

A M E N D E D
Written Statement of

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Before the

**United States House of Representatives
Subcommittee of Commercial and Administrative Law**

**Oversight Hearing on
the “Executive Office for United States Attorneys”**

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Chairman Sánchez, Ranking Member Cannon, and Distinguished Members of the Subcommittee:

INTRODUCTION

Imagine a federal courtroom, rather large, several rows of pews. Two counsel tables, several chairs at each. A jury box which holds 16. Smaller tables throughout the well of the courtroom, a chair on each side. In the mornings, 5 days a week, working in 2 shifts each morning, 70 men and women dressed in dirty street clothes, most with brown skin reddened by the hours or days spent in the Arizona desert before arrest the previous day. They meet with one of the 10 to 16 lawyers present each day, 15 minutes to a half-hour each. Plain-clothed U.S. Marshals position themselves among the many; two Customs and Border Protection (CBP) agents lean at opposite ends of the courtroom. There is the smell of many who have not bathed in a while.

In the afternoon, most will admit they are not United States citizens and plead guilty to entering the United States without being inspected at a port of entry.¹ Those with minimal or no record will be sentenced at that same hearing to time served; others with multiple immigration contacts, criminal arrests or convictions will receive from days up to 6 months imprisonment.

Those who have previously been formally deported, excluded, or removed from the United States will be charged with a "flip-flop": Count 1: Unlawful re-entry after deportation,² a felony punishable by up to 2 years to 20 years in prison, depending on criminal history; and Count 2: Illegal entry, the petty offense. Most will accept the standard plea offer: plead guilty to the lesser illegal entry with a stipulated sentence of 30 days to 6 months and the felony charge will be dismissed.

This is Operation Streamline in Tucson, Arizona. A criminal case with prison and deportation consequences is resolved in 2 days or less.

EVOLUTION OF OPERATION STREAMLINE

In December 2005, CBP started Operation Streamline in Del Rio, Texas (Western District of Texas) and in Yuma, Arizona, December 2006. Streamline started in Laredo,

¹ Illegal entry, 8 U.S.C. § 1325(a). It is a petty offense with a maximum possible penalty of up to 6 months imprisonment.

² 8 U.S.C. § 1326(a). This includes re-entries after exclusion or removal also. If the formal removal happened after a felony conviction, the maximum possible penalty is 10 years in prison. If after an aggravated felony conviction defined under 8 U.S.C. § 1101(a)(43), up to 20 years in prison.

Texas (Southern District of Texas), November 1, 2007.³

Del Rio, Texas

In Del Rio, the Federal Public Defender (FPD) initially asked the court to limit FPD Operation Streamline appointments to 20 per day due to staffing and caseload concerns. The court ended up using only Criminal Justice Act (CJA) lawyers⁴ to represent all 80 or more Streamline cases each day. To attract CJA lawyer participation, the court offered to pay these lawyers "\$50 a head."⁵ While at first, several lawyers were appointed each day, the lawyers suggested one or 2 lawyers a day could handle the 80 plus defendants. This attracted CJA lawyer participation from lawyers in San Antonio who find it cost effective to drive the almost 6 hour round trip to earn \$2000 to \$4000 a day.

Last year, the FPD was convinced to send Assistant FPDs every Monday to Del Rio Streamline Court after the court denied motions to continue hearings and trials, finding the FPD must have plenty of time to be ready for court since they did not have Streamline cases.

In Del Rio, lawyers have the one day between the defendant's initial appearance and their next court date - a status hearing, which is usually a change of plea and sentencing - to interview clients. (Case lists are delivered to the FPD on Thursdays.) To interview the few dozen to over 100 daily Streamline defendants at the jail (the average is 50-60), lawyers have to give the jail notice of the attorney's visits in advance. The FPD tries to avoid visiting clients on the weekends so they do not interfere with any family visitations the clients will have.

Yuma, Arizona

The FPD in Arizona opened its Yuma office with 2 lawyers the month before Streamline began there in December 2006. There were and are only 5 CJA lawyers there and they handle mostly conflict appointments. Streamline defendants number 30 to 50 a day in Yuma. In the past 2½ years, our Yuma office has grown to 5 lawyers and we hope to

³ Appendix 1 compares Streamline in each court is occurs.

⁴ 18 U.S.C. § 3006A allows for private lawyers approved by the court to take federal court-appointed cases.

⁵ At the time Streamline began in Del Rio, Congress had approved CJA payments of \$94 per hour. We do not know by what authority the Del Rio court was able to pay "\$50 a head," an obscene way to characterize representation of these poor defendants. The CJA rate is now \$100 per hour.

hire up to 2 more before the end of the year. This is a challenge because we require all Yuma employees to be Spanish speakers. Two to three Assistant FPDs handle Streamline each day, interviewing clients in the morning, with court in the afternoon.

Laredo, Texas

Streamline started last November 2007 in Laredo, Texas. Only the FPD handles Streamline cases. Two Assistant FPDs and an Office Investigator arrive at the courthouse between 6:30 a.m. and 8:00 a.m., depending on how many defendants are expected. The three then interview all the defendants (some then only very briefly talk with a lawyer before deciding whether or not to plead guilty). Court starts at 9:00 or 10:00 a.m. and is done by noon or 1:00 p.m.

TO HAVE A KNOWING, INTELLIGENT AND VOLUNTARY PLEA

Rule 11 of the Federal Rules of Criminal Procedure requires a judge taking a guilty plea to make findings that the guilty plea is entered knowingly, voluntarily, and intelligently. To make these findings, the court:

1. Advises the defendant of his constitutional rights:
 - a. to be presumed innocent unless and until the Government proves him guilty beyond a reasonable doubt;
 - b. to a trial - if the offense is punishable by more than 6 months, that trial will be in front of a jury of 12 people from the community who will listen to the evidence and the law and decide if the Government has proven guilt beyond a reasonable doubt; if the punishment is 6 months or less, the trial is before the court;
 - c. to confront and cross-examine the witnesses against him;
 - d. to testify on his own behalf if he wishes; if he does not wish to testify, he does not have to testify and no one can assume he is guilty if he does not testify because he has the right to remain silent;
 - e. to subpoena witnesses to testify on his behalf; and
 - f. to be represented by a lawyer at his trial.
2. Finds out if the defendant understands these rights and wishes to give up his constitutional rights.
3. Reads the charge against the defendant, explaining each element of the offense.
4. Finds out if the defendant understands the possible punishment and other consequences if he pleads guilty and any other obligations he may have under a plea agreement (if there is one).
5. Asks the defendant to give a factual basis (to explain what he did) for his guilty plea.
6. Finds out if anyone has forced him or threatened him to induce him to plead guilty.

Knowing that the court will ask these questions should the defendant plead guilty, a defense lawyer must explain the constitutional rights to the Client, explain the charge, explain all possible punishments if there is a guilty verdict after trial or if Client pleads guilty. The lawyer then asks the Client about how he got arrested, what led to the arrest, what he did and what law enforcement did. Then the lawyer explores the Client's personal history: family, medical problems, mental health issues, work and schooling, criminal and immigration record.

In Streamline, this usually needs to be done in another language, most often in Spanish. And in the brief 3 to 30 minutes (depending on which court) Streamline gives the defense lawyer to meet and educate the Client and herself, the lawyer must decide whether the Client is competent, whether there is a defense of citizenship or duress, a lack of intent, a pretrial motion to suppress evidence or statements due to constitutional violations. The lawyer must learn personal information which might mitigate a sentence. The lawyer must consider not just the options in the criminal case, but also any immigration consequences or opportunities the Client may have, such as asylum. And without any time to do investigation or research, with usually one CBP *Report of Removable Alien* as disclosure, the lawyer must advise the Client whether to plead guilty or go to trial, when either decision could result in the Client spending up to 6 months in prison and likely giving up the chance ever to be in the United States legally.

