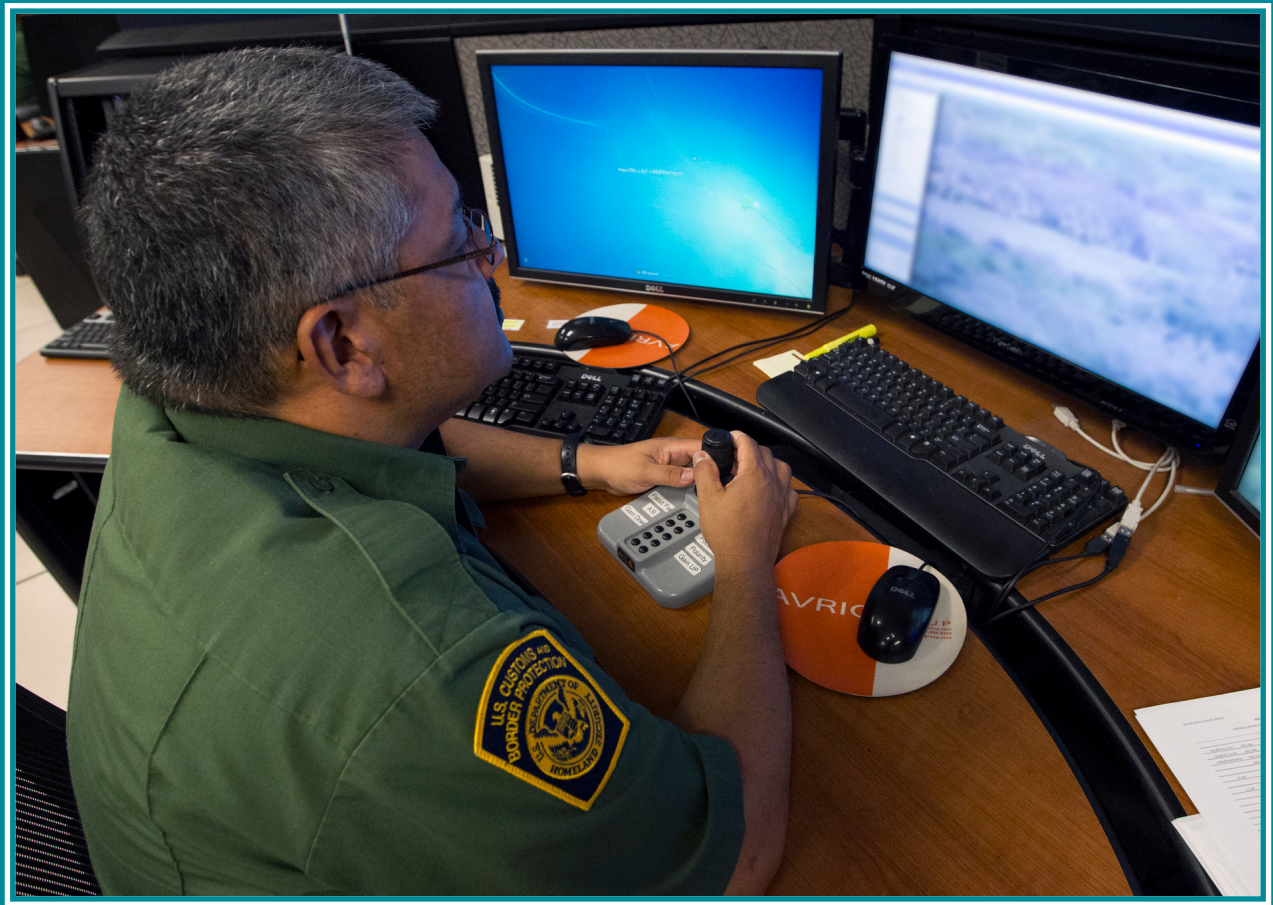


ADVANCES IN U.S.-MEXICO BORDER ENFORCEMENT

A Review of the Consequence Delivery System



By Randy Capps, Faye Hipsman, and Doris Meissner

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Executive Summary

How to best secure the U.S.-Mexico border is a question central to U.S. immigration policy and debates around reforming U.S. immigration laws. To inform key border policy decisions, it is important to be able to assess the effectiveness of various border enforcement strategies. In fiscal year (FY) 2011, the U.S. Border Patrol began implementing what it terms the Consequence Delivery System (CDS), its first systematic attempt to employ metrics of effectiveness and efficiency to the different forms of removal and other enforcement consequences that migrants face after being apprehended at the Southwest border.

The Migration Policy Institute (MPI) conducted a year-long study of CDS in 2014. Its research team worked closely with Border Patrol officials involved in CDS implementation, analyzed CDS data for FY 2011-14, and visited the two busiest Border Control sectors: Tucson, Arizona and the Rio Grande Valley of South Texas. The CDS data analyzed in this report were provided by the Border Patrol and have not been previously published.

The Border Patrol designed CDS to measure how well these consequences are working and to guide their use.

The large majority of migrants apprehended at the Southwest border over the past 50 years were returned informally to Mexico, usually within a period of hours or days. Starting in the mid-2000s, the Border Patrol increasingly employed other actions, known internally as consequences, on apprehended unauthorized migrants, including:

- repatriation to U.S.-Mexico border locations far from where migrants were apprehended;
- formal removal orders that carry bars on future legal admission to the United States;
- notices to appear before immigration judges (with the possible result of a formal removal); and
- prosecution for federal immigration crimes that carry sentences of months, even years.

The Border Patrol designed CDS to measure how well these consequences are working and to guide their use. In Border Patrol parlance, CDS is the system used to measure the effectiveness and efficiency of consequences, not the enforcement measures themselves. The measurement system classifies migrants by how many times they have been apprehended and whether they are traveling alone or with family, are suspected of smuggling, or have any criminal convictions. It uses recidivism data (i.e., how many times the same migrant has been apprehended) and resource considerations to identify which consequences are the most effective and efficient in deterring different populations from repeating attempts to cross the U.S.-Mexico border.

A. Recent Patterns of Consequence Enforcement

Between FY 2011 and 2014, U.S.-Mexico border apprehensions rose from 328,000—a historic low—to 479,000,¹ before declining slightly in 2015 and rising somewhat again in 2016. The 2016 increase was driven primarily by a newer flow of Central American children and families.

¹ Despite this increase, fiscal year (FY) 2014 apprehensions were well below historical apprehension levels of the past four decades, which peaked at 1.67 million in FY 2000.



In FY 2014, the Border Patrol repatriated 9 percent of apprehended migrants informally, via “voluntary return.” The remaining 91 percent were formally removed, with most (74 percent of the total) removed administratively—via expedited removal or reinstatement of a prior removal order. Expedited removal and reinstatement are fast-track procedures, resulting in removal within a matter of hours or days (like voluntary return). They do not allow migrants to contest their removal. Another 17 percent of migrants were given notices to appear (NTAs) in immigration court, which allow them to contest their removal (for instance by applying for asylum)—a process that can take years given current court backlogs. Most NTAs went to children and families. A small number went to adults claiming asylum.

This pattern marks a significant shift from three years earlier. In FY 2011, 41 percent of apprehended migrants were repatriated informally via voluntary return, with 59 percent given formal removal orders or placed in removal proceedings. This pattern dates to the early 2000s, before which there was an even heavier reliance on voluntary return as the primary method for repatriation.

Some migrants are prosecuted in federal court in addition to being formally removed. The number of migrants prosecuted for immigration crimes was relatively consistent in FY 2011–14, at about 15 percent to 25 percent annually. “Streamline,” a program allowing the collective prosecution of up to 70 migrants at a time for unlawful entry or re-entry, accounted for half of immigration-related prosecutions in FY 2014.

The use of remote repatriation (under the Alien Transfer Exit Program, ATEP) also fell, to 15 percent of apprehensions in FY 2014 from a peak of 29 percent in FY 2012. ATEP applies to only Mexican migrants, and repatriates them laterally along the border at locations far from where they were apprehended. The use of ATEP fell as the flows and apprehensions of Central American migrants increased.

B. Migrant Groups Classified by CDS

In FY 2014, 47 percent of all apprehensions were first-time apprehensions. This share rose over the study period as apprehensions of Central Americans without previous illegal migration experience increased. That same year, 21 percent were second- or third-time apprehensions.

Also in FY 2014, 14 percent of apprehensions were of migrants arriving in family units (i.e., a parent or guardian and at least one child traveling together). This was up from 3 percent in FY 2013 and reflects a rise in the number of families migrating from Central America. CDS did not track unaccompanied children separately from other apprehensions.

CDS flagged very few migrants as smugglers or individuals with prior criminal convictions: 3 percent and 6 percent, respectively, in FY 2014.

C. The Effectiveness of Consequence Delivery

The primary CDS measure of effectiveness is recidivism, which is the share of migrants apprehended more than once in the same year. Overall, U.S.-Mexico border recidivism fell from 29 percent in FY 2007 to 14 percent in FY 2014. This drop points to the effectiveness of consequence enforcement alongside other strategies in deterring return migration.

Recidivism was higher for migrants given voluntary return (31 percent) than those formally removed (18 percent for expedited removal and 16 percent for reinstatement). This suggests that formal removal deters return migration more effectively than does voluntary return.

Migrants prosecuted in federal court—individually or through Streamline—were the least likely to return. Their recidivism fell below 10 percent. While this demonstrates that prosecution is an effective deterrent,



many migrants who were prosecuted served prison terms spanning more than one fiscal year, removing them from annual recidivism calculations.

D. Efficiency and Resource Requirements

While CDS does not incorporate detailed information on cost or other measures of efficiency, MPI researchers discussed cost implications with the Border Patrol and partner agencies during fieldwork. Voluntary return is the least resource-intensive option, requiring only a few minutes of Border Patrol staff time. Formal removal through either expedited removal or reinstatement requires about 90 minutes. These three forms of deportation also impose minimal resource demands on other federal agencies.

NTAs are more resource intensive, as they involve U.S. Immigration and Customs Enforcement (ICE) attorneys and U.S. Department of Justice immigration judges in immigration hearings. Further, ICE may detain migrants during some or all of an NTA process, which can incur costs for months or even years.

Prosecution, whether individual or in a Streamline group, is the most resource-intensive option. It involves the Border Patrol, U.S. district courts, U.S. Attorneys' offices, and the U.S. Marshals Service (USMS). (Some Border Patrol sectors—for instance, Rio Grande Valley—do not utilize Streamline due to partner-agency constraints.)

E. The Accomplishments and Limitations of CDS

As a management tool, CDS allows the Border Patrol to better identify whom it apprehends, focus prosecution and other resources on priority migrants, and assess the impact of each enforcement consequence on them. But the system has several key limitations.

The system addresses only those strategies employed by the Border Patrol and its federal partners *after migrants come into custody*. It cannot—and is not intended to—assess the complex environment surrounding illegal migration to the United States and the overall security of the U.S.-Mexico border.

