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# In Harm's Way: Family Separation, Immigration Enforcement Programs and Security on the US- Mexico Border

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## Executive Summary

The Consequence Delivery System (CDS) is a suite of border and immigration enforcement programs designed to increase the penalties associated with unauthorized migration in order to convince people not to return (Rosenblum 2013). Despite its inauguration in 2011, many aspects of the CDS are not new. CDS does however, mark a shift from the deterrent strategy that, in the 1990s that relied heavily on the dangers of the natural terrain to dissuade unauthorized border crossers, to one that actively punishes, incarcerates, and criminalizes them. This article presents findings from the Migrant Border Crossing Study, a random sample survey of 1,100 recently deported migrants in six cities in Mexico conducted between 2009 and 2012. It examines the demographics and family ties of deportees, their experiences with immigration enforcement practices and programs under the CDS, and how these programs have reshaped contemporary migration and deportation along the US-Mexico border. The article covers programs such as criminal prosecutions of illegal entries under Operation Streamline, and the Alien Transfer and Exit Program (ATEP) or lateral repatriation program which returns immigrants to different locations from where they illegally entered. In relationship to these programs, it considers issues of due process and treatment of deportees in US custody. It also examines interior enforcement under Secure Communities, which, during the study period, comprised part of the overarching border security plan, and screened virtually everybody arrested in the United States against

immigration databases.

The article concludes that these programs do not have a strong deterrent effect. Instead, immigration enforcement has led to a “caging effect” over the past two decades which has disrupted seasonal migration flows, increased familial and social ties to the United States, and decreased the probability of returning to Mexico once in the United States. The development of strong family and other ties to the United States contributes to a greater resolve to return post-deportation.

## Introduction

The US Customs and Border Protection (CBP) consolidated a new approach to immigration enforcement with the implementation of the Consequence Delivery System (CDS) in 2011. As described by Border Patrol Chief Michael Fisher, the CDS “guides management and agents through a process designed to uniquely evaluate each subject and identify the ideal consequences to impede and deter future entry.”<sup>1</sup> The CDS marks a profound shift in immigration enforcement through active prosecution of immigration violators, as opposed to a passive strategy of enforcement through deterrence. Previous enforcement efforts in the 1990s relied on the natural and physical hazards of the desert to deter future crossings by driving the flow of people into the harshest terrain along the US-Mexico border (Andreas 2000; Nevins 2002). This approach greatly increased the lethality of unauthorized migration but did little to stem the flow of people and deter future crossings (Eschbach et al. 1999; Cornelius 2001; Cornelius 2005; Cornelius and Lewis 2007; Nevins and Aizeki 2008). The CDS actively seeks to prevent and deter reentry through increased prosecution, incarceration, and other strategies designed to make the experience so difficult and costly that migrants will not return.

This article examines the demographics and family ties of recently-deported migrants and their experiences with immigration enforcement practices and programs under the CDS, including issues of due process and treatment of deportees in US custody. The analysis focuses on two CDS programs<sup>2</sup>: (1) Operation Streamline, which criminally prosecutes illegal entrants *en masse* in particular Border Patrol sectors and crossing corridors; and (2) the Alien Transfer and Exit Program (ATEP), which deports unauthorized migrants apprehended in one region to another part of the border (Danielson 2013; De León 2013).

1 Testimony of Michael J. Fisher, Chief, US Border Patrol, US Customs and Border Protection, before the House Committee on Homeland Security, Subcommittee on Border and Maritime Security, “Does Administrative Amnesty Harm our Efforts to Gain and Maintain Operational Control of the Border?” 2011. Available at: <http://www.dhs.gov/news/2011/10/04/written-testimony-cbp-house-homeland-security-subcommittee-border-and-maritime>.

2 The CDS includes the following programs: Operation Streamline, Alien Transfer and Exit Program (ATEP), Mexican Interior Repatriation Program (MIRP), and Operation against Smugglers Initiative on Safety and Security (OASISS). Additional initiatives that represent examples of the CDS include: expedited removal proceedings, reinstatement of removal, voluntary return, efficient immigration court hearings, and warrant of arrest/ notice to appear (see Fisher Testimony, *supra*). We include a discussion of interior enforcement in this article because the removal of people who have established homes in the United States is vital to the continued functioning of this enforcement strategy.

The analysis also examines experiences of deportees with Secure Communities, an interior enforcement program which between October 2008 and November 2014 screened virtually all people who were arrested against the Department of Homeland Security's (DHS's) Automated Biometric Identification System (IDENT) database for immigration violations. We ask: (1) Who is most affected by these programs? (2) What is the overall impact and efficacy of increased punishments for unauthorized migrants? The findings show that border enforcement practices over the past two decades have led to longer stays, and therefore, increased ties to the United States. The current approach to immigration enforcement has caused disproportionately negative impacts on people who have been removed who have family in the United States.