OPERATION STREAMLINE - TUCSON VERSION

Until October 1, 2007, five to 50 people a day were charged with entry without inspection or the "flip-flop" re-entry/illegal entry. The people who were charged with entry without inspection were rarely first-timers. Some would have multiple voluntary returns; others would have a criminal arrest or conviction; first-timers were charged if a CBP agent had to run after them or if they were found within 100 yards of marijuana bundles. Our Office, the FPD, represented most of these defendants.

As the immigration arrests increased as more CBP were sent to the Arizona border, the number of Assistant U.S. Attorneys in the Tucson U.S. Attorney's office did not commensurately increase. By 2006, marijuana cases involving less than 500 pounds (unless a gun was involved or the arrestee had a prior conviction) were prosecuted as misdemeanors or handed off to the state for prosecution because there were not enough prosecutors to handle all of the cases. Then-U.S. Attorney Paul Charlton said at a periodic meeting with the Tucson defense bar that white collar investigations and indictments were on the back burner due to the crush of immigration cases.⁶

⁶ At this meeting in 2006, one defense lawyer asked about the status of a white collar case under investigation where he had been advising the possible defendants for several years. This case has just this month been filed. *United States v. Chris Reno and Roy Fife*, U.S. District Court (Arizona) Case No CR 08-***.

In September 2007, five Assistant U.S. Attorneys in the Tucson Office announced they were leaving. Faced with already staggering caseloads, the Office determined that it lacked enough personnel to effectively to prosecute the petty offenses and flip-flops. As of October 1, 2007, they stopped, but other felonies continued to be charged, including many charged with re-entry after deportation.

The discontinuation of prosecutions of petty offenses seemed to upset CBP and, by the end of October, CBP was proposing Operation Streamline for Tucson.⁷ CBP cited its supposed success in Yuma and Del Rio as the fourth prong to take operational control of the Border, after technology (e.g. sensors), infrastructure (e.g. fences), and manpower. CBP argued that, with almost 380,000 deportable aliens arrested in the Tucson Sector the previous fiscal year, it was time for "zero tolerance" and that charging 100 to 120 a day with simply being here illegally, first-timers or repeat violators, would work to discourage recidivism.⁸ CBP asserted that sentencing defendants to 15 to 30 days in prison is the magic sentence to fully discourage repeated entries.⁹

After several meetings which included the CBP, district court judges and magistrates, the U.S. Attorney's Office, U.S. Marshal Service, FPD, CJA Panel Representative, Clerk's Office, and Bureau of Prisons (BOP), several hurdles to CBP's proposal became apparent. The U.S. Attorney's Office lacked prosecutors; CBP offered 5 Department of Homeland Security Immigration lawyers to be made Special Assistant U.S. Attorneys. The U.S. Marshal Service lacked deputies already spread thin with its various obligations, which include courtroom security for the 80 to 100 hearings held each day in Tucson's U.S. District Court; CBP offered 2 CBP agents to help with security in the Streamline courtroom. U.S. Marshal courthouse holding cells only hold a maximum of 140 people; there are 80 or more defendants and material witnesses every day without

⁷ See Appendix 2 - Tucson Sector PowerPoint presented at the first Operation Streamline meeting. Please excuse my notes.

⁸ Brady McCombs, "BP May Have to Rein in Its Zero-Tolerance Plan," *Arizona Daily Star* (11/23/07). One hundred a day represents only 4% to 10% of those arrested by CBP each day.

⁹ We are not sure how CBP studied this to reach its conclusion. We do not know what time period they considered for recidivist behavior or if they limited considering recidivist behavior to returns to the same sector. Two difficulties exist in trying to verify CBP's "statistics": CBP has all the information which cannot be verified easily by anyone, even with a FOIA request, and not everyone who comes across gets caught.

Also, despite CBP's assertion that Del Rio was handing out 15 day sentences regularly, our investigation showed otherwise.

the Streamline calendar.¹⁰

The FPD, my Office, asserted at first that it could not participate. Our lawyers' caseloads were at a maximum. As it is, we generally accept 60% of all cases, with 40% going to the CJA lawyers as conflict cases or for high caseloads within our Office. The CJA lawyers (Spanish speakers only), who felt they could devote an entire day periodically to Streamline, met to discuss concerns and minimum requirements. There were medical exposure concerns, as Streamline defendants do not get a medical screening before being brought to court. Where would lawyers privately meet with clients, as the U.S. Marshal had limited interview rooms? How many clients could each lawyer effectively represent? What was the schedule? Could they be paid the same as the CJA lawyers in Del Rio? What payment was acceptable to handle Streamline?

Eventually, Streamline was imminent. My Office was persuaded by the court to participate and we agreed to send 2 Assistant FPDs each day. This allowed each of the 20 Assistant FPDs doing Streamline to only be in court for Streamline every 2 weeks. We allowed lawyers who had medical concerns to opt out. CJA lawyers who were willing to participate in Streamline commit to regular days each week or every 2 weeks and we have set schedules of 10 to 14 CJA lawyers each day. The court has told them it cannot pay more than the Congressionally mandated \$100 per hour, regardless of how many clients a lawyer represents each day. So far, every lawyer participating is fluent in Spanish, so the court has no extra cost for interpreters.

Further, participating lawyers asserted that they could not effectively represent any more than 6 defendants a day given the 3 hour morning interview time. This would mean spending only 20 to 30 minutes with each client. Fortunately, several magistrates who would be hearing the Streamline calendar are former criminal defense lawyers and agreed with the limitation. Since Streamline started, some lawyers have decided they can effectively represent only 4 defendants a day, others as many as 8, but most handle up to 6 cases a day.

Streamline court takes place in the Special Proceedings Courtroom, the largest in the courthouse. The court agreed to set up desks throughout the courtroom with 2 chairs for quasi-private attorney-client meetings. The court was able to have CBP agree that the following would not be charged for Streamline: juveniles, those who spoke no Spanish or English,¹¹ anyone exhibiting mental health problems or complaining of

¹⁰ Letter from the Honorable Chief Judge John M. Roll to Senator Kyl and Representatives Culberson and Giffords, 3/4/2008.

¹¹ It is not uncommon for defendants to speak native Mexican Indian dialects or to be Brazilian speaking Portuguese.

serious medical problems.¹² Each week there may be several dismissals because defendants fall into any one of these categories.

Streamline began January 14, 2008, at 40 per day. Because it has been less than the 100 proposed by CBP, CBP calls what happens in Tucson "Arizona Denial Prosecution Initiative" (ADPI). Numbers increased to 50-a-day in mid-March, 60-a-day in mid-April, and 70-a-day in mid-May. When Streamline began, most cases were flip-flops.¹³ Then there was a usually even mixture of petty offenses and flip-flops. Since April 1, there have been many more petties than flip-flops.¹⁴ We believe this is to help the U.S. Marshal, the agency hardest hit fiscally by Streamline, especially when it pays for housing the stipulated flip-flop sentences until BOP takes over. We do not believe it is because Streamline is working, as we get reports from our clients that those with prior records are being bused to the Border without being charged.

As much as our lawyers disapprove of Streamline, compared with how it is being handled in the other courts, we feel it is a model for effective lawyering under these conditions and serves the clients and the court much better.

ETHICAL AND CONSTITUTIONAL CONCERNS

Defendant Concerns

The following are issues which can be and have been missed because of the rapid resolution of Streamline cases. They can result in additional costs of incarceration and, if a defendant returns, in possible habeas-type petitions.

- Incompetency due to:
 - Mental illness,
 - Lack of education,
 - Being under the influence (a day between arrest and court may not allow for withdrawal),
 - Physical illness(including dehydration from travel) and lack of medication,
 - Inadequate nourishment,
 - Not enough sleep;
- Actual or derivative citizenship;
- Asylum claims;
- Juveniles;

¹² This does not mean they might not be charged as part of the court's other and more regular calendar.

¹³ See Appendix 3.

¹⁴ See Appendix 3.

- Primary language other than Spanish or English.

