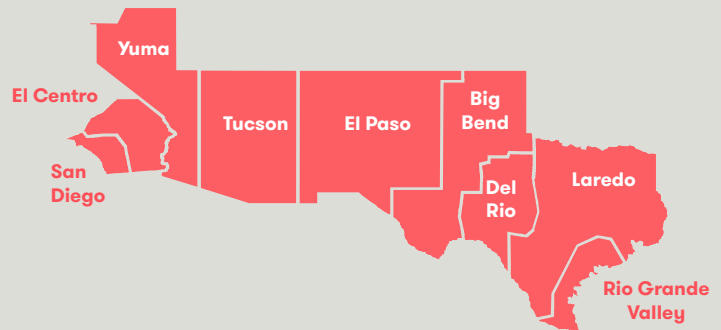
Between 2004 and 2005, the volume of non-Mexicans apprehended while crossing the border into Texas without authorization, particularly through the Del Rio Border Patrol Sector, increased substantially—from 9,896 in 2004 to 15,642 in 2005.^e This influx quickly exhausted the local detention capacity of both Border Patrol and Immigration and Customs Enforcement (ICE), the agency within DHS charged with detaining immigrants in the civil immigration system.

Because Border Patrol in the Del Rio sector lacked the capacity to detain all non-Mexican immigrants who entered the country without authorization, many non-Mexican immigrants apprehended in the Del Rio sector were released from detention and told to appear in immigration court at a future date to begin civil deportation proceedings.^f This presented a dilemma to Border Patrol, which did not want to send a signal that migrants looking for an easy path into the United States could cross the border in Del Rio.

Border Patrol approached the U.S. Attorney's Office for the Western District of Texas with a plan: instead of diverting only those immigrants with serious criminal histories or repeated unauthorized entries, Border Patrol would refer all immigrants apprehended making unauthorized crossings in the Del Rio Sector for federal criminal prosecution.^g Then, instead of having to release non-Mexican migrants due to a lack of bed space, Border Patrol agents could funnel them into the federal criminal justice system. In December 2005, DHS officially introduced this program to the public as Operation Streamline.

Figure 1

Map of Southwest Border Patrol sectors



Over the next several years, other Border Patrol sectors along the Southwest border adopted similar initiatives. (See Figure 1, above.) The Yuma sector implemented its version of Operation Streamline in 2006, followed by the Laredo sector in 2007 and the Tucson and El Paso sectors in early 2008. By the end of 2009, when the Rio Grande Valley sector implemented Operation Streamline, six of the nine Border Patrol sectors along the Southwest border had adopted some version of the policy.^h

^a Prior to 2002, most of the immigration functions of the federal government were housed in the Immigration and Naturalization Service (INS) within the Department of Justice (DOJ). U.S. Department of Homeland Security, "History," <https://perma.cc/TPS2-WTTD>.

^b DHS uses the term "Other-Than-Mexicans" or "OTMs" to refer to immigrants from countries other than Mexico. In the civil immigration system, immigrants who are believed to be removable are issued a charging document called a "Notice to Appear" (NTA) that states the alleged charges of removability. Hearings are conducted in immigration court, and an immigration judge ultimately determines whether they should be removed (deported). Immigration judges may not impose criminal penalties (including incarceration) on immigrants appearing before them; rather, they can only decide whether an immigrant should be permitted to stay in the country.

^c U.S. Department of Homeland Security (DHS), Office of the Inspector General (OIG), Streamline: Measuring Its Effect on Illegal Border Crossing (Washington, DC: OIG, 2015), 3; Joanna Lydgate, "Assembly-Line Justice: A Review of Operation Streamline," *California Law Review* 98, no. 2 (2010), 484.

^d The DHS Office of the Inspector General (OIG) reports a 159 percent increase in the total number of federal immigration cases between FY 2005 and FY 2013. Total new immigration cases more than doubled over that eight-year period, from approximately 37,000 in 2005 to more than 97,000 in 2013. DHS, Streamline (2015), at 37-38.

^e Lydgate, "Assembly-Line Justice" (2010), at 492.

^f DHS, Streamline (2015), at 3-4.

^g Border Patrol's original proposal would have exempted Mexican immigrants from this plan, but the U.S. Attorney's Office refused to sign onto a plan that would select people for criminal prosecution based on their national origin. Lydgate, "Assembly-Line Justice" (2010), at 493.

^h The San Diego and El Centro sectors in California and the Big Bend sector in Texas never implemented a version of Operation Streamline. *Ibid.* at 483.

Analysis

Operation Streamline's goal was to deter immigrants from entering the United States without authorization by criminally prosecuting and punishing those immigrants who were apprehended doing so.⁹ It relied on the theory of deterrence, which posits that people are less likely to engage in undesirable behavior if the probability of legal sanction is high.¹⁰ But contemporary scholars have consistently documented the limitation of the deterrent effect on human behavior in various situations, finding instead that the decision to obey a law is driven by more complex social and economic factors.¹¹ In the immigration context, the decision to migrate is influenced by many "push factors," like conflict or violence in one's home country, and "pull factors," like better employment prospects or rejoining family members already in the United States. These factors may be stronger than any perceived threat of legal consequences—including criminal prosecution, incarceration, or deportation.¹²

The government's claims that Operation Streamline deterred unauthorized entry have not been subjected to rigorous scientific testing. Rather, claims of its efficacy have

been based on the overall decline in apprehensions along the Southwest border after its implementation. As Figure 2 below shows, apprehension numbers did indeed drop precipitously after 2005, the year Operation Streamline was first introduced.