To answer the research questions, the paper draws on the Migrant Border Crossing Study (MBCS), a data source based on surveys conducted by the authors with a random sample of deportees in six cities, including five cities along the US-Mexico Border and Mexico City. The MBCS differs from previous quantitative studies that focus on people's propensity to migrate in sending communities in Mexico (Massey, Durand, and Malone 2002; Durand and Massey 2004; Cornelius and Lewis 2007) or border flows (Bustamante 2002). The MBCS allows scholars and policymakers to better understand who is being deported, what they experience during their northward journeys, and what happened while they were processed through the programs that comprise the CDS. The goal is to provide an empirical basis by which to bring the questions and concerns generated by two bodies of literature into the policy arena. First, literature based on qualitative, historical, and meta-theoretical interpretations of border enforcement procedures has focused on the human and social costs of migration, especially migrant deaths in the desert (Andreas 2000; Nevins 2002; Nevins and Aizeki 2008; Heyman 2008; Martinez, Cantor, and Ewing 2014). The second, more recent body of literature has developed around deportation, especially interpreting the potential deportability of both authorized and unauthorized immigrants as a form of social control (Coleman 2007, 2009; Núñez and Heyman 2007; Varsanyi 2008; De Genova and Peutz 2010; Varsanyi 2010; Coleman and Kocher 2011).

### **Research Methodology and Sample Characteristics**

The data utilized in this analysis is from Wave II of the MBCS. It is based on survey interviews by US and Mexican researchers with 1,110 recent deportees between 2009 and 2012,<sup>3</sup> covering their experiences crossing the border, being apprehended by US authorities, and being repatriated to Mexico.<sup>4</sup> Interviews took place at ports of entry immediately following deportation and in migrant shelters in Tijuana and Mexicali, Baja California; Nogales, Sonora; Ciudad Juárez, Chihuahua; Nuevo Laredo, Tamaulipas; and Mexico City.<sup>5</sup> Wave II covers a period characterized by heightened border enforcement and the maturation of several measures designed to deter unauthorized entry. While the CDS

3 Wave II of the MBCS included 27 interviews during 2009, 14 during 2010, 999 during 2011, and 73 during 2012.

4 Wave I was conducted with 421 deportees in Nogales, Sonora from 2007 to 2009.

5 Interviews in Mexico City were with participants of the Mexican Interior Repatriation Program (MIRP), which offers people a flight to Mexico City or a bus ticket home out of the Tucson Sector during the summer months, instead of being dropped off at the border. The program did not operate in 2012, and the future of this program is uncertain.

was formally launched in 2011, its component initiatives were all functioning prior to that date. Operation Streamline began in 2005 and ATEP has been documented in some form or another throughout the history of the United States Border Patrol (USBP) (Hernandez 2010). While migration and border enforcement are constantly evolving and changing, the MBCS captures all official border enforcement measures in place at the time this article was written. An important goal of the MBCS is to provide generalizable findings about abuses and hardships of the border crossing experience that will be useful to scholars, nongovernmental organizations, and policymakers.

According to Mexican government statistics, in 2011 there were 267,029 deportations and repatriations<sup>6</sup> to the six cities represented in the survey (Rodríguez and Martínez 2013). Total deportations and repatriations to these cities comprised 66 percent of all people returned by the United States to Mexico that year (*ibid.*). The MBCS survey consisted of 250 questions, was carried out in a face-to-face setting, and lasted approximately 45 minutes.<sup>7</sup> The researchers only interviewed people 18 years of age or older who had crossed without legal documents sometime after September 11, 2001 and were deported within a month prior to the interview. A single probability weight based on three characteristics (Mexican state of repatriation, gender, and Mexican region of origin) was constructed. An iterative proportional fitting (*i.e.*, raking) method was used to construct the weights because marginal totals in the population are known but joint distributions in the population are not known (Deming and Stephan 1940). In order to compare people with different migratory histories, all data presented in this article refer to people's most recent crossing, apprehension, and deportation experience.

Table 1 provides descriptive statistics for the survey respondents. The average person interviewed was a 32-year-old male with eight years of formal education who earned a median household income of \$346 dollars per month before attempting to cross into the United States.

About one-half of the survey respondents spoke at least some English, and one in 10 spoke an indigenous language in addition to Spanish. Sixty-two percent were employed before deciding to leave Mexico, and 42 percent were the sole income provider for their families. Three-quarters of deportees had previously lived or worked in the United States. Among those who had lived or worked in the United States, the median time spent in the country was nine years.

One-half had at least one US citizen family member, and about one in five had at least one child under the age of 18 with US citizenship. Almost one-half of those interviewed expressed that they intended to settle permanently during their last crossing, and 30 percent stated that their current home was in the United States.

This is a strikingly different portrait of deportees than the common conception of seasonal laborers and young single men with no real ties to the United States. Julieta, a 24-year-old deportee, explained, "As a mother it is very difficult to leave your children over there—I

6 "Repatriation" refers to an administrative action used at the discretion of border officials to allow an individual to depart from the United States voluntarily rather than undergo formal removal proceedings.

7 We used a random spatial sampling technique to ensure external validity. Researchers did not ask for volunteers, but rather randomly selected potential participants at shelters and ports of entry.