CDS also lacks data on migrants after they leave Border Patrol custody. For example, it offers no information on whether or when individuals going through an immigration court process are ultimately deported.

CDS was developed when most border crossers were from Mexico. But since FY 2005, Mexican apprehensions have markedly declined and fell below 300,000 annually during FY 2011-14 and below 200,000 annually during FY 2015-16. In FY 2014 and again in FY 2016, apprehensions of migrants from Central America exceeded those of Mexicans. Since FY 2013, nearly 490,000 unaccompanied children and families, predominantly from Central America, have arrived at the U.S.-Mexico border. Because families and children are excluded from the more severe consequences (under U.S. law or other policies), the Border Patrol's ability to deter these increasingly significant groups is limited.

Against the backdrop of these shifting trends, the U.S. Department of Homeland Security (DHS) faces the challenge of rethinking deterrence and advancing policies and strategies better suited to today's mixed flows, with their humanitarian as well as economic-migration characteristics.



I. Introduction

Border security is a central element of immigration policy and debates around reforming U.S. immigration laws. To inform key immigration policy decisions, it is important to be able to assess the effectiveness of various border enforcement strategies. Beginning in the mid-1990s, and particularly in the wake of the 9/11 attacks, border security received unprecedented resource infusions that have just started to level off. Between fiscal year (FY) 1995 and FY 2005 the number of U.S. Border Patrol agents more than doubled, from 5,000 to 11,000, and then nearly doubled again to 20,000 by FY 2010, with the number of agents remaining relatively consistent since that time.² Similarly, the Border Patrol budget more than tripled from \$450 million to \$1.5 billion from FY 1995 to FY 2005, and more than doubled again to \$3.6 billion in FY 2016.³

Since FY 2011, through what it terms the Consequence Delivery System (CDS), the Border Patrol has conducted detailed analyses of the effectiveness and efficiency of a variety of consequences it imposes for illegal entry at the Southwest border. The purpose of these consequences is to change migration behavior. By imposing criminal penalties, detaining migrants for longer periods, and returning them to areas far from where they were apprehended, the Border Patrol aims to make it more difficult and expensive for unauthorized crossers to attempt repeat trips. Increasing the costs to migrants, it is hoped, will also deter first-time attempts and make it more difficult for smuggling organizations to operate. Consequences are enforced after migrants are apprehended. Thus, they do not alter the likelihood that any individual migrant will be apprehended.

The Border Patrol's consequence measures have cost implications for the agency and its federal partners. CDS weighs the effectiveness of these measures against their costs—or “efficiency” in Border Patrol parlance.

This report summarizes findings from analyses of previously unpublished CDS data for FY 2011 through FY 2014, briefings from Border Patrol officials, visits by Migration Policy Institute (MPI) researchers to the two busiest Border Patrol sectors of the U.S.-Mexico border,⁴ and an MPI roundtable discussion of report findings with current and former border enforcement officials and experts.⁵ The research

2 U.S. Border Patrol, “Border Patrol Agent Nationwide Staffing by Fiscal Year (as of October 1, 2016),” www.cbp.gov/document/stats/us-border-patrol-fiscal-year-staffing-statistics-fy-1992-fy-2016.

3 U.S. Border Patrol, “Enacted Border Patrol Program Budget by Fiscal Year,” accessed October 31, 2016, www.cbp.gov/sites/default/files/assets/documents/2016-Oct/BP%20Budget%20History%201990-2016.pdf.

4 Migration Policy Institute (MPI) researchers conducted week-long site visits to Tucson, Arizona and the Rio Grande Valley, Texas during winter and spring 2014. In Tucson, MPI researchers conducted 60- to 90-minute interviews with the following Border Patrol Tucson Sector staff: the Acting Chief, command staff, subject matter experts (supervisors over operations, operational programs, and prosecutions), and agents working in the Tucson Coordinating Center. The researchers also interviewed a U.S. Magistrate Judge (who handles Streamline and standard prosecution cases) and the Deputy Court Administrator for Tucson District; the Criminal Chief of the U.S. Attorney's office in Tucson; staff at the Tucson Public Defender's Office; staff at the Mexican Consulate Protection Department; and advocates with Derechos Humanos. The researchers observed a Streamline trial and visited the command center at Tucson Processing Center. In the Rio Grande Valley (RGV), they conducted 60- to 90-minute interviews with the following Border Patrol RGV Sector staff: Acting Chief, command staff, subject matter experts (all from prosecutions), and agents working in McAllen Station. At the courts, the researchers met with a U.S. Magistrate Judge, Assistant U.S. Attorney in Charge, and a judicial assistant. They also interviewed officials with U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO), the U.S. Marshals Service (USMS), Mexican consulate staff, and advocates and attorneys with Texas RioGrande Legal Aid, the American Civil Liberties Union (ACLU), Equal Voice Network, and Community for Children. In addition, the researchers toured the McAllen Station processing center and USMS facilities at the McAllen district court, observed a magistrate court hearing on misdemeanor unlawful entry cases, and took a tour of the border.

5 MPI held a closed-door roundtable in August 2014 to discuss the findings from the Consequence Delivery System (CDS) analysis and border visits, and to put the findings in the context of overall trends in illegal immigration and U.S. homeland security policy. Attendees included current and former senior U.S. Department of Homeland Security (DHS) and Border Patrol staff, staff from the Border Patrol's CDS Program Office, officials from foreign embassies, and border enforcement researchers.



was conducted in 2014, and most findings draw from FY 2014 CDS data. The report examines CDS, discusses which consequence measures may be most effective in deterring illegal migration, analyzes how the Border Patrol estimates the effectiveness of various consequences and weighs this against resource requirements, and considers the limitations of consequence delivery in deterring key groups of current border migrants. The assessment is not an endorsement of any particular consequence or set of consequences. Furthermore, it does not speak to the human rights or legal protection concerns raised by some stakeholders.

The underlying assumptions about effectiveness and deterrence inherent in CDS may be less applicable to the Southwest border today than in the past.

The research is focused on Border Patrol apprehensions between ports of entry along the U.S.-Mexico border, which is where CDS is used, but not on the agency's strategies or resource deployment for apprehensions. As a result, conclusions about broader immigration policy issues such as the security of the Southwest border or growth in the unauthorized population cannot be drawn from this analysis.

Finally, the underlying assumptions about effectiveness and deterrence inherent in CDS may be less applicable to the Southwest border today than in the past, as new and diverse migrant populations, particularly women and children fleeing violence in Central America, have begun to emerge alongside the traditional group of economic migrants, most of whom are men from Mexico.

II. Background

Over the last two decades, successive U.S. administrations and Congresses have shown a strong commitment to securing the U.S.-Mexico border by directing sizeable appropriations to relevant infrastructure, technology, and personnel. The United States introduced the first national border control strategy in 1994 in response to concerns that the Southwest border was being overwhelmed by illegal immigration and drug smuggling from Mexico. Under the strategy and subsequent agency policies that seek to deter unlawful border activity by making it more difficult to cross into the United States, the number of Border Patrol agents—along with surveillance technology, fencing, and other equipment—has increased steadily for 20 years.

Amid this border security buildup, apprehensions of migrants attempting to cross the Southwest border between ports of entry rose throughout the 1990s and reached a peak of almost 1.65 million in FY 2000 before hovering at around 1 million annually for the next several years.⁶ These numbers fell precipitously in FY 2007, and then reached a low of 328,000 in FY 2011 before oscillating over the past few years: 414,000 in FY 2013; 479,000 in FY 2014; 331,000 in FY 2015; and 409,000 in FY 2016.⁷ This last number is less than one-quarter of the peak in FY 2000. Analysts attribute the long-term decline in apprehensions to the convergence of a number of factors: weak U.S. labor markets in the aftermath of the 2007–09 recession, falling birthrates and an improving economy in Mexico, and tightened border control.⁸

6 U.S. Border Patrol, "Total Illegal Alien Apprehensions by Fiscal Year, (Oct. 1st through Sept. 30th)," FY 2000-2016, www.cbp.gov/sites/default/files/assets/documents/2016-Oct/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20-%20FY2016.pdf.

7 U.S. Customs and Border Protection (CBP), "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016" (statement by Secretary of Homeland Security Jeh Johnson, DHS, Washington, DC, October 18, 2016), www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016.

8 Carla N. Argueta, *Border Security: Immigration Enforcement between Ports of Entry* (Washington, DC: Congressional Research Service, 2016), www.fas.org/sgp/crs/homesecc/R42138.pdf.



In recent years, apprehensions rose in FY 2014 and dipped slightly in FY 2015, before rebounding in FY 2016 due in large part to migration from Central American countries—predominantly the Northern Triangle of El Salvador, Guatemala, and Honduras. These apprehensions were heavily concentrated in the Rio Grande Valley of Texas. In FY 2014, for the first time, apprehensions of Central Americans exceeded those of Mexicans (but remained far below the numbers of Mexicans apprehended during the 1990s to the mid-2000s).⁹ While Mexicans again accounted for a majority of apprehensions in FY 2015 (54 percent), 53 percent of FY 2016 apprehensions were of Central Americans.¹⁰ The number of Mexican apprehensions has fallen to the lowest level in four decades.

Meanwhile, unaccompanied children and family groups have begun to comprise a substantial share of border apprehensions. Apprehensions of unaccompanied children numbered 39,000 in FY 2013, 69,000 in FY 2014, 40,000 in FY 2015, and 60,000 in FY 2016. The number of family members apprehended rose from 15,000 in FY 2013 to 68,000 in FY 2014, fell to 40,000 in FY 2015, and then rebounded to a new peak of 78,000 in FY 2016. Indeed, in FY 2016, unaccompanied children and family groups together comprised one-third of all apprehensions (137,000 out of 409,000).¹¹

CDS classifies migrants by how many times they have been apprehended and whether they were traveling alone or with family, are suspected of smuggling, or have any criminal convictions.

For most of its history, the Border Patrol returned the majority of apprehended migrants through “voluntary return,” a procedure that does not involve formal immigration or criminal charges. Under voluntary return, migrants are returned to Mexico through ports of entry along the U.S.-Mexico border, usually within a period of hours or days. Starting in the mid-2000s, the agency began using several other measures that apply additional penalties for unauthorized U.S. entry. In FY 2011 the Border Patrol consolidated analysis and planning for the use of these consequences into CDS.¹²

CDS classifies migrants by how many times they have been apprehended and whether they were traveling alone or with family, are suspected of smuggling, or have any criminal convictions. The system uses recidivism data and resource considerations to identify which consequences are most effective and efficient in deterring different populations from making repeated crossing attempts. Based on the CDS data, the Border Patrol develops annual, sector-specific guides to advise agents on which consequences to use for different migrant groups.