The simple difference in the number of apprehensions before and after Operation Streamline began does not tell the full story. Data measured over a period of time, such as the number of immigrants apprehended each year, can fluctuate for reasons having nothing to do with an individual event like the implementation of Operation Streamline. These fluctuations can instead be the result of long-term trends, such as improving economic conditions, or short-term drivers, like seasonal weather conditions.¹³ A number of these push and pull factors may affect immigrants' decisions to migrate and cause short- and long-term variations in apprehensions. In the case of Operation Streamline, after zooming out to look at a larger timeframe, the decrease in apprehensions after 2005 appears to have been part of a longer-term decline. (See Figure 3 at page 4.)

Figure 2
Yearly apprehensions for all jurisdictions since 2000

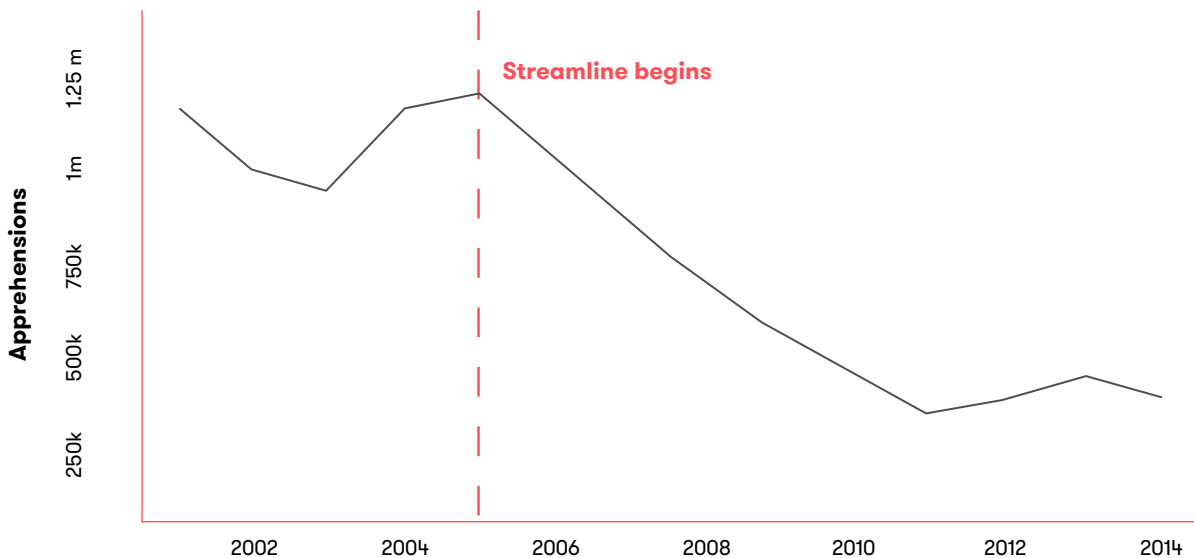
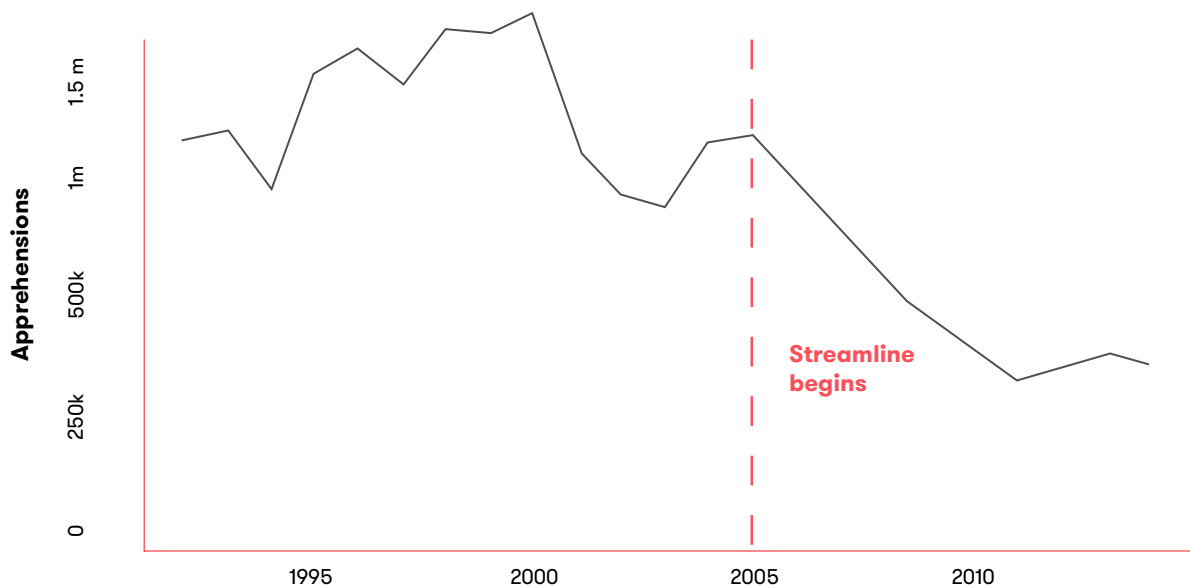