**Table 1. Demographic Characteristics and Ties to the United States**

<b>Variable</b>	<b>Percent/Mean</b>
Male	90%
Female	10%
Age	32 years
Formal educational attainment	8 years
Monthly household income before crossing (in US dollars)	\$346
English-speaking (“at least some”)	47%
Indigenous language-speaking	8%
Sole economic provider for household	42%
Employed before crossing	62%
Have lived or worked in the US	75%
Years in the US (among people with US experience)	9 years
US Citizen family members	49%
US Citizen child	23%
US Citizen MINOR child	20%
Current home located in the US	30%
Intended to emigrate permanently after last crossing (10 years or longer)	46%

Source: Migrant Border Crossing Study, Wave II (N = 1,110), weighted data.

feel really bad about that. My daughter lives there with her father. He was abusive to me, so I am afraid to leave her there with him.”

One might assume that family connections to the United States would generate legal options for immigration, but this is rarely the case. Under the Immigration and Naturalization Act, there are three broad categories for potential immigrants seeking lawful permanent residence.<sup>8</sup> Each of these categories is subject to direct numerical limitations each fiscal year and additional limits by country.<sup>9</sup> This quota system, combined with the use of a lottery “for increasing the diversity of immigrants,” makes legal immigration in any given year more likely for an individual from a country with a low historical flow of immigrants than for an individual from a country with a high historical flow such as Mexico.

While 49 percent of people surveyed had a US citizen family member, many do not fit into categories that allow for legal entry, and if they do, the queue can stretch 20 years or longer. For instance, the US State Department’s Visa Bulletin for January 2015 reveals a visa priority date of September 15, 1994 in cases involving a US citizen who filed an immigrant visa petition for their unmarried adult son or daughter from Mexico. Family members

<sup>8</sup> Family sponsored immigrants, employment-based immigrants and diversity immigrants may qualify for lawful permanent residence. INA § 201, 8 U.S.C. § 1151.

<sup>9</sup> INA § 201, 8 U.S.C. § 1151; INA § 202, 8 U.S.C. § 1152.

cannot file for permanent residency until their visa priority date becomes current, more than a 20 year wait in this case. Moreover, Operation Streamline prosecutes individuals who have crossed the border without authorization. Prior to this program, border officials commonly exercised their discretion to allow unauthorized migrants to voluntarily be repatriated to Mexico, instead of subjecting them to formal removal proceedings, which carry criminal charges. A far higher percentage of people than in the past undergo removal proceedings and are therefore inadmissible to the United States.

For the average MBCS respondent, who likely possesses low levels of human and financial capital (see Table 1), legal immigration under the current statutory scheme would be extremely difficult or impossible. For example, a 32-year-old Mexican man with eight years of formal education, some work experience in Mexico and the United States, at least one US citizen family member other than a spouse, and a US citizen child under the age of 21, may never find a way to immigrate legally. While the executive action announced by President Obama in November 2014 would extend temporary administrative relief to as many as 5.2 million individuals that lack immigration status (Warren 2014), certain previous immigration-related criminal charges would exclude potential beneficiaries from the Deferred Action for Childhood Arrivals (DACA) program, the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program, and other future avenues to legal status.

## **The Consequence Delivery System and Interior Enforcement**

### *The Effects on Deterrence of Removal Programs*

The CDS seeks to impose additional repercussions for unauthorized entry in hopes that people will decide not to attempt another crossing. Claims that these programs significantly decrease the likelihood that people will return have never been externally evaluated or proven using reliable data, with the exception of recidivism rates, which have their own limitations (Rosenblum 2013).<sup>10</sup> The Government Accountability Office (GAO) has recommended that Immigration and Customs Enforcement (ICE) provide metrics for evaluating removal programs due in part to their high cost (GAO 2012), which is illustrated by the combined budget of CBP and ICE of \$18.2 billion in the 2014 Fiscal Year (FY) (DHS 2013).

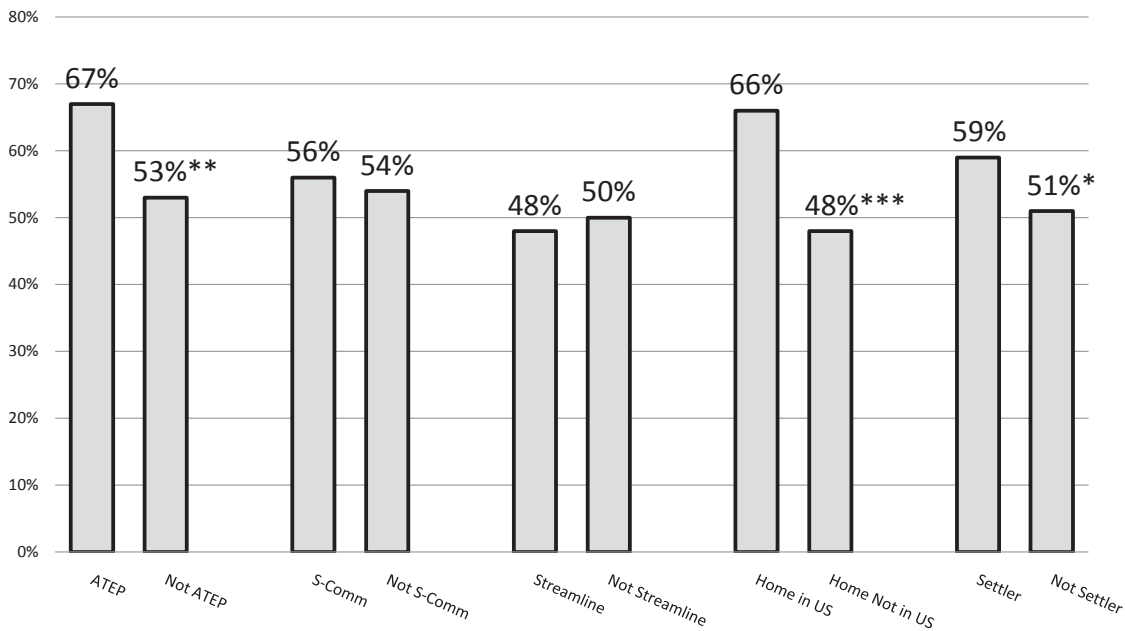
The MBCS data show that deterrence by arrest, incarceration and removal is largely ineffective. The majority of respondents expressed that they intend<sup>11</sup> to return to the United States sometime in the future (55 percent), with the rate being 18 percentage points higher for people who consider their current home to be located in the United States (66 percent vs. 48 percent) ( $p < 0.001$ ). Among people who stated that their home is in the United States, only 12 percent said they would not return in the future. Antonio, a 42-year-old deportee, explained, “I have no choice, my family is there. I need to go back to my children