9 U.S. Border Patrol, “Illegal Alien Apprehensions from Mexico by Fiscal Year FY 2000-2016,” accessed April 24, 2017, www.cbp.gov/sites/default/files/assets/documents/2016-Oct/BP%20Total%20Apps%2C%20Mexico%2C%20OTM%20FY2000-FY2016.pdf. In FY 2014, there were 253,000 Southwest border apprehensions of migrants from countries other than Mexico—up from 149,000 in FY 2013, 95,000 in FY 2012, and 47,000 in FY 2011. Between October 1, 2012 and March 31, 2017, nearly 490,000 unaccompanied children and families, predominantly from Central America, arrived at the U.S.-Mexico border. See CBP, “United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016,” accessed October 18, 2016, www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016; CBP, “U.S. Border Patrol Southwest Border Apprehensions by Sector,” updated April 5, 2017, www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions.

10 CBP, “United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016;” U.S. Border Patrol, “Total Illegal Alien Apprehensions by Month,” FY 2000-2016, accessed April 17, 2017, www.cbp.gov/sites/default/files/assets/documents/2016-Oct/BP%20Total%20Monthly%20Apps%20by%20Sector%20and%20Area%2C%20FY2000-FY2016.pdf.

11 CBP, “United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016.”

12 CDS is managed by the Consequence Delivery System Program Management Office within the Border Patrol’s Strategic Planning, Policy, and Analysis Division. This office provided MPI with the data analyzed in this report and facilitated the site visits to the Tucson and Rio Grande Valley sectors.



III. The Border Patrol's Enforcement with Consequences

Unauthorized migrants apprehended at the border may face a variety of consequences. All are subject to one of four statutory forms of deportation: voluntary return; judicial removal based on an immigration hearing, following a notice to appear (NTA); expedited removal; or reinstatement of removal.¹³ The Border Patrol may additionally seek criminal prosecution for a range of misdemeanor or felony immigration offenses. It may also deport migrants laterally along the border through ports of entry in different sectors from those in which they were apprehended, via the Alien Transfer Exit Program (ATEP). A migrant is likely to face more than one consequence (e.g., one of the statutory forms of deportation alongside prosecution or remote repatriation).

Below is a list of the border enforcement consequences, ranked by MPI researchers from least to most severe.¹⁴ It should be noted that this ranking does not address humanitarian or legal protection concerns.

- **Voluntary return.** Repatriation of a migrant to his or her country of origin without being subject to a formal order of removal.
- **Warrant of arrest/notice to appear (WA/NTA).** A notice that initiates removal proceedings before an immigration judge in the U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR). When a WA/NTA is issued, the migrant is transferred from the custody of U.S. Customs and Border Protection (CBP) to U.S. Immigration and Customs Enforcement (ICE), a separate agency within the U.S. Department of Homeland Security (DHS). ICE prosecutes the removal case in immigration court, and detains the migrant, if warranted, while removal charges are pending.
- **Expedited removal.**¹⁵ Repatriation of a migrant to his or her country of origin with formal removal charges, implemented without a hearing before an immigration judge.
- **Reinstatement of removal.** Repatriation of a migrant to his or her country of origin with formal removal charges based on a pre-existing removal order, without a hearing before an immigration judge.
- **Alien Transfer Exit Program (ATEP).** Repatriation program through which Mexican migrants are deported through a port of entry in a different Border Patrol sector from the one in which they were apprehended. ATEP is often combined with expedited removal or reinstatement.
- **Streamline.** Criminal prosecution of apprehended migrants for misdemeanor, unlawful entry, or re-entry offenses, in groups of up to 70 migrants at a time, in U.S. magistrate courts. Illegal entry, as a misdemeanor, carries a maximum prison sentence of 180 days.

13 Together, these four statutory forms of deportation add up to 100 percent of apprehensions. By definition, migrants subject to voluntary return, expedited removal, or reinstatement of removal are always ordered deported, while migrants given a warrant of arrest/notice to appear (WA/NTA) and subject to judicial removal have an opportunity to seek asylum or another form of relief from deportation before an immigration judge. A migrant initially facing voluntary return, expedited removal, or reinstatement who wishes to contest his or her deportation may be eligible to request an immigration hearing, which results in transfer into a judicial proceeding.

14 The Border Patrol CDS office does not rank consequences by severity for the entire U.S.-Mexico border, but individual sectors provide severity rankings during their annual CDS reviews.

15 Expedited removal was created in the 1996 *Illegal Immigration Reform and Immigrant Responsibility Act* and applies to noncitizens deemed inadmissible because they are either seeking immigration benefits through misrepresentation or being present without valid documents. See *Immigration and Nationality Act*, Public Law 82-414, §235(b)(1)(A)(i), as codified at U.S. Code 8, §1225(b)(1)(A)(i). Initially, expedited removal applied only to those who were found inadmissible at ports of entry, but DHS extended its use in FY 2002 and FY 2004 to include those arriving by sea and those apprehended within 14 days of illegal entry and within 100 miles of either land border (with Mexico or Canada).



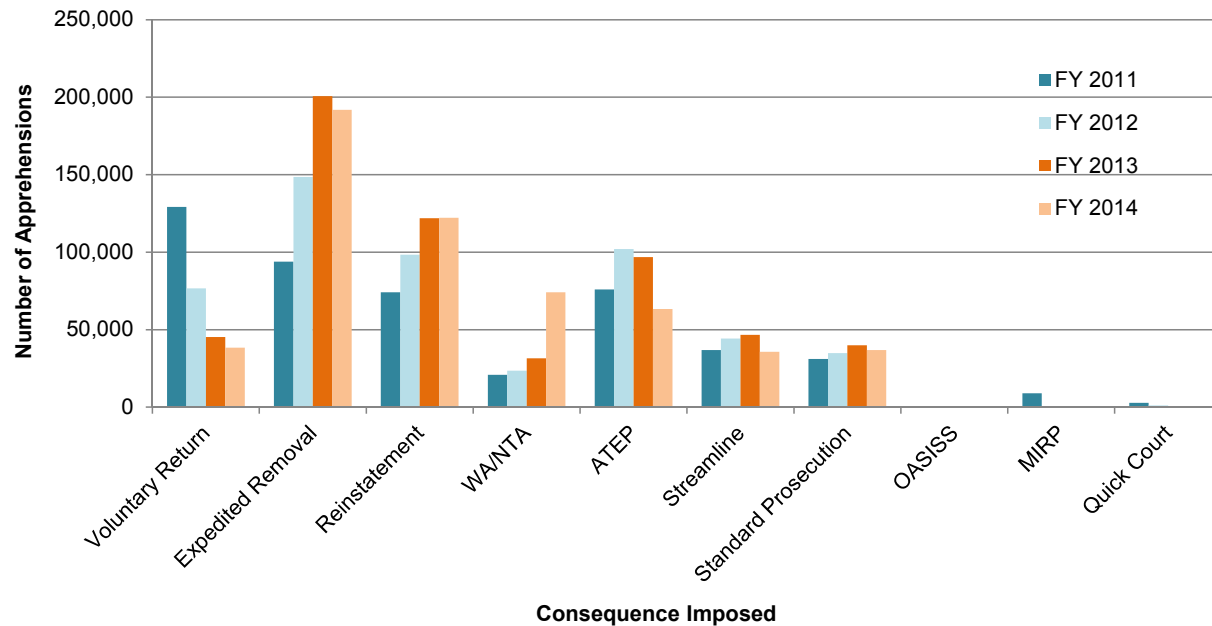
- **Standard prosecution.** Criminal prosecution of apprehended migrants for a range of federal criminal offenses (most frequently felony, illegal re-entry, and smuggling crimes) in a U.S. district court. Sentences are up to several years.
- **Operation against Smugglers Initiative on Safety and Security (OASISS).** Criminal prosecution of apprehended migrants for smuggling offenses in the Mexican judicial system.

The following two consequences had been discontinued at the time of this study, but appear in CDS data analysis:

- **Mexican Interior Repatriation Program (MIRP).** This is a program through which Mexican migrants are repatriated by airplane to Mexico City or Guadalajara.
- **Quick Court.** Apprehended migrants are placed in formal removal proceedings and go before an immigration judge in an accelerated hearing at a Border Patrol station.

As the Border Patrol has implemented other, more severe consequences, its use of voluntary return has declined. Once applied to a large majority of apprehensions, voluntary returns do not carry any of the legal or immigration penalties attached to a formal removal order. They are, however, faster and easier to process—unauthorized crossers are generally deported within a few hours or days. As shown in Figure 1, the use of voluntary returns declined steadily over the study period, from 129,000 apprehensions in FY 2011 to 38,000 in FY 2014.

Figure 1. Southwest Border Apprehensions, by Consequence Imposed, FY 2011-14



ATEP = Alien Transfer Exit Program; MIRP = Mexican Interior Repatriation Program; OASISS = Operation against Smugglers Initiative on Safety and Security; WA/NTA = warrant of arrest/notice to appear.

Note: Analysis of Consequence Delivery System (CDS) data is based on “CDS trackable” apprehensions, or all apprehensions for which fingerprints were taken. Because the Border Patrol does not fingerprint children under the age of 14 or individuals above the age of 65, the number of CDS trackable apprehensions is marginally smaller than the total number of apprehensions.

Source: Data provided to the Migration Policy Institute (MPI) by the U.S. Border Patrol, Statistics and Data Integrity Unit for the purpose of this study.



In place of voluntary return, formal removals (expedited removal, reinstatement, and WA/NTA) have become the most common forms of deportation. These prohibit an individual from being admitted to the United States for at least five years, and often much longer, depending on the grounds for removal. A formal removal order can also serve as the basis for criminal prosecution upon a subsequent apprehension. Expedited removal and reinstatement became the most frequently used consequences in FY 2014—at 192,000 (45 percent of apprehensions) and 122,000 (29 percent of apprehensions), respectively. Their use rose rapidly from FY 2011 to FY 2013, before leveling off in FY 2014.

WA/NTAs were used relatively infrequently between FY 2005 and FY 2013, but became more widespread following a surge in apprehensions of unaccompanied child migrants and family units (i.e., parents and children traveling together) from Central America during the spring and summer of 2014. Child migrants and family units who are not from Mexico are generally afforded hearings before immigration judges, and so the surge in migration from Central America resulted in increased use of WA/NTAs, from 32,000 (8 percent of Southwest border apprehensions) in FY 2013 to 74,000 (17 percent) in FY 2014.

In place of voluntary return, formal removals (expedited removal, reinstatement, and WA/NTA) have become the most common forms of deportation.

Migrants seeking asylum in the United States who are found to have a credible fear of persecution in their home countries are also entitled to an immigration hearing to adjudicate their claims, and so must be given a WA/NTA. MPI considers a WA/NTA a less severe consequence than expedited removal or reinstatement because it often results in removal hearings that take several years to conclude (due to immigration court backlogs) and, sometimes, in relief from deportation altogether.¹⁶ Additionally, while immigration court decisions are pending, migrants may be released (as most family units were at the time of the study). Under statute, unaccompanied children are placed with relatives or in foster settings in the United States.