Figure 3

Yearly apprehensions for all jurisdictions since 1992



A simple comparison of immediate pre- and post-intervention apprehension numbers is therefore insufficient to determine the efficacy of Operation Streamline in deterring unauthorized border crossing. Instead, researchers at the University of New Haven, led by Jonathan Allen Kringen, used a more sophisticated statistical analysis to determine whether the decrease in apprehensions was most likely a result of “noise” (short and long-term fluctuations in the data) or the introduction of Operation Streamline.¹⁴

The researchers collected data from Customs and Border Protection (CBP), the parent agency of Border Patrol, on the number of apprehensions in the nine Border Patrol sectors in the Southwest border region from 1992 to 2014. Apprehension data serves as a useful proxy for measuring the number of unauthorized immigrants entering an area since the exact number of unauthorized entrants (many of whom are not apprehended) is difficult to measure with certainty.¹⁵ Thus, changes in apprehensions can be used to understand changes in unauthorized entry.

The researchers disaggregated the data into monthly counts of apprehensions for each of the sectors in the Southwest border region that had implemented Operation Streamline. This was done for two reasons. First, monthly data provides greater statistical power to analyses that seek to distinguish broader trends and volatility from the

Many jurisdictions show long-term trends toward fewer apprehensions that started long before Operation Streamline was implemented.

specific effect of a policy change. Second, although Operation Streamline technically began in 2005, implementation dates varied among sectors, with three sectors never implementing Operation Streamline at all. Monthly data allowed researchers to conduct analyses at the sector level, taking into account each sector's unique implementation date.

The researchers looked for evidence of any deterrent effect using a statistical technique called bivariate ARIMA (Auto-Regression, Integration, Moving Average). This is a form of time series analysis that allows researchers to isolate the effects of an intervention from other short- and long-term variations in the data.¹⁶ (See Technical Appendix at page 9 for more details on methodology and results.) After controlling for underlying trends, the models assessed the

Figure 4

Monthly apprehensions for all sectors since 1992

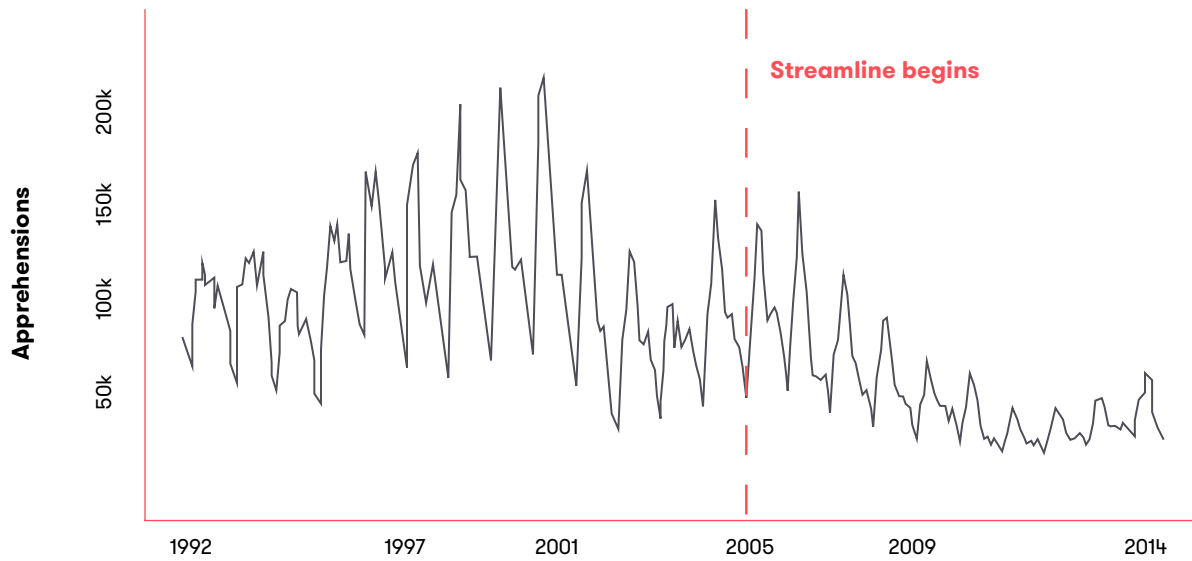
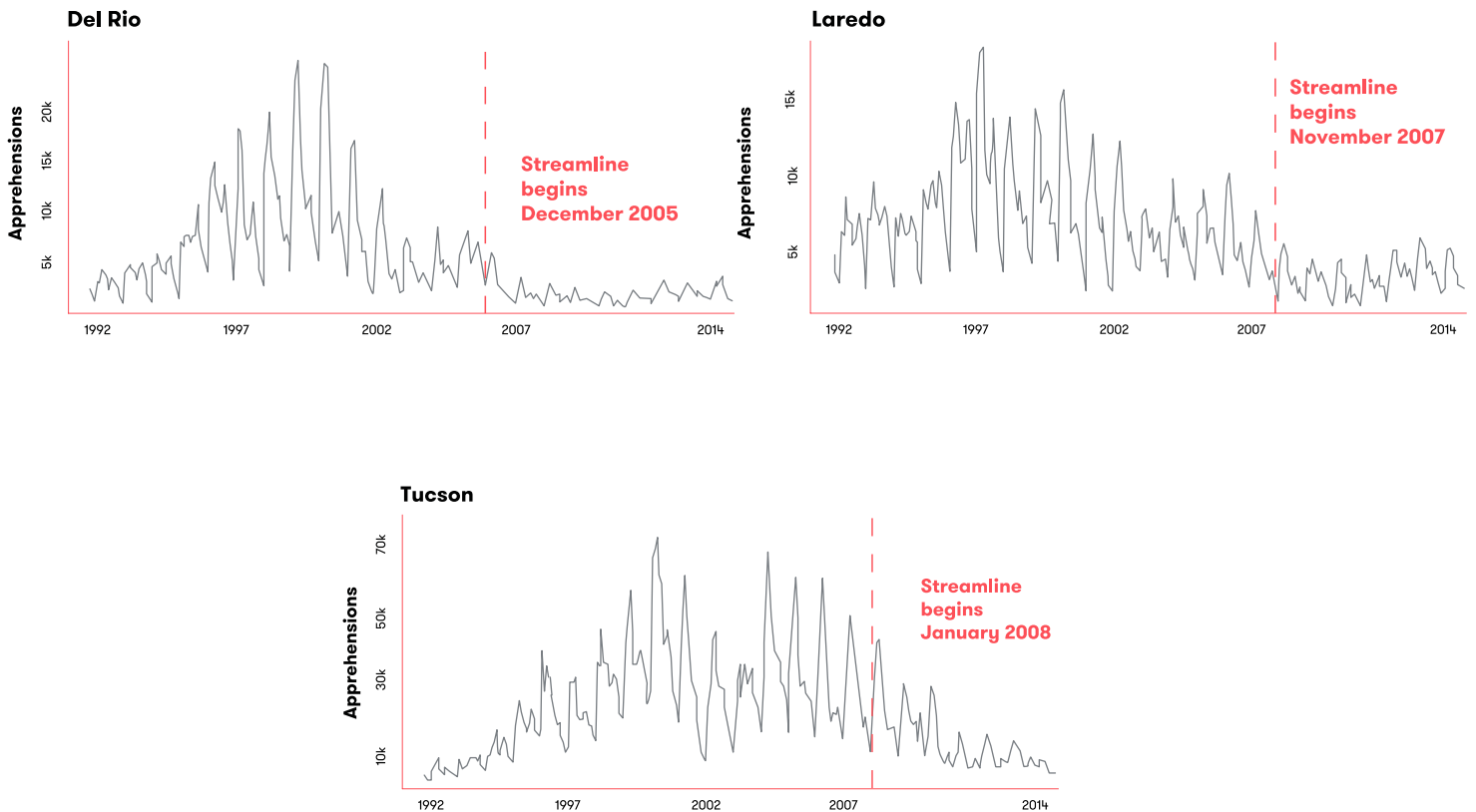


