



Testimony of
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Examining the Adequacy and Enforcement of Our Nation's Immigration Laws

Before

House Judiciary Committee

February 3, 2015

Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee:

Good morning. My name is Marc Rosenblum, and I am deputy director of the U.S. immigration program at the Migration Policy Institute, an independent, non-partisan think tank in Washington, DC that analyzes U.S. and international migration trends and policies. Thank you for the opportunity to testify today.

In any immigration system, illegal immigration depends on three factors: 1) the economic, social and demographic drivers of migration; 2) laws that define who may enter legally; and 3) immigration control measures to enforce these rules. When the drivers of migration produce a larger flow than the law permits, the result is illegal immigration, unless adequate enforcement measures are in place to prevent it.

In the U.S. case, the drivers of migration have exceeded the legal limits for most of the last 50 years and the United States has lacked adequate enforcement measures to prevent illegal immigration during much of this period. As a result, the population of unauthorized immigrants increased from fewer than 2 million people in 1970 to a high of 12.2 million in 2007. (About 80 percent of U.S. unauthorized immigrants are from Mexico and Central America, who are the focus of my statement today.) The unauthorized population stopped increasing in 2007, and has fallen by 1 million people since then. As far as we know, this is the first time in U.S. history that the unauthorized population has fallen without a legalization program.

What does this mean regarding the adequacy of immigration enforcement? To answer this question, I would like to outline the causes of illegal migration to the United States, provide a brief history of U.S. policy responses and describe the current immigration enforcement system. In short, the United States was slow to mount an effective response to rising unauthorized inflows, but changes since 2005 have produced substantial gains in enforcement capacity both at the Southwest border and within the United States. These gains have required high levels of spending that will increasingly yield marginal returns on investment, and that have already proven difficult to sustain. Thus, I conclude by recommending that Congress adopt a broader approach to controlling illegal immigration: combining the most promising enforcement strategies with additional policies designed to address the root causes of unauthorized flows.

Understanding the Causes of Illegal Migration

The United States experienced very little illegal immigration prior to 1965, and most unauthorized flows were seasonal, with workers typically returning home annually. Two changes initiated an era of large-scale illegal immigration. First, in 1964 and 1965, Congress eliminated the U.S.-Mexico Bracero program (through which several million Mexicans came to work temporarily in U.S. agriculture between 1942-1964) and passed the 1965 amendments to the Immigration and Nationality Act (INA). These changes ended guestworker migration from Mexico, which had stood at 450,000 people per year during

the 1950s, and imposed strict numerical limits on permanent migration from Mexico and the rest of Latin America, which had previously been uncapped.

The second change, which coincidentally also started in the 1960s, was a long and substantial increase in the drivers of low-skilled migration from Mexico and Central America. These drivers included structural changes in the U.S. and global economy that resulted in a growing demand for low-skilled workers in more diverse industries. Essentially, as the United States shifted from a heavily unionized industrial economy to a post-industrial service economy, U.S. employers sought more low-skilled, low-wage, non-union workers; and U.S. workers became better educated and less willing to take lower-skilled jobs at prevailing wages.

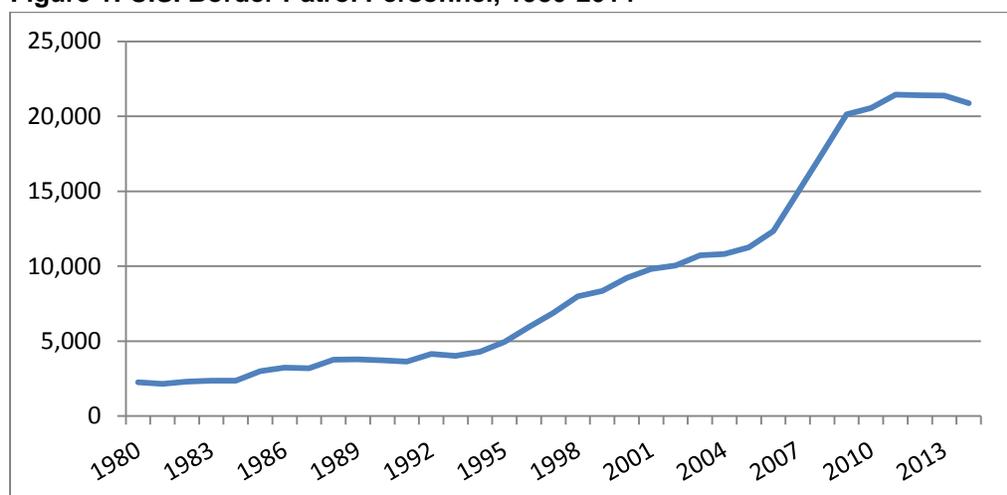
The drivers also included demographic changes: a baby boom in Mexico that ushered in a rapidly growing young, prime migration-age population coming after an earlier baby boom in the United States that has resulted in an aging population here. A third driver of regional migration is a strong culture of migration, which emerged over the course of two or three generations in hundreds of Mexican villages whose working populations migrated to the United States during earlier U.S.-sponsored guestworker programs.

Over time, family reunification has also become an important “pull” factor. Mexican and Central American immigrants in the United States have limited ability to sponsor family members abroad for immigrant visas; many therefore travel illegally to join family members who settled earlier in the United States. A final important “push” factor in recent years has been political instability and poor citizen security, especially in parts of Central America.

U.S. Immigration Enforcement: A Brief History

The convergence of strong economic, demographic and social drivers of migration along with a limited number of legal immigration channels immediately produced increasing unauthorized flows, but lawmakers struggled to craft a policy response. After holding a series of hearings on immigration control between 1970 and 1972, Congress took 15 years to pass the 1986 Immigration Reform and Control Act (IRCA). IRCA legalized most existing unauthorized immigrants, made it illegal for employers to knowingly hire unauthorized workers—in an effort to eliminate the “jobs magnet” attracting illegal flows—and authorized a 50 percent increase in Border Patrol staffing. IRCA marked the beginning of sustained investments in the agency that continue today (see Figure 1).

Figure 1: U.S. Border Patrol Personnel, 1980-2014



Note: Nationwide totals as of September 20, 2014.

Source: U.S. Customs and Border Protection, "U.S. Border Patrol Fiscal Year Staffing Statistics," accessed January 30, 2015, www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2014_0.pdf.

Nonetheless, IRCA's employer sanctions provisions were poorly designed, leaving many loopholes for employers to hire unauthorized workers, and thus have not effectively deterred unauthorized employment.¹ Increased border enforcement had the unintended effect of discouraging circularity, instead causing more unauthorized immigrants to settle permanently in the United States.² And IRCA's amnesty provisions excluded recent arrivals and the family members of those legalizing. As a result, even after IRCA legalized about 2.7 million unauthorized immigrants, a sizeable residual population remained that was ineligible for legalization, and the unauthorized population grew from 3.2 million people in 1986 to 5.8 million a decade later.³

A second major development in U.S. immigration enforcement occurred in 1996, with passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). A primary goal of IIRIRA was to strengthen and streamline the deportation process. Prior to

¹ According to the Congressional Research Service (CRS), a total of 2,176 employers were fined for violating employment eligibility verification requirements under the Immigration Reform and Control Act (IRCA) between 1999 and 2012, including 495 in 2012; see Andorra Bruno, *Immigration-Related Worksite Enforcement: Performance Measures*, CRS report R40002 (Washington, DC: CRS, 2013), 5, <http://fas.org/sgp/crs/homesecc/R40002.pdf>. By comparison, the Pew Research Center estimates that there were about 8.1 million unauthorized workers in 2012; see Jens Manuel Krogstad and Jeffrey S. Passel, "5 Facts about Illegal Immigration in the U.S.," (Pew Research Center FactTank blog, November 18, 2014), www.pewresearch.org/fact-tank/2014/11/18/5-facts-about-illegal-immigration-in-the-u-s/. For a fuller discussion of IRCA's design flaws, see Marc R. Rosenblum, *Immigration Enforcement at the Worksite: Making it Work* (Washington, DC: Migration Policy Institute, 2005), www.migrationpolicy.org/research/immigration-enforcement-worksite-making-it-work.

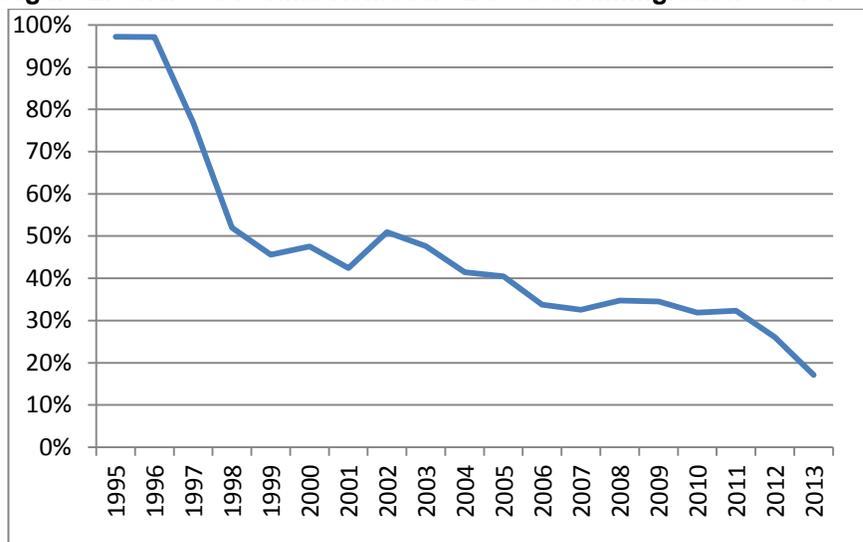
² See Wayne A. Cornelius and Idean Salehyan, "Does Border Enforcement Deter Unauthorized Immigration? The Case of Mexican Migration to the United States of America," *Regulation and Governance* 1 (2007); Douglas S. Massey, Jorge Durand and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2002).