ATEP, which accounted for 13 percent (63,000) of Southwest border apprehensions in FY 2014, is another frequently used consequence. The purpose of lateral repatriation is to displace migrants so that they must travel a long distance to reconnect with their smuggler or use a different smuggling network to re-enter. Its use is constrained by transportation and detention resources. Its application is also limited to Mexicans (nationals of other countries must be removed directly to their origin countries). The surge in apprehensions of Central American migrants, particularly in the Rio Grande Valley, led to a decline in the use of ATEP in FY 2013.

Limited court, prosecution, and detention resources, meanwhile, constrain the most severe immigration consequence: the prosecution of migrants in federal criminal court for immigration-related offenses. The use of both group prosecution (via the Streamline program) and standard, individual prosecution remained relatively consistent from FY 2011 through FY 2014, fluctuating between 60,000 and 90,000 apprehensions each year.

¹⁶ For example, in October 2016 the *New York Times* reported that 56,000 cases of families who entered since 2014 had been delayed by the immigration courts, some until 2023. See Caitlin Dickerson, “Obama Administration Is Quietly Delaying Thousands of Deportation Cases,” *New York Times*, October 6, 2016, www.nytimes.com/2016/10/07/us/delayed-deportations-illegal-immigrants.html.



OASISS, by which migrants are prosecuted in Mexico, was rarely used over the analysis period, and both MIRP and Quick Court were discontinued.¹⁷

IV. The Consequence Delivery System

In Border Patrol parlance, CDS is the system used to measure the effectiveness and efficiency of consequences, not the individual enforcement measures themselves. To develop and refine the measures, CDS Program Office staffers meet annually with command staff and subject matter experts (sector management, supervisors, and experienced or specialized agents) in each sector to review CDS data, rank the effectiveness and efficiency of various consequences, and develop guidance for Border Patrol agents in the field.

A. Migrant Classifications

Understanding the characteristics of migrants is central to understanding the effectiveness of consequences. CDS relies on the Enforcement Integrated Database (EID)—which uses fingerprint data to link multiple apprehensions to one individual—to do this.¹⁸ Accurately classifying migrants not only provides recidivism data but also allows the Border Patrol to target the most severe consequences to high-priority individuals such as smugglers and criminals.

In FY 2014, the CDS program classified migrants apprehended along the Southwest border as follows (see Figure 2):

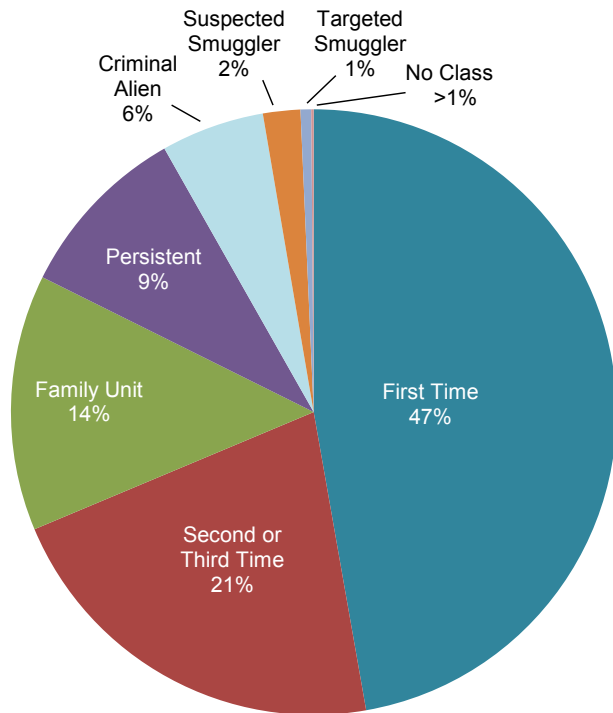
- First apprehensions
- Second or third apprehensions
- Persistent aliens (those with four or more apprehensions)
- Family units (adults and dependent children or dependent adults such as the disabled, apprehended together)
- Suspected smugglers (based on activities, actions, or intelligence)
- Targeted smugglers (those with documented smuggling activity prior to the current apprehension)
- Criminal aliens (migrants with one or more prior criminal convictions).

17 In FY 2012, ICE and the Mexican Ministry of the Interior began a pilot program similar to MIRP called the Interior Repatriation Initiative (IRI), which was signed as a permanent initiative in April 2013. The IRI program, which followed earlier interior repatriation efforts, is not included in the CDS and was not operating in Tucson or Rio Grande Valley at the time of the site visits. See ICE, “US and Mexico Resume Interior Repatriation Initiative” (news release, ICE, El Paso, TX, July 11, 2013), www.ice.gov/news/releases/1307/130711elpaso.htm.

18 In FY 2013, a very small number of CDS trackable apprehensions (46) were not given a migrant classification.



Figure 2. Southwest Border Apprehensions, by Migrant Classification, FY 2014



Note: Analysis of CDS data is based on “CDS trackable” apprehensions, or all apprehensions for which fingerprints were taken. Because the Border Patrol does not fingerprint children under the age of 14 or individuals above the age of 65, the number of CDS trackable apprehensions is marginally smaller than the total number of apprehensions.

Source: Data provided to MPI by the U.S. Border Patrol, Statistics and Data Integrity Unit.

The majority of apprehensions involve migrants who have crossed the border once or twice and have no criminal record. In both FY 2013 and FY 2014, first-time border crossers accounted for 47 percent of apprehensions, up slightly from 42 percent in FY 2012. Second- or third-time apprehensions comprised 21 percent of the FY 2014 total. Family units (also often first-, second- or third-time apprehensions, but not classified as such) made up 14 percent of all apprehensions in FY 2014, up substantially from 3 percent in FY 2013. Persistent border crossers—those apprehended four or more times—comprised 9 percent of all apprehensions. The shares of first-time apprehensions and family units increased from FY 2013 to FY 2014, suggesting that consequence enforcement may not be deterring new groups of Central American migrants.

A very small share of all apprehensions included migrants involved in smuggling or other known criminal activities. Two percent of those apprehended in FY 2014 were classified as suspected smugglers and 1 percent as targeted smugglers. Six percent of migrants apprehended at the border and tracked through CDS had prior criminal convictions—including those with convictions for illegal entry or re-entry into the United States.

B. Groups Not Classified in CDS

While the CDS classifications encompass various groups of migrants, neither children nor nationals of countries other than Mexico—two increasingly important groups—are classified separately. (Children under 14 are not fingerprinted and therefore are not included in CDS at all.) CDS and other long-term Border Patrol strategies were developed at a time when Mexicans comprised a large majority of unauthorized migrants. But the pattern is changing: since 2007 Mexican migration has receded to its lowest level in several decades, and migration from Central America (El Salvador, Guatemala, and



Honduras in particular) began to rise substantially in 2012. In FY 2014 and again in FY 2016, Central Americans accounted for more than half of apprehensions.¹⁹

As the population of apprehended migrants shifts from majority Mexican to majority non-Mexican, the Border Patrol has a more limited menu of consequences it can impose. For instance, Mexicans may in some cases agree to voluntary return, while other nationalities must be deported to their origin countries through formal means (expedited removal, reinstatement, or WA/NTA), at least initially.²⁰ Only Mexicans can be deported through a sector other than the one through which they entered, via ATEP, as other nationalities must be removed directly to their home countries.

The increasing number of child migrants apprehended also poses challenges to consequence enforcement. The Border Patrol's options are very limited when it comes to youth under the age of 18, particularly those apprehended alone. In FY 2014, 14 percent of trackable apprehensions involved youth ages 14 to 18, while youth comprised 19 percent of those apprehended in the Rio Grande Valley.²¹ These apprehensions included those of 69,000 unaccompanied children (76 percent from the Northern Triangle), 50,000 in the Rio Grande Valley alone. Apprehensions of unaccompanied children were considerably lower in FY 2015 (40,000) but showed a similar pattern: 71 percent were from Central America and 60 percent were apprehended in the Rio Grande Valley.²² Apprehensions began to increase again in fall 2015, with a marked increase in FY 2016 over the FY 2015 total.

As the population of apprehended migrants shifts from majority Mexican to majority non-Mexican, the Border Patrol has a more limited menu of consequences it can impose.

As with adult apprehensions, there is an important distinction to be made between unaccompanied children from Mexico and those from other countries. Under the *Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA), unaccompanied children from countries other than Mexico and Canada must be transferred into the custody of the Office of Refugee Resettlement (ORR) within 72 hours of their apprehension.²³ ORR, an agency of the U.S. Department of Health and Human Services, places them in shelters until they can be released to sponsoring family members already living in the United States or to foster families. These unaccompanied children are placed in judicial removal proceedings before an immigration judge, meaning that they all receive WA/NTAs.

TVPRA handles unaccompanied children from contiguous countries (Mexico and Canada) differently. These children are screened by Border Patrol agents within 48 hours of their apprehension to determine whether they are trafficking victims, have potential asylum claims, or might voluntarily agree to return to their home countries. It is standard practice to give unaccompanied Mexican children the voluntary return option. At the time of writing, it was rare for these youth to request asylum or raise

19 U.S. Border Patrol, "Total Illegal Alien Apprehensions by Fiscal Year (Oct. 1st through Sept. 30th)," FY 2000-2016, accessed October 31, 2016, www.cbp.gov/sites/default/files/assets/documents/2016-Oct/BP%20Total%20Apps%2C%20Mexico%2C%20OTM%20FY2000-FY2016.pdf.

20 Some migrants initially given a WA/NTA may be offered voluntary departure by an immigration judge; voluntary departure, like voluntary return, is not a formal removal mechanism.

21 CDS does not disaggregate unaccompanied children from accompanied children; thus, "youth" refers to any minor between the ages of 14 and 18 who is apprehended by the Border Patrol.

22 From October 1, 2014 to July 31, 2015, 72 percent of unaccompanied children were from El Salvador, Guatemala, or Honduras. See CBP, "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016."

23 *William Wilberforce Trafficking Victims Protection Act of 2008*, Public Law 110-457, *U.S. Statutes at Large* 122 (2008): 5044, www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf.



trafficking concerns.²⁴ Thus, unlike Central American children, few unaccompanied Mexican children receive WA/NTAs.²⁵ Beginning in 2016, the Border Patrol introduced more robust screening of Mexican unaccompanied children to determine whether they should be transferred into ORR custody alongside Central American children. The voluntary return option, however, remained open to Mexican youth.