Figure 5

Monthly apprehensions since 1992, by sector



impact of Operation Streamline by determining whether the levels of apprehensions were significantly different before and after the date on which Operation Streamline was implemented in each sector. The analyses found no evidence of a deterrent effect in any sector.

The statistical analyses indicate that the change in apprehension numbers seen after Operation Streamline was implemented was the result of a longer term downward trend in immigration and short-term volatility, rather than a deterrent effect of Operation Streamline. This can be seen in graphs of monthly-level apprehensions. (See Figures 4 and 5, at page 5.)

These short- and long-term trends were most likely caused by underlying push and pull factors.¹⁷ While it is unclear which factors specifically explain the changes in levels of apprehensions, what is clear is that there is no statistical evidence of a deterrent effect for Operation Streamline. As measured by apprehensions, the criminal

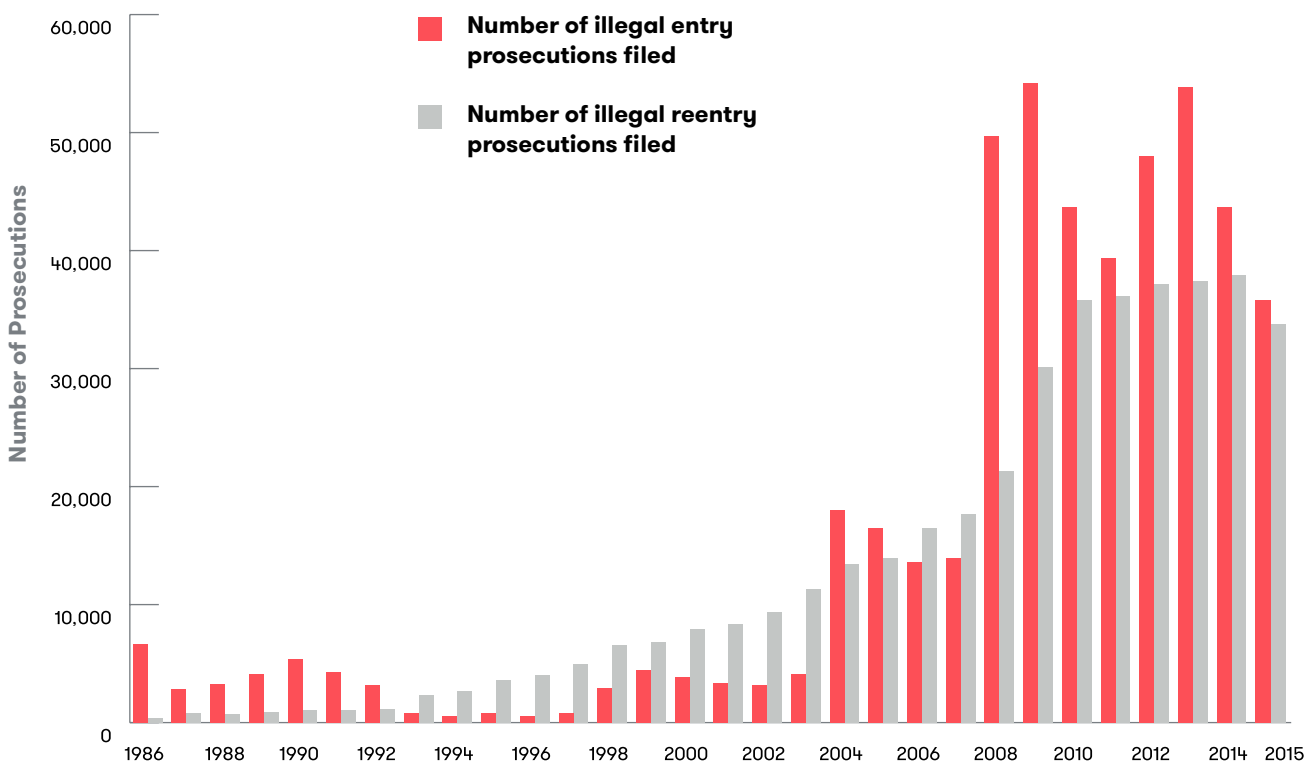
prosecution of immigrants under Operation Streamline was not an effective means of deterring unauthorized immigration.

The costs and effects of Operation Streamline

Despite the lack of any demonstrable effect on the number of people attempting to cross the border without authorization, Operation Streamline had massive effects on immigrants and the federal judicial system. Federal judges along the Southwest border saw their courts clogged with thousands of Streamline cases, and often conducted hearings with dozens of Streamline defendants at a time, raising serious due process concerns.¹⁸ Federal prosecutors were forced to devote time and resources to Operation Streamline prosecutions instead of focusing on more complex or serious

Figure 6

Illegal entry (8 USC §1325) and reentry (8 USC §1326) prosecutions filed by fiscal year



Source: Judith A. Greene, Bethany Carson, Andrea Black, *Indefensible: A decade of mass incarceration of migrants prosecuted for crossing the border* (Charlotte, NC: Grassroots Leadership, 2016), at 17-18.

cases, while public defenders representing Streamline defendants often had only a few minutes to spend with their clients.¹⁹ Those being prosecuted were rushed through a process in which they had little opportunity to defend themselves, and nearly all of them were then jailed and deported. Researchers and advocates have observed that by criminalizing and incarcerating immigrants as a group, immigration enforcement activities like Operation Streamline harm the emotional well-being of children, decrease the ability of adults to provide for them, and separate families from each other at significant economic and social cost.²⁰

The federal court system

As Operation Streamline spread along the border, the volume of federal prosecutions for unauthorized entry and reentry increased dramatically. As seen in Figure 6, the number of prosecutions filed for “illegal entry” and “illegal reentry” rose sharply around the end of 2008, after Operation Streamline had been widely implemented.

As the number of immigration prosecutions grew, they comprised an increasing share of all cases in federal courts, reaching a high in 2013 of 47 percent of all federal cases completed.²¹

The federal court system as a whole saw a 159 percent increase in total immigration cases between 2005—the first year of Operation Streamline—and 2013.²² Federal courts in districts along the Southwest border experienced the brunt of this growth: according to the DHS Office of Inspector General, the five federal district courts located along the Southwest border comprise 5 percent of all federal judicial districts, yet process nearly three-quarters of all federal criminal immigration cases.²³

The high volume of Operation Streamline prosecutions in Southwest border courts may have also had the effect of deprioritizing other criminal prosecutions, including serious or violent felonies.²⁴ Some federal judges and prosecutors expressed concern that Operation Streamline diverted law enforcement and judicial attention away from the activities of violent organized gangs or drug cartels and toward the apprehension of low-level offenders—people whose only crime was crossing the border without authorization.²⁵

The U.S. Marshals Service, which was responsible for detaining Streamline defendants while they were processed through the criminal court system, also felt an increased strain on its resources. An internal Marshals Service report claimed

that the agency was “being forced to balance the apprehension of child predators and sex offenders against the judicial security requirements” of handling immigration detainees.²⁶

Due process

Unlike immigrants in civil removal proceedings, defendants facing criminal prosecution, including those prosecuted under Operation Streamline, are guaranteed the right to government-funded counsel under the Sixth Amendment. The way in which Streamline was implemented, however, severely limited the benefits of receiving counsel. Defendants charged under Streamline, the vast majority of whom could not afford private attorneys, were typically represented by federal public defenders.²⁷ Though highly-skilled, public defenders handling Streamline dockets were forced to work under significant time pressures in order to meet with defendants prior to their initial appearances in court, in which nearly all Streamline defendants entered pleas and were sentenced.²⁸ In particularly busy courts, a single attorney might meet with up to 80 Streamline clients per day for only a few minutes each.²⁹ These limitations placed significant constraints on the ability of attorneys to effectively represent their clients. In the year-long period ending September 30, 2016, for example, 16,577 defendants in federal district court were charged with unauthorized reentry; 98 percent were convicted upon entering a guilty plea.³⁰

