

Calendar No. 519

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-279

TO EXPRESS THE SENSE OF THE SENATE
REGARDING THE SUCCESS OF OPERATION
STREAMLINE AND THE IMPORTANCE OF
PROSECUTING FIRST TIME ILLEGAL
BORDER CROSSERS

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TOGETHER WITH

ADDITIONAL VIEWS

TO ACCOMPANY

S. RES. 104



JUNE 16, 2016.—Ordered to be printed

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TO EXPRESS THE SENSE OF THE SENATE REGARDING THE SUCCESS OF
OPERATION STREAMLINE AND THE IMPORTANCE OF PROSECUTING
FIRST TIME ILLEGAL BORDER CROSSERS

JUNE 16, 2016.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. Res. 104]

The Committee on Homeland Security and Governmental Affairs,
to which was referred the resolution (S. Res. 104), to express the
sense of the Senate regarding the success of Operation Streamline
and the importance of prosecuting first time illegal border crossers,
having considered the same, reports favorably thereon without
amendment and recommends that the resolution do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. Res. 104 is to express the sense of the Senate
that the Executive Branch should immediately remove any issued
or related prohibition, policy, guidance, or direction to cease pros-
ecuting first time illegal border crossers under Operation Stream-
line.

II. BACKGROUND AND THE NEED FOR LEGISLATION

In 2011, the United States Border Patrol created the Consequence Delivery System to provide assistance to “management and agents” in applying the ideal “criminal and administrative consequences” for apprehended individuals.¹ Under the Consequence Delivery System, the Border Patrol attempts to impose a “consequence” such as prosecution, expedited removal or voluntary removal on most or all unauthorized migrants it apprehends at the Southwest Border. A key component of the system is Operation Streamline.² According to the Department of Homeland Security,

Streamline is a criminal prosecutions program targeting individuals who illegally enter the United States through defined geographic locations. Consequences are imposed through consistent application of criminal sanctions to reduce illicit cross-border activity. Streamline is a multi-agency effort that relies heavily upon the collaborative efforts of U.S. Customs and Border Protection, the U.S. Magistrate, the Federal Judiciary, the U.S. Attorney’s Office, the U.S. Marshals Service, Immigration and Customs Enforcement, and the Executive Office of Immigration Review.³

Operation Streamline expedites the criminal processing of illegal border crossers by allowing large groups to have their charges heard by a judge at the same time, often resulting in jail time.⁴ According to a chart on the Consequence Delivery System prepared by Customs and Border Protection (CBP) for use by Border Patrol officers in the Tucson sector, Operation Streamline is rated “most effective and efficient” for those who are apprehended for the first time, those who have been apprehended two or three times, and those who are a “persistent alien.”⁵ In addition, Operation Streamline is rated “highly effective and efficient” for suspected smugglers, targeted smugglers, and criminal aliens.⁶

In 2015 the DHS Office of Inspector General noted additional tools CBP could use to measure the effectiveness of Operation Streamline and other consequences, such as measuring recidivism rates over multiple fiscal years (FY).⁷ However, CBP explained that “rather than focusing solely on recidivism and the re-apprehension rate, conducting analyses on a wide range of indicators demonstrates better evaluation and assessment of CBP’s enforcement

¹ *Does Administrative Amnesty Harm our Efforts to Gain and Maintain Operational Control of the Border: Hearing Before the H. Subcomm. on Border and Maritime Sec’y of the H. Comm. on Homeland Sec’y*, 112th Cong. (2011) (statement of Michael J. Fisher, Chief, U.S. Border Patrol, U.S. Customs and Border Protection, U.S. Dep’t of Homeland Sec.), available at <https://www.dhs.gov/news/2011/10/04/written-testimony-cbp-house-homeland-security-subcommittee-border-and-maritime>.

² *Id.*

³ *Id.*

⁴ Lisa Seghetti, Cong. Research Serv., R43356, *Border Security: Immigration Enforcement Between Ports of Entry* 8 (2014).