³ Ruth Ellen Wasem, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, CRS Report RL33874 (Washington, DC: CRS, 2012), 3, <http://fpc.state.gov/documents/organization/202461.pdf>.

IIRIRA, almost all deportations were informal “returns,” which involved bussing immigrants to the nearest port of entry (or flying them home) with no additional legal consequences. IIRIRA made it much easier for enforcement agents to “remove” unauthorized immigrants, a formal legal process that makes deportees legally inadmissible for at least five years, and subjects them to possible criminal penalties upon a subsequent unlawful entry. IIRIRA also mandated deportation for an expanded list of violations, thereby limiting discretion of immigration judges to provide relief from deportation.⁴

Thus, IIRIRA transformed immigration enforcement from a system relying on immigration courts to one based increasingly on administrative removals, implemented by the Department of Homeland Security (DHS) with limited opportunity for judicial review. As Figure 2 illustrates, 97 percent of all removals in the years before IIRIRA’s passage involved hearings in immigration court, versus just 17 percent of all removals in 2013.⁵

Figure 2: Share of Formal Removals Based on Immigration Court Proceedings, FY 1995-2013



Note: Removals resulting from court proceedings are defined as removals *other than* expedited removals, reinstatements of removal and stipulated removals. Figure excludes data on stipulated removals for fiscal year (FY) 2012-2013; as a result the actual percentages of removals involving court proceedings were somewhat lower for these years.

Source: Adapted from Rosenblum and Meissner, *Deportation Dilemma*.

IIRIRA appears to have had little impact on illegal immigration, however. Apprehensions at the Southwest border, considered a proxy measure of unauthorized border crossers, averaged 1.2 million annually in the five years prior to IIRIRA’s passage, versus 1.5 million in the five years afterwards.⁶ Moreover, just as border enforcement had the unintended consequence of discouraging circularity, the so-called three- and 10-year bars on re-entry

⁴ For a fuller discussion, see Marc R. Rosenblum and Doris Meissner with Claire Bergeron and Faye Hipsman, *The Deportation Dilemma: Reconciling Tough and Humane Enforcement* (Washington, DC: Migration Policy Institute, 2014), www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement.

⁵ *Ibid.*

⁶ Migration Policy Institute (MPI) calculations from U.S. Border Patrol, “Total Illegal Alien Apprehensions by Fiscal Year,” accessed January 30, 2015, www.cbp.gov/newsroom/media-resources/stats.

created by IIRIRA have prevented certain unauthorized immigrants who may be eligible for a green card from leaving the country to claim their visa, thereby adding further to the growth of the unauthorized population within the United States.⁷ Overall, the estimated unauthorized population continued to increase, reaching 8.5 million in 2000 and peaking at 12.2 million in 2007.⁸

U.S. Immigration Enforcement: The Current System

Congress authorized substantial additional investments in immigration enforcement after the 9/11 attacks, and particularly since 2006. These investments, along with important policy decisions by the Bush and Obama administrations, have transformed the U.S. immigration enforcement system and mark the beginning of a new era in immigration enforcement. New enforcement programs and strategies beginning in 2005-2006, along with economic and demographic changes in the United States and Mexico, have been associated with a sustained downturn in illegal immigration, and today's immigration enforcement system appears far more effective than the pre-2005 system.

One change since 2005 was that, with passage of the Secure Fence Act in 2006, Congress and DHS completed the installation of fencing and vehicle barriers along strategically important sectors of the border. As Figure 3 illustrates, while the U.S. Immigration and Naturalization Service (INS) and its successor agencies within DHS installed just 120 miles of new fencing between 1996 and 2006, DHS added another 500 miles of fencing between 2006 and 2010. As of 2013, DHS had installed fencing and barriers along 99.7 percent of the border miles it had identified as appropriate to do so.⁹ Along with these barriers, DHS also invested in new roads, lighting, sensors, manned and unmanned aircraft, marine vessels, video and radar systems, night vision equipment and thermal imaging technology.¹⁰

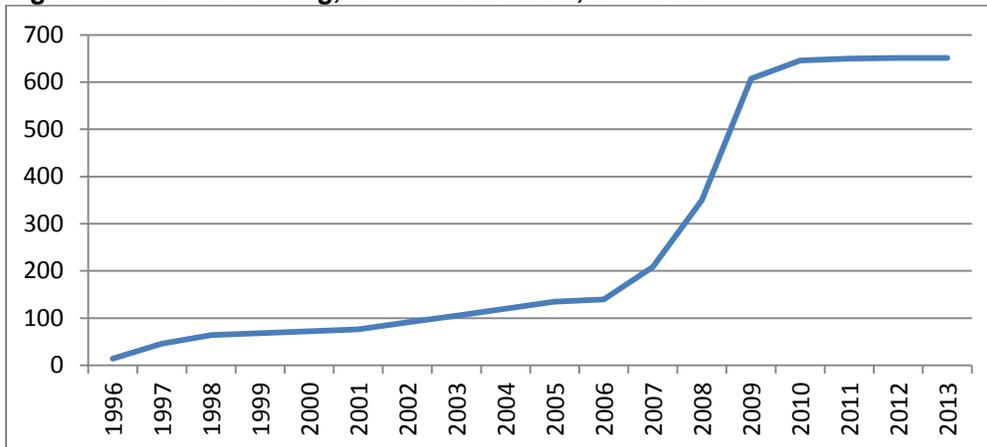
⁷ IIRIRA Section 301 mandated that unauthorized immigrants who leave the country wait outside the United States for three or 10 years—depending on the length of their illegal stay—before re-entering the country legally. MPI estimates that these three- and 10-year bars have stranded more than 1 million unauthorized immigrants inside the United States—immigrants who otherwise would have been eligible for permanent residency or temporary work visas based on sponsorship by an employer or by a family member who is a U.S. citizen or legal permanent resident (LPR). See MPI Data Hub, “Profile of the Unauthorized Population: United States,” accessed January 30, 2015, www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US.

⁸ Wasem, *Unauthorized Aliens Residing in the United States*, 3; Pew Research Center, *Unauthorized Immigrant Population Trends of States, Birth Countries and Regions* (Washington, DC: Pew Research Center, 2014), www.pewhispanic.org/2014/12/11/unauthorized-trends/.

⁹ Testimony of Homeland Security Secretary Janet Napolitano before the Senate Judiciary Committee, *The Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744*, 113th Cong., 1st sess., April 23, 2013, www.dhs.gov/news/2013/04/23/written-testimony-dhs-secretary-janet-napolitano-senate-committee-judiciary-hearing.

¹⁰ Homeland Security Secretary Jeh Johnson, “Border Security in the 21st Century,” (remarks at Center for Strategic and International Studies, Washington, DC, October 9, 2014), www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century. Also see Lisa Seghetti, *Border Security: Immigration Enforcement between Ports of Entry*, CRS Report R42138 (Washington, DC: CRS, 2014), 15-19, <http://fas.org/sgp/crs/homesecc/R42138.pdf>.

Figure 3: Miles of Fencing, Southwest Border, 1996-2013



Source: Adapted from Seghetti, *Border Security: Immigration Enforcement Between Ports of Entry*.

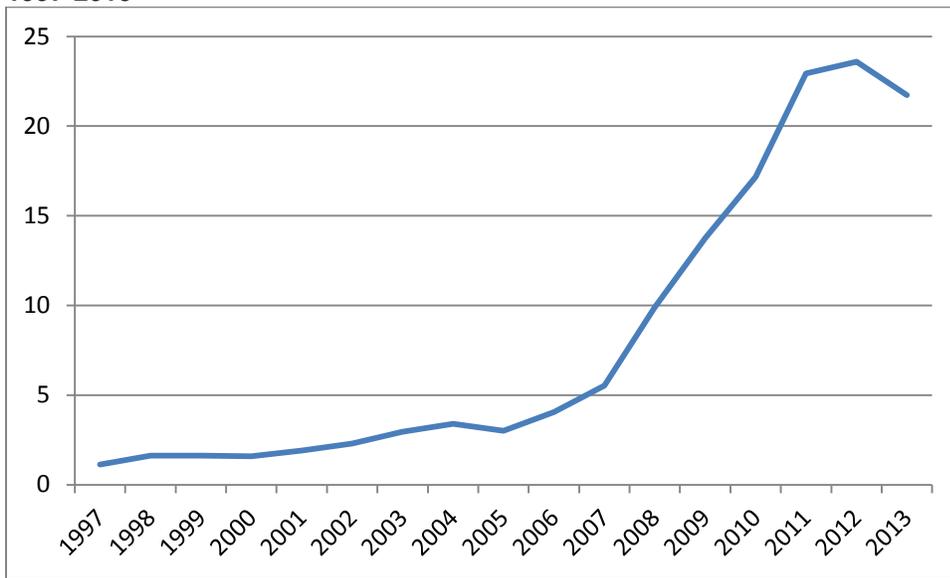
A second change concerns U.S. Customs and Border Protection (CBP) enforcement practices at the border. With increased resources and falling illegal entries, CBP has the ability to focus more attention on individual cases. Thus, beginning in 2005, the agency adopted a number of policies aimed at enhancing penalties for border crossers, rather than simply deporting them via “voluntary return” through the nearest port of entry. As part of this shift, DHS began to consistently detain people apprehended at the border either until they could be deported or until an immigration judge found them eligible to remain in the United States.¹¹

Also in 2005, DHS and the Department of Justice (DOJ) initiated Streamline, a fast-track prosecution program designed to charge large numbers of unauthorized immigrants with the federal criminal offenses of illegal entry and illegal re-entry. During Streamline hearings, which now operate in most of the nine Southwest border sectors, defendants appear before U.S. magistrate judges where they are charged in groups, rather than individually; they typically plead guilty to misdemeanor illegal entry charges, though they are often originally charged with felony illegal re-entry. Illegal entry charges carry prison sentences ranging up to six months. As a result of Streamline and increased prosecutions in standard court settings for smuggling and other charges, the proportion of immigrants apprehended at the Southwest border who were subject to immigration-related criminal charges increased from 3 percent in 2005 (and 1 percent in 1997) to 24 percent in 2012, before declining somewhat to 22 percent in 2013 (see Figure 4).¹²

¹¹ U.S. Customs and Border Protection (CBP), “DHS Secretary Announces End to ‘Catch and Release’ on Southern Border,” (press release, August 23, 2006). Previously, many border crossers with pending removal hearings were paroled or released into the United States with an order to appear in court at a future date.