Private consultation between attorney and client

Confidentiality of information must be guaranteed between client and lawyer.¹⁵

Mass hearings

The problems with mass advising of rights and *en masse* requests for waivers of those rights include (a) the failure to obtain a "considered and intelligent" waiver, (b) the risk that individuals will feel pressured to keep silent because everyone else is, and (c) the stigma of speaking up or standing alone before the judge who conveys through such questioning disfavor and discourages further discussion.¹⁶

Adequate opportunity to prepare

Opportunity for adequate case preparation is an absolute prerequisite for counsel to fulfill his/her constitutionally assigned role.¹⁷ There are concerns that the extremely high caseload adversely affects adequate preparation in other cases.¹⁸

Conflicts between current clients

Some defendants are arrested in groups walking or in a vehicle. One may be considered to be the "guide," a factor considered by the sentencing magistrate during sentencing.

Any lawyer who represents two or more clients in a criminal case cannot participate in making an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all of the claims or pleas involved and of the

¹⁵ Fed.R.Evid. 601; 17A A.R.S. Supreme Court Rules, Rule 42, Ethics Rule (ER) 1.6(a).

¹⁶ United States v. Ahumada-Aguilar, 295 F.3d 943, 949-950 (9th Cir. 2002); United States v. Lopez-Vasquez, 1 F.3d 751, 754-755 (9th Cir. 1993).

¹⁷ U.S. CONST., Am. VI; Powell v. Alabama, 287 U.S. 45, 68-69 (1932); Brescia v. New Jersey, 417 U.S. 921 (1974).

¹⁸ 17A A.R.S. Supreme Court Rules, Rule 42, ER 1.8(g) Conflicts of Interest; Current Clients.

participation of each person in the settlement.¹⁹

Maintain Integrity of Adjudicative Process

Lawyers have special duties as officers of the court to avoid conduct that undermines the integrity of the adjudicative process.²⁰ Factory-like proceedings may do this.

Delay Before Being Brought to Court

Waiting more than 48 hours before bringing defendants to their initial court appearance may violate the 5th Amendment.²¹

Due Process and Burden of Proof

The 5th and 6th Amendments are potentially violated when issues of improper venue, lack of proof of entry, and no corroboration of the defendant's statements as to entry or alien citizenship are not raised.

High Caseload

"A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer . . .

Comment

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see ER 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would

¹⁹ 17A A.R.S. Supreme Court Rules, Rule 42, ER 1.8(g) Conflicts of Interest; Current Clients.

²⁰ 17A A.R.S. Supreme Court Rules, Rule 42, ER 3.3, Comment [2].

²¹ Riverside v. McLaughlin, 111 S.Ct. 1661 (1991).

impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules."²²

Supervisors Assigning Cases

Any lawyer who supervises other lawyers "shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct" and "shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. . . . [The supervisory lawyer] shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

- (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."²³

The Court's Responsibilities²⁴

Independent Judiciary

By the many meetings before Streamline began and possibly meetings since involving the many agencies involved in Streamline, the court's independence may be compromised.²⁵

²² 17A A.R.S. Supreme Court Rules, Rule 42, ER 6.2 Accepting Appointments.

²³ ABA Formal Opinion 347 (12-1-81); I ABA Standards for Criminal Justice (3rd Ed. 1990), Providing Defense Services, Sec. 5-1.2(d); 17A A.R.S. Supreme Court Rules, Rule 42, ER 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers.

²⁴ Each of these sections cites to 17A A.R.S. Supreme Court Rules, Rule 81, *Code of Judicial Conduct (AZ)* and *Guide to Judiciary Policies and Procedures*, Chap. 1, Codes of Conduct for United States Judges (U.S.).

²⁵ AZ. and U.S. CANON I.A.

Impartiality

A judge cannot, with respect to cases, controversies, or issues likely to come before the court, make any pledges, promises, or commitments inconsistent with the impartial performance of the adjudicative duties of the office.²⁶

A judge should avoid public comment on the merits of any pending or impending action, requiring similar restraint by court personnel subject to the judge's direction and control. This proscription does not extend to public statements made in the course of a judge's official duties, to explaining court procedures, or to a scholarly presentation made for legal education.²⁷

Court administration

A judge must diligently discharge the judge's administrative responsibilities without bias or prejudice, must maintain professional competence in judicial administration, and should cooperate with other judges and court officials in administering court business.²⁸

OTHER CONCERNS

Operation Streamline carries additional concerns for prosecution and defense lawyers, deputy U.S. Marshals, magistrates and court staff participating in it, including extra concerns about money, adequate staffing, and space.

For Defense Lawyers

- Health risks
 - TB
 - Hepatitis
 - Chicken Pox
 - Colds and flu
- Safety (if must talk with clients when seated in consecutive rows - concerns for female lawyers and overweight attorneys)
- Smell (inmates will not have bathed and will be in the clothing they were arrested in)
- Morale
 - *En Masse* representations/administrative flunkies
 - Lack of private consultations and individual representations

²⁶ AZ. CANON 3.B (10).

²⁷ U.S. CANON 3.A (6).

²⁸ AZ. CANON 3.C(1) ADMINISTRATIVE RESPONSIBILITIES.

- Concerns over keeping Bar license

For Court, Court Staff, Deputy U.S. Marshals, and Assistant U.S. Attorneys

- Health risks
 - TB
 - Hepatitis
 - Chicken Pox
 - Colds and flu
- Safety due to large numbers
- Smell
- Morale
 - *En Masse* representations/administrative flunkies
 - Organization and paperwork
- Determining conflicts between defendants
- Having enough attorneys available to handle conflicts

Money, Staffing, and Space

The U.S. Attorney's Office in Tucson, in part due to the publicity surrounding Streamline, has within the past few months been authorized to backfill the resigned lawyer positions, backfill previous years' losses, and hire additional lawyers, for a total of 16. We understand the U.S. Attorney's Office in Tucson sometimes is unable to find qualified, experienced applicants. Once the Office was a popular place for Assistant U.S. Attorneys to transfer to from other offices across the country, particularly those from the colder climes. That is not the case any longer because word of the very high caseloads discourages applicants.

Additionally, for years it has been said that the U.S. Attorney's Office in Tucson is running out of space in the courthouse or may be run out of their space due to the court's growth.

We are told, once the new Assistant U.S. Attorneys start, felony case filings likely will increase and the U.S. Attorney's Office will take over Streamline. Our FPD Office is concerned that once the felony filings increase and the CJA lawyers get assigned more felony cases, they will stop participating in Streamline. Should that happen, we anticipate the Court will look to our Office to handle more Streamline cases, which means we would handle fewer felonies. This will challenge the stewardship obligation each federal agency owes in managing the public's money. It also will challenge our Office's ability to prevent burn-out.

Our Office has been fortunate in the support it has received from our Federal Defender, Jon Sands, and the Office of Defender Services here in Washington, D.C. We are

presently hiring 3 additional lawyers for our Tucson Office. Even were we to increase the number of lawyers we have, we are always challenged in hiring experienced lawyers dedicated to public service who are fluent in Spanish.

Here is a chart citing the costs of CJA lawyers and Assistant FPDs in Streamline.

CJA (\$100 an hour)		FPD
8:30-5 pm 8.5 hours a day	\$ 800 a day	Considering FY 2008 Federal Public Defender, District of Arizona budget (District wide) 2 AFPDs day \$ 543.87 Yearly \$ 141,406.20
x 10 CJA lawyers a day	\$ 8000	
x 5 days a week	\$ 40,000	
x 52 weeks a year	\$ 2,080,000	

Chief Judge Roll has requested that two additional magistrates be appointed to help with the already large caseloads.²⁹ This chart shows how §1325 and §1326 cases in Tucson changed between January 2007 and April 17, 2008.

		1/07	2/07	3/07	4/07	5/07	6/07	7/07	8/07	9/07	10/07	11/07	12/07	1/08	2/08	3/08	4/08
§1325	FPD	415	223	331	198	291	199	154	212	73	0	11	1	70	131	164	136
	CJA	0	15	19	75	78	21	4	4	4	0	0	0	178	401	730	552
	Total	415	238	350	273	369	220	158	216	77	0	11	1	248	532	894	688
§1326	FPD	18	18	30	33	19	16	18	28	14	30	30	30	24	18	13	15
	CJA	84	63	70	97	102	76	49	83	72	28	43	19	23	34	57	11
	Total	102	81	100	130	121	92	67	111	86	58	73	49	47	52	70	26

The Marshal Service has asked for additional deputies. It is continually looking for ways the courthouse can be modified to house more and more in-custody defendants. There has been talk of using some, if not all of the sub-courthouse parking lot for additional cells where, for now for security reasons, judges, magistrates, and certain court and U.S. Attorney personnel park.