*Tracking the outcomes for unaccompanied child migrants
remains difficult in the CDS context.*

Regardless of their origins, children under age 18, with few exceptions, cannot be prosecuted for illegal entry or re-entry in federal courts, though in rare cases they may be prosecuted for other offenses in state or local courts. Agents in the Rio Grande Valley reported that Mexican youth are increasingly being used by smugglers as guides, spotters, and drivers because they are quickly returned and face no penalties for being apprehended. An estimated 78 percent of smuggling guides were Mexicans under age 18, according to one report.²⁶

Tracking the outcomes for unaccompanied child migrants remains difficult in the CDS context. CDS neither classifies children separately from adults, nor does it track what happens to children after they are given WA/NTAs and transferred out of Border Patrol custody. Once children are transferred to ORR, they do not reappear in the CDS data unless they are reapprehended on a future attempt to enter the United States. Some are granted asylum, Special Immigrant Juvenile (SIJ) status, or another form of deportation relief, while others fail to appear at their immigration hearings. The CDS data do not link these outcomes. Similarly, family units that include non-Mexican nationals are transferred from Border Patrol to ICE custody, and in most cases released pending their immigration court dates. Some receive asylum or deportation relief, while others fail to appear at their hearings. Thus, the lack of data on individuals transferred into the custody of ORR or ICE, or placed in immigration court proceedings, limits the capability of CDS to analyze recidivism and other effectiveness metrics for the groups receiving WA/NTAs.

V. Analyzing the Effectiveness of Consequences

At the time of this study, CDS used the following six factors to evaluate the effectiveness of consequences:

1. Recidivism (the percentage of *individual migrants* who are reapprehended during the same fiscal year)
2. Reapprehension (the percentage of *apprehensions* that are a second or subsequent apprehension of the same individual in a single fiscal year)

²⁴ This may be changing, as DHS has recently developed screening procedures to better identify Mexican unaccompanied children with humanitarian protection needs.

²⁵ In 2015, the Border Patrol developed a now-discontinued initiative called the Juvenile Referral Program that was designed to take Mexican youth out of the smuggling cycle for two- to three-month periods before they were returned to Mexico. Youth placed in the program were questioned by U.S. authorities for intelligence-gathering purposes and then transferred to Office of Refugee Resettlement (ORR) custody where they had access to standard services provided to all unaccompanied children in ORR care, such as education, counseling, and medical care. These youth were also given the opportunity to appear before an immigration judge when their time in ORR custody ended.

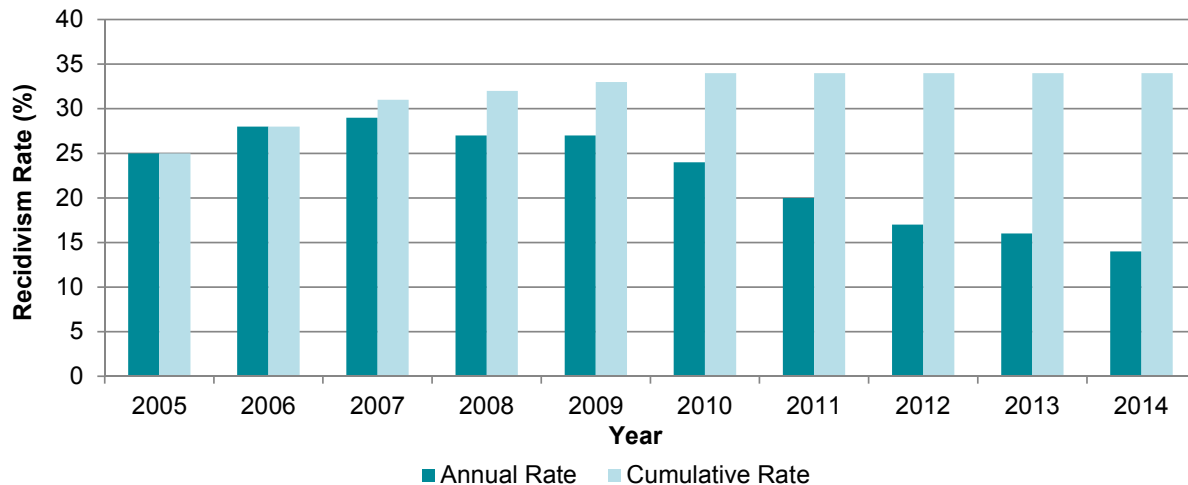
²⁶ Joshua Partlow, "Mexican Kids Held for Months as Punishment for Border-Crossing," *Washington Post*, March 11, 2015, www.washingtonpost.com/world/the_americas/mexican-kids-held-for-months-as-punishment-for-border-crossing/2015/03/10/311d319a-b2f2-11e4-bf39-5560f3918d4b_story.html.



3. Average number of reapprehensions per recidivist (with a minimum of two, as only migrants who have been reapprehended are counted in the denominator)
4. Displacement (the percentage of reapprehensions that occur in a different sector from the prior apprehension)
5. Severity of the consequence (sector-specific and based on the judgment of Border Patrol subject matter experts)
6. Awareness/deterrence (a factor estimated by Border Patrol subject matter experts in each sector to measure migrants' awareness of consequences and their impact on migrant behavior).

Recidivism has fallen since FY 2007, when Border Patrol apprehensions also began to drop. Annual recidivism—defined as the share of apprehensions that involve migrants reapprehended *within the same fiscal year*—fell from a high of 29 percent in FY 2007 to 14 percent in FY 2014 (see Figure 3). Annual recidivism fails to account for individuals who are apprehended repeatedly across fiscal years—a significant data limitation. The CDS data also allow for calculation of cumulative recidivism—the share of individuals apprehended any time in FY 2005 or later, who were reapprehended *in any year* up to FY 2014. The cumulative recidivism rate rose until FY 2010, when it reached 34 percent, and remained at that level through FY 2014. The fact that annual recidivism has fallen and cumulative recidivism has held steady for several years suggests that repeat crossing attempts are becoming less common. (Cumulative cannot fall since recidivists from all previous years are included in the numerator.)

Figure 3. Annual and Cumulative Recidivism Rates for Southwest Border Apprehensions, FY 2005–14



Source: Data provided to MPI by the U.S. Border Patrol, Statistics and Data Integrity Unit.

On the face of it, declining annual recidivism suggests that the Border Patrol's consequences have been effective in deterring return migration. Simply put, a migrant apprehended in FY 2014 was only about half as likely as one apprehended in FY 2007 to attempt a repeat entry and get caught again. The cumulative recidivism rate, which leveled off after FY 2010, tells essentially the same story.

A. Effectiveness of Individual Consequences

The CDS data generally indicate that the consequences ranked by MPI as relatively severe were also relatively effective.



In FY 2014, migrants given the option of voluntary return had the highest recidivism rate (31 percent). They also had the highest average apprehensions per recidivist (2.79), the shortest average time to reappréhension (30 days), and the lowest displacement (14 percent). Thus, voluntary return is the least effective option by all these metrics (see Table 1).

1. Voluntary Return

As has been noted, voluntary return is used almost exclusively for Mexican-national family units and unaccompanied children. Under current policies (and under statute for unaccompanied children), migrants under age 18 cannot be given expedited removal or reinstatement, and displacement to another sector via ATEP is considered too dangerous for women or children. Thus, the Border Patrol is likely to continue offering the option of voluntary return to these groups of apprehended Mexican migrants.

2. ATEP

The Alien Transfer Exit Program does not appear to be much more effective than voluntary returns using the same set of metrics. ATEP had the second-highest recidivism rate (29 percent), second-most apprehensions per recidivist (2.51), and second-fewest days to reappréhension (39 days). In conversations with the CDS Program Office and during fieldwork, respondents reported that the central purpose of ATEP is not to reduce recidivism, but rather to disrupt smuggling by making it more costly. To this end, the program displaces migrants from one sector to another or slows their return to the same sector. In FY 2014, 30 percent of migrants who had been given ATEP were subsequently reappréhended in another sector (a metric referred to as displacement)—a larger share than that of voluntary returns or expedited removals, but smaller than of migrants in most of the other consequence programs.²⁷

Migrants in ATEP are also being deported via expedited removal, reinstatement, or, to a much lesser extent, voluntary return. As a result, the effectiveness of ATEP is difficult to interpret. Correspondingly, various removal pathways encompass the effects of ATEP.

3. Nonjudicial Formal Removal

The two nonjudicial formal removal pathways—expedited removal and reinstatement—had substantially lower recidivism rates than voluntary return (18 percent and 16 percent, respectively).²⁸ They also had lower average apprehensions per recidivist (both with 2.35) and longer periods of time before reappréhension (46 days and 65 days, respectively) than either voluntary return or ATEP. The displacement rate was lower for expedited removal than for ATEP, but higher for reinstatements. Border Patrol agents reported that they explain to migrants that expedited removal and reinstatement include formal removal charges and as such lay the groundwork for prosecution. As a result, it appears that expedited removal and reinstatement are more likely to discourage repeat migration than voluntary return or ATEP.

4. Prosecution Programs

Standard prosecution and Streamline were the most consistently effective of the consequences based on available metrics.²⁹ In FY 2014, the recidivism rates for these programs were 9 percent and 8 percent, respectively, or about one-third of the rate for voluntary return. Apprehensions per recidivist were also substantially lower (2.25 and 2.24), and displacement rates (i.e., rates of reappréhension in a different sector) were higher for both Streamline and standard prosecution (38 percent and 52 percent) than for all other consequences. During the fieldwork for this study, agents cited the shock value of going

²⁷ Migrants who are repatriated remotely via the Alien Transfer Exit Program (ATEP) may be deported via voluntary return, expedited removal, or reinstatement. The statistics given here are for all ATEP program participants, regardless of how their deportation was conducted.

²⁸ Unlike ATEP, expedited removal and reinstatement are both mutually exclusive of voluntary return.

²⁹ Prosecution is almost always used in combination with expedited removal or reinstatement, not voluntary return.



before a judge in a courtroom setting as one important component of the prosecution programs. Indeed, unauthorized crossers taken to the Streamline court in Tucson were shackled at their wrists, ankles, and waists, and shuffled into court in groups.³⁰

Implementation of Streamline was not uniform across all Border Patrol sectors at the time of this study; some sectors employed the program for first-time entrants while others used it only for migrants with multiple apprehensions or those suspected of smuggling. Some sectors—for instance, Rio Grande Valley—did not utilize Streamline due to partner-agency constraints. Standard prosecution was generally used only for migrants with multiple immigration violations and significant criminal charges beyond illegal entry or re-entry. Its frequency was determined by policies and prosecution standards in the U.S. district courts and U.S. Attorneys’ offices with jurisdiction in each sector.

Most fieldwork respondents stated that jail time is the most important component of Streamline and standard prosecution. Jail time not only exhausts individuals in a punitive environment, but takes them out of the hands of smugglers for an extended period. Perhaps more important, it takes them out of the labor force (on either side of the border), where they could otherwise earn money to pay a smuggler again or support their families—often the reason for migrating in the first place.