¹² Rosenblum and Meissner, *The Deportation Dilemma*, 20-22.

Figure 4: Criminal Immigration Cases in Border Districts as Share of Border Apprehensions, FY 1997-2013



Source: Rosenblum and Meissner, *Deportation Dilemma*.

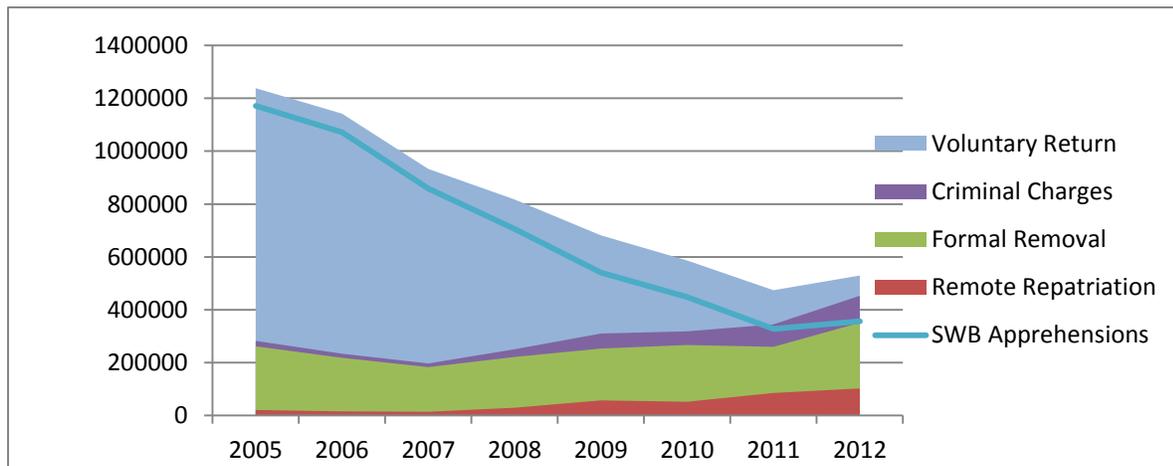
DHS's approach to border enforcement has also been transformed by its use of the Automated Biometric Identification System (IDENT) biometric database. As of September 2013, IDENT included more than 160 million unique records, making it the largest biometric database in the world.¹³ Since 2000, the Border Patrol has collected fingerprint records and digital photographs from almost 100 percent of illegal border crossers, and it uses the records to identify and track repeat crossers and convicted criminals.

Under a program now known as the Consequence Delivery System (CDS), the Border Patrol prioritizes criminals and repeat crossers for enhanced immigration penalties, including formal removal instead of informal return, immigration-related criminal charges through Streamline and standard forms of prosecution, and "remote repatriation," in which migrants are deported hundreds of miles away from their point of apprehension in an effort to discourage re-entry.¹⁴ As Figure 5 illustrates, the combination of increased resources and falling border apprehensions has allowed the Border Patrol to reduce the share of border crossers subject to voluntary return, and to substantially increase the use of enhanced penalties.

¹³ Seghetti, *Border Security: Immigration Inspections at Ports of Entry*, 23.

¹⁴ See *Ibid.* for a fuller discussion, as well as Rosenblum et al., *The Deportation Dilemma*.

Figure 5: CBP Consequence Delivery System: Southwest Border Enforcement Outcomes, FY 2005-12



Source: Seghetti, *Immigration Enforcement Between Ports of Entry*.

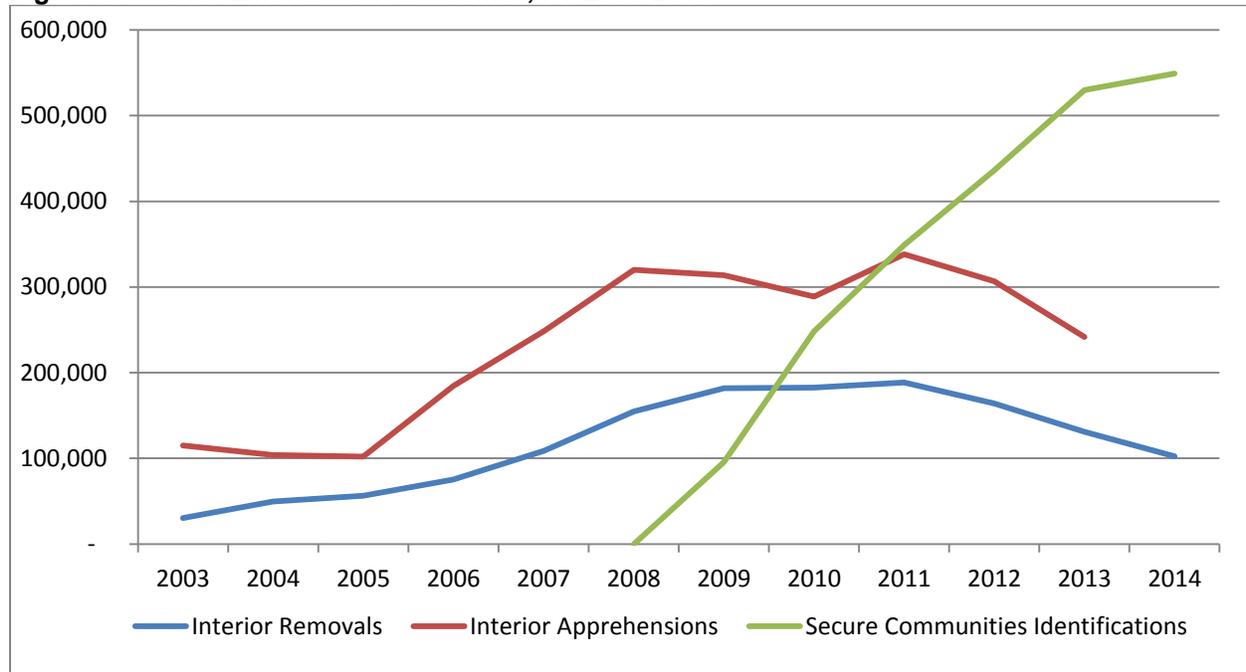
In addition to these changes at the border, the other significant development in the post-9/11 period—and mostly after 2005—is that Congress and DHS have initiated important programs aimed at identifying, detaining and deporting unauthorized immigrants located in the U.S. interior. The National Fugitive Operations Program (NFOP), created in 2003, involves teams of U.S. Immigration and Customs Enforcement (ICE) officers that apprehend deportable non-citizens—including fugitives (i.e., people who fail to appear at immigration hearings or fail to comply with immigration orders), people with multiple immigration violations and convicted criminals—in their homes, worksites and in public places. The Criminal Alien Program (CAP), which absorbed two earlier INS programs in 2007, focuses on initiating removal proceedings against non-citizens in jails and prisons after they have completed their sentences. And the 287(g) program, which geared into full action in 2006, trains state and local law enforcement officers to identify and interview deportable aliens in their communities and as they are being booked into local jails, before transferring them into ICE custody.¹⁵

Interior enforcement has also been greatly transformed by IDENT, which has been linked to the FBI’s main biometric criminal database, the Integrated Automated Fingerprint Identification System (IAFIS). Since 2008, the Secure Communities program has used IDENT-IAFIS data sharing to automatically check the immigration records of persons booked into a jail or prison and undergoing a criminal background check. When Secure Communities flags a potentially deportable immigrant, ICE may issue an immigration detainer—a document requesting that the arresting agency hold a person for up to 48 hours after completing criminal justice processing and then transfer them into ICE custody.

¹⁵ Marc R. Rosenblum and William A. Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, CRS Report R42057 (Washington, DC: CRS, 2012), <http://fas.org/sgp/crs/homesec/R42057.pdf>; Randy Capps, Marc R. Rosenblum, Cristina Rodríguez and Muzaffar Chishti, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement* (Washington, DC: MPI, 2011), <http://migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement>.

As Figure 6 illustrates, NFOP, CAP, 287(g) and Secure Communities have substantially increased the number of non-citizens identified, apprehended and deported from the U.S. interior. Prior to 2005, DHS typically apprehended about 100,000 migrants per year in the interior, and removed less than half that number. By 2008, apprehensions climbed to over 300,000 per year, and removals to over 150,000. And with Secure Communities now operational in every law enforcement jurisdiction in the country, DHS identified more than half a million non-citizens through its relationships with local jails and prisons in 2013, though not all Secure Communities identifications are removable.