²⁹ Letter from the Honorable Chief Judge John M. Roll to Senator Kyl and Representatives Culberson and Giffords, 3/4/2008.

IS IT WORKING?

The stated goals of Streamline are to discourage first-time border crossers by returning them home where they will supposedly pass the word of "zero tolerance" and to prevent recidivism.

CBP Statistics

Before starting Streamline in Laredo and Tucson, CBP touted the following numbers as evidence of success:

Relying primarily on statistics from the Del Rio Sector Streamline, since Streamline began in December 2005, CBP reported:

66.5% decrease total apprehensions
78.8% decrease OTM³⁰ apprehensions
329.9% increase in misdemeanor cases filed since 12/2005
25.2% decrease in felony cases filed since 12/2005
66.2% increase in narcotic seizures

By April 6, 2008, Tucson Sector CBP claimed, "Zero Tolerance Working."³¹ The article claimed a "46% recidivism rate now," stating that it was 79% before Streamline started.

The problem with these statistics is (1) what we do not know:

- did CBP consider only those arrested since Streamline started in the Tucson Sector or people arrested at any time before;
- what time period did CBP consider for the recidivist behavior; and
- did CBP consider only those who returned and were arrested within the Tucson Sector or did they include returns to other Sectors;

(2) CBP has all of the information, which cannot be verified easily by anyone, even with a FOIA request, and (3) not everyone who comes without documents across the Border gets caught.

Further, the Department of Homeland Security's own statistics do not support Operation Streamline as the cause for reduced arrests of deportable aliens. As Thomas Hillier, Federal Public Defender, Western District of Washington, eloquently wrote April 22, 2008, to the Senate Judiciary Committee and the Senate Committee on Homeland

³⁰ Other than Mexican.

³¹ Brady McCombs, "Zero Tolerance Working, says Border Patrol," *Arizona Daily Star*, § A-1 (4/6/08).

Security & Governmental Affairs concerning the proposed Border Crossing Deterrence Act of 2008 (S 2709):³²

In urging the Senate to fund expansion of Operation Streamline to all border sectors, Senator Sessions stated that "[i]n just over a year," Operation Streamline "has resulted in a 50-percent decrease in the number of arrests in Del Rio and a 68-percent decrease in the arrests in Yuma, proving . . . with certainty that this kind of consistent prosecution and conviction is a critical factor in deterring illegal entry," and that "[i]f you reduce the number who attempt to come illegally, you reduce costs at the same time." [Table Endnote 1 replacing footnote 27 in the original]

Assuming that these figures are correct, it does not follow that Operation Streamline is the cause. According to statistics published by the Office of Immigration Statistics of the Department of Homeland Security for 1997-2006, the number of deportable aliens located by the Border Patrol and Detention and Removal Operations has steadily declined over the past several years in most sectors that do not have Operation Streamline. See Exhibit 11, *Deportable Aliens Located By Border Patrol and Detention and Removal Operations Fiscal Years 1997-2006*. In those sectors that do have Operation Streamline, the number was declining well before it went into effect. In Yuma, where Streamline went into effect in December 2006, the number dropped from 138,438 in 2005 to 118,537 in 2006. *Id.* In Tucson, where it went into effect in January 2008, the number dropped from 491,771 in 2004 to 439,090 in 2005 to 392,104 in 2006. [Table Endnote 2 replacing footnote 28 in the original] *Id.* In Laredo, where Streamline went into effect November 1, 2007, the number dropped from 75,342 in 2005 to 74,843 in 2006. *Id.*

In Del Rio, after a large and steady decline from 2000 through 2003 (from 157,178 to 50,145), there was a slight increase to 53,794 in 2004, a larger increase to 68,510 in 2005, then a decline to 42,634 in 2006. *Id.* Operation Streamline went into effect in mid-December 2005, but the apparent decline in 2006 was due to inflated numbers in 2004-2005 resulting from the practice at Eagle Pass of allowing immigrants from countries other than Mexico to continue on their way into the U.S. after giving them a notice to return for removal or deportation on a certain date. Word quickly spread, and immigrants from every country, including Mexico, flocked to Eagle Pass and were allowed in at a rate of 200 or more a day. [Table Endnote 3 replacing footnote 29 in the original] This practice ended in November/December 2005, and explains the decline in 2006.

In Las Cruces, Operation Lockdown went into effect four months ago. Statistics for apprehensions are not available, but the Defender reports that the Border Patrol had planned on 170 petty misdemeanor cases per week, but the most they have had is 150 and the number is now at 120. Crossings have slowed because of the deployment of the National Guard, the addition of 300 agents, and the construction of fences and barriers.

If arrests have decreased this dramatically in Del Rio and Yuma, petty misdemeanor prosecutions should have decreased at the same rate (if this is truly a "zero tolerance" program), or at least should show a downward trend (if the deterrence theory is correct).

³² The exhibits in the letters are attached as follows: Exhibit 1 = Appendix 4; Exhibit 2 = Appendix 5; Exhibit 3 = Appendix 6; Exhibit 4 = Appendix 7; Exhibit 11 = Appendix 8.

Instead, the caseload grows with no end in sight. In Del Rio, the number of petty cases has steadily increased since Operation Streamline began in December 2005, from approximately 3495 cases in 2005 to 15,428 cases projected for 2008. See Exhibit 1. In Yuma, there were 3664 cases the first year and a projected 8563 cases for 2008 based on the number to date. See Exhibit 2. In Laredo, a conservative estimate is 170% growth in the first year, and in Tucson, a conservative estimate of 243% growth in the first year. See Exhibits 3 and 4.

Further, if Operation Streamline deters illegal immigration, one would expect to see a marked decrease in felony re-entry cases after it went into effect. But there has been an increase in felony re-entry cases in all sectors except Tucson. See Exhibits 1-4. The decline in felonies in Tucson is likely explained by a shortage of prosecutors there, which we understand will soon be remedied, at which time the number of both felonies and petty misdemeanors is likely to increase.

Endnotes

1. Statement of Senator Session in support of SA 4231 to S. Con. Res. 70, March 18, 2008.
2. A Border Patrol supervisor told the Arizona Star that illegal entrants are being sentenced to an average of 30 days in Tucson, and that the "number of people who repeat their attempt to enter the United States more than once dropped from 79% to 46% since the program started in January." Brady McCombs, *Zero tolerance working, says Border Patrol*, April 6, 2008. This claim is unsupported because those picked up since January are still in jail or recently released.
3. James C. McKinley Jr., *Tougher Tactics Deter Migrants at U.S. Border*, New York Times, Feb. 21, 2007.

Immigrant Property

How CBP and the Marshal Service deal with defendant property not only encourages recidivism, but creates potential other criminal problems.

Many undocumented immigrants carry with them not only what they need for their journey, but also what they want to remember from what they left behind. CBP has said it will keep defendant property for 30 days after arrest. Those sentenced to time served are reunited with their property before being returned to the Border. Few defendants have anyone in the United States, let alone in the Tucson area, who can pick up their property for them. Property not claimed is supposedly destroyed.

The Marshal Service limits what defendant property it will accept to follow the defendant: \$50 U.S. currency, a plain watch and a plain wedding ring.

Streamline defendants will eventually be deported to their countries of origin and, without identification, money, phone numbers, or addresses, most will be unable to

easily return to their homes further from the ports of entry.³³ Many do not know how to contact family or friends. They cannot pick up wired money without ID. Many lose irreplaceable birth certificates and photographs. Our lawyers have heard many a client, when asked, "Why did you come here?" say, "After I was dropped at the Border, I did not have any money, so I thought I would come back across just for a day and do some yardwork to get some money so I could start home."