Border Patrol agents, staff at federal partner agencies, and stakeholders outside the federal government reported that long prison sentences discourage some migrants from making repeat crossing attempts. The general consensus was that the one to two months imposed under some versions of the Streamline program were less effective than the longer sentences attached to standard prosecution (usually six months or more). Meanwhile, several stakeholders outside the Border Patrol—those in the federal justice system in particular—stated that some migrants have such strong family and other ties to the United States that sentences shorter than several years are unlikely to discourage them from trying to enter the country again.

There is also an important technical reason for the high, apparent effectiveness of prosecution-based consequences: individuals who spend several months (or even years) in jail might not be deported until a subsequent fiscal year. They thus do not appear in the data as recidivists. This data limitation would need to be overcome to accurately assess the effectiveness of Streamline and standard prosecution.

5. Warrant for Arrest/Notice to Appear

On the face of it, WA/NTA appears to be a highly effective consequence, with the lowest recidivism rate by far (just 1 percent in FY 2014) and one of the longest average times to reaprehension (102 days). But a technical limitation applies here, too: most affected migrants remained in the United States for months or years before their removal proceedings were resolved (due to record-high backlogs and case-processing times in immigration courts), and were therefore not reaprehended during the same fiscal year. As of July 2016, there were 516,031 pending cases in immigration court, and the average wait time was 672 days.³¹

Moreover, a substantial number of migrants given WA/NTAs were never deported—and therefore could not be reaprehended—either because they were granted asylum or another form of relief, or because they failed to appear for their removal hearings and remained in the United States as unauthorized migrants. Thus, many individuals given WA/NTAs had low recidivism for reasons other than being dissuaded from illegal re-entry.

30 Courtroom security policies are determined by the court and the U.S. Attorney’s office, not the Border Patrol, and may vary from one sector to another.

31 Transactional Records Access Clearinghouse, “Immigration Court Backlog Tool,” accessed October 31, 2016, http://trac.syr.edu/phptools/immigration/court_backlog/.



Table 1. Selected Metrics of the Effectiveness of Consequences Delivered at the Southwest Border, by Consequence, FY 2014

Consequence	Recidivism (%)	Average Apprehensions per Recidivist	Average Days to Reapprehension	Displacement from One Sector to Another (%)
Voluntary return	31	2.79	30	14
ATEP	29	2.51	39	30
Expedited removal	18	2.35	46	25
Reinstatement	16	2.35	65	31
Standard prosecution	9	2.25	94	38
Streamline	8	2.24	102	52
WA/NTA	1	2.30	102	30
OASISS	18	2.50	67	14
All consequences	14	2.40	49	25

Note: ATEP = Alien Transfer Exit Program; OASISS = Operation against Smugglers Initiative on Safety and Security; WA/NTA = warrant of arrest/notice to appear.

Source: Data provided to MPI by the U.S. Border Patrol, Statistics and Data Integrity Unit.

B. Effectiveness across Migrant Classifications

Recidivism and other effectiveness metrics varied greatly by migrant classification. As Table 2 shows, recidivism was relatively low (below 20 percent) among first apprehensions, second/third apprehensions, and family units in FY 2014, whereas displacement from one sector to another was relatively high for all three groups: 20 percent or more. Low recidivism and high displacement imply that the delivery of consequences was relatively effective for these three groups, which comprise the vast majority of all apprehensions.

Family units, however, had among the highest average apprehensions per recidivist (2.64), as well as the fewest days to reapprehension (26 days). Since Mexican family units generally obtained voluntary return, they had the opportunity to attempt re-entry quickly. Recidivism among Mexican national family units was 34 percent in FY 2014 (well above the average of 14 percent for all apprehensions), and the average time between apprehensions was 24 days (versus 49 days for all apprehensions).

On the other hand, non-Mexican family units were generally given WA/NTAs, and because of long wait times in immigration court were not likely to be deported and attempt illegal re-entry within the same year. In FY 2014, the recidivism rate among Salvadoran, Honduran, and Guatemalan family units amounted to zero when rounded (not shown in table). In addition, family migration is motivated to a significant degree by a search for safety, and individuals fleeing danger are more likely to receive relief from deportation in immigration court than are economic migrants and are less likely to be deterred by enforcement consequences.

Persistent aliens and smugglers had much higher recidivism rates and average apprehensions per recidivist than the other classifications. Suspected and targeted smugglers were apprehended three times or more, on average, in FY 2014. Displacement rates of the two smuggling classifications were very low (less than 10 percent) and the average time gap between apprehensions was short. These outcomes may seem surprising given that these three groups were often dealt the most severe consequences—Streamline or standard prosecution. Yet these groups are by definition more difficult to deter than less-experienced migrants whose livelihood is not the smuggling industry.

**Table 2. Selected Metrics of the Effectiveness of Consequences Delivered at the Southwest Border, by Migrant Classification, FY 2014**

Classification	Recidivism (%)	Average Apprehensions per Recidivist	Average Days to Reapprehension	Displacement from One Sector to Another (%)
First apprehension	13	2.34	47	21
Family unit	3	2.64	26	25
Second or third apprehension	19	2.41	51	26
Persistent alien	24	2.67	48	27
Suspected smuggler	18	3.46	53	6
Targeted smuggler	24	3.60	52	3
Criminal alien	19	2.65	51	28
All classifications	14	2.40	49	25

Source: Data provided to MPI by the U.S. Border Patrol, Statistics and Data Integrity Unit.

Persistent aliens and smugglers who underwent standard prosecution or Streamline were more effectively deterred than those given other consequences. In FY 2014, recidivism rates were 8 percent and 9 percent for suspected and targeted smugglers in Streamline, respectively, and 4 percent for suspected and targeted smugglers in standard prosecution. Average time between apprehensions was less than 150 days for both groups in Streamline, and 125 days in standard prosecution. Significant jail time undoubtedly extended the period between apprehensions—and may have pushed some apprehensions into the next fiscal year, thereby lowering recidivism.

However, significant numbers of smugglers were not prosecuted, because they were under age 18. In FY 2014, 24 percent of apprehended suspected smugglers and 29 percent of targeted smugglers were under age 18. In the Rio Grande Valley sector in particular, where smuggling organizations expanded with the influx of Central American migrants, youth comprised 81 percent of suspected smugglers and 68 percent of targeted smugglers. Borderwide, suspected and targeted smugglers offered voluntary return (almost all of them youth) were apprehended five times on average in FY 2014, with about a month between apprehensions. During fieldwork, agents reported that some Mexican youth in the Rio Grande Valley sector had more than 20 apprehensions.

It should be noted that suspected and targeted smugglers composed a small share of the 479,000 migrants apprehended along the Southwest border in FY 2014—12,000 smugglers were apprehended, and of these 3,700 were youth. The impact of smugglers on the overall effectiveness of border-control measures is minimal, though they remain an important focus of CDS due to their role in facilitating the illegal entry of others.

Criminal aliens, a category that includes those convicted of crimes such as illegal (re)entry as well as other crimes in the United States, represented a larger group: 26,000 or about 6 percent of all migrants apprehended in FY 2014 (see Figure 2). Their recidivism was relatively low (19 percent), and they were apprehended fewer times on average (2.65) than suspected or targeted smugglers. Most criminal aliens (71 percent) were given reinstatement of removal, and recidivism among this group was 15 percent. Almost half of criminal aliens (12,000) went through Streamline or standard prosecution; their recidivism was 8 percent. Criminal aliens going through Streamline or standard prosecution in FY 2014 had an average time of more than 130 days between apprehensions.

Thus, the data show that the more severe consequences—especially Streamline and standard prosecution—are relatively effective in slowing or preventing return migration in serious cases (i.e., those



of persistent migrants, smugglers, and criminal aliens). At the same time, the growing use of youth by smuggling organizations—perhaps an adaptation to tighter enforcement—has hindered the effectiveness of consequence delivery, as minors cannot be prosecuted in federal court.

C. Effectiveness across Border Sectors

Another way to look at recidivism is in comparison with the overall apprehension numbers in various sectors along the U.S.-Mexico border. Here, trends in recidivism often oppose trends in apprehensions. For instance, San Diego and El Centro—the two California sectors—had the highest recidivism rates (both more than 30 percent in FY 2014), but also had small and generally declining numbers of apprehensions in FY 2011–14 (see Table 3). Thus, in sectors under relatively tight control, a core of migrants frequently attempted re-entry. It may be that these migrants had stronger family and economic ties to the United States or closer ties to smuggling operations that outweighed the deterrent effects of consequences. In this way, high recidivism alongside low and falling apprehensions may actually signal that border enforcement is working.

Table 3. Total Apprehensions and Recidivism Rates, by Southwest Border Sector, FY 2011–14

Sector	Total Apprehensions				Recidivism Rate (%)			
	FY 2011	FY 2012	FY 2013	FY 2014	FY 2011	FY 2012	FY 2013	FY 2014
Rio Grande Valley	59,000	98,000	154,000	256,000	15	13	12	12
Tucson	123,000	120,000	121,000	88,000	21	19	21	19
Laredo	36,000	45,000	51,000	44,000	15	13	12	12
San Diego	42,000	28,000	27,000	30,000	34	30	32	33
Del Rio	16,000	22,000	24,000	24,000	8	7	7	5
El Centro	30,000	24,000	16,000	15,000	42	38	36	33
El Paso	10,000	10,000	11,000	12,000	8	8	10	11
Yuma	6,000	7,000	6,000	6,000	18	18	17	14
Big Bend	4,000	4,000	4,000	4,000	10	7	8	7
Southwest border	328,000	357,000	414,000	479,000	20	17	16	14

Source: Data provided to MPI by the U.S. Border Patrol, Statistics and Data Integrity Unit.

By contrast, apprehensions in Rio Grande Valley rose dramatically over the period to reach the highest level of any sector in both FY 2013 and FY 2014—at a time when the sector’s recidivism was low and falling. In this case, low and declining recidivism clearly did not indicate more effective deterrence of illegal immigration; in fact, it was due to an overwhelming share of migrants who were first-time border crossers. The inability of recidivism to account for the rising numbers of first-time border crossers is a significant weakness of CDS, highlighted by the recent influx of Central American migrants.

VI. Analyzing the Efficiency of Consequences

CDS uses several factors to evaluate the *efficiency* of consequences. In contrast with *effectiveness* measures, which are based on enforcement outcomes derived from apprehensions data, efficiency measures are based on the evaluation of subject matter experts—generally Border Patrol supervisors



and agents. CDS used eight factors to evaluate the efficiency of consequences: average days between apprehensions; average time required for Border Patrol processing; personnel hours per case; cost per hour of processing; cost per apprehension; cost per border mile patrolled; staff dedicated (full-time) to processing for a given consequence; and contribution of strategic partners (i.e., other federal agencies). CDS does not, however, offer detailed accounting or other quantitative data on these efficiency measures that could be used for analyses similar to those MPI researchers conducted on effectiveness.