Figure 6: Interior Enforcement Outcomes, FY 2003-2013

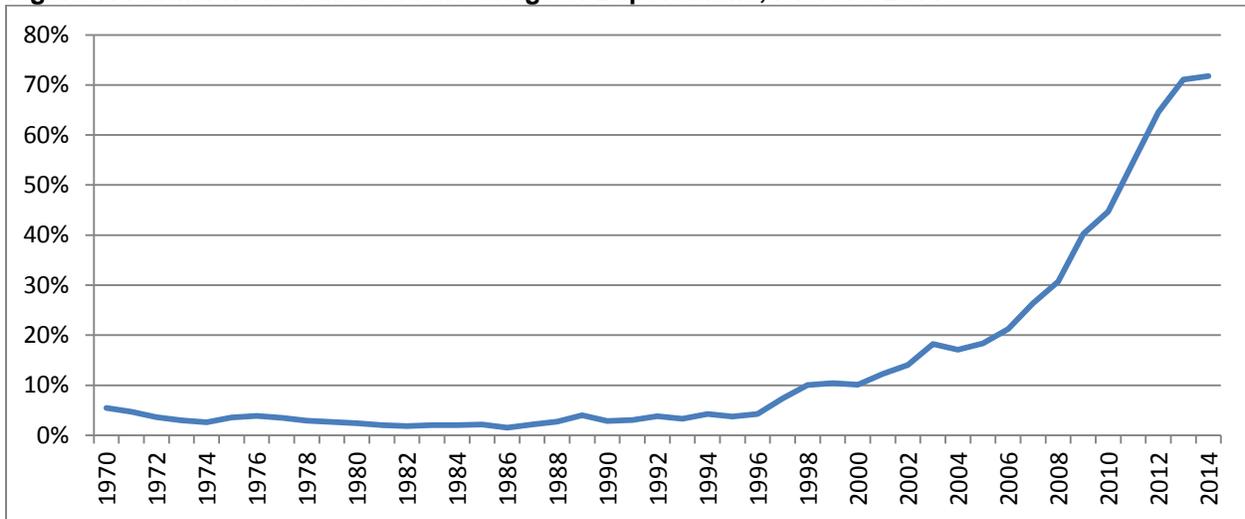


Note: Secure Communities identifications for 2014 are a Migration Policy Institute (MPI) estimate of the 12-month total based on reported data for the first 11 months of the fiscal year.
Sources: MPI calculations from DHS, *Yearbook of Immigration Statistics*, various years; ICE Enforcement Integrated Database (EID) for FY 2003-13; DHS Office of Immigration Statistics (OIS), *Immigration Enforcement Actions*, 2010-13; U.S. Immigration and Customs Enforcement, *Secure Communities: IDENT/IAFIS Interoperability Report*, August 2014.

These policy changes at the border and in the interior since 2005 represent a maturation of the legislative changes Congress initiated with the 1996 IIRIRA. As Figure 7 illustrates, virtually all deportations prior to IIRIRA consisted of informal returns, and formal removals accounted for 10-18 percent of removals in the decade after IIRIRA's passage. More recently, removals have accounted for a much larger share of deportations, growing from 21 percent in 2006 to 72 percent of deportations in 2014.¹⁶

¹⁶ Also see Rosenblum and Meissner, *Deportation Dilemma*.

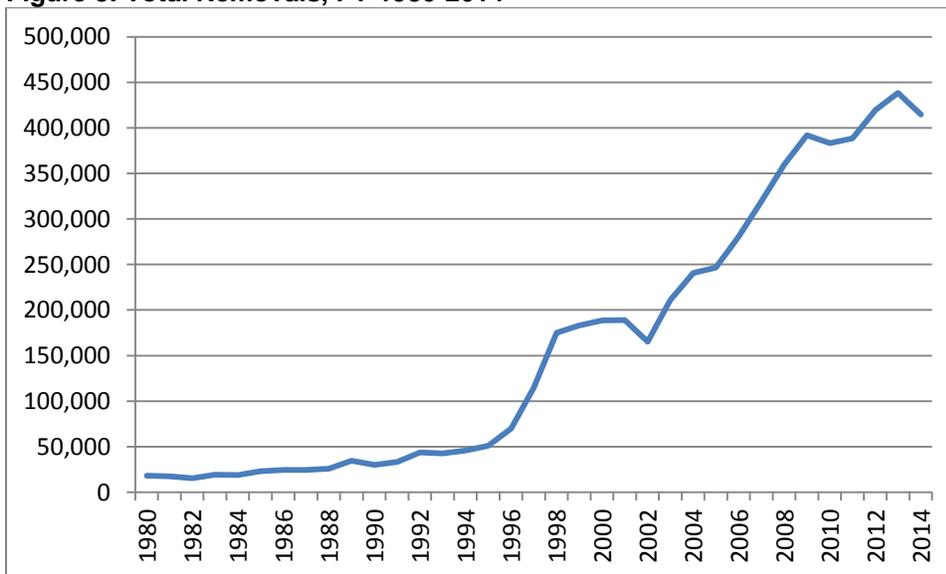
Figure 7: Formal Removals as a Percentage of Deportations, FY 1970-2014



Source: Adapted from Rosenblum and Meissner, *Deportation Dilemma*.

How has immigration enforcement evolved under the Obama administration? As Figures 2 through 7 indicate, the Obama administration has maintained key programs initiated under President Bush, including the high level of criminal prosecutions at the border, the shift from voluntary returns to formal removals and the expansion of interior enforcement. Interior removals reached an all-time high of 188,000 in 2011; and even after falling back to 102,000 in 2014 they remain twice as high as pre-2006 levels. Overall, as Figure 8 indicates, the Obama administration has completed more removals than any of its predecessors.

Figure 8: Total Removals, FY 1980-2014

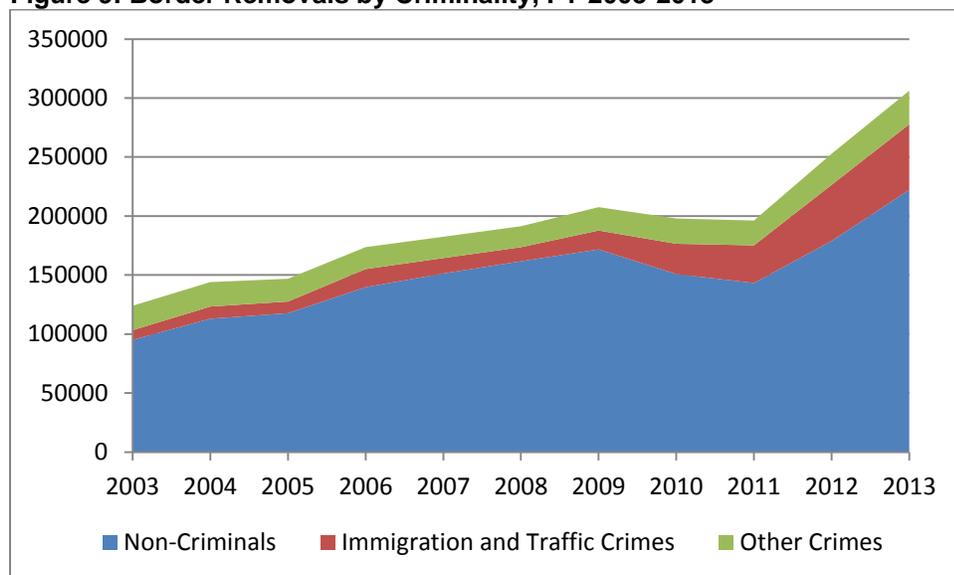


Sources: DHS, *Yearbook of Immigration Statistics* FY 2003, <http://www.dhs.gov/yearbook-immigration-statistics#>; DHS, "End of Year Statistics FY 2014," <http://www.dhs.gov/news/2014/12/19/dhs-releases-end-year-statistics>.

The most significant change since 2009 is that the Obama administration has taken a series of steps to focus its enforcement efforts on certain high-priority cases. Building on long-standing congressional priorities and policies undertaken by previous administrations, the Obama administration published a pair of policy guidance memoranda in 2010 and 2011 formally identifying as enforcement priorities noncitizens convicted of a crime, people who obstruct immigration controls by disobeying immigration court orders or failing to show up for deportation and recent illegal entrants.¹⁷ According to MPI's analysis of ICE enforcement data, 96 percent of all DHS removals since 2009 fall within these three categories.¹⁸

As Figures 9 and 10 illustrate, the Obama administration's focus on its stated enforcement priorities mostly resulted in a continuation of Bush administration trends with respect to border enforcement, but substantial changes with respect to interior enforcement. At the border, the great majority (77 percent) of removals are of non-criminals or people convicted only of immigration or traffic crimes (11 percent); these percentages are almost unchanged between 2003-2008 and 2009-2013.