<sup>10</sup> Recidivism assumes that people will have the same probability of being apprehended again, rather than taking a more costly or risky route that guarantees greater likelihood of success.

<sup>11</sup> Although intentions many not necessarily translate into actual behavior, the theory of planned behavior suggests intentions are the most proximate determinant of behavior (Ajzen 1991).

who want me back.” While it is important to note that future intention to cross is different from actually crossing the border, the data could just as easily undercount people who will return as over-count. Participants in the study were interviewed immediately following deportation, when experiences of incarceration and the dangers of crossing were fresh in their minds. Following return to Mexico, the availability of work and other social or cultural pressures may cause people to reconsider their intentions to cross in the future. However, David Spener notes that migrants tend to downplay the negative aspects of migration as time passes (2009). It is possible that some people may decide not to migrate again, while others who stated they would not attempt another crossing may indeed decide to do so upon returning to their communities of origin.

**“Do you believe you will cross again in the future?”  
 (“Yes” responses by variable of interest)**



Note: †p < 0.10, \*p < 0.05, \*\*p < 0.01, \*\*\*p < 0.001 indicate the difference is statistically significant. “Streamline” limited to people who crossed through sectors that have implemented the program.

Source: Migrant Border Crossing Study, Wave II (N = 1,110).



Deterrence became the linchpin of US border enforcement policy in the mid-1990s, (Andreas 2000; Nevins 2002; Dunn 1996, 2009; Rubio Goldsmith and Reineke 2010; Ewing 2014) and yet, despite billions of dollars spent, thousands of deaths, and millions of people detained, only 26 percent of all respondents stated that they would never return. Graph 1 compares the decision to cross again with the specific removal program (i.e., Operation Streamline, ATEP, and Secure Communities). As shown, these programs do not correspond to a significantly lower rate of future crossing intentions. Operation Streamline is shown to cause a slight, but not statistically significant decrease. However, people who have been laterally repatriated report intentions to cross again at higher rates when compared to people not processed through this program ( $p < 0.01$ ). “Settlers”—those who state they intend to migrate permanently—also report that they will cross again at higher rates. These findings differ slightly from official statistics outlined in a report by the Congressional Research Service (CRS) that show a decline in recidivism for people who faced criminal prosecutions within a period of one fiscal year (Rosenblum 2013). However, we contend that statements about the intention to return are a more accurate indicator because they account for a more flexible and realistic time period to recuperate resources rather than the occurrence of repeat crossings within a period of one fiscal year. Furthermore, using recidivism statistics assumes that people will have the same likelihood of apprehension before and after a criminal prosecution. Our qualitative data show that people are likely to invest more time, effort and resources in future crossings, or take a riskier approach, in order to avoid detection after prosecution. Moreover, nothing affects the decision to cross again as much as stating that one’s home is in the United States, a factor not considered in the CRS report.

Considering the amount of taxpayer dollars being spent, and the number of lives being affected, a serious evaluation of these programs is necessary to justify their continued operation. The following sections present survey findings on Operation Streamline, ATEP, and the interior immigration enforcement programs Secure Communities and 287(g).