Our Office retrieves client property from CBP, though we are not supposed to do so by our own *Policies and Procedures*. From their backpacks, we take IDs, birth certificates, phone cards, addresses, phone numbers, and photographs and make copies of them and send them to our clients (the prison will not let them have the originals because that is "property."). Any money we find, no matter the currency, office volunteers will take to a bank or *casa de cambio*, exchange and receive back in a money order or cashier's check and deposit it in the client's prison account. If there is family to whom we can send other personal property, we do so. The lawyers send it using their own money because we cannot use Office postage to send personal property. Any remaining property we throw out.

Most defendants represented by CJA lawyers do not get their property back - the court does not pay CJA lawyers for the hours it can take to locate, retrieve, inventory, copy, exchange, and send client personal property.

The opportunity to destroy unclaimed money, jewelry, and identification is also an opportunity and a temptation to pocket the same for profit. The black market for identification is a market that caters not only to those seeking work in the United States, but those seeking to harm the United States and other countries.

Immigrant Treatment

We have received complaints from clients about their treatment before coming to court. Some with medical problems, including high blood pressure and diabetes, are not getting the medication they brought with them. After hours to days in the desert, there is inadequate access to water and minimal food. As the numbers increase, the space for holding them at the CBP station decreases per person and now many sleep sitting up on the floors of the holding cells without blankets or pillows. No one gets a shower; they stay days in the same clothes. Some are waiting up to 3 days before being brought to court, rather than the Streamlined next day hearings originally proposed. Those who have money are being told to sign a document abandoning the right to have that money returned under a pretense of it being returned or without explanation of what the paper truly says.

³³ See Appendix 9 - Letter from Juan Manuel Calderón-Jaimes, Cónsul of México, letter to the Honorable Magistrate Charles M. Pyle, 2/15/2008.

Reality

It is CBP that decides who gets charged in Operation Streamline and who does not. It is CBP that decides whether Streamline defendants are charged with a § 1325 petty illegal entry or a flip-flop felony re-entry/petty illegal entry combination.

One day in court, the following exchange occurred between a lawyer and his Streamline client who had never before been arrested:

LAWYER: You face a maximum of 6 months . . .
CLIENT: That can't be! I have 3 children who need me, please!
LAWYER: The judge may give you much less than that because we can tell her you have never been deported, never been voluntarily returned, nothing.
CLIENT: No, no! Please tell her I have been deported and convicted before - I want to go home.
LAWYER: You have no priors, right? It says here you have never been deported, right? Why would I tell her you have been?
CLIENT: **Because yesterday, in the little jail,³⁴ they took everyone who had a prior conviction and put them on a bus to go home, but only kept us who swore we had never been arrested before. And that's why they brought us here and the others got to go home. . . . Only this time they bring me here, and next time they will let me go too!**

Congressman Duncan Hunter, Representative for the 52nd district of California, the area bordering Mexico and Arizona, said:

The effectiveness of border fencing is not only seen in San Diego County but also in Yuma, Arizona, where more than 30 miles of fencing has been built over the last year and a half. In fact, since the start of fence construction in the Yuma sector, there has been a 73% reduction in apprehensions.³⁵

Last year, the Arizona State Legislature passed its own laws to remove business licenses of employers knowingly employing undocumented immigrants. In November and December 2007, Arizona saw many Hispanic residents packing up and moving to other states or to Mexico, not wanting to get swept up in enforcement of the new state

³⁴ CBP Station.

³⁵ Rep. Duncan Hunter press release, *Hunter Joins House Committee Field Hearing on Border Fence Waiver (4/28/08)*.

law.³⁶

The weaker economy in the United States can also discourage people from unlawfully coming to the United States to look for work to support a family back home.

There are many reasons why people may stop entering the United States without permission. Operation Streamline may well be one of the least successful, but most costly and time-consuming ways of discouraging entries and re-entries.

Thank you for giving me this opportunity to talk with you.

³⁶ Miriam Jordan, "AZ squeeze on immigration angers business," *Tucson Citizen* (12/14/07).

OPERATION STREAMLINE DIVISIONS COMPARISONS

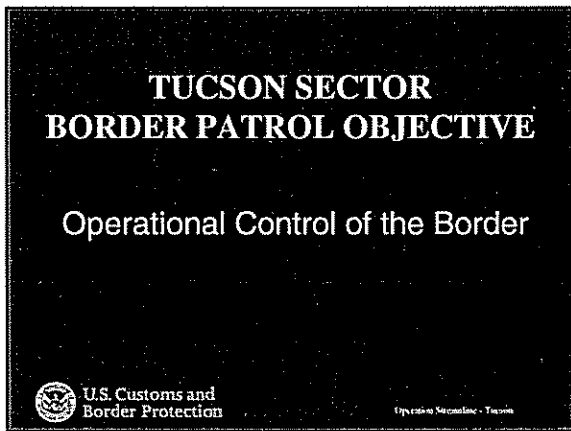
June 2008

District	Western District Texas	Southern District Texas	District of Arizona	
Division	Del Rio	Laredo	Yuma	Tucson
District Ct judges	1	2	-	5
Magistrates	2	2	1	6
Jails	(4) 30 min-4 hr RT	(3) 20 min-1 hr RT	(1) 1 hr RT	(2) 40 min-3 hrs RT
Panel members	20-25	25-30	5 (3 OS)	127 (34 OS volunteers)
FPD attorneys	10	17	5	23
Division population	145,789	256,994	187,555	1,117,199
Division Counties	Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde, Zavala	Jim Hogg, La Salle, McMullen, Webb, Zapata	Yuma	Pima, Santa Cruz, Cochise
Port of Entry	Ciudad Acuna	Nuevo Laredo	San Luis	Agua Prieta, Naco, Nogales, Sasabe
Schedule	<ul style="list-style-type: none"> ▶ D arrested & booked into nearest jail to Ct ▶ appted p.m. when BP swears in complaints ▶ Ct set 2 ct days later ▶ D atty gets complaints & I-213s that or next day ▶ Visit D at jail day between ▶ Ct 9-11:30 am 	<ul style="list-style-type: none"> ▶ D arrested & held @ BP ▶ Attys meet Ds at Ct beginning 6:30 am or 8 am, depending ▶ Paperwork at Ct ▶ 2 attys + investigator interview after mass advisals ▶ Ct 9 or 10 am, depending ▶ Done by noon or 1 pm 	<ul style="list-style-type: none"> ▶ D arrested & held @ BP ▶ Paperwork faxed to FPD overnight - 10:30 am ▶ Once paperwork received, 2-3 attys meet with Ds in interview rms (3) ▶ Ct 1 pm 	<ul style="list-style-type: none"> ▶ D arrested and held @ BP ▶ 8 am: Ds brought to cthouse & booked ▶ Paperwork given to JA; BP IDs conflicts ▶ 9 am: JA assigns cases ▶ 9:30 am: Attys meet with Ds ▶ 1:30 pm: Ct ▶ done by 4:30-5 pm

District	Western District Texas	Southern District Texas	District of Arizona	
Division	Del Rio	Laredo	Yuma	Tucson
Ds & cases	Includes females & juveniles Primarily Central Americans Occasional other languages §1325 only	No seriously ill or pregnant Juveniles get dismissed Occasional other languages §1325 & A&A §1325	Includes females Juveniles are dismissed Occasional other languages §1325 & Flip-Flops	Includes females Juveniles are dismissed §1325 & Flip-Flops
Attys	FPD Mondays, CJA other days	2 FPD on mag duty	2 FPD assigned to petties; if few felonies, atty assigned to felonies will help; CJA attys for conflicts	FPD: 2 a day, all Spanish speakers; CJA Panel: Spanish speakers, 35 volunteered for Op Streamline
How long?	2.5 yrs (FPD only recently)	since 11/1/07	2.5 yrs	since mid-1/08
D meeting	Visit D at jail day between	In ctrm - can take aside	In ctrm - can sometimes meet in USM holding	In ctrm
How many?	≈ 80	≈ 80	≤ 15 per atty, most 35 in a day	≤ 70 Plan to gradually increase to 100 by October



BO Del Rio Sector





Operational Control of the Border

- **Technology**
 - 1,615 Sensors
 - 156 RVS Cameras
 - 22 Scope Trucks
 - 35 Skywatch Towers
 - 3 Ground Radar Units

U.S. Customs and Border Protection
Operation Secureline - Tucson 6

Remote Video System

Operational Control of the Border

- **Infrastructure**
 - 43.6 miles AWR
 - 11.3 Miles Lighting
 - 40 Miles Ped Fencing
 - 53.2 Miles PVB – 32.4 Miles TVB
 - 11 Tactical Checkpoints
 - 22 Rescue Beacons

U.S. Customs and Border Protection
Operation Secureline - Tucson 7

All weather Road

Permanent Vehicle Barriers

Temporary Vehicle Barriers

Operational Control of the Border

- **Manpower**
 - 2,783 Agents
 - 148 Support Personnel (Maintenance, Garage, Supply, Purchasing, LMR, etc...)