Figure 9: Border Removals by Criminality, FY 2003-2013



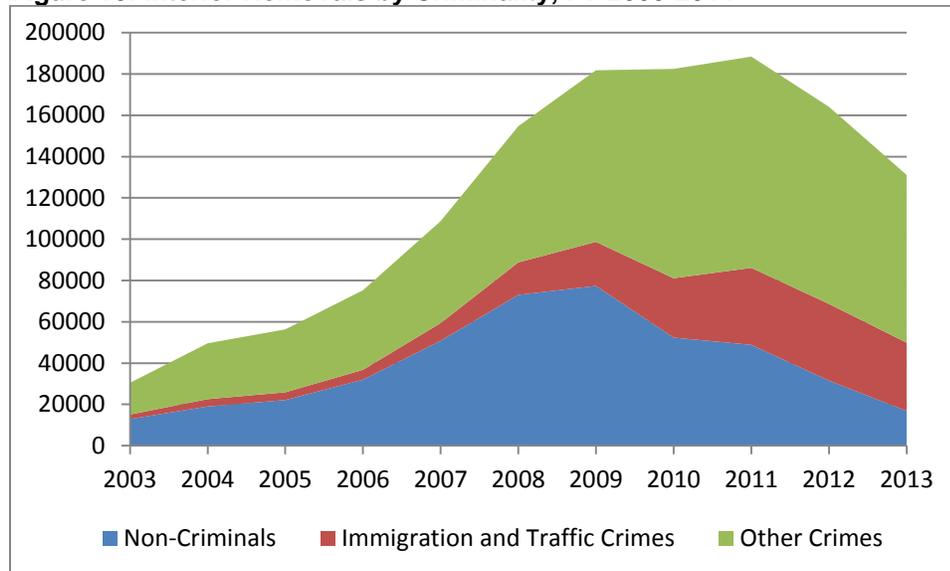
Source: Adapted from Marc R. Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change* (Washington, DC: MPI, 2014), <http://migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>.

¹⁷ Memorandum from U.S. Immigration and Customs Enforcement (ICE) Assistant Secretary John Morton to all ICE employees, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" (memorandum, June 30, 2010), www.ice.gov/doclib/news/releases/2010/civil-enforcement-priorities.pdf; Memorandum from ICE Director John Morton to all ICE Field Office Directors, Special Agents in Charge, and Chief Counsel, "Exercising Prosecutorial Discretion Consistent with Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" (memorandum, June 17, 2011), www.ice.gov/doclib/foia/prosecutorial-discretion/pd_cnstnt_w_civil_imm_enforce_ice_priorities.pdf.

¹⁸ Marc R. Rosenblum and Kristen McCabe, *Deportation and Discretion: Reviewing the Record and Options for Change* (Washington, DC: MPI, 2014), <http://migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change>.

In the interior, half of all deportations under the Bush administration were of non-criminals or people convicted only of immigration or traffic crimes, including 57 percent of interior removals in 2008. Following the Obama administration’s effort to shift the focus of interior enforcement to serious criminals, the share of non-criminals among interior removals fell to 13 percent in 2013, while the proportion convicted of serious crimes (i.e., crimes other than immigration and traffic offenses) grew to 62 percent. Overall, criminal removals more than doubled, from 84,000 in 2003 to an all-time high of 207,000 in 2012.

Figure 10: Interior Removals by Criminality, FY 2003-2014



Source: Adapted from Rosenblum and McCabe, *Deportation and Discretion*.

Evaluation of the Current System

The subject of this hearing is “the adequacy and enforcement” of immigration laws. Evaluating adequacy and enforcement raises two overarching questions: How effective are current enforcement policies at preventing illegal immigration? And what are the costs of current enforcement policies?

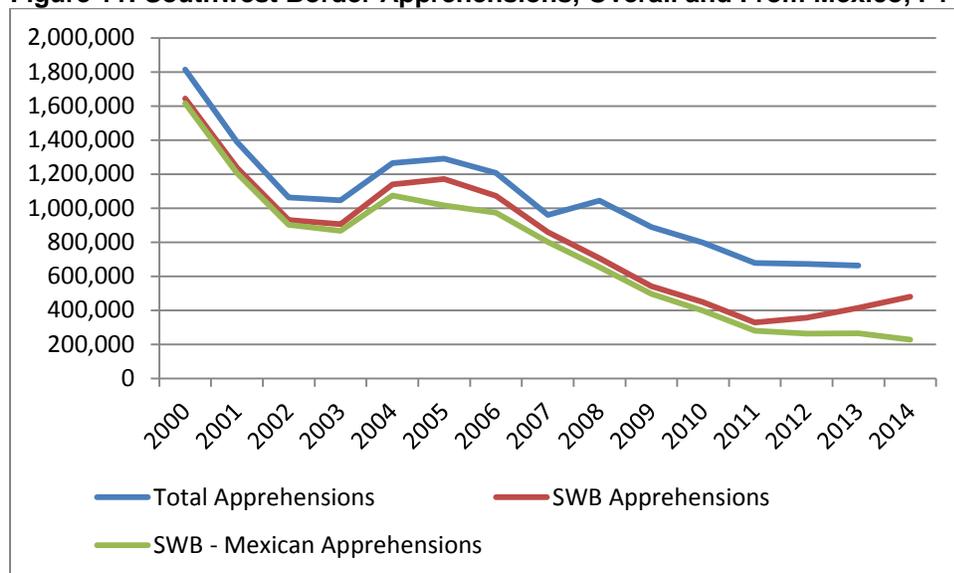
The Effectiveness of Immigration Enforcement

Border Patrol Apprehensions

Traditionally, DHS and its predecessor the INS have relied on apprehensions of unauthorized immigrants at the Southwest border as their primary measure of enforcement effectiveness: fewer apprehensions imply fewer crossing attempts, and thus less illegal immigration. As Figure 11 indicates, Southwest border apprehensions fell to 328,000 in 2011, the lowest level since 1972. While apprehensions rebounded somewhat between 2012 and 2014, the 2014 total of 487,000 apprehensions was still less than one-third the 1.68 million apprehensions recorded in the peak year of 2000. Moreover, apprehensions of Mexicans have continued to fall since 2011, reaching a low point of

227,000 in 2014. This number is significant because Mexicans have traditionally accounted for about 97 percent of unauthorized immigrant apprehensions.¹⁹

Figure 11: Southwest Border Apprehensions, Overall and From Mexico, FY 2000-2014



Source: DHS, *Statistical Yearbook* FY 2013, and DHS, “End of Year Statistics FY 2014.”

With apprehensions of Mexicans still at historic lows, the growth in apprehensions since 2011 consists almost entirely of Central Americans, about half of whom are families and children presenting themselves at the border and seeking asylum or another form of humanitarian protection.²⁰ While these flows are clearly a cause for concern, they

¹⁹ MPI calculations based on DHS Statistical Yearbook data for 1990-2011. By comparison, Mexicans accounted for just 47 percent of Border Patrol apprehensions in FY 2014.

²⁰ Available evidence suggests that at least half of children and families fleeing Central America and arriving at the U.S. border are escaping conditions that may entitle them to humanitarian protection under existing legislation. In 2014, the UN High Commissioner for Refugees (UNHCR) found 58 percent of surveyed unaccompanied children had valid humanitarian claims. See UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (Washington, DC: UNHCR, 2014), 6, http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf. In 2010, the Vera Institute of Justice found that approximately 40 percent of surveyed children in custody of the Office of Refugee Resettlement (ORR) were potentially eligible for relief from removal; see Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children through the Immigration System* (New York: Vera Institute of Justice, 2012), 24, www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf. In 2014, the Refugee and Immigrant Center for Education and Legal Services (RAICES) found that 63 percent of surveyed unaccompanied children in ORR custody at Lackland Air Force Base in San Antonio, Texas were eligible for relief from removal. See RAICES, “At Least 63% of Refugee Children at Lackland Air Force Base Qualify for Relief,” (news release, July 22, 2014), www.raicestexas.org/#!/At-Least-63-of-Refugee-Children-at-Lackland-Air-Force-Base-Qualify-for-Relief/c4x3/48917F75-F1DC-40B4-8F0C-2E2270900065. According to a report by the *New York Times*, lawyers counseling nearly 300 women in Artesia, New Mexico found that as many as 80 percent could win asylum claims. See Julia Preston, “In Remote Detention Center, a Battle on Fast Deportations,” *New York Times*, September 5, 2014, www.nytimes.com/2014/09/06/us/in-remote-detention-center-a-battle-on-fast-deportations.html. American Immigration Lawyers Association (AILA) attorneys in Artesia found that most screened mothers and children would likely qualify as refugees under U.S. law. See AILA, “AILA Letter to Congress on Artesia,” September 16, 2014, www.aila.org/content/default.aspx?bc=6714|6866|50093. Also see International Rescue Committee (IRC), “IRC Field Visit to Texas and Arizona: Key Findings and Recommendations to Policy Makers,” October 2014, www.rescue.org/sites/default/files/resource-file/Unaccompanied%20children%20in%20the%20U.S.%20IRC%20report.pdf.

represent a distinct phenomenon from traditional unauthorized immigrants. And with most women and children from Central America surrendering to the first Border Patrol agent they encounter rather than attempting to evade apprehension, the rapid rise in these flows should not be interpreted as an indicator of ineffective border controls, but rather as evidence of a broader shock to the region.