⁵ *Tucson Sector: Consequence Delivery System Guide, FY2014*, U.S. Customs and Border Protection (2015) (on file with Comm. staff); *U.S. Border Patrol Apprehensions from Mexico and Other Than Mexico (FY 2000–FY 2015)*, U.S. Customs and Border Protection (2015), available at <http://www.cbp.gov/newsroom/media-resources/stats?title=Border+Patrol>.

⁶ *Id.*

⁷ Office of Inspector General, Department of Homeland Security, OIG-15-95, *Streamline: Measuring Its Effect on Illegal Border Crossing*, 3 (May 15, 2015), available at https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf.

efforts at the strategic, operational, and tactical levels.”⁸ CBP is currently implementing a “State of the Border Risk Methodology” strategy to measure its effectiveness, which the OIG found responsive to its recommendation.⁹

Operation Streamline was originally implemented in the Del Rio Sector in December 2005¹⁰ as a joint venture between the United States Border Patrol, Department of Justice, and United States Marshals Service. Under the Del Rio initiative, many illegal crossers, including first time crossers, were criminally prosecuted for illegal entry, usually sentenced to jail time, and then removed.¹¹ The Del Rio Sector saw a marked decrease in apprehensions after the implementation of the operation.¹² For example, from FY 2005 to FY 2006 apprehensions decreased from 68,506 to 42,636—a decrease of 37 percent.¹³ Similarly, in FY 2007 apprehensions again fell to 22,920—a 67 percent decrease from FY 2005 apprehension levels.¹⁴

After the decreased apprehensions realized in the Del Rio Sector, Operation Streamline was rolled out in other southwest border sectors.¹⁵ Once Operation Streamline was applied in the Yuma Sector, apprehensions decreased from 118,549 in FY 2006 to 37,992 in FY 2007—a 68 percent decrease.¹⁶

Despite this success, in 2014 the Yuma County, Arizona Sheriff wrote a letter to members of Congress explaining he received notice from the U.S. Attorney’s Office for the District of Arizona “that first time offenders will not be prosecuted.”¹⁷

This resolution expresses the sense of the Senate that gains made in border security in the Yuma sector are of critical importance and that failing to prosecute first-time illegal border crossers under Operation Streamline will jeopardize such border security gains. To that end, the resolution affirms that Operation Streamline should be preserved and that the Executive Branch should immediately remove any and all obstacles to prosecuting first-time illegal border crossers under Operation Streamline.

III. LEGISLATIVE HISTORY

Senators Jeff Flake, Chuck Grassley, Ron Johnson, and John McCain introduced S. Res. 104 on March 18, 2015, which was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. Res. 104 at a business meeting on February 10, 2016. The Committee ordered the bill, reported favorably, by roll call vote. Senators voting in the affirmative were: Johnson, McCain, Portman, Paul, Lankford, Ayotte, Ernst, and Sasse. Senators voting in the negative were: Carper, McCaskill,

⁸*Id.*

⁹*Id.*

¹⁰*Id.* at 4.

¹¹*Id.*

¹²*U.S. Border Patrol Apprehensions from Mexico and Other Than Mexico*, *supra* note 5.

¹³*Id.*

¹⁴*Id.*

¹⁵*Streamline: Measuring Its Effect on Illegal Border Crossing*, *supra* note 7 at 5.

¹⁶*U.S. Border Patrol Apprehensions from Mexico and Other Than Mexico*, *supra* note 5.

¹⁷Letter from Leon N. Wilmot, Sheriff, Yuma County to the Honorable Jeff Flake, U.S. Senator (Aug. 19, 2014), available at http://www.flake.senate.gov/public/_cache/files/9d45f51e-521b-42e1-9df8-407e5d24388f/flake-jeff-re-operation-streamline-08192014.pdf (policy subsequently confirmed by U.S. Customs and Border Protection).