Seven of the eight efficiency factors involved Border Patrol resources, but subject matter experts also rated the importance of the contribution of strategic partners—such as U.S. district courts, U.S. Attorneys’ offices, USMS, and ICE—to consequence enforcement. These partners are especially critical to Streamline and standard prosecutions, and the resource constraints these partner agencies face factor into variations in the frequency of prosecution across sectors.

A. Resource Requirements of Selected Consequences

Auditing the costs of various consequences was beyond the scope of this study. Nonetheless, respondents in the two study sites, Tucson and the Rio Grande Valley, provided the authors with estimates of the amount of time agents spend delivering consequences and the external resources required to support them, if any.

Respondents reported the lowest resource requirements for voluntary return. Agents in both sectors reported that voluntary return takes 15 minutes of processing time on average and has lower transportation and detention costs than most other consequences. It generally does not require any resources outside the Border Patrol.

ATEP involves higher transportation and detention costs than voluntary return. Some sectors transport migrants to different parts of the border by plane, while others do so by bus. The resources lateral repatriation requires thus depend on how many buses or planes are filled. The Border Patrol and ICE also provide transportation, and their relative costs vary by sector. Additionally, migrants are detained in Border Patrol or ICE facilities until a bus or plane becomes available.

Expedited removal requires more processing time (an average of 90 minutes, or about six times as long as voluntary return) because a formal removal order must be generated. But expedited removal, like voluntary return, has lower transportation and detention costs than other consequences. These costs are primarily borne by the Border Patrol but can be shared with ICE, particularly in the case of non-Mexican apprehensions.

Reinstatement requires agents to obtain the original removal order. In cases where it can be obtained swiftly through the Border Patrol’s electronic system, reinstatement takes about the same amount of time as expedited removal. However, agents reported difficulty in obtaining removal orders this way from other sectors due to backlogs in data entry. When a paper order must be obtained, the wait time can be long. Reinstatement transportation and detention costs are also shared with ICE.

WA/NTAs impose resource requirements on federal agencies other than the Border Patrol. Immigration courts within the Justice Department hold hearings to adjudicate removal cases, and ICE takes custody of migrants awaiting immigration hearings.

Streamline has more extensive and complex resource requirements because it involves substantial cooperation with federal partner agencies. In 2014, Streamline in Tucson was limited to 70 people per day, due to courtroom space, detention space provided by USMS, and staff requirements at the U.S. Attorney’s office and the U.S. district court. Just one courtroom was available for Streamline, and the district court’s six magistrate judges rotated weeks on Streamline duty. CBP’s Office of Chief Counsel provided two prosecuting attorneys, who were supervised by the U.S. Attorney’s office in Tucson, and an assistant to help with paperwork. The Streamline courtroom was staffed with two clerks, an interpreter,



and two criminal justice workers to support the defense attorneys, plus a part-time automation technology worker to manage the docket.

Streamline required several defense attorneys, because the Ninth U.S. Circuit Court of Appeals mandated a maximum of six defendants per attorney. In other sectors—notably in western Texas—the courts had not mandated this attorney-client ratio.

USMS is responsible for transporting migrants to and from the court, and for their detention while in court. At the time fieldwork was conducted for this study, its Tucson office had the capacity to detain 100 individuals at the court, but in practice had held up to 200 during peak periods—including defendants in non-Border Patrol cases. Three Border Patrol agents supplemented the marshals, providing security in the courtroom.

The Rio Grande Valley sector had minimized the use of Streamline at the time of fieldwork, due to resource constraints and the high priority placed on smugglers and criminal aliens amenable to standard prosecution.³²

Standard prosecution requires greater partner-agency resources than Streamline, as cases are handled individually in U.S. district court and require multiple hearings. The Tucson sector averaged about 30 referrals for standard prosecution a day (a number that reflects the severity of the cases, not a hard cap based on resources). Mini-Streamline, a smaller group hearing focusing primarily on smugglers, had a cap of 30 per week, and was supported by one magistrate judge and two to three clerks during one morning session each week. Five district judges were adjudicating standard prosecution Border Patrol cases, with caseloads of several hundred each.

*Standard prosecution requires greater partner-agency
resources than Streamline.*

The U.S. Attorney's office had three divisions of eight attorneys each devoted exclusively to Border Patrol cases (one division each for immigration offenses, drug smuggling, and alien smuggling). The three other divisions (focusing on financial, violent, and organized crime) also often prosecuted Border Patrol cases. The six divisions of attorneys were supported by one legal assistant for every two to three attorneys, a paralegal in the immigration division, a legal assistant in the alien smuggling division, and a paralegal and a legal assistant in the drug smuggling unit. CBP's Office of Chief Counsel provided three prosecutors and an assistant to help with paperwork in the Mini-Streamline court.

In the Rio Grande Valley sector, the McAllen U.S. Attorney's office and district court had placed an informal cap of 50 total prosecutions (including defendants and material witnesses for those cases) from the Border Patrol on Mondays, and a cap of 40 on the other days of the week. This cap included both Streamline and standard prosecution cases. The Attorney's office required the Border Patrol to build prosecution cases that involved serious criminal histories or significant smuggling activities. This made it difficult for the Border Patrol to fill the docket of 40 to 50 per day, even with 700 to 800 apprehensions daily in the sector. Agents at the McAllen processing center culled several databases to identify past criminal convictions, while others gathered intelligence on smuggling activities.

Mini-Streamline and standard prosecution have the same general transportation and detention requirements as Streamline, though standard prosecution requires individuals to be kept in detention longer, as they must attend multiple hearings before their cases are adjudicated.

³² The Border Patrol reported that the Rio Grande Valley sector restarted Streamline for a small number of apprehensions in April 2014. The authors did not obtain information on which classifications of migrants were referred for Streamline because the program was restarted after their visit to the sector.



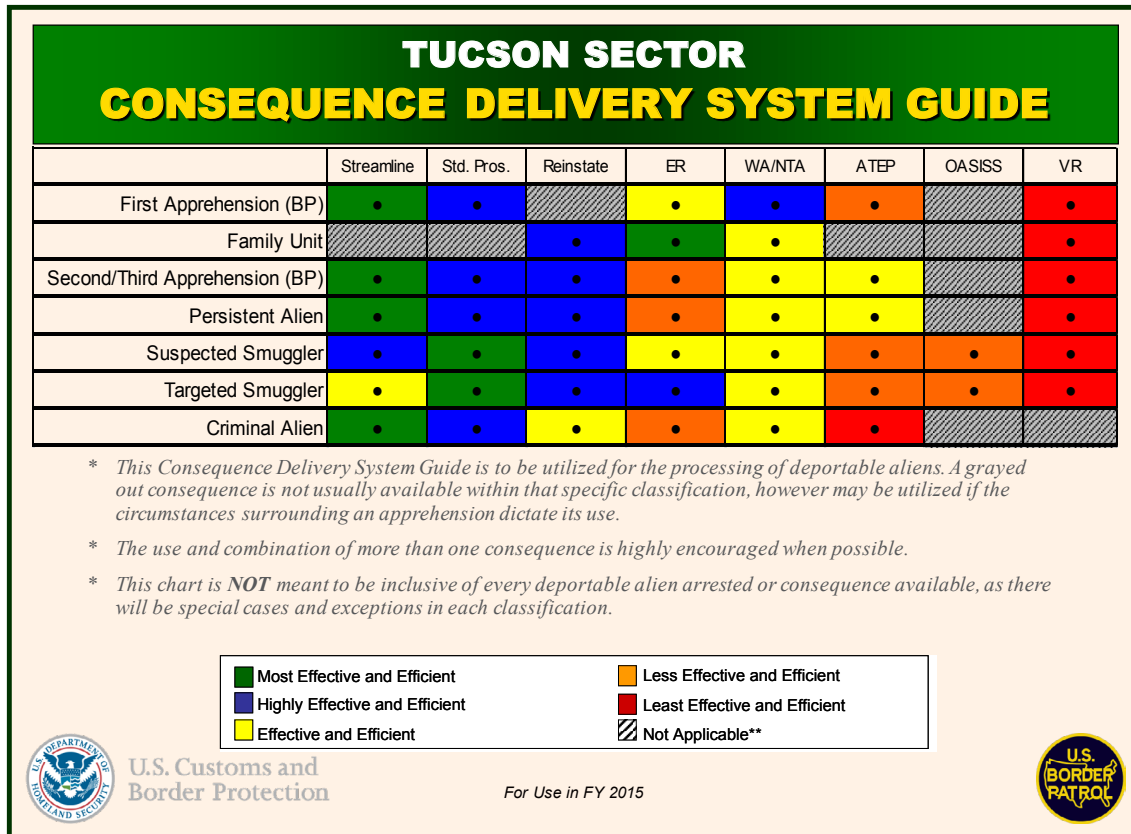
B. Variations in Efficiency across Sectors

Resource requirements constrain consequence delivery in some sectors more than others. Variations reflect differences in resource allocations, migrant traffic levels, and relationships with partner agencies such as courts and prosecutors. During their annual CDS reviews, the sectors assess the resource requirements of various consequences. With input from subject matter experts, the Sector Chief, Deputy Chief, Assistant Chiefs, and other command staff weigh the relative importance of relevant factors and generate a guide that lists the most effective and efficient consequences for specific migrant classifications.

Resource requirements constrain consequence delivery in some sectors more than others.

In Tucson, the FY 2015 guide ranked Streamline or standard prosecution as the most effective and efficient consequences for most migrant classes, despite resource requirements (see Figure 4). Reinstatement was ranked highly effective and efficient for almost all groups, while expedited removal was effective and efficient for some groups but not others. Voluntary return and ATEP were rated as less or least effective and efficient for most groups because of high recidivism and poor performance on other effectiveness metrics.

Figure 4. Consequence Delivery System Guide for the Tucson Sector, FY 2015



Note: ATEP = Alien Transfer Exit Program; BP = Border Patrol; ER = expedited removal; OASISS = Operation against Smugglers Initiative on Safety and Security; Std. Pros. = standard prosecution; VR = voluntary return; WA/NTA = warrant of arrest/notice to appear.

Source: Figure provided to MPI by the U.S. Border Patrol, CDS Program Office.



Not all sectors weighed effectiveness as heavily as Tucson. In FY 2014, command staff across the U.S.-Mexico border weighted effectiveness factors at 57 percent and efficiency factors at 43 percent—thus giving effectiveness slightly more emphasis in the calculations that generate sector guidance (see Table 4). The Tucson sector weighted efficiency factors lower, at 35 percent. Only Yuma—a sector with very light traffic—gave efficiency factors less weight. The Tucson sector agents reported adequate staffing and time to handle the volume of traffic and apply appropriate consequences. Since it had experienced a stable level of apprehensions between 2011 and 2014, the sector could adjust its staffing and other resources to the number of apprehensions.