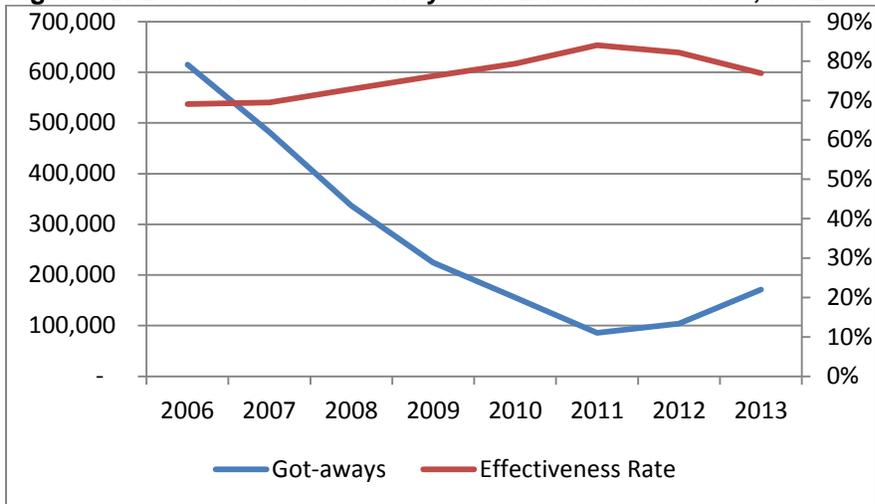
“Got-Aways” and the Border Patrol’s Effectiveness Rate

Focusing exclusively on apprehensions is problematic because apprehensions do not account for successful illegal entries. Do fewer apprehensions mean fewer crossing attempts, or that more unauthorized immigrants are evading detection? To address this question, at least since 2006 the Border Patrol has generated an independent assessment, based on surveillance data and agent intelligence, of “got-aways,” i.e., the number of immigrants successfully crossing the border without inspection.²¹ The Border Patrol also uses its estimate of got-aways and “turnbacks” (i.e., individuals escaping apprehension by returning to Mexico) to calculate an “effectiveness rate,” defined as the sum of apprehensions and turnbacks (i.e., successful enforcement outcomes) divided by the sum of apprehensions, turnbacks and got-aways (i.e., total crossing attempts). While agents’ estimates of got-aways and turnbacks are based in part on their subjective judgments of facts on the ground and rely on imperfect information, these metrics are important because they represent the agency’s most systematic attempt to directly measure enforcement failures and the effectiveness of border enforcement.

As Figure 12 indicates, the Border Patrol’s estimate of got-aways fell from more than 600,000 in 2006 to just 85,000 in 2011, and remained at 170,000 in FY 2013—a 70 percent decline in seven years. The effectiveness rate climbed from 69 percent in 2006 to 84 percent in 2011, before dropping back to 77 percent in 2013. The slip in these statistics since 2011 is primarily driven by the surge in Central American arrivals in the Rio Grande Valley sector; corresponding statistics for the other eight sectors in 2013 were 68,000 got-aways and an effectiveness rate of 84 percent.

²¹ For a fuller discussion, see testimony of Rebecca Gambler, Director Homeland Security and Justice Issues, Government Accountability Office (GAO), before the Subcommittee on Border and Maritime Security, House Committee on Homeland Security, “Goals and Measures Not Yet in Place to Inform Border Security Status and Resource Needs,” 113th Cong. 1st session, February 26, 2013, www.gao.gov/assets/660/652331.pdf.

Figure 12: Border Patrol Got-Aways and Effectiveness Rate, FY 2006-2013

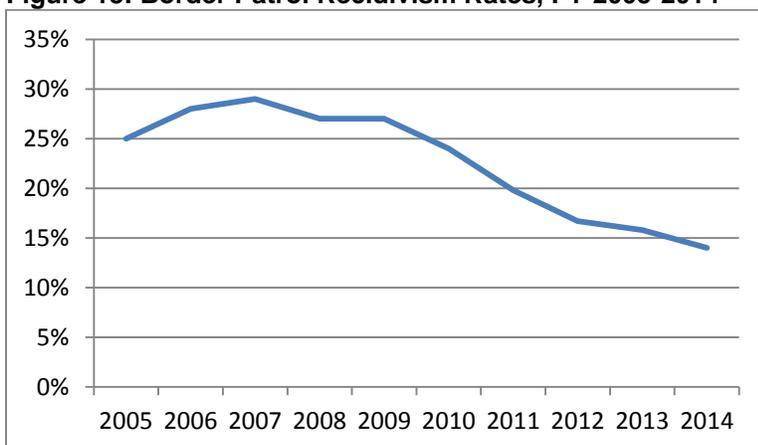


Source: MPI calculations from Government Accountability Office (GAO), *Border Patrol: Goals and Measures Not Yet in Place to Inform Border Security Status and Resource Needs* (Washington, DC: GA), 2013), www.gao.gov/assets/660/650730.pdf; U.S. Border Patrol, *Southwest Border Gotaways and Turnbacks by Sector: FY2012-FY2013*.

Recidivism and Deterrence

Another measure of border enforcement effectiveness is the recidivism rate, or the share of deportees that is re-apprehended on a subsequent crossing attempt. While recidivism confronts the same methodological problem as apprehensions—i.e., does a low recidivism rate indicate a low level of re-entries or a high level of success among repeat crossers?—recidivism is still a key enforcement measure since it reveals the extent to which migrants are not deterred even after being deported within the same year. As Figure 13 indicates, recidivism peaked (in the period for which CBP has collected and analyzed the data) in 2007 at 29 percent and has declined every year since then, reaching a low of 14 percent in 2014.

Figure 13: Border Patrol Recidivism Rates, FY 2005-2014



Source: Adapted from Seghetti, *Border Security: Immigration Enforcement between Ports of Entry*, Rosenblum and Meissner, *Deportation Dilemma*.

U.S. data sources cannot detect successful deterrence (i.e., cases in which migrants do not attempt re-entry), but certain Mexican surveys ask deportees about their intentions to re-enter the United States. According to the most recent available information, Mexicans repatriated in 2010 were less likely than those returned in 2005 to intend such attempts again. Among those who were deported in 2010 after migrating illegally to look for work (83 percent of those in the survey), 60 percent reported that they intended to return to the United States immediately, and 80 percent reported that they intended to return eventually, down from 81 percent and 92 percent, respectively, in 2005. Among new unauthorized migrants (those who had spent less than a week in the United States before being repatriated to Mexico), 18 percent of those repatriated in 2010 reported that they would not return compared to 6 percent in 2005.²² Thus, among both long-term and short-term Mexican migrants who were deported, the share who intended to attempt a return trip to the United States dropped over the most recent reported five-year period.

Smuggling Fees

The great majority of unauthorized migrants to the United States make use of smugglers to help them enter the United States.²³ Migrants' reliance on smugglers, along with the prices they are charged, provide an additional indicator of border enforcement effectiveness, as more effective enforcement increases the costs to smugglers of bringing migrants across the border and the value of their services, both of which should be reflected in higher smuggling fees.²⁴ Figure 14 depicts average smuggling fees paid by unauthorized migrants crossing the U.S.-Mexican border according to data collected by the Princeton University Mexican Migration Project (MMP). The MMP data, in constant dollars, show a steady increase in border crossing costs over the course of the last 25 years, with costs reaching about \$3,000 per crossing in 2012.²⁵ Other reports indicate that smuggling fees are even higher: \$4,000 to cross the border by foot in 2012, and \$9,000 to be smuggled around the U.S.-Mexico border by sea.²⁶

²² See Jeffrey Passel, D'Vera Cohn and Ana Gonzalez-Barrera, *Net Migration from Mexico Falls to Zero--And Perhaps Less* (Washington, DC: Pew Hispanic Center, 2012), 24-25, www.pewhispanic.org/files/2012/04/PHC-04-23a-Mexican-Migration.pdf.

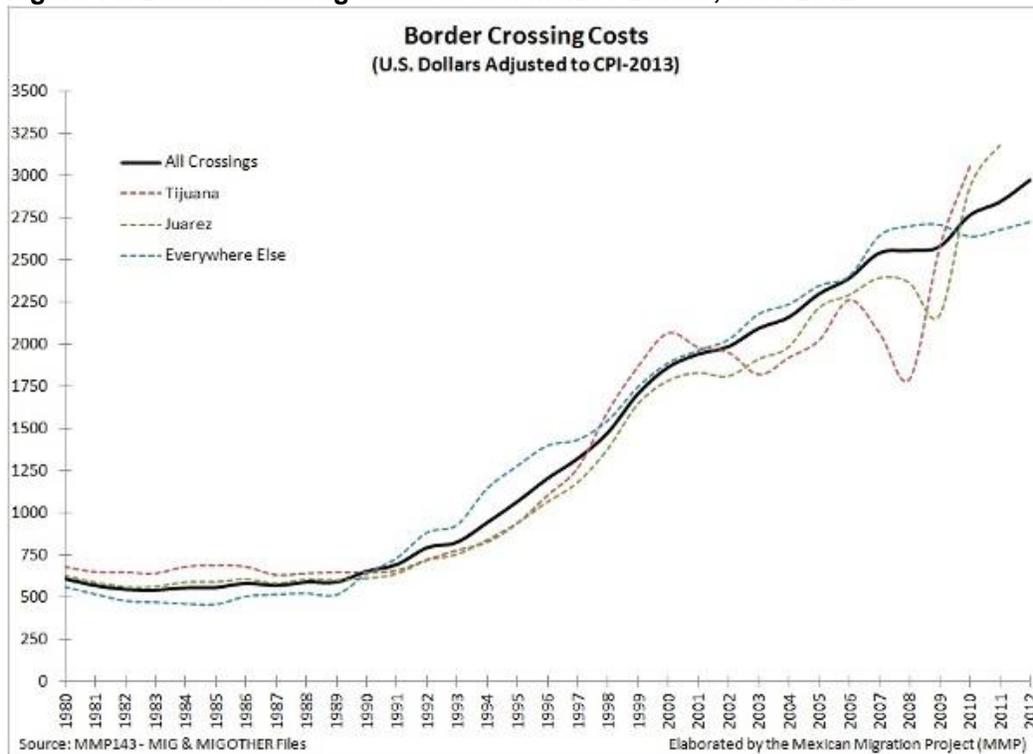
²³ See Princeton University Mexican Migration Project (MMP), "Graph 2: Access to Border-Crossing Guides and Family/Friends on First Undocumented Trip," accessed January 30, 2015, <http://mmp.opr.princeton.edu/results/002coyote-en.aspx>.