U.S. Customs and Border Protection
Operation Secureline - Tucson 8

—

Operational Control of the Border

- Vigorous Prosecution Program

This will be accomplished through
Operation Streamline - Tucson



U.S. Customs and Border Protection


Operation Streamline - Tucson 9

Why criminal prosecution only?

Why not just remove everyone rather than criminally prosecute?

OPERATION STREAMLINE

Geographically based zero tolerance prosecution initiative. Border zones are targeted and enforcement efforts are concentrated until entry patterns are deterred or diverted. The targeted zone is then maintained as the program is expanded. The focus area is incrementally increased while maintaining prior focus zones. Focus areas or zones may be expanded by targeting either neighboring zones or attacking priority zones in other geographical areas.




U.S. Customs and Border Protection

Operation Streamline - Tucson

Operation Streamline

- Operation STREAMLINE is a collaborative effort of multiple agencies within the Sector's AOR, using criminal prosecution for 8 USC 1325 and/or 8 USC 1326 / 8 USC 1325 to reduce illegal entries and gain control of problematic areas.

The Chief Patrol Agent identifies and designates a 'zero tolerance zone' for all illegal entries and directs that all prosecutable aliens, regardless of nationality, apprehended within the geographic boundaries be processed for criminal prosecution and removal proceedings. The intent is to end "catch and release" with an operation of arrest, prosecute, and remove.



U.S. Customs and Border Protection

Operation Streamline - Tucson 11

Area of Operation

1030 a day
7233 a wk

100 DSL AS = 97% of arrestees

Handwritten calculations:
 $10\% = 140$
 $52 \times 140 = 7280$
 $7280 - 7233 = 47$
 $47 \times 10 = 470$
 $470 + 7233 = 7703$
 $7703 - 7233 = 470$
 $470 \times 10 = 4700$
 $4700 + 7233 = 11933$
 $11933 - 7233 = 4700$
 $4700 \times 10 = 47000$
 $47000 + 7233 = 54233$

Tucson Sector Stats

- FY07 5396 Vehicle Seizures
- FY07 3304 Drug Seizures
- FY07 149 Gun Seizures
- FY07 98 Currency Seizures
- FY07 TCA Arrested 378,125 illegal aliens. This accounted for 43% of all SWB Alien Apprehensions.
- FY07 TCA Interdicted 897,289 pounds of Marijuana. This accounted for 48% of all SWB Marijuana Seizures.

U.S. Customs and Border Protection
Operation Streamline - Tucson

Handwritten notes on lined paper:
 121
 104
 171
 156
 152
 104
 495

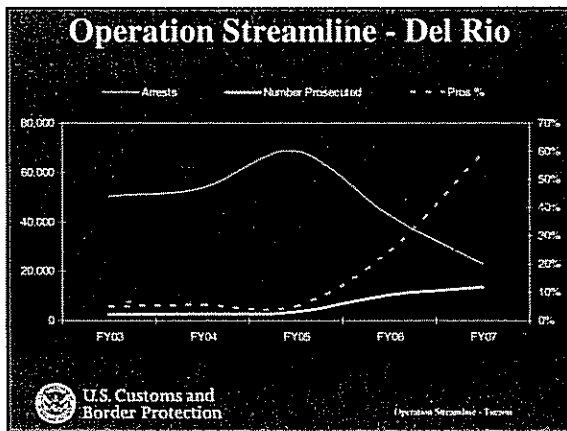
Southwest Border

OPERATION STREAMLINE

Del Rio Sector
December 6, 2005 - Present

U.S. Customs and Border Protection
Operation Streamline - Tucson

Blank lined paper.



we have 4x apprehensions
~~prosecuted~~
 Del Rio did

Red = Apprehensions
 Yellow = prosecutions
 Green = % of UAI's prosecuted


OPERATION STREAMLINE – DEL RIO

Rate of Recidivism by Criminal Sentence

Optimum Sentence to Restore Deterrence Appears to be 30 Days

- Recidivism rates roughly doubled as criminal sentences dropped from 30 to 15 days, however little change was seen between 30 and 90 days
- Sentences of "Time Served" (2-6 days) have produced recidivism in as little as 24 hours after repatriation

Sentence	Recidivism
15 Days	40.00%
30 Days	19.00%
90 Days	12.00%

 U.S. Customs and Border Protection

Operation Streamline - Tucson 15

OPERATION STREAMLINE - DEL RIO

Streamline Recidivism

Nearly two years later, only 360 of 24,880 aliens prosecuted pursuant to Operation Streamline – Del Rio have been identified as having re-entered the United States illegally.

 U.S. Customs and Border Protection

Operation Streamline - Tucson 16

Benefits Realized

- Proven Deterrence of illegal entries in target zones due to zero tolerance for all prosecutable aliens.
- Significant ground gained toward achieving operational control of the Nation's border.
- Reduces numbers of smugglers and smuggling organizations by reducing overall number of illegal entries in target areas.
- Reduced entries have allowed greater situational awareness toward apprehending terrorists, terrorist weapons, detection, apprehension, & deterrence of smugglers of humans, drugs, and other contraband illegally entering the United States.
- Reduced entries in urban areas have improved the quality of life in surrounding communities.

 U.S. Customs and Border Protection

Operation Streamline - Tucson 17

Operation Streamline - YUMA

- Started 12/4/06
- Defined Area
- FY 07 Apprehensions Down 68% vs. FY06
- FY08 to Date Apprehensions Down 69%

U.S. Customs and Border Protection

How much ES
 Nat'l ID presence
 on Border?