Due process rights faced further challenges in the courtroom, where hearings were often held for dozens of defendants simultaneously. In the Tucson sector, which has historically been among the busiest Border Patrol sectors as measured by apprehensions, the federal court saw up to 70 Streamline prosecutions per day in 2010.³¹ Hearings were conducted in groups, with charging, pleading, and sentencing often happening in under a minute for each defendant.³² One magistrate judge in Tucson who presided over these mass hearings told the *New York Times* that his record for processing 70 immigrants appearing before him was 30 minutes.³³

Prosecuting the persecuted

Among the immigrants who enter or attempt to enter the United States are a large number of people seeking protection from persecution and violence.³⁴ While these asylum-seekers are supposed to have their claims heard in immigration court, it is likely that many people with legitimate claims to asylum were prosecuted and deported through Operation Streamline. According to the 1951 U.N.

Convention Relating to the Status of Refugees, asylum-seekers have a fundamental right to seek protection from persecution in their home countries when crossing an international border.³⁵ Border Patrol agents are required to advise apprehended immigrants on how to exercise their rights to help ensure that asylum-seekers are not returned to their home countries simply because they do not know how to seek asylum.³⁶ Immigrants who express a fear of persecution must be interviewed by an asylum officer to determine whether their fear is credible, making them eligible to apply for asylum in the United States.

Reviews of Border Patrol practices relating to screening for asylum-seekers indicate that this process was not uniformly followed throughout the duration of Operation Streamline.³⁷ A report by the DHS Office of Inspector General expressed concern about a lack of guidance for Border Patrol officers and concluded that “Border Patrol agents sometimes use Streamline to refer aliens expressing fear of persecution to DOJ for prosecution.”³⁸ Despite the clear requirement under international and U.S. law to allow immigrants who fear persecution to seek protection, in 2016 Border Patrol officials told the U.S. Commission on International Religious Freedom that they would continue prosecuting immigrants who have expressed a credible fear of persecution.³⁹

Increased unauthorized migration

Researchers have suggested that initiatives like Operation Streamline may in fact increase the number of people who try to reenter the country without authorization, and lengthen the stays of those who cross the border without being apprehended. The Migrant Border Crossing Study (MBCS), a random sample survey of 1,100 recently deported migrants in six cities in Mexico from 2009 to 2012, examined migrants’ experiences with immigration enforcement and its effects on family ties. The study found that the Consequence Delivery System, of which Operation Streamline was a major component, did not deter migrants from reentering the country without authorization; rather, almost the opposite had happened, as unauthorized immigrants already in the United States were deterred from leaving the country due to the difficulty of traveling back

and forth across the border and the strength of their familial and social ties in the United States.⁴⁰ For those who had been deported, these strong ties in turn contributed to “a greater resolve to return post-deportation,” and decreased the probability of a migrant’s returning to Mexico once in the United States.⁴¹ More than half (55 percent) of the deportees interviewed for the study planned to return to the United States in the near future despite the likelihood of arrest, incarceration, and deportation.⁴²

Conclusion

In the wake of the September 11 attacks, the U.S. government dramatically increased security measures at domestic airports. As more measures were added over time, security analysts noted that while these measures might make flyers feel safer, they did little or nothing to actually improve security. In effect, they were “security theater”—measures that provided the illusion of security while doing nothing to actually increase or ensure security.⁴³

Similarly, Operation Streamline’s lack of any demonstrable deterrent effect arguably makes it “deterrence theater.” The mass criminal prosecution and incarceration of immigrants provides the illusion of reducing unauthorized immigration, but statistical analysis provides no evidence of any deterrent effect.

With its new “zero-tolerance” policy, the government seems to be doubling down on the criminal prosecution strategy first tried during Operation Streamline, while adding harsh new consequences—most notably, the forced separation of immigrant children from their parents—all with the goal of deterring other immigrants from making the same journey.⁴⁴ The negative consequences of this policy may well end up being even greater than those of Operation Streamline, but this analysis strongly suggests that it will fail in its stated goal of deterring future immigration, at tremendous cost to immigrants, the court system, and due process.

Technical Appendix

To examine Operation Streamline’s impact on immigration apprehensions, the researchers collected data on all apprehensions reported by Customs and Border Protection from FY1992 to FY2014.⁴⁵ The data included counts of the number of apprehensions occurring each month starting October 1, 1991, and ending September 30, 2014. This resulted in 276 months of data for analysis. Given that Operation Streamline was not implemented in all Border Patrol sectors along the Southwest border, and that implementation dates varied between sectors, independent analyses were conducted for each sector. This resulted in six different series to be analyzed, one for each of the sectors that implemented Operation Streamline (Rio Grande Valley, Laredo, Del Rio, El Paso, Tucson, and Yuma).