²⁴ See Bryan Roberts, Gordon Hanson and Derekh Cornwell, et al., *An Analysis of Migrant Smuggling Costs along the Southwest Border* (Washington, DC: DHS Office of Immigration Statistics, 2010), www.dhs.gov/xlibrary/assets/statistics/publications/ois-smuggling-wp.pdf.

²⁵ MMP, "Graph 1: Border Crossing Costs," accessed January 30, 2015, <http://mmp.opr.princeton.edu/results/001costs-en.aspx>.

²⁶ Alex Nowratseh, "The Conservative Case for Immigration Tariffs," *CEInPoint* no. 177 (2012), <http://cei.org/sites/default/files/Alex%20Nowrasteh%20-%20The%20Conservative%20Case%20for%20Immigration%20Tariffs.pdf>.

Figure 14: Border Crossing Costs at U.S.-Mexico Border, 1980-2012



Source: Princeton University Mexican Migration Project.

Total Unauthorized Population

Arguably the most important indicator of the overall effectiveness of immigration enforcement is the size of the U.S. unauthorized population. By this basic metric, the U.S. enforcement system was, on balance, ineffective for the first four decades after 1965, as the estimated unauthorized population in the United States increased every year for which estimates are available, with the exception of 1986-1988, when 2.7 million unauthorized immigrants legalized through IRCA.²⁷

Also by this basic metric, immigration enforcement has been broadly effective over the last seven years, as the unauthorized population has fallen from 12.2 million people in 2007 to about 11.2 million people in 2012-2013—a drop of 8 percent in seven years.²⁸ While a significant share of this drop is related to the U.S. recession of 2007-2009 along with economic and demographic changes in Mexico, the sustained drop in illegal immigration over such a long period—along with data described above on Border Patrol effectiveness, recidivism, border deterrence, smuggling fees and the expansion of interior enforcement

²⁷ Wasem, *Unauthorized Aliens Residing in the United States*; Arthur F. Corwin, "The Numbers Game: Estimates of Illegal Aliens in the United States, 1970-1981," *Law and Contemporary Problems* 45 (1983).

²⁸ Pew Research Center, *Unauthorized Immigrant Population Trends of States, Birth Countries and Regions*. DHS estimates that the unauthorized population dropped from 11.8 - 12.0 million in 2007 to 11.4 million in 2012; Bryan Baker and Nancy Rytina, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012* (Washington, DC: DHS Office of Immigration Statistics, 2013), www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf.

programs—strongly suggest that tough new enforcement measures put in place after 2005 have discouraged new illegal immigration to the United States and re-entry attempts among deportees. Other scholars have reached similar conclusions.²⁹

The Costs of Immigration Enforcement

Direct Costs

As described above, Congress has invested heavily over a sustained period in U.S. immigration enforcement capabilities, particularly since 9/11. Figure 15 depicts historical immigration enforcement spending, including INS budgets data for 1980-2002 and budget data for DHS immigration enforcement agencies (i.e., CBP, ICE, and US-VISIT) for 2003-2014. As the figure indicates, DHS's enforcement budget has averaged \$18.5 billion in the last five years, more than three times the total INS budget in 2000, and about 18 times the INS budget in 1980 (all figures in constant 2014 dollars). Since the 9/11 attacks, the United States has spent \$208 billion on immigration enforcement. H.R.399, as ordered reported by the House Homeland Security Committee, would authorize an additional \$4.2 billion in border security spending for 2015-2019.³⁰

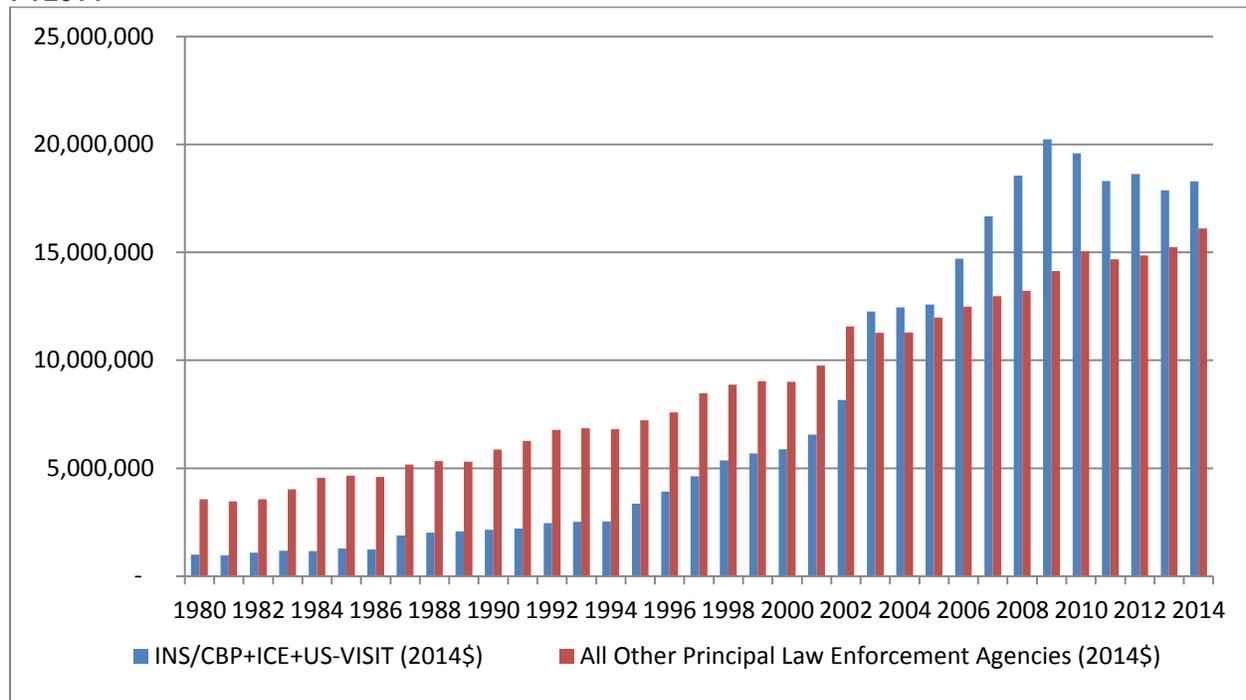
By comparison, the United States has spent an annual average in the last five years of \$15.2 billion on *all other federal criminal law enforcement agencies combined*.³¹ Notably, INS budgets consistently lagged the budgets of other law enforcement agencies in the 20 years before 9/11, but immigration enforcement spending has grown three times faster than other federal law enforcement spending since 2000.

²⁹ See for example, Jeffrey Passel, D'Vera Cohn and Ana Gonzalez-Barrera, *Net Migration from Mexico Falls to Zero—and Perhaps Less* (Washington, DC: Pew Hispanic Center, 2012), www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/; Manuela Angelucci, "U.S. Border Enforcement and the Net Flow of Mexican Illegal Migration," *Economic Development and Cultural Change* 60 no. 2 (2012): 311-357; Scott Borger, Gordon Hanson and Bryan Roberts, "The Decision to Emigrate From Mexico," (presentation at the Society of Government Economists annual conference, Washington, DC, November 6, 2012).

³⁰ Congressional Budget Office (CBO), Cost Estimate for H.R. 399, January 26, 2015, www.cbo.gov/sites/default/files/cbofiles/attachments/hr399.pdf.

³¹ Other federal law enforcement agencies include the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Secret Service, US Marshals Service, and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); see Doris Meissner, Donald M. Kerwin, Muzaffar Chishti and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: MPI, 2013), <http://migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.

Figure 15: Spending on Immigration and Other Federal Law Enforcement Agencies, FY1980-FY2014



Notes: The principal federal law enforcement agencies listed here outside the immigration arena are the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Secret Service, US Marshals Service, and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

Source: Adapted from Doris Meissner, Donald M. Kerwin, Muzaffar Chishti and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: MPI, 2013), <http://migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery>.