## Operation Streamline

*“We all went in a big group in front of the judge...they put chains on us really tight...the whole time in there they made me feel like I killed someone.” – Javier*

Operation Streamline is a coordinated program of immigration enforcement and criminal prosecution that is characterized by *en masse* plea agreements for immigration offenders who have illegally entered the United States, a misdemeanor offense. Those with previous convictions of criminal offenses can be charged with illegal reentry, which is an aggravated felony if combined with other charges. The program officially began in the Del Rio Border Patrol Sector (TX) in 2005 and expanded to the Tucson Sector (AZ) by 2008 (Lydgate 2010). It currently operates in all but three sectors along the southern border.<sup>12</sup>

In Operation Streamline, a defense attorney is provided for defendants, sometimes in groups, and sometimes one-on-one, but the limited time allotted and complicated court

<sup>12</sup> The El Centro and San Diego Sectors (CA) do not participate in Operation Streamline, and the Big Bend Sector (TX) experiences too few apprehensions to warrant the use of the program.

setting have raised concerns about due process and access to effective legal counsel. When asked “what did your lawyer inform you about your rights?” only 30 percent mentioned any sort of basic legal right such as the right to silence or a fair trial. Fifty-five percent of respondents stated that their lawyer simply informed them that they needed to sign their order of removal and plead guilty. Six percent reported that their lawyers did not tell them anything. Only one percent reported being informed that they could report abuses. And only three people stated that their lawyer screened for legal immigration options based on family connections, which is relevant to the subsequent removal process. Under the current immigration system, if more people were to fight the charges, the enormity of the caseload would quickly overwhelm the capacity of the courts.

**Table 2. Interaction with Legal Counsel During Operation Streamline**

<b>Variable</b>	<b>Percent</b>
Processed through Operation Streamline <sup>1</sup>	27%
Shackled during Operation Streamline	95%
<i>“What did your lawyer tell you about your rights?”<sup>2</sup></i>	
Sign the form and do not fight the charges	55%
Some mention of basic legal rights	30%
Nothing or could not understand	6%
Could not recall	3%
Other	3%
Asked to report abuses	1%
Check for legal status of defendant	1%
Prospect of being paroled while waiting for resolution of an immigration case.	0%

1.) Among all respondents. When people apprehended and repatriated in sectors not practicing Operation Streamline are omitted, the percentage increased to 35%.

2.) Among respondents who gave valid responses. Does not sum to 100 due to rounding.

Source: Migrant Border Crossing Study, Wave II (N = 1,110), weighted data.

Unauthorized entry carries a maximum six-month sentence and those who are convicted have a criminal record based on an immigration offense, which hinders future legal residence or entry.<sup>13</sup> If apprehended again, they will be charged with illegal re-entry, which generally carries a longer prison sentence. However, when asked what they understood about their sentence, only 71 percent of respondents processed through Operation Streamline mentioned that a judge had told them they would face some amount of jail time if they return to the United States after being deported. However, once people have plead to the criminal charges, even the misdemeanor plea options, it becomes almost impossible to pursue legal immigration avenues which may have been available in the past. Operation

13 INA § 275, 8 U.S.C. § 1325.

Streamline also diverts law enforcement and judicial resources away from prosecuting more serious offenders, including those who represent a public safety or security risk (see Lydgate 2010).

Federal criminal convictions for illegal entry have increased substantially over the past decade from 3,900 in FY 2000 to 92,215 in FY 2013 (TRAC 2014). Federal convictions for illegal reentry increased from 6,513 in FY 2000 to 19,463 in FY 2012, while “other immigration” convictions increased from 1,032 to 1,504 during this same time period (Light, Lopez, and Gonzalez-Barrera 2014). In FY 2000 only 17 percent of federal convictions were for immigration-related offenses, but by FY 2012 this share had increased to 30 percent (*ibid.*). Operation Streamline has driven the increase in federal convictions for immigration-related offenses. For instance, 45 percent of all immigration-related prosecutions in southwest border districts between FY 2005—when Operation Streamline first began—to FY 2012 were a result of Operation Streamline proceedings (Rosenblum 2013).

The changes in prosecution brought about by Operation Streamline also likely account for a sizeable proportion of “criminal aliens” who have been removed for immigration crimes. Among all “criminal aliens” removed in FY 2013, 31 percent were removed for immigration infractions (which includes unlawful entry and reentry), while the other largest categories were traffic violations (15 percent) and drug offenses (15 percent) (Simanski 2014).

As discussed, Operation Streamline has been criticized on the ground that mass trials are anathema to the justice system due to the lack of due process and inability to effectively communicate the consequences of the conviction and future apprehensions. In addition, defendants are generally shackled before, during and after their court appearances. Defendants reported being shackled at the feet, waist and wrists for a median of six hours while they are transferred to and from the federal courthouse. Many women complained about not being able to go to the bathroom during this period because the shackles hold their pants up.

Because of Operation Streamline, the number of people who have been sent to federal prison for immigration violations has also increased tremendously. Thirty-eight percent of all survey respondents were criminally detained for more than one week, which means that they were not simply processed by border officials, but were also sent to immigration detention or to federal prison where they served a sentence for illegal re-entry.<sup>14</sup> For people who decide not to sign the removal order and who fight their cases, immigration detention can last for excessive periods, even years, due to a backlog in the system (Mountz 2010). There is an enormous cost associated with increased incarceration, with each detainee costing an estimated \$119 dollars per day (DHS 2013). The federal detention budget for ICE was \$1.96 billion in FY 2013, excluding the cost of incarcerating people convicted of crimes who are sent to the federal prison system (*ibid.*). The legal implications of Operation Streamline will be experienced for decades in part because criminal records impede eligibility for immigration status, employment, and full participation in US society.

14 Those who are convicted of a federal offense are sent to a federal prison alongside the general population. People attempting to fight an immigration case are held in immigration detention.