Integrated IT Systems

Electronic Filing with CM System
 JABS/ PTS - Marshals

U.S. Customs and Border Protection

Prisoner Xfer Service &
 deal w/ JABS

Operation Streamline - TUCSON

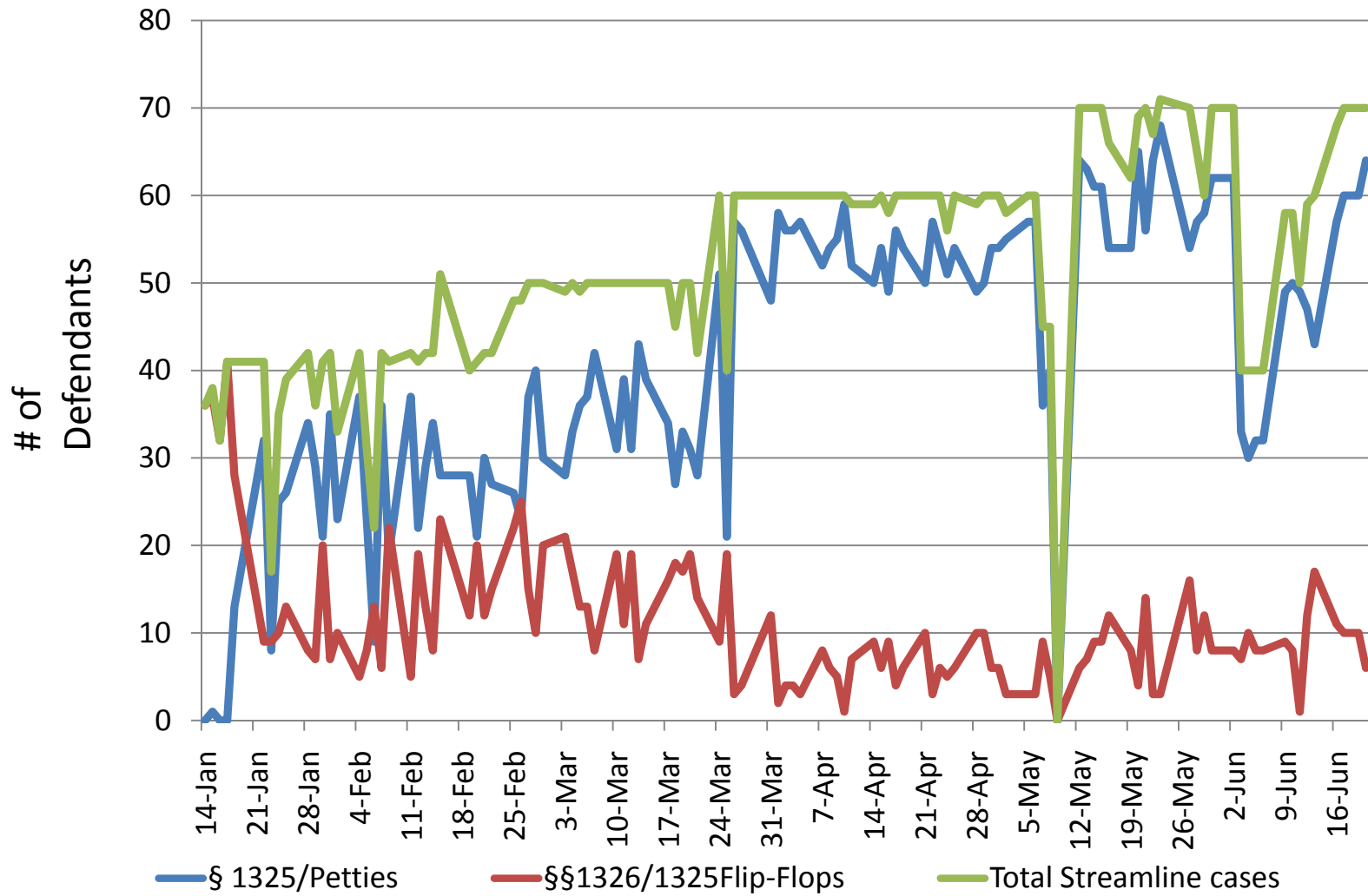
- Desired Start Date 12/23/07
- Start with an average of 25 per day for the first two weeks, then an average of 50 per day for the third week and progressing to an average of 100 per day starting the fourth week.
- Start in a Defined Area with Incremental Increases.
- Duration – Operational Control of the Border

U.S. Customs and Border Protection

we want to make impact

Golf Links Holding facility
 24

U.S. District Court – Tucson, AZ
Operation Streamline: Petty & Flip-Flop Cases
1/14/2008 – 6/20/2008



U.S. District Court – Tucson, AZ
 Operation Streamline: Petty Flip-Flop Cases, 1/14/2008 – 6/20/2008

	§ 1325/Petties	§§1326/1325Flip-Flops	Total Streamline cases
14-Jan	0	36	36
15-Jan	1	37	38
16-Jan	0	32	32
17-Jan	0	41	41
18-Jan	13	28	41
22-Jan	32	9	41
23-Jan	8	9	17
24-Jan	25	10	35
25-Jan	26	13	39
28-Jan	34	8	42
29-Jan	29	7	36
30-Jan	21	20	41
31-Jan	35	7	42
1-Feb	23	10	33
4-Feb	37	5	42
5-Feb	23	8	31
6-Feb	9	13	22
7-Feb	36	6	42
8-Feb	19	22	41
11-Feb	37	5	42
12-Feb	22	19	41
13-Feb	29	13	42
14-Feb	34	8	42
15-Feb	28	23	51
19-Feb	28	12	40
20-Feb	21	20	41
21-Feb	30	12	42
22-Feb	27	15	42
25-Feb	26	22	48
26-Feb	23	25	48
27-Feb	37	15	50
28-Feb	40	10	50
29-Feb	30	20	50
3-Mar	28	21	49
4-Mar	33	17	50
5-Mar	36	13	49
6-Mar	37	13	50
7-Mar	42	8	50
10-Mar	31	19	50
11-Mar	39	11	50
12-Mar	31	19	50
13-Mar	43	7	50
14-Mar	39	11	50
17-Mar	34	16	50
18-Mar	27	18	45

U.S. District Court – Tucson, AZ

Operation Streamline: Petty Flip-Flop Cases, 1/14/2008 – 6/20/2008

19-Mar	33	17	50
20-Mar	31	19	50
21-Mar	28	14	42
24-Mar	51	9	60
25-Mar	21	19	40
26-Mar	57	3	60
27-Mar	56	4	60
28-Mar	54	6	60
31-Mar	48	12	60
1-Apr	58	2	60
2-Apr	56	4	60
3-Apr	56	4	60
4-Apr	57	3	60
7-Apr	52	8	60
8-Apr	54	6	60
9-Apr	55	5	60
10-Apr	59	1	60
11-Apr	52	7	59
14-Apr	50	9	59
15-Apr	54	6	60
16-Apr	49	9	58
17-Apr	56	4	60
18-Apr	54	6	60
21-Apr	50	10	60
22-Apr	57	3	60
23-Apr	54	6	60
24-Apr	51	5	56
25-Apr	54	6	60
28-Apr	49	10	59
29-Apr	50	10	60
30-Apr	54	6	60
1-May	54	6	60
2-May	55	3	58
5-May	57	3	60
6-May	57	3	60
7-May	36	9	45
8-May	40	5	45
9-May	0	0	0
12-May	64	6	70
13-May	63	7	70
14-May	61	9	70
15-May	61	9	70
16-May	54	12	66
19-May	54	8	62
20-May	65	4	69
21-May	56	14	70

U.S. District Court – Tucson, AZ

Operation Streamline: Petty Flip-Flop Cases, 1/14/2008 – 6/20/2008

22-May	64	3	67
23-May	68	3	71
27-May	54	16	70
28-May	57	8	65
29-May	58	12	60
30-May	62	8	70
2-Jun	62	8	70
3-Jun	33	7	40
4-Jun	30	10	40
5-Jun	32	8	40
6-Jun	32	8	40
9-Jun	49	9	58
10-Jun	50	8	58
11-Jun	49	1	50
12-Jun	47	12	59
13-Jun	43	17	60
16-Jun	57	11	68
17-Jun	60	10	70
19-Jun	60	10	70
20-Jun	64	6	70

Exhibit 1

Del Rio–Petty Misdemeanor Cases Closed; Felony Immigration Cases Filed		
OS in effect 12/15/05	All Petty Cases Closed (99% of which are § 1325(a))¹	Felony Immigration Cases Filed (under § 1325(a) and 1326)²
Jan-Mar 2005	1000	
Apr-June 2005	801	
July-Sept 2005	761	
Oct-Dec 2005	933	
Total 2005	3495	706
Jan-Mar 2006	2482	
Apr-June 2006	2749	
July-Sept 2006	3499	
Oct-Dec 2006	3056	
Total 2006	11786	582
Jan-Mar 2007	4618	
Apr-June 2007	3315	
July-Sept 2007	2788	
Oct-Dec 2007	1879	
Total 2007	12,600	628
2008	3857 (1/1/08-3/31/08)	301 (1/1/08-4/21/08)
Projected Total 2008	15,428 (+341%)	980 (+39%)

1 Source: Western District of Texas, Magistrate Judge Statistics, <http://156.124.10.198/chambers/index.asp>. Defender reports that 99% of all petty offenses in Del Rio are immigration offenses under 8 U.S.C. § 1325(a).

