

# **JUSTICE STRATEGIES**

## **CERD/UPR Consultation with Civil Society**

**Tuesday, July 8, 2014**

**9:30am-12:00pm**

**U.S. Department of State  
George Marshall Auditorium**

*Testimony of Judith A. Greene, Director of Justice Strategies*

## **I. Introduction and Issue Summary**

Justice Strategies is a U.S.-based nonprofit research organization dedicated to providing high quality “action research” to advocates and policymakers pursuing more humane and cost-effective approaches to criminal justice and immigration law enforcement. Our concern relates in general to the issues addressed in the International Convention on the Elimination of All Forms of Racial Discrimination, and specifically in the provision in Part I, Article 1, which states

*In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

We are alarmed about the sharp increase in the number of migrants, the vast majority being Mexican nationals, who are criminally prosecuted by United States Attorneys for immigration crimes at the border; about the increasing disparate impact on the federal incarcerated populations with regards to race, ethnicity, nationality and citizenship status resulting from such criminal prosecutions; and about the substandard, privately operated segregated immigrant prisons where the majority of sentenced migrants are incarcerated.

## **II. Operation Streamline, the felony prosecutions of migrants, and the growth in incarceration of non-citizens, primarily Mexican nationals**

The sharp increase in criminalization and prosecution of migrants at the border has caused a great burden for the federal court system and contributed greatly to overcrowding in the federal prison system. Two sections of the United States Code are of particular concern. If apprehended at the U.S. border, migrants can be charged with one of two federal crimes:

8 U.S.C. § 1325 – unlawful entry to the U.S., a misdemeanor carrying a sentence of up to 180 days; or

8 U.S.C. § 1326 – unlawful reentry after deportation, a felony charge normally carrying a federal prison sentence of up to two years, but with aggravated circumstances the maximum may rise to 10 or 20 years.

These two charges are now the most prosecuted offenses in the federal court system. By 2011, the federal court in Arizona had such a clogged criminal caseload that the chief judge was forced to declare a judicial emergency, suspending requirements of the Speedy Trial Act.<sup>1</sup>

This flood of immigration cases started to become overwhelming in the mid-2000s with initiation of “Operation Streamline,” a policy that mandated that nearly all border crossers along the U.S.-Mexico border be criminally prosecuted if apprehended without proper documentation. Prior to the administration of George W. Bush, border crossers who did not represent any threat to public safety were handled primarily through the civil immigration system.<sup>2</sup> The federal criminal statutes cited above are duplicative of civil immigration laws. These discretionary prosecutions represent a marked departure from traditional law enforcement of immigration violations.

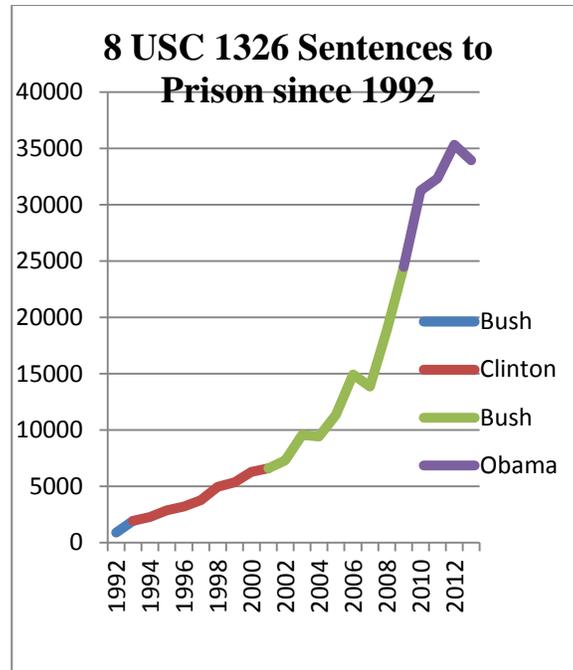
Operation Streamline resulted in an abrupt increase in misdemeanor prosecutions (8 U.S.C. § 1325, from 3,192 cases filed in 2002, reaching 53,822 last year. The average sentence currently imposed at conviction is one month in federal jail.<sup>3</sup> This prosecution boom has been accompanied by a sharp increase in felony prosecutions (8 U.S.C. § 1326), from 9,337 in 2002 to 37,440 last year. Last year 33,938 people were sentenced to prison for unlawful re-entry.