## **The Alien Transfer and Exit Program (ATEP): Lateral Repatriation**

ATEP<sup>15</sup> is an enforcement program with the explicit directive of breaking smuggling networks (GAO 2010). Under this program, the Border Patrol deports migrants from a different sector along the border from the one in which they were apprehended (De León 2013). The MBCS found that 13 percent of deportees were laterally repatriated<sup>16</sup> and 20 percent were deported between the hours of 10:00 p.m. and 5:00 a.m. Despite the stated goal of ATEP to break up smuggling networks, people processed through the program reported that they will return to the United States at higher rates. Forty percent of people processed through ATEP reported that they planned on crossing again within the next week compared to just 28 percent of people not processed through the program. The MBCS findings also show that ATEP sends people away from the Arizona-Sonora border, which is the second busiest point of unauthorized crossing, to other areas where fewer people cross. Officially, only men are processed through ATEP. However, women who are separated from men during the deportation process are also deported alone. As a result, 17 percent of the people deported to Sonora, Mexico are women versus 10 percent border-wide due to men being sent to other parts of the border (Rodríguez and Martínez 2013). The separation of women from male family or friends with whom they are traveling places them at increased risk of theft, violence and abuse (Danielson 2013, 11).

Mexico's northeastern border region is home to the criminal organization, Los Zetas. While by no means an exception among criminal organizations, Los Zetas has been known to kidnap, extort, and kill migrants on a large scale. The infamous massacre of 72 migrants in August 2010 and the discovery of mass graves containing hundreds of migrants have raised concerns about the ethics of continuing deportations to this area. In recent years Tamaulipas has become the top state for deportations with tens of thousands more deportations than the number of people apprehended in the corresponding area (Meyer and Isacson 2013; Slack 2015). Many people are also sent to cities in this region in the middle of the night. Twenty percent of all survey respondents were deported to the border between the hours of 10:00 p.m. and 5:00 a.m. When evaluating the CDS as an immigration enforcement strategy, we must ask if it is justifiable to put people's lives in danger to punish them for unauthorized entry.

## **Interior Enforcement: Secure Communities and 287(g)**

Twenty-five percent of MBCS respondents were apprehended as a consequence of interior

15 The survey defined ATEP recipients as individuals who were apprehended by the Border Patrol while crossing and returned to Mexico in a different, non-adjacent Border Patrol sector. It excluded individuals who went to long-term detention and/or successfully arrived at their desired destination. It also excluded people that were deported to adjacent sectors to eliminate people that might have walked into another sector before being apprehended (N = 505).

16 This is a conservative estimate that does not include people who arrived at their desired destination or were detained for more than one week. To be counted, individuals must have crossed and been deported in different and non-adjacent sectors.

enforcement programs such as the Secure Communities program<sup>17</sup> (S-Comm) or 287(g).<sup>18</sup> Interior enforcement targets people that are already settled in the United States and have established a life there, making it a particularly traumatic experience. Studies have shown that these programs lead to a racialized form of policing, generating extreme distrust between minority communities and the police (Coleman and Kocher 2011). Research has also illustrated that the S-Comm rollout had no impact on alleviating index crime rates at the local level (Miles and Cox, forthcoming). The roll-out of S-Comm marked the end of the highly visible spectacle of workplace raids, such as the 2008 Postville Raid in Iowa, which provoked an outcry from human rights organizations, businesses and religious groups. S-Comm was far less visible, and causes a less concentrated economic impact as compared to workplace raids, which have the potential to shut down whole businesses and even sectors of the economy.

**Table 3. Comparison between People Apprehended through Interior Enforcement Programs Such as Secure Communities or 287(g) and Those Apprehended through Other Means**

Variable	Interior Enforcement (25%)	Other Removal Program (75%)	Difference
US Citizen Family Members	43%	51%	8%†
US Citizen Children	28%	22%	6%
Current Home in US	47%	25%	22%***
Total Years in US	8.2 years	6.0 years	2.2 years***

Note: †p < 0.10, \*p < 0.05, \*\*p < 0.01, \*\*\*p < 0.001 indicate the difference is statistically significant.

Source: Migrant Border Crossing Study, Wave II (N = 1,110), weighted data.

Almost half of the people deported through interior enforcement measures stated that their home is in the United States versus only a quarter of other deportees (see Table 3). They had also spent an average of 8.2 years in the United States versus 6.0 for other deportees, further illustrating that interior enforcement programs target people who have established

17 DHS announced the discontinuation of the Secure Communities program on November 20, 2014. The program will be replaced by the Priority Enforcement Program (PEP), through which ICE will continue to rely on fingerprint-based biometric data submitted during bookings by state and local law enforcement agencies, but should only seek the transfer of an alien in the custody of state or local law enforcement when the alien poses a demonstrable risk to national security or has been convicted of specific crimes. See Memorandum from DHS Secretary Jeh Johnson regarding Secure Communities, 20 November 2014, available at: [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_secure\\_communities.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf).