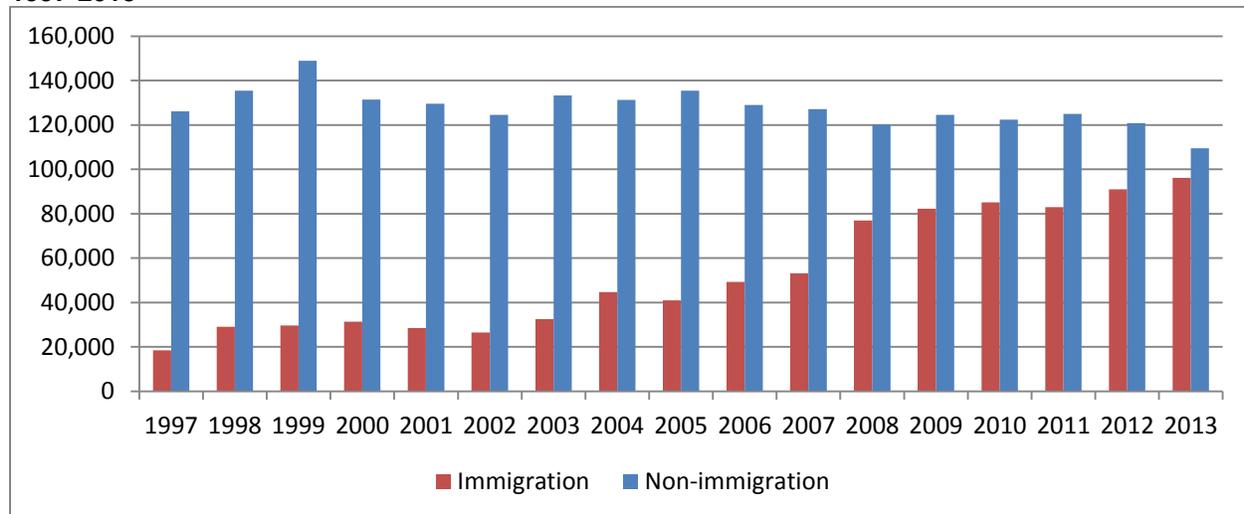
Impact of Immigration Enforcement on Other Law Enforcement Priorities

The more rapid increase in immigration enforcement versus other federal law enforcement spending raises questions about the opportunity costs of immigration control: how does spending on DHS affect resources available for other enforcement functions? More concretely, the interaction between immigration enforcement and other parts of the legal and criminal justice system means that prioritizing migration control affects the ability of other law enforcement agencies to do their work.

For example, Figure 16 depicts cases completed in federal district and magistrate courts for FY 1997-2013. Prior to 2004 immigration cases accounted for 15-20 percent of all such cases; but the increased focus on immigration-related criminal charges in border districts has pushed this proportion steadily higher, with immigration cases accounting for 47 percent of all district and magistrate court hearings in FY 2013. Moreover, as Figure 16 indicates, this shift not only reflects growth in the number of immigration cases, which increased from 18,000 cases in 1997 to 96,000 in 2013, but also a fall in the number of all other federal cases, which dropped from 126,000 to 109,000 cases during this period.

These data suggest that immigration prosecutions are crowding out other federal law enforcement priorities.

Figure 16: Immigration and Non-Immigration Cases in U.S. District and Magistrate Courts, FY 1997-2013



Source: Adapted from Rosenblum and Meissner, *The Deportation Dilemma*.

Another way that immigration enforcement affects other law enforcement activities relates to the interaction between ICE and state and local law enforcement agencies. In particular, a number of immigrant rights and civil liberties groups have raised concerns that the 287(g) program and Secure Communities have undermined trust between state and local law enforcement agencies and immigrant communities, and thereby discouraged immigrants from reporting crimes, creating a barrier to community policing practices.³² This concern, along with concerns about the uncompensated costs of immigrant detention, has also been raised by a number of law enforcement agencies—though others support the program—and by a DHS task force on Secure Communities.³³

Effects of Enforcement on U.S. Communities

Tough immigration enforcement also has adverse consequences for U.S. communities, particularly immigrants and citizens of foreign descent. The most immediate impact of enforcement is felt by deported immigrants and—in many cases—their U.S. families. A 2012 report, for example, found that 205,000 noncitizens deported between July 2010 and September 2012 were parents of U.S.-citizen children—23 percent of all deportations during that period.³⁴

³² Capps, Rosenblum, Rodríguez and Chishti, *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement*.

³³ DHS Advisory Council, “Task Force on Secure Communities Findings and Recommendations,” September 2011, 24, www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities.pdf; Chuck Wexler, *Critical Issues in Policing Series: Police Chiefs and Sheriffs Speak Out* (Washington, DC: Police Executive Research Forum, 2008), www.policeforum.org/assets/docs/Free_Online_Documents/Immigration/police%20chiefs%20and%20sheriffs%20speak%20out%20on%20local%20immigration%20enforcement%202008.pdf.

³⁴ Seth Freed Wessler, “Nearly 205K Deportations of Parents of U.S. Citizens in Just Over Two Years,” December 17, 2012, Colorlines, http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html.

Some immigrant rights and civil liberties groups have argued that both border and interior enforcement have led to racial profiling and wrongful detentions.³⁵ Streamline, in particular, raises concerns about whether migrants receive adequate due process protections during border criminal proceedings, as in some sectors there is reportedly only one defense lawyer for a group of up to 60 defendants at a hearing.³⁶

Enforcement also affects economic activity and quality of life in border communities and other locations with large immigrant populations. For example, intense border enforcement can disrupt local economic activity by discouraging trade and travel.³⁷ And while reduced illegal entries mitigate damage done to remote wilderness areas by border crossers, environmental groups have generally argued that the construction of fencing, roads and other tactical infrastructure damage sensitive border-area ecosystems.³⁸

Border Crime and Migrant Mortality

A final significant set of costs associated with today's immigration enforcement regime concerns its impact on border crime and migrant mortality. While the concentration of enforcement resources at the Southwest border has contributed to historically low crime rates in U.S. border towns and cities, it appears to have exacerbated migrant mortality and crime on the Mexican side of the border by making migrants more reliant on smugglers and more likely to cross in dangerous locations. DHS estimates that an average of about 411 border crossers have died per year—more than one a day—since 2005, the period of most intense border enforcement.³⁹ By comparison, earlier research identified fewer than 60 deaths per year between 1993 and 1995—a period of more border crossings but lower Border Patrol staffing and relatively limited enforcement infrastructure.⁴⁰ In other words, the mortality rate among border crossers has grown as immigration enforcement has tightened.

³⁵ New York University School of Law, New York Civil Liberties Union and Families for Freedom, *Justice Derailed: What Raids On New York's Trains And Buses Reveal About Border Patrol's Interior Enforcement Practices* (New York: NYU School of Law, New York Civil Liberties Union and Families for Freedom, 2011),

www.nyclu.org/files/publications/NYCLU_justicederailedweb_0.pdf; Lornet Turnbull and Roberto Daza, "Climate of fear grips Forks illegal immigrants," *Seattle Times*, June 26, 2011, http://seattletimes.com/html/localnews/2015435439_forks27m.html.

³⁶ American Civil Liberties Union, "Immigration Reform Should Eliminate Operation Streamline," (issue brief, undated), www.aclu.org/files/assets/operation_streamline_issue_brief.pdf.

³⁷ See GAO, *U.S.-Mexico Border: CBP Action Needed to Improve Wait Time Data and Measure Outcomes of Trade Facilitation Efforts*, GAO-13-603 (Washington, DC: GAO, 2013), www.gao.gov/assets/660/656140.pdf.

³⁸ See e.g., Defenders of Wildlife, *On the Line: The Impact of Immigration Policy on Wildlife and Habitat in the Arizona Borderlands*, www.defenders.org/publications/on_the_line_report.pdf. Also see Ross W. Gorte, Carol Hardy Vincent, Laura A. Hanson and Marc R. Rosenblum, *Federal Land Ownership: Overview and Data*, CRS Report R42346 (Washington, DC: GAO, 2012), <http://fas.org/sgp/crs/misc/R42346.pdf>.

³⁹ U.S. Border Patrol, "Southwest Border Deaths by Fiscal Year, 1998 - 2014," www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Sector%20Deaths%20FY1998%20-%20FY2014_0.pdf.

⁴⁰ Maria Jimenez, "Humanitarian Crisis: Migrant Deaths at the U.S.-Mexico Border," ACLU of San Diego & Imperial Counties, October 1, 2009, www.aclu.org/files/pdfs/immigrants/humanitariancrisisreport.pdf.

Conclusion and Recommendations

In conclusion, although the United States was slow to respond to increasing illegal immigration in the 1970s and 1980s, the last two decades have seen a substantial investment in border and interior enforcement resources and increasingly effective strategies to prevent illegal border crossings and to identify and deport people from within the United States. The greatest increase in deployment of enforcement resources and strategies has occurred since 2005-2006; and the estimated number of unauthorized immigrants in the United States has dropped by about 1 million since 2007. Illegal immigration from Mexico, in particular, has not only ground to a halt but has substantially reversed during this period. While some of these enforcement gains reflect diminished economic and demographic drivers of migration, both the timing of new enforcement programs and the detailed enforcement metrics described above suggest that recent enforcement efforts are an important factor explaining reduced illegal immigration.

These enforcement gains have not come cheaply as the federal government now spends more money on immigration enforcement than on all other federal criminal law enforcement priorities combined. In so doing, the modern era of immigration enforcement also implicates other key U.S. law enforcement efforts, and has especially adverse consequences for the U.S. families of unauthorized immigrants. Today's enforcement system also has adverse implications for the civil rights, economic activity and other quality of life issues in many U.S. communities; and they have likely contributed to increased crime and violence on the Mexican side of the border.

A serious assessment of these costs raises questions about how sustainable the enforcement-only response is. A more robust U.S. economy will result in stronger drivers of immigration; will the policy response focus exclusively on enforcement? Future enforcement gains in the U.S. interior will be even more difficult to achieve, as declining illegal immigration in recent years mean that remaining unauthorized immigrants are deeply entrenched in their communities.

We know what it would take to design a more efficient and sustainable enforcement system. Illegal immigration is a three-dimensional issue: based on the underlying demand for migration flows, the supply of visas, and enforcement. Yet for 40 years, U.S. policy has focused almost entirely on enforcement. By failing to address the structural roots of migration flows or the policy roots of *illegal* immigration, we've battled illegal immigration with one hand tied behind our back. I urge this committee to support a more balanced set of policies that address the root causes of illegal immigration—policies that in the long run will be more efficient, more effective, and more humane.

Mr. Chairman, this concludes my testimony. I thank you for the opportunity to testify and would be pleased to answer any questions.