Tester, Baldwin, Heitkamp, Booker, and Peters. For the record only, Senator Enzi voted aye by proxy.

IV. SECTION-BY-SECTION ANALYSIS OF THE RESOLUTION, AS REPORTED

The resolution states the Senate's findings that Operation Streamline has proven to be an effective tool in the Consequence Delivery System and, along with manpower and technology, has contributed to significant border security gains, namely in the Yuma Sector.

The resolution resolves that ceasing to prosecute illegal crossers under Operation Streamline will jeopardize border security gains and declining recidivism rates. To that end, it is the sense of the Senate that the Executive Branch should abolish any prohibition, policy, guidance, or directive preventing the use of Operation Streamline across the Southwest border.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this resolution and determined that the resolution will have no regulatory impact within the meaning of the rules. The Committee believes that the resolution contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CHANGES IN EXISTING LAW MADE BY THE RESOLUTION, AS REPORTED

Because S. Res. 104 would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.

VII. ADDITIONAL VIEWS

ADDITIONAL VIEWS OF SENATORS CARPER AND BALDWIN ON S. RES. 104

OPERATION STREAMLINE

Operation Streamline grew out of a concern that too many unlawful border crossers were being returned to Mexico without serious consequences (an option known as voluntary return), or released on bond while they awaited hearings in immigration court or other procedures. In 2005, the Border Patrol in the Del Rio Sector of Texas (the El Paso region) partnered with federal prosecutors to try unlawful border crossers in federal court on criminal charges. The program was dubbed “Operation Streamline,” and subsequently expanded to certain other districts along the southwest border, including the Yuma sector in Arizona.

Operation Streamline is notable in two respects. First, the cases are handled in federal criminal court rather than the civil immigration court system. This means that defendants are entitled to a lawyer (which is not true in the civil immigration courts) but also subject to far more serious penalties. Not only do they serve federal prison sentences, but the criminal conviction carries negative consequences with respect to any future attempts to enter or legalize status. Second, these cases are handled under abbreviated, group proceedings rather than as individual cases. Dozens of migrants are brought into the courtroom together and have a group hearing with limited or no individualized review.

Operation Streamline is part of the Border Patrol’s broader Consequence Delivery System, which seeks to determine the most effective and efficient ways to deter border crossings along the Southwest Border. Some of the other options include formal removal proceedings by an immigration judge (group or individual), repatriation to the interior of Mexico, or individualized prosecution in federal court.

It is important for Border Patrol to have a range of tools to respond to challenging conditions at the border, and the agency clearly believes that Operation Streamline is an effective deterrent for some border crossers and an important tool to use in conjunction with other responses. In addition, some border communities in Arizona and elsewhere have been heavily impacted by unlawful migration and drug trafficking and rightfully want effective action by the federal government to blunt negative impacts.

According to DHS statistics, immigrants prosecuted under Operation Streamline are less likely to cross again (10.3 percent) than

those allowed to return voluntarily (27.1 percent) or subject to removal by immigration judge (roughly 16 to 18 percent).¹

But some academics have questioned whether Streamline is as effective a deterrent as Border Patrol statistics suggest, and a May 2015 report by the DHS Office of Inspector General (OIG) also identified certain weaknesses in the data.²

In addition, Operation Streamline imposes significant costs, particularly compared with handling these cases in the civil immigration system. DHS bears some of these costs and in some districts is supplying lawyers to help federal prosecutors with the caseload. But most of the costs are borne by the Department of Justice, including federal prosecutors and judges, federal public defenders, and the federal Marshals Service, which houses the defendants pre-trial and for their criminal sentences. The recent OIG report on Operation Streamline noted that DHS does not currently track the precise costs of Streamline, either for itself or its law enforcement partners, and recommended that officials try to generate cost estimates for the program.³ In addition to the absolute costs of prosecution and detention, some critics say the prosecutions impose a broader social cost by crowding out prosecution of more serious crimes.⁴

Since fiscal year 2006 when the Streamline program began, the number of immigration prosecutions in federal courts along the southwest border climbed from 37,529 to more than 97,000 in fiscal year 2013.⁵ In Tucson alone, the U.S. Marshals Service estimated it spent \$63 million annually to detain Streamline defendants.⁶ That does not include additional costs for prosecutors, court personnel and related expenses.