18 For the MBCS sample, people included in this category must have been apprehended by police outside of the border zone and subsequently deported. It is often difficult to determine whether people apprehended inside the border zone were processed through an interior enforcement program or one of the many informal arrangements between police and the Border Patrol. For instance, in southern Arizona the police frequently call Border Patrol agents when they suspect someone might be unauthorized rather than going through formal channels, charging them with a crime or processing them. However, according to ICE statistics, 20 percent of all removals in 2011 stemmed from Secure Communities (GAO 2012).

ties and roots in the United States, including children. This creates consequences for children who not only witness their families physically torn apart, but who must live with the absence of a parent.

Besides having a devastating impact on families, interior immigration enforcement efforts invariably turn law enforcement officers into immigration officials in the minds of immigrants in many communities. This hinders the ability of a police force to investigate crimes, which generally requires the trust and cooperation of receptive communities. People fear any interaction with law enforcement, be it a simple traffic stop or the reporting of serious crimes, because they could end up being deported. Due to this fear, they avoid authorities at all costs. One man described how a chance car accident resulted in his deportation and the abandonment of his young daughter:

I was leaving the park with my kids when a man crashed into me. The cops came and saw that I didn't have a driver's license so they fingerprinted me. He said I was going to be deported. I asked if I could call someone to take my children. He said I could, but when my brother-in-law [only documented family member besides children] did not show up, the police officer said he could not wait any longer so I asked the woman that was helping translate for me to watch them. I had no option other than to trust her. – Santiago

## Treatment of Deportees in US Custody

### *Due Process Abuse*

Many nongovernmental organizations and immigrant rights groups have expressed concern that USBP's removal procedures, including Operation Streamline, do not meet basic due process requirements (NMD 2011). The MBCS sought to uncover how people understood their experiences in US custody. Nearly all respondents (96 percent) indicated they signed a removal order while in US custody, whether a voluntary return or a formal removal.<sup>19</sup> Among those who signed, 28 percent reported that no one explained the documents they had signed, and 27 percent responded "No" or "Don't Know" when asked if they knew what they had signed. Thirty-three percent reported feeling forced or pressured to sign a removal order. This occurred largely while in the custody of the USBP.

There is little transparency about what happens to migrants in the US justice system. Signing documents while in US custody can have long-term and far-reaching consequences for people's future ability to immigrate legally.<sup>20</sup> Individuals facing deportation have a right to due process including notice and a hearing.<sup>21</sup> Dense, complex forms which fail to

<sup>19</sup> The remaining four percent most likely refused to sign. They were still removed, but required (often forcibly) to put a thumbprint in a box marked "refused to sign."

<sup>20</sup> For example, an immigration offense such as entering without inspection may be an "aggravated felony" with harsh immigration consequences if an individual was previously deported for another offense. INA § 101(a)(43)(O), 8 U.S.C. § 1101(a)(43)(O). Individuals who were previously removed from the United States are ineligible to receive visas and ineligible to be admitted to the United States for certain periods of time. INA § 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A).

<sup>21</sup> See, e.g., *Landon v. Plasencia*, 259 U.S. 21, 32-33 (1982).

provide adequate, clear information on remedies and consequences of action or inaction may violate constitutionally guaranteed due process rights.<sup>22</sup>

The increased use of expedited removal, a summary deportation without the benefit of a trial before an immigration judge, has also raised concerns about people's knowledge of and access to legal counsel. The logic behind not incorporating removal proceedings into the criminal justice system has a long and complicated history, but largely hinges on the ruling that deportation is not considered a criminal punishment (Kanstroom 2007). It is important to reevaluate the role of border officials in processing, sentencing and removing unauthorized migrants. Border officials cannot reasonably be expected to perform the tasks of arresting officer, judge, prosecutor and defense attorney all at once. Moreover, incentives for the Border Patrol and ICE are focused on increasing deportations. In order to ensure that reasonable protections exist, the processing, sentencing and removal of unauthorized migrants must be excised from border officials and ICE and returned to the court system.

## Conclusion: What Is Security?

Increased border enforcement has dominated recent discussions about immigration reform. The idea that reform can only happen once the border is secure, raises the question of what security might mean for different groups. Is a secure border one through which nothing and no one that is unauthorized can pass, or is it one where quality of life and a clear, just and transparent process of border enforcement is ensured for people that live in its shadow (Heyman 2013)? An impermeable border is impossible if the United States and Mexico expect to maintain or expand trade and economic development. There are other ways to stem the flow of migrants, such as promoting economic development in Mexico and Central America which would provide people with the option not to migrate, commonly referred to as, "*el derecho de no migrar*." Rather than assert that more border enforcement is necessary in order to proceed with immigration reform, we would like to revisit what border enforcement aims to accomplish.

While the official mission of CBP is to prevent terrorism,<sup>23</sup> this is hardly its day-to-day task. The replacement of the Immigration and Naturalization Services (INS) by the Department of Homeland Security as the umbrella organization for the Border Patrol emphasizes its security-oriented function. The rise of the CDS illustrates the extent to which enforcement has become more punitive. The MBCS sheds light on what is happening under the guise of security along the border. Does Operation Streamline or ATEP increase security? Does family separation and detention increase security? To conflate all immigration enforcement with security distorts the nature of these programs. Any discussion of reforms needs to address the explicit and implicit goals of specific enforcement programs, as well as their unintended consequences.