2 Source: PACER system.

Exhibit 2

Yuma-Petty Misdemeanor and Felony Immigration Cases			
OS in effect 12/4/06 (no FPD office in Yuma until then)	FY 2006	FY 2007	Projected FY 2008 (based on numbers as of 4/15/08)
Opened as Misdemeanor	0	1832	4281 (+134%)
Opened as Felony or Felony/Misdemeanor	0	2583	4748 (+84%)
TOTAL OPENINGS	0	4415	9029 (+105%)
Closed as Misdemeanor	0	3664	8563 (+134%)
Closed as Felony	0	751	466 (-38%)
TOTAL CLOSINGS		4415	9029 (+105%)

Source: Federal Public Defender, District of Arizona

Approx. half §1325 misdemeanor cases are charged as §1326 felony/§1325 misdemeanor; closed with §1326 felony dismissed.

All Yuma felonies sent to U.S. District Court in Phoenix because no Article III judge in Yuma.

Exhibit 3

Laredo–Felony and Petty Misdemeanor Immigration Cases Closed by Federal Public Defender				
OS in effect 11/1/07	Closed Cases–FY 2007		Closed Cases–FY 2008	
Month	Misdemeanors	Felonies	Misdemeanors	Felonies
OCT	286	108	420 (+47%)	106 (-1.9%)
NOV	322	123	955 (+197%)	227 (+85%)
DEC	248	71	648 (+161%)	90 (+27%)
JAN	283	124	1165 (+311%)	167 (+35%)
FEB	378	146	1148 (+204%)	148 (+1.4%)
MAR	388	138	1285 (+231%)	108 (-22%)
APR	415	120	-	-
MAY	268	138	-	-
JUNE	488	91	-	-
JULY	393	89	-	-
AUG	418	133	-	-
SEPT	277	140	-	-
Total	4164	1421	11242* (+170%)	1692* (+19%)

*Projected total based on first half of FY 2008; conservative estimate because OS not in effect in October 2007.

Source: Federal Public Defender, Southern District of Texas.

FPD handles all immigration petty offense cases and most immigration felony cases.

Exhibit 4

Tucson–Petty Misdemeanor and Felony Immigration Cases				
OS in effect 1/14/08	2007		2008	
	Petty Misdemeanors	Felonies	Petty Misdemeanors	Felonies
Jan	415	102	248	47
Feb	238	81	532	52
Mar	350	100	894	70
Apr	273	130	688 as of 4/17/08	26 as of 4/17/08
May	369	121	-	-
June	220	92	-	-
July	158	67	-	-
Aug	216	111	-	-
Sept	77	86	-	-
Oct	0	58	-	-
Nov	11	73	-	-
Dec	1	49	-	-
Total	2328	1070	7983* (+243%)	659* (-38%)

*Projected total based on first 108 days of 2008. Estimates are conservative because the number of petty cases is planned to increase from 60 to 100 per day by September 2008 with the hiring of several new prosecutors.

Source: Federal Public Defender, District of Arizona.

Numbers include FPD and CJA appointments; FPD handles 25% of petty cases and most felonies; CJA handles 75% of petty cases and few felonies.

Exhibit 11

Deportable Aliens Located By Border Patrol and Detention and Removal Operations Fiscal Years 1997-2006										
BORDER PATROL SECTOR	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Total	1,412,953	1,555,776	1,579,010	1,676,438	1,266,214	955,310	931,557	1,160,395	1,189,108	1,089,136
Southwest sectors	1,368,707	1,516,680	1,537,000	1,643,679	1,235,718	929,809	905,065	1,139,282	1,171,428	1,072,018
San Diego, CA	283,889	248,092	182,267	151,681	110,075	100,681	111,515	138,608	126,909	142,122
EL Centro, CA	146,210	226,695	225,279	238,126	172,852	108,273	92,099	74,467	55,726	61,469
Yuma, AZ	30,177	76,195	93,388	108,747	78,385	42,654	56,638	98,060	138,438	118,537
Tucson, AZ	272,397	387,406	470,449	616,346	449,675	333,648	347,263	491,771	439,090	392,104
EL Paso, TX	124,376	125,035	110,857	115,696	112,857	94,154	88,816	104,399	122,689	122,261
Marfa, TX	12,692	14,509	14,952	13,689	12,087	11,392	10,319	10,530	10,536	7,517
Del Rio, TX	113,280	131,058	156,653	157,178	104,875	66,985	50,145	53,794	68,510	42,634
Laredo, TX	141,893	103,433	114,004	108,973	87,068	82,095	70,521	74,706	75,342	74,843
Rio Grande Valley, TX	243,793	204,257	169,151	133,243	107,844	89,927	77,749	92,947	134,188	110,531
Other sectors	44,246	39,096	42,010	32,759	30,496	25,501	26,492	21,113	17,680	17,118
Blaine, WA	2,684	2,403	2,421	2,581	2,089	1,732	1,380	1,354	1,001	809
Buffalo, NY	2,065	1,640	1,666	1,570	1,434	1,102	564	671	400	1,517
Detroit, MI	1,500	1,768	1,838	2,057	2,106	1,511	2,345	1,912	1,792	1,282
Grand Forks, ND	1,978	905	656	562	921	1,369	1,223	1,225	754	517
Havre, MT	2,813	1,145	1,448	1,568	1,305	1,463	1,406	986	949	567
Houlton, ME	309	307	461	489	685	432	292	263	233	175
Livermore, CA (closed 8/31/04)	10,607	11,633	11,198	6,205	5,211	4,371	3,565	1,850	117	-
Miami, FL	8,305	6,065	6,961	6,237	5,962	5,143	5,931	4,602	7,243	6,032
New Orleans, LA	9,094	8,008	10,777	6,478	5,033	4,665	5,151	2,889	1,358	3,054
Ramey, PR	896	1,244	1,405	1,731	1,952	835	1,688	1,813	1,619	1,436
Spokane, WA	2,331	2,176	1,308	1,324	1,335	1,142	992	847	279	185
Swanton, VT	1,664	1,802	1,871	1,957	2,463	1,736	1,955	2,701	1,935	1,544

Source: Office of Immigration Statistics, Department of Homeland Security, 2006 *Yearbook of Immigration Statistics*, Table 36, <http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2006/Table36.xls>.

Consulate of México in Tucson

Number: TUC-392
Subject: Operation Streamline

February 15th, 2008



SECRETARIA DE
RELACIONES EXTERIORES



HONORABLE CHARLES R. PYLE
United States District Court
Evo A. DeConcini U.S. Courthouse
405 West Congress Street, Suite 5660
Tucson, AZ 85701

Al contestar este oficio, diligense los datos contenidos en el ángulo superior izquierdo

The purpose of this letter is to address you a delicate matter where your cooperation and support would be greatly appreciated.

Operation Streamline was launched in the month of January in the state of Arizona where the Department of Homeland Security (DHS), Department of Justice (DOJ) and numerous local law enforcement organizations are working to expedite prosecution of undocuments nationals for illegal entry in conjunction with removal proceedings.

This Prosecution Initiative has caused that when mexican nationals are apprehended by immigration authorities, their properties are removed and kept at the Border Patrol Tucson Station. When defendants receive time served as a sentence, they are taken directly back to Border Patrol station from court, where they get their properties before BEEN removed to Mexico, but, if they get more than one day of sentence they have to be under Federal Bureau of Prisons (BOP) custody, therefore, when they are released from the custody of the (BOP) they are taken directly to the border back to México without their belongings, which includes money and ID's.

As a consequence, they are entering into Mexico without their identifications and money. This has originated an unsettling situation, these people are having problems to identify themselves as mexicans when going back to México. With no picture identifications or birth certificates, Mexican Immigration Authorities have been having trouble to identify them as mexicans and not as central americans.

Please be assured that this Consulate appreciates your assistance to the preceding, and would like to extend our unberding support to you and your staff. The undersigned appreciates your attention to the previous and looks forward to receiving your valuable response.

Respectfully,

Juan Manuel Calderón-Jaimes
Cónsul of México
ARC/EMC/DLQ

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