To quantitatively assess the deterrent effect of Operation Streamline in each sector, the researchers used an Autoregressive, Integrated, Moving Average (ARIMA) interrupted time series analysis. ARIMA interrupted time series analysis is the primary technique for evaluating quasi-experimental time series data.⁴⁶ It is particularly useful when factors that affect an outcome are unmeasurable, making it uniquely suited to examining the impact of a policy change (like Operation Streamline) on an outcome (like apprehensions) over time.⁴⁷

ARIMA interrupted time series analysis isolates temporal processes such as long-term trends, short-term drift, and short-term volatility, and removes the effect of these temporal processes from a series prior to assessing the impact of an intervention. An ARIMA model converts time series data into two components: a “noise” component, including the systematic variations associated with unmeasured causal factors; and a “signal” component, which reflects changes in the series not due to systematic variation.⁴⁸ After removing noise, the signal component can be assessed to determine whether an

outcome significantly changes after an intervention is applied. If a significant change is noted in the signal series, then the intervention can be concluded to have affected the outcome.⁴⁹

In the context of Operation Streamline, the researchers first removed changes in apprehensions resulting from any unmeasured factors that may have impacted apprehension rates (noise) for each jurisdiction. After specifying an ARIMA model, the suitability for testing the intervention was assessed using the Ljung-Box Q-statistic.⁵⁰ A model is suitable for testing the intervention if the Q-statistic is not significant ($p > .05$). The model specifications and Q-statistics for each jurisdiction are presented in Table 1, below.

Table 1

Model specification and white noise test

Sector	Specification	Q-statistic	p-value
RGV*	(1,0,0)(1,0,0) ₁₂	54.66	0.061
Laredo	(3,1,0)(1,0,1) ₁₂	39.94	0.473
Del Rio*	(0,1,1)(1,0,0) ₁₂	53.58	0.074
El Paso	(1,0,0)(1,0,0) ₁₂	44.41	0.291
Tucson	(1,0,0)(1,1,0) ₁₂	45.76	0.245
Yuma*	(1,0,0)(1,0,0) ₁₂	55.54	0.052

* Natural log transformation

The analysis then compared changes in the remaining number of apprehensions (signal) to determine whether the number of apprehensions after Operation Streamline (the intervention) was implemented significantly differed from the number before implementation. An intervention has an effect on the outcome if a statistically significant difference is seen ($p \leq .05$). The tests for each series are presented in Table 2, at page 10.

Table 2

Interrupted time series analysis for Operation Streamline by sector

Sector	Coefficient	Z-statistic	p-value
RGV*	0.034	0.28	0.782
Laredo	-696	-0.02	0.854
Del Rio*	-0.154	-1.30	0.193
El Paso	-1908	-0.63	0.528
Tucson	203	0.02	0.982
Yuma*	-0.282	-0.82	0.411

* Natural log transformation

No statistically significant coefficients were found for any of the series. The lack of a statistically significant effect for any of the series suggests that the variation seen in the various CBP sectors results primarily from long-term trends and short-term fluctuations rather than from a specific intervention.⁵¹ Therefore, it can be concluded that the implementation of Operation Streamline did not have a statistically significant effect on the number of apprehensions in any of the CBP jurisdictions.

Endnotes

- 1 Memorandum from U.S. Attorney General Jeff Sessions to Federal Prosecutors Along the Southwest Border, "Zero-Tolerance for Offenses under 8 U.S.C. §1325(a)" (Washington, DC: Office of the Attorney General, April 6, 2018), <https://perma.cc/P7XN-V27G>.
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- 3 Nick Miroff, "Trump's 'Zero Tolerance' at the Border Is Causing Child Shelters to Fill Up Fast," *Washington Post*, May 30, 2018, <https://wapo.st/2sHIE0t>.
- 4 U.S. Department of Homeland Security (DHS), *Congressional Budget Justification, FY 2011* (Washington, DC: DHS, 2011), S&E-66, <https://perma.cc/2SNA-N6ZF>.
- 5 Joanna Lydgate, "Assembly-Line Justice: A Review of Operation Streamline," *California Law Review* 98, no. 2 (2010), 483-84.
- 6 Ibid. at 484.
- 7 Even under Operation Streamline, Customs and Border Protection (CBP) exercised discretion not to refer for prosecution juveniles, parents traveling with minor children, certain persons with health conditions, and others who require prompt return to their country of origin for humanitarian reasons. Lydgate, "Assembly-Line Justice" (2010), at 484.
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- 13 Richard McCleary, David McDowall, and Bradley Bartos, *Design and Analysis of Time Series Experiments* (New York: Oxford University Press, 2017).

