



THE CHIEF JUSTICE EARL WARREN INSTITUTE  
ON RACE, ETHNICITY & DIVERSITY

UNIVERSITY OF CALIFORNIA, BERKELEY LAW SCHOOL

## AN ALTERNATIVE TO OPERATION STREAMLINE: BORDER ENFORCEMENT IN THE SOUTHERN DISTRICT OF CALIFORNIA

by Joanna Lydgate

This snapshot examines the Southern District of California, which is the only southwest border district that has chosen not to implement Operation Streamline. Instead, the U.S. Attorney's Office (USAO) for the Southern District of California has developed a targeted approach to border enforcement, which serves as an effective alternative to Operation Streamline and a potential model for other districts.

Operation Streamline requires the federal criminal prosecution and imprisonment of migrants who cross the U.S.-Mexico border unlawfully. Before Operation Streamline began in 2005, the Department of Homeland Security (DHS) channeled most first-time border crossers through the civil immigration system for detention and removal, or voluntarily returned them across the border. U.S. attorneys usually saved criminal prosecution for border crossers who were major recidivists, who had prior criminal records, or who were caught with drugs or weapons.

Operation Streamline has caused skyrocketing petty immigration caseloads in many federal district courts along the southwest border. In a January 2010 report, *Assembly-Line Justice*,<sup>1</sup> the Warren Institute concluded that the program's en masse hearings violate the U.S. Constitution. The Warren Institute also found that Operation Streamline appears to be channeling law enforcement resources away from prosecuting more serious crimes, a dynamic that is particularly troubling in light of the recent rise in drug-cartel violence along the border.<sup>2</sup>

The Southern District of California includes the San Diego and El Centro Border Patrol sectors, as well as ten miles of the Yuma sector. Except in that small stretch of the Yuma sector (where apprehended migrants are channeled to Yuma, Arizona for mandatory prosecution), the USAO has retained full discretion to choose which unlawful border crossers to prosecute throughout the district.<sup>3</sup>

The USAO has decided to target the border crossers it believes are most likely to cause violence in U.S. cities. Under a plan that began in 2007, U.S. attorneys focus on prosecuting those border crossers who have been previously removed and who have substantial criminal records. That includes individuals who have committed aggravated felonies, who have histories of numerous lesser crimes, or who have engaged in multiple illegal reentries after full exposure to civil immigration proceedings.<sup>4</sup> The USAO charges these individuals with felony illegal reentry under 8 U.S.C. § 1326.<sup>5</sup> However, the USAO generally does not prosecute first-time border crossers; those migrants are usually channeled through the civil immigration system for detention and removal.<sup>6</sup>

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1. CHIEF JUSTICE EARL WARREN INSTITUTE ON RACE, ETHNICITY AND DIVERSITY, *ASSEMBLY-LINE JUSTICE* (2010), available at [http://www.law.berkeley.edu/files/Operation\\_Streamline\\_Policy\\_Brief.pdf](http://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf).

2. See, e.g., Randal C. Archibold, *Mexican Drug Cartel Violence Spills Over*, *Alarming U.S.*, N.Y. Times, Mar. 22, 2009, at A1.

3. Telephone Interview with Karen Hewitt, U.S. Attorney, S. Dist. of Cal. (Feb. 12, 2010) [hereinafter Hewitt Interview].

4. Telephone Interview with Karen Hewitt, U.S. Attorney, S. Dist. of Cal. (Feb. 16, 2010).

5. Hewitt Interview, *supra* note 3. Prosecutions under 8 U.S.C. § 1326 have increased by more than 165 percent in the Southern District of California since 2007. There were 745 prosecutions filed under § 1326 in the district in 2007 and 1,978 in 2009. Data obtained from the Transactional Records Access Clearinghouse Federal Criminal Enforcement database, using the "TRAC Express" search tool, searching by district, lead charge, and prosecutions filed (results on file with author).

6. Hewitt Interview, *supra* note 3.

This approach ensures that U.S. attorneys have the time and resources to prosecute other crimes along the border, and it has led to some impressive results. The Southern District of California ranks first nationwide in per capita prosecutions of alien smuggling under 8 U.S.C. § 1324 and importing controlled substances under 21 U.S.C. § 952.<sup>7</sup> The district's prosecution plan is also, U.S. Attorney Karen Hewitt believes, "consistent with what the public [in the Southern District of California] would like to see."<sup>8</sup>

Furthermore, the fact that border apprehensions declined by 25 percent in the Southern District of California from 2008 to 2009<sup>9</sup> indicates that declining apprehensions in other border

sectors—which Operation Streamline's supporters are quick to point out—are likely not a result of Operation Streamline.<sup>10</sup>

The Southern District of California demonstrates why the Obama administration should eliminate Operation Streamline and restore U.S. attorneys' discretion to choose which border crossers to prosecute. Such a tailored approach to border enforcement improves border security without overburdening our federal courts or violating the U.S. Constitution.