Beyond the costs, there have been lawsuits and other complaints alleging that the mass trials violate due process, or at least accepted standards of justice. Immigrants are brought into the courtroom shackled and in large groups, and asked to give their pleas after minimal contact with an attorney. There is particular concern—noted in the recent OIG report—that the program may violate the rights of asylum seekers under international law.⁷

In July 2015, 171 civil rights, human rights and faith organizations wrote to Attorney General Lynch asking that she discontinue or significantly curtail the Streamline program. According to the groups, the Streamline prosecutions pose serious due process concerns and do not clearly deter unauthorized migration. The letter expresses particular concern that the program violates international law by prosecuting valid asylum seekers.

Against these concerns, we cannot support S. Res. 104.

¹ DHS Office of Inspector General, “Streamline: Measuring Its Effect on Illegal Border Crossing,” May 15, 2015, OIG-15-95, p. 8. (hereinafter, “OIG report”).

² OIG report, pp. 8–10.

³ OIG report, p.11.

⁴ Congressional Research Service, “Border Security: Immigration Enforcement Between Ports of Entry,” December 31, 2014, R42138, p. 40.

⁵ OIG report, p. 38.

⁶ OIG report, p. 36.

⁷ The 2015 OIG report on Operation Streamline raises this issue as well and recommends that CBP develop better guidance for Streamline jurisdictions on how to handle migrants who express a fear of persecution.

S. Res. 104 is a Sense of the Senate affirming the importance of Operation Streamline and calling on the Administration to reverse a reported curtailment in who is eligible for the prosecutions.

Specifically, the resolution cites reports that the Office of the U.S. Attorney in Arizona will only prosecute defendants for illegal reentry into the United States, rather than for a first-time entry. The Justice Department will not confirm such a policy, however, stating that it would undermine its law enforcement efforts to make public specific information about prosecution policies.

The resolution asserts that Operation Streamline has been a “key to the success in the Yuma Sector” in decreasing illegal crossings and is particularly effective at deterring repeat crossings.

These are controversial contentions. As noted above, the Inspector General and others have questioned the accuracy of current statistics on the effectiveness of Operation Streamline. It is also difficult to isolate the impact of any one factor on overall migration—particularly in the face of broader economic trends, for instance, that have caused net Mexican migration to the United States to drop to zero or below.

The resolution also cites the Yuma Sheriff’s claim that there is a shared Federal, state and local goal of “zero tolerance” and 100 percent prosecution of border crossers. However, CBP has recently stated that Streamline is “is not a zero tolerance initiative.”⁸ Indeed, our understanding is that first-time border crossers are typically not prosecuted under Operation Streamline in other Border Patrol sectors.

It is worth noting that the number of apprehensions in the Yuma sector has remained relatively steady in the past eight years, ranging from about 5,800 to 8,363—well below the peak of 138,438 in fiscal year 2005. To the extent numbers have climbed somewhat in fiscal year 2015, it appears to reflect the general increase of migrants from the Northern Triangle countries of El Salvador, Guatemala and Honduras seen across the southwest border. Additionally, a significant number of those Central American migrants are unaccompanied minors and families who are not eligible for Operation Streamline in any event.

We support the Inspector General’s call for better metrics to assess the full costs and effectiveness of the Streamline program—including costs borne by all affected agencies.

THOMAS R. CARPER.



⁸Appendix C: CBP and ICE Comments to the Draft Report in Streamline: Measuring Its Effect on Illegal Border Crossing, DHS OIG, May 15, 2015.