- 14 Clive Granger and Paul Newbold, "Spurious Regressions in Econometrics," *Journal of Econometrics* 2 (1974), 111-20.
- 15 The correlation between apprehensions for undocumented entry and the actual flow of undocumented entry has been shown to be very high ($r = 0.90$) indicating that apprehensions are highly reliable as measures of total unauthorized entry. Thomas Espenshade, "Using INS Border Apprehension Data to Measure the Flow of Undocumented Migrants Crossing the U.S.-Mexico Frontier," *International Migration Review* 29, no. 2 (1995), 545-65. See also Douglas Massey and Audrey Singer, "New Estimates of Undocumented Mexican Migration and the Probability of Apprehension," *Demography* 32, no. 2 (1995), 203-13.
- 16 David McDowall, Richard McCleary, Errol Meidinger, and Richard A. Hay, *Interrupted Time Series Analysis* (Thousand Oaks, CA: SAGE Publications, 1980). For a detailed explanation of the analyses, see the Technical Appendix.
- 17 See Douglas Massey, Joaquin Arango, Graeme Hugo, et al., "Theories of International Migration: A Review and Appraisal," *Population and Development Review* 19, no. 3 (1993), 431-66.
- 18 Lydgate, "Assembly-Line Justice" (2010), at 530-33.
- 19 Ibid. at 519-522 & 533-535. Also see Bryan Schatz, "A Day in the 'Assembly-Line' Court that Prosecutes 70 Border Crossers in 2 Hours," *Mother Jones*, July 21, 2017, <https://perma.cc/3ML8-SLJ3>.
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- 23 Ibid.
- 24 Lydgate, "Assembly-Line Justice" (2010), at 519-22.
- 25 Solomon Moore, "Push on Immigration Crimes Is Said to Shift Focus," *New York Times*, January 12, 2009, <https://nyti.ms/2Jv0ZXC>.
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- 27 Lydgate, "Assembly-Line Justice" (2010), at 484.
- 28 Ibid.
- 29 Ibid. at 504-08.
- 30 Administrative Office of the U.S. Courts, "Table D-4: US District Courts-Criminal Defendants Disposed of, by Type and Disposition of Offense, During the 12-Month Period Ending September 30, 2016," <https://perma.cc/3DRL-6R4C>. Defendants who have previously entered without authorization or have been removed are often charged with both felony unauthorized reentry and misdemeanor unauthorized entry, and plead guilty to the misdemeanor to avoid the felony charge. Lydgate, "Assembly-Line Justice" (2010), at 511.
- 31 Lydgate, "Assembly-Line Justice" (2010), at 500.
- 32 Fernanda Santos, "Detainees Sentenced in Seconds in 'Streamline' Justice on Border," *New York Times*, February 11, 2014.
- 33 Ibid.
- 34 While the exact number of asylum-seekers entering the country is difficult to determine, DHS reports that nearly 20,000 people were granted asylum in 2016. DHS, "Individuals Granted Asylum Affirmatively Or Defensively: Fiscal Years 1990 To 2016," <https://perma.cc/8ME4-H6FM>.
- 35 U.N. General Assembly, *Convention Relating to the Status of Refugees*, July 28, 1951, United Nations Treaty Series vol. 189, at 137. In the treaty, state parties committed themselves not to return an individual who reasonably fears serious harm in their state of nationality or residence via the *non-refoulement* obligation set out in Article 33.
- 36 U.S. Commission on International Religions Freedom (USCIRF), *Barriers to Protection* (Washington, DC: USCIRF, 2016), 18, <https://perma.cc/572E-PSTX>. Border Patrol officers must take a sworn statement on Form I-867, which includes a script that officers are required to read advising immigrants of their right to seek asylum.
- 37 Ibid. at 20.
- 38 DHS, *Streamline* (2015), at 16. OIG observed Streamline referrals of immigrants who expressed fear of return in two of four Border Patrol sectors visited.
- 39 USCIRF, *Barriers* (2016), at 56 ("if we were to forgo prosecuting those who claim credible fear, that would spread like wildfire").
- 40 Jeremy Slack, Daniel E. Martínez, Scott Whiteford, and Emily Peiffer, "In Harm's Way: Family Separation, Immigration Enforcement Programs and Security on the US-Mexico Border," *Journal on Migration and Human Security* 3, no. 2 (2015), 109-28. After 2011, Operation Streamline was part of Border Patrol's "Consequence Delivery System," an effort to impose consequences on immigrants entering the country without authorization in order to "break the smuggling cycle and end the subject's desire to attempt further illegal entry." U.S. Customs and Border Protection (CBP), *2012-2016 Border Patrol Strategic Plan*, (Washington, DC: CBP, 2012), 17, <https://perma.cc/62MK-89AZ>.

- 41 Slack, “In Harm’s Way” (2015), at 110. See also Sherrie Kossoudji, “Playing Cat and Mouse at the U.S.-Mexican Border,” *Demography* 29, no. 2 (1992), 159-80.
- 42 Slack, “In Harm’s Way” (2015), at 114.
- 43 Bruce Schneier, “Is Aviation Security Mostly for Show?” CNN, December 29, 2009, <https://perma.cc/P8RP-P8AH>; Eric Levenson, “The TSA Is in the Business of ‘Security Theater,’ Not Security,” *Atlantic*, January 31, 2014, <https://perma.cc/MPE5-ZK3J>; and Kevin D. Williamson, “The TSA’s 95 Percent Failure Rate: Security Theater as Farce,” *National Review*, June 3, 2015, <https://perma.cc/6CK8-RZH7>.
- 44 Miroff, “‘Zero Tolerance’ at the Border” (2018).
- 45 CBP publish yearly apprehension numbers through their website <https://perma.cc/4MR5-HJ58>. The analysis reported here required a monthly disaggregation of these counts. Researchers obtained this data through a Freedom of Information Act request to CBP.
- 46 Donald Campbell and Julian Stanley, *Experimental and Quasi-Experimental Designs for Research* (Boston, MA: Houghton Mifflin, 1963); Thomas Cook and William Shadish, “Social Experiments: Some Developments over the Past Fifteen Years,” *Annual Review of Sociology* 45 (1994), 545-80; and H. Laurence Ross and Richard McCleary, “Methods for Studying the Impact of Drunk Driving Laws,” *Accident Analysis & Prevention* 15, no. 6 (1983), 415-28.
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