



AILA's Take on Operation Streamline

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For years, Operation Streamline (Streamline), a federal program that fasttracks federal criminal prosecutions for immigration status offenses, has drawn criticism for engaging in speedy mass prosecutions that deprive individuals of due process. Under the principle of prosecutorial discretion, Streamline improperly shifts law enforcement resources to focus on people who have committed immigration status offenses and pose no threat to public safety. Despite these concerns, Streamline has expanded exponentially in recent years with little oversight or accountability. New findings published in May 2015 by the Inspector General (OIG) for the Department of Homeland Security (DHS) conclude that Streamline may not be an effective enforcement tool despite the enormous law enforcement resources dedicated to the program. The OIG also found that Customs and Border Protection (CBP) uses Streamline to refer people, who are known to have a fear of persecution and are seeking asylum, to the Department of Justice (DOJ) for illegal entry and reentry prosecution—a practice that is in gross violation of asylum law.

With these new findings, DHS and DOJ should halt the use of Streamline. The severe due process violations, in and of themselves, are sufficient proof that Streamline is fundamentally flawed. But the OIG's new report reveals that Streamline is denying protection to asylum seekers and may not even be an effective deterrence for illegal immigration. As a matter of prosecutorial discretion, federal prosecutors and federal judges should not be allocating their enforcement resources to pursue immigration status violations at the expense of far more serious and dangerous crimes such as those involving narcotics smuggling, firearms, and violence.

About Operation Streamline

Introduced in 2005 in several southwest border sectors, Streamline was intended to deter illegal immigration by heightening the penalties (criminal prosecution) imposed on recent border crossers. Since then the program has increased dramatically. The number of reentry convictions grew from 690 in 1992 to 19,463 in 2012, according to Pew Research Center—a 28-fold increase over two decades. By 2012, prosecutions for immigration crimes had grown so much as to constitute 30 percent of all federal criminal prosecutions nationwide. As a result, in 2012, these prosecutions for immigration status offenses far exceeded federal conviction numbers for firearms (10 percent of all federal prosecutions) and white collar crimes (15 percent), and rival drug convictions (33 percent).

Operation Streamline severely restricts due process

Individuals processed through Streamline appear before a federal magistrate in mass hearings that may have 40 or up to 80 people appearing and entering pleadings at the same time. Nearly all who are charged in such proceedings are unable to consult with their legal counsel within the rapid timeframe and many plead guilty without understanding the consequences. Judges render decisions in a matter of seconds or minutes.

Operation Streamline may not be an effective deterrent for illegal border crossing

The 2015 OIG report concluded that it is unclear if Streamline discourages people from crossing the border illegally. Border Patrol (BP) has not been tracking and appropriately measuring whether an individual who is prosecuted and removed in past years reenters the country and is re-apprehended in the future. BP tracks data so poorly that it cannot measure this essential performance metric.

The costs of Operation Streamline are unknown and Border Patrol does not track or estimate costs.

The OIG report found that BP does not evaluate Streamline costs, and even after seven years of operation still does not provide an aggregate budget for the program despite its massive growth. As a result BP cannot evaluate whether Streamline is cost-effective or a wise use of the federal law enforcement resources it requires, which include federal prison and detention costs, prosecutor and judge time, not to mention BP expenditures. While the total budget of Streamline is not known, the incarceration costs alone for those convicted for illegal entry and reentry prosecutions have been estimated at \$1 billion per year. In 2011, the prosecution costs for Streamline averaged well over \$20 million. BP's budget does not specify the amount of resources expended on Streamline, but after Streamline's inception in 2005, BP's budget more than doubled to over \$3.6 billion in 2013.

The Government is prosecuting known asylum seekers in violation of asylum law

Of grave concern is the OIG's conclusion that BP is referring people that it knows have expressed fear of persecution for Streamline prosecution. These prosecutions are happening before the asylum seeker is able to complete, or in many cases even begin, the process of applying for asylum. It is well-known that those who flee life-threatening persecution often cannot obtain passports, visas or entry documents, and may not be able to enter a safe-haven country legally. As a result, asylum law shields asylum seekers from punishment (including prosecution) for unauthorized entry. The 1951 Refugee Convention states: "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened ..."

CBP asserts that it can prosecute an asylum seeker for the immigration status violation, while that person seeks asylum, and reported to the OIG that: "Neither process affects the outcome of the other." Apprehension, detention, and the threat of criminal prosecution are highly likely to intimidate and discourage bona fide asylum seekers from going through the process of seeking asylum. CBP cannot meaningfully safeguard asylum access for those fleeing persecution while prosecuting them for immigration status violations.

AILA recommends the following:

- DOJ and DHS should halt Operation Streamline.
- DHS should immediately stop referring asylum seekers to DOJ for prosecutions for immigration status violations consistent with principles of prosecutorial discretion, due process, and asylum law
- DHS should implement measures to ensure asylum seekers can meaningfully seek asylum upon apprehension by CBP.
- DOJ and DHS should conduct a thorough evaluation of the program, specifically its costs and actual rate of effectiveness on deterring people from crossing the border illegally
- For every immigration status case referred to DOJ for prosecution, DOJ should exercise prosecutorial discretion and consider the equities.
- Upon conclusion of Streamline's evaluation DOJ and DHS should publish its findings.