---

<sup>1</sup> [http://www.uscourts.gov/news/newsView/11-01-25/Judicial\\_Emergency\\_Declared\\_in\\_District\\_of\\_Arizona.aspx](http://www.uscourts.gov/news/newsView/11-01-25/Judicial_Emergency_Declared_in_District_of_Arizona.aspx)

<sup>2</sup> Grace Meng. *Turning Migrants into Criminals: The Harmful Impact of U.S. Border Prosecutions*, Human Rights Watch, May 2013. [http://www.hrw.org/sites/default/files/reports/us0513\\_ForUpload\\_2.pdf](http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_2.pdf)

<sup>3</sup> Data obtained from the Transactional Records Access Clearinghouse at <http://trac.syr.edu/>



More than 90 percent of those were sentenced for “simple” re-entry after removal, which carries a sentence of up to two years in prison. The average sentence for that offense is 15 months, while aggravated circumstances boost the average to 16 or 30 months, after which the prisoner is transferred to ICE for the civil removal process. This increase is driving a significant amount of the overcrowding and racial disparity that plagues our federal prison system.

### III. Privately operated segregated immigrant prisons in the U.S.

The profound discriminatory effect of increased felony prosecution of migrants crossing the border on race, nationality and citizenship status is brought into sharp focus when one looks at the impact on the federal prison system..

Of the people serving time for an immigration violation in the federal prison system, 91.6 percent are Hispanic or Latino. Slightly over two-thirds had been convicted and sentenced in a Southwest border district federal court, with nearly three-quarters coming from Texas Southern, Arizona, and California Southern districts. They comprised 97 percent of the increase of the growth in that offense category between 2002 and 2010.<sup>4</sup> Currently non-citizens comprise 25.1 percent of the total BOP prison population, with 17.4 percent of the total made up of Mexican nationals.

Between 1994 – the year that NAFTA was enacted – and 2012, the number of Mexicans serving time for an immigration offense in a federal prison increased by more than 755 percent. To handle the increasing number of Mexican migrants sentenced to federal prison after the passage

<sup>4</sup> Marc Motivans. (July 2012) *Immigration Offenders in the Federal Criminal Justice System, 2010*. Washington, DC: Federal Justice Statistics Program.

of NAFTA, the federal Bureau of Prisons (BOP) launched a massive privatization initiative in 1999. BOP officials carved out a special population of federal prisoners: the so-called "criminal alien" population, designated for segregation from the rest of the prison population in private contract prisons. In September 1999, the BOP issued its first request for low-security private prison beds to meet the prison system's "Criminal Alien Requirements (CAR)."

There are 13 private prisons under contract with the BOP holding a "CAR" population – a virtual "Gulag" of segregated sub-standard prisons designed for migrants whose only crime may be re-crossing the border. "CAR" prisons are notoriously plagued with human rights violations. A new report from the ACLU details results from a multi-year investigation of five "CAR" prisons located in Texas, including a finding that, "the men held in these private prisons are subjected to shocking abuse and mistreatment, and discriminated against by BOP policies that impede family contact and exclude them from rehabilitation programs."

Excessive numbers of these prisoners are held in solitary confinement, nearly double the rate of prisoners in BOP-operated prisons. Some have been subjected to racist language from guards using terms such as "wetback" and "Mexican nigger." Access to both routine and emergency medical treatment is reported to be limited. Conditions are squalid, especially at one of the largest "CAR" prisons, the Willacy Correctional Institution, where prisoners are warehoused in large tents.<sup>5</sup>

When the "CAR" prison initiative was launched back in 1999, BOP officials explained that the choice would provide "management flexibility" to help them deal with this fast-growing segment of the prison population. The "Criminal Alien" population typically requires only low-security housing, and perhaps they could rationalize the lack of any program services on the basis that most would be sent back to Mexico when their sentences were served. But this is no excuse for segregating these prisoners in isolated private prisons where they are subjected to the shameful conditions documented by the ACLU.

---

<sup>5</sup> Carl Takei *et. al.* (June 2014) *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System*. Washington DC: American Civil Liberties Union.