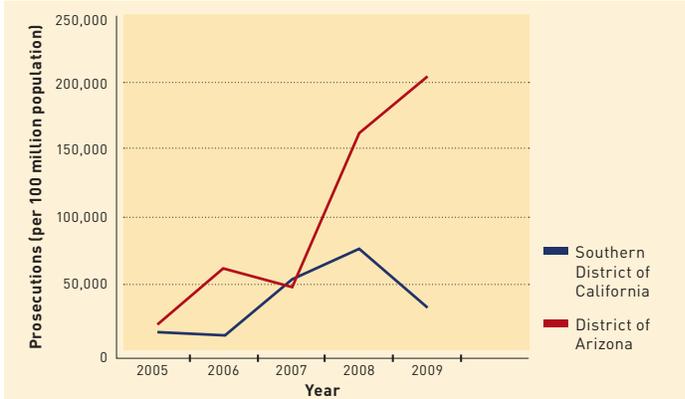
## COMPARING THE SOUTHERN DISTRICT OF CALIFORNIA WITH AN OPERATION STREAMLINE JURISDICTION<sup>11</sup>

Of the four southwest border districts that have implemented Operation Streamline, the District of Arizona is the nearest geographically to the Southern District of California and has the most similar rate of annual apprehensions.<sup>12</sup> It thus serves as an effective comparison.

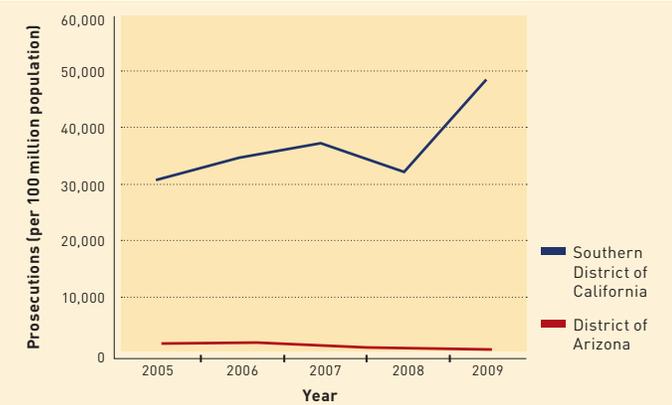
Operation Streamline is currently in effect in Yuma, Arizona and Tucson, Arizona. The program has caused prosecutions for illegal entry under 8 U.S.C. § 1325 to skyrocket in the District of Arizona. As those prosecutions have increased, prosecutions for importing controlled substances and for alien smuggling have declined.

The Southern District of California, by comparison, has chosen to focus its resources mainly on prosecuting border crossers with prior criminal records. The Southern District of California's prosecutions for misdemeanor illegal entry under 8 U.S.C. § 1325 are therefore much lower than Arizona's. The district ranks first nationwide in per capita prosecutions of alien smuggling under 8 U.S.C. § 1324 and importing controlled substances under 21 U.S.C. § 952.

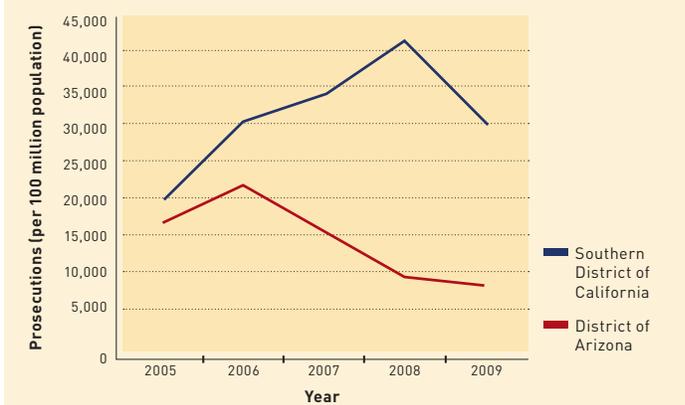
**FIGURE 1 | Per Capita Prosecutions for Illegal Entry (under 8 U.S.C. § 1325)**



**FIGURE 2 | Per Capita Prosecutions for Importing Controlled Substances (under 21 U.S.C. § 952)**



**FIGURE 3 | Per Capita Prosecutions for Alien Smuggling (under 8 U.S.C. § 1324)**



7. Data obtained from the Transactional Records Access Clearinghouse Federal Criminal Enforcement database, using the "TRAC Express" search tool, searching by lead charges 8 U.S.C. §§ 1324 and 952 nationwide for the time period 2002 to 2009, ranked by prosecutions per capita (results on file with author).

8. Hewitt Interview, *supra* note 3.

9. Throughout the district (in El Centro and San Diego), apprehensions went from 203,354 in 2008 to about 152,221 in 2009. Apprehensions declined in El Centro from 40,962 in 2008 to approximately 33,500 in 2009. KRISTEN McCABE & JEANNE BATALOVA, MIGRATION POLICY INSTITUTE, IMMIGRATION ENFORCEMENT IN THE UNITED STATES (Nov. 2009), available at <http://www.migrationinformation.org/USfocus/display.cfm?id=750>; Telephone Interview, U.S. Border Patrol, Office of Pub. Affairs, El Centro, Cal. (Feb. 12, 2010) (notes on file with author). Apprehensions declined in San Diego from 162,392 in 2008 to 118,721 in 2009.

McCABE & BATALOVA; Telephone Interview, U.S. Border Patrol, Office of Pub. Affairs, San Diego, Cal. (Feb. 12, 2010) (notes on file with author).

10. Though apprehensions did not decline in San Diego between 2007 and 2008—the first year this prosecution plan was in place—they did decline in El Centro. McCABE & BATALOVA, *supra* note 9.

11. All data obtained from the Transactional Records Access Clearinghouse Federal Criminal Enforcement database, using the "TRAC Express" search tool, searching by district, lead charge, and prosecutions filed per capita (results on file with author).

12. In 2008, the Border Patrol made 326,072 apprehensions in the District of Arizona and 203,354 apprehensions in the Southern District of California. U.S. Dep't of Homeland Sec., 2008 Yearbook of Immigration Statistics, Enforcement Data Tables tbl.35, available at <http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/table35.xls>.