As shown by the MBCS, more and more of the people who are being expelled from the United States have very strong ties to the country as the family members of US citizens. A deportation should not be seen as an event affecting only the deportee, but as one affecting

22 *Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998).

23 The mission of CBP is to "protect the American public against terrorists and the implements of terror." There is no mention of unauthorized migrants. <http://www.cbp.gov/xp/cgov/about/mission/guardians.xml>.

their family members and community as well. Family reunification is one of the primary goals of the US immigration system.<sup>24</sup> Immigration reform must first and foremost provide pathways to citizenship for the family members of US citizens already living and working in the United States. Lawmakers should also reevaluate people with minor infractions, such as immigration-related offenses and traffic violations that result in deportations, who would otherwise be eligible for relief under DACA, DAPA, or the proposed Development, Relief, and Education for Alien Minors (DREAM) Act. Moreover, it is important to reduce or eliminate penalties for false claims of citizenship, which currently lead to a permanent bar from legal entry. In our research, we found that the vast majority of the people who attempt to cross the border by talking their way through ports of entry claiming to be US Citizens are young people who have spent significant time living in the United States and are unaware of the repercussions of doing so.<sup>25</sup> These individuals often have little or no connection to Mexico and find themselves in an extremely difficult and precarious position upon deportation to Mexico. For instance, an 18-year-old deportee, Julian, stated, "I have been in the United States since I was five. I got in a fight right after I turned 18 and the judge deported me. I don't know anyone in Mexico. I don't exist here or in the United States."

Some scholars have recently claimed that mass labor migration from Mexico to the United States has ended due to the economic downturn, the impact of anti-immigrant policies in the United States, and economic improvements, declining fertility rates, and an aging population in Mexico (Durand 2013; Massey and Gentsch 2014). While the United States may not experience the same levels of migration from Mexico as it did in the early-to-mid 2000s, we are not entirely convinced that this is a permanent decline in unauthorized Mexican migration given the tenuous and often volatile nature of macroeconomic processes. Further, the MBCS findings highlight that a shift toward family-oriented migration is becoming a more significant portion of the unauthorized stream.

The MBCS findings suggest that the United States may be experiencing a new era of migration stemming directly from the rise of an enforcement regime which has led to

24 See generally INA § 201(a)(1), 8 U.S.C. § 1151(a)(1) (describing family sponsored immigrants); INA § 201(a)(2)(A)(i), 8 U.S.C. § 1151(a)(2)(A)(i) (exempting immediate relatives from direct numerical limitations); INA § 240A, 8 U.S.C. § 1229b (describing cancellation of removal based on hardship to US citizen or Lawful Permanent Resident family members); *INS v. Errico* 385 U.S. 214 (1966) (evaluating the legislative history of the INA to find that family unity is a primary goal, often trumping either enforcement of quota provisions or keeping potentially harmful people out of the U.S.); *Fiallo v. Bell* 430 U.S. 787 (1977) (recognizing the underlying intention and goal of immigration law to be family unity as demonstrated by legal preference for the immigration of certain family members); *Holder v. Martinez Gutierrez* 132 S. Ct. 2011 (2012) (affirming the fact that goals of family unity underlie or inform immigration law while declining to interpret every provision in the statute in the most family-friendly light).

25 See INA § 212(a)(6)(C)(ii), 8 U.S.C. 1182(a)(6)(C)(ii) (describing a false claim to U.S. citizenship for any purpose or benefit under any federal or state law as a ground of inadmissibility); INA § 237(a)(1)(H), 8 U.S.C. 1227(a)(1)(H) (allowing for a waiver of certain misrepresentations at the discretion of the Attorney General but not allowing waiver of a false claim); *Sandoval v. Holder* 641 F.3d 982 (2011) (reviewing specifically whether an unaccompanied minor falsely claiming citizenship should be subject to the non-waivable permanent bar but deferring to the Board of Immigration Appeals to explain the statutory provisions); *Jaen-Chavez v. US Atty. Gen.* 415 Fed.Appx. 964 (11th Cir. 2011) (finding no reversible error in the Bureau of Immigrant Affairs' determination of inadmissibility for a false claim on Form I-9 and no available waiver for this misrepresentation).



high rates of family separation. Academic and political discourses based on neoclassical, rational actor models were instrumental in developing the policies of deterrence that have failed so many and cost so much. While family-based migrants may not necessarily behave in drastically different ways than economic migrants, the idea that the cost of migration can be too great, the danger too perilous, and the punishments too harsh to keep people from reuniting with their loved ones needs to be rejected. The MBCS shows that people who consider the United States their home are willing to endure hardships at the border, discrimination in the United States, and the harsh penalties of an increasingly criminalized immigration system (Martínez and Slack 2013). The impacts of the current approach to immigration enforcement will be felt for generations, including migrants' family members who are citizens of the United States, and will not deter those who are most adversely affected. We are currently at a juncture where we can change course and adopt a humane immigration system and inclusive approach to security that addresses our needs as one society connected by family, economics and the desire to make a better life for ourselves and our loved ones.

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