By contrast, the Rio Grande Valley and Big Bend sectors gave efficiency factors much higher weights: more than 50 percent. These two sectors also weighted average time spent processing migrants and Border Patrol staffing required for consequence delivery most heavily. Rio Grande Valley had become the busiest sector—apprehensions quadrupled in three years—and was struggling to keep pace even after hiring sizeable numbers of additional agents. The sheer volume of traffic put Border Patrol staffing resources at a premium in the sector.

Table 4. Weighting of Selected CDS Efficiency Factors, by Sector, FY 2014

Sector	All Efficiency Factors (%)	All Effectiveness Factors (%)	Average Time for Border Patrol Processing (%)	Border Patrol Staffing (%)	Contribution of Strategic Partners (%)
Rio Grande Valley	51.6	48.4	10.2	8.5	9.2
Big Bend	51.4	48.6	9.1	10.3	3.3
Laredo	47.3	52.6	7.5	6.3	5.7
El Centro	46.5	53.5	6.9	7.2	10.1
Del Rio	42.9	57.9	8.0	5.9	4.9
San Diego	42.7	57.3	6.2	4.9	7.3
El Paso	36.5	63.5	4.7	5.4	4.9
Tucson	35.2	64.8	4.3	5.3	5.6
Yuma	31.6	68.4	5.1	4.5	6.3
Southwest border	42.9	57.2	6.6	6.5	6.4

Note: As weighted by Border Patrol Sector Command Staff in each sector.

Source: Data provided to MPI by the U.S. Border Patrol, Consequence Delivery System Program Management Office.

VII. The Accomplishments and Limitations of CDS

CDS is the Border Patrol's first systematic attempt to employ effectiveness and efficiency metrics across the Southwest border sectors. Data that link migrants across apprehension events via fingerprints have made it possible to assess recidivism, time between apprehensions, and other important metrics. Despite methodological challenges, CDS has gone a long way toward creating a comprehensive set of standardized, reliable effectiveness metrics.

Assessing efficiency is more challenging. At the time of the study, CDS relied primarily on the judgments of sector command staff and subject matter experts regarding Border Patrol resource requirements and relationships with federal partner agencies. Yet, even as it lacks detailed accounting or other quantitative data relevant to efficiency, CDS offers the Border Patrol a way to assess tradeoffs between efficiency and effectiveness—which is essential for strategic and operational planning in a world of finite resources.



In sum, CDS has offered the Border Patrol an important tool for its strategic planning and assessments of the security of the U.S.-Mexico border. The rapid decline in recidivism—which reached 14 percent for apprehensions overall and 13 percent for first-time apprehensions in FY 2014—suggests progress in deterring repeat migration attempts. Substantial displacement from one sector to another also suggests that the strategy of lateral repatriation may help reduce repeat attempts in high-traffic areas. Declining recidivism and substantial displacement represent important recent border enforcement accomplishments.

In sum, CDS has offered the Border Patrol an important tool for its strategic planning and assessments of the security of the U.S.-Mexico border.

But CDS by itself cannot—and is not intended to—assess the complex environment surrounding illegal migration to the United States and the overall security of the U.S.-Mexico border. CDS only analyzes the effectiveness of strategies employed by the Border Patrol and its federal partners *after migrants come into custody*; it does not assess how many migrants have evaded capture or may have been deterred from entering in the first place.

The deployment of Border Patrol resources can influence the probability of apprehension and thereby have a deterrent effect. But while consequence enforcement can counteract economic, family, humanitarian, and other motivations for illegal immigration, it cannot always overcome them. Broader forces—such as the presence of family members in the United States or violence in Central America—strongly affect these motivations.

Most MPI study respondents and fieldwork participants emphasized that a few weeks, months, or even several years in prison do not sufficiently deter migrants with strong ties to the United States. A study by Human Rights Watch (HRW), for instance, found that approximately 102,000 migrants apprehended in FY 2010 and FY 2011 were parents of U.S.-citizen children, and that parents were significantly more likely to be deported through reinstatement and criminally prosecuted than other apprehended migrants. The study concluded that “parents of U.S.-citizen children try again and again to rejoin loved ones.”³³ Academic research, too, suggests that a high share of all deportees have very strong ties to U.S. communities and therefore strong incentives to return.³⁴ On the other hand, data from a survey of deported Mexican migrants indicate that incentives to return are waning. In 2005, 95 percent of surveyed deportees said they intended to return to the United States; in 2015, this share had fallen to 49

33 The Human Rights Watch (HRW) study found that 60 percent of apprehended migrants who are parents of U.S.-citizen children were deported through expedited removal or reinstatement of removal, while one-third were deported through voluntary return. Given the decreased use of voluntary return since the study was conducted in FY 2011–12, the share of parents subject to expedited removal or reinstatement is likely higher today. The study also found that parents of U.S.-citizen children were 1.77 times more likely than other apprehended migrants to be processed under a reinstatement of a previous removal order, and that parents of U.S.-citizen children were 1.35 times more likely than other apprehended migrants to be prosecuted for illegal entry or re-entry. See HRW, “Border Enforcement Policies Ensnare Parents of US Citizen Children,” HRW, January 8, 2015, www.hrw.org/news/2015/01/08/border-enforcement-policies-ensnare-parents-us-citizen-children.

34 An analysis of the results from the Migrant Border Crossing Study (MBCS), a survey of individuals deported to six cities in Mexico, found that half of respondents had at least one U.S.-citizen family member, one in five had at least one child under the age of 18 with U.S. citizenship, almost half intended to settle permanently after their most recent crossing, and 30 percent stated that their current home was in the United States. See Jeremy Slack, Daniel E. Martínez, Scott Whiteford, and Emily Peiffer, “In Harm’s Way: Family Separation, Immigration Enforcement Programs and Security on the US-Mexico Border,” *Journal on Migration and Human Security* 3, no. 2 (2015): 109–28, <http://jmhs.cmsny.org/index.php/jmhs/article/view/46>.



percent. Parents with children in the United States, however, were still more likely to intend to return, at 63 percent.³⁵

CDS does not incorporate data on migrants' motivations and so cannot factor these into its calculations. This limitation may become increasingly important if Southwest border flows continue to shift away from Mexicans toward Central Americans, to include more families and children fleeing violence.

The caps on prosecution in some Border Patrol sectors highlight another limitation of CDS: it cannot account for the opportunity costs of immigration prosecutions. Court and prosecution resources are severely constrained along the U.S.-Mexico border and prosecutors and judges participating in this study expressed concern that too great a focus on illegal entry and re-entry cases might mean that other types of cases (such as smuggling) go unprosecuted. In response to these concerns, the courts and attorneys' offices placed caps on Border Patrol prosecutions and the attorneys imposed strict rules for which cases they would prosecute. Immigration prosecutions—particularly Streamline—have also raised legal protection and humanitarian concerns, which are difficult to incorporate into cost-benefit analyses of consequence enforcement.

CDS does not incorporate data on migrants' motivations and so cannot factor these into its calculations.

Variation in the way Streamline and standard prosecution are implemented across Border Patrol sectors may also impede a systematic analysis of their effectiveness and efficiency. Court and prosecution resources vary dramatically from sector to sector, as do policies about what types of cases to prosecute. Indeed, Streamline is used infrequently or not at all in three major sectors: Rio Grande Valley, San Diego, and El Centro. The high resource needs of Streamline, coupled with opportunity costs and relatively short prison sentences (six months or less), raise significant questions about the tradeoffs between effectiveness and efficiency in the program.

Another broad limitation of CDS is that it does not disaggregate youth from adults, or Mexican nationals from nationals of other countries. The CDS office collects data on migrants' ages and origin countries but does not include these data in annual reviews. Including such data, particularly on unaccompanied children and family units from nations other than Mexico, could help identify groups for which the full range of consequence options is not available.

The exclusion of these groups is more than a data problem. The arrival of family units and children in significant numbers and their exclusion from the more severe consequences (in many cases by statutory requirement) limit the Border Patrol's ability to deter and control migrant flows. For example, when arrivals of unaccompanied children and family units peaked in the Rio Grande Valley in the summer of 2014, the Border Patrol was unable to deploy the full range of consequences, and a strategy to respond to this newer, mixed flow was not in place. Instead of seeking to evade the Border Patrol, most family units and unaccompanied children surrendered themselves in anticipation of being released to await immigration hearings.

The lack of detailed CDS information on the financial costs of consequence measures represents a third important data gap. While CDS employs apprehensions data to assess effectiveness, efficiency metrics are based on the evaluation of sector-level subject matter experts. Auditing the actual costs associated with different consequence measures is beyond the scope of this study. Nonetheless, this research lays

³⁵ MPI analysis of La Encuesta sobre Migración en la Frontera Norte de México (Emif Norte); see Ryan Schultheis and Ariel G. Ruiz Soto, *A Revolving Door No More? A Statistical Profile of Mexican Adults Repatriated from the United States* (Washington, DC: MPI, 2017), www.migrationpolicy.org/research/revolving-door-no-more-statistical-profile-mexican-adults-repatriated-united-states.



the groundwork for the quantitative accounting of respective consequences by identifying major cost components, such as Border Patrol and partner agency staff time, courtroom space, detention space, transportation, and information systems (e.g., the costs of virtual processing and requests for criminal histories).

A fourth limitation is the lack of data on what happens to migrants after they leave Border Patrol custody. While this study was being prepared, CDS classified apprehensions by deportation type: voluntary return, expedited removal, reinstatement, and WA/NTA. In most cases, the Border Patrol has final disposition over voluntary return, expedited removal, and reinstatement cases, and is responsible for their deportation. As a result, CDS can accurately code these cases as deportations. But WA/NTA cases are referred to the custody of ICE—or ORR for unaccompanied children—until migrants appear before an immigration judge. Under the data-sharing arrangements in place during the research of this report, the Border Patrol did not have a mechanism for following up on these cases, and so CDS could not collect data on whether individuals were deported in the same year, in a later fiscal year, or not at all.³⁶

Collecting more accurate data on the ultimate disposition of migrants given WA/NTAs (i.e., whether they were eventually deported or released in the United States) would require linking the Border Patrol data on apprehensions with ICE data on detentions and deportations as well as data from the Justice Department Executive Office of Immigration Review on immigration court cases. Because immigration court cases take so long to adjudicate, records would have to be linked across multiple fiscal years. Such links would allow for analysis of the shares of WA/NTA migrants with different characteristics who are detained versus released, the length of time until their first court dates, the share who abscond from immigration hearings, the number who are removed, and the length of time between apprehension and removal. Without such data, it is difficult to evaluate the effectiveness of WA/NTAs, which appear highly effective according to the metrics but not in the eyes of Border Patrol agents who understand that low recidivism among migrants given WA/NTAs is primarily due to release in the United States pending removal hearings, rather than deterrence of repeat migration.

A related and final limitation is the lack of data on the date of deportation. CDS includes a measure of the days between an initial and subsequent apprehension in a given fiscal year. The Border Patrol processes most voluntary return, expedited removal, or reinstatement cases within a few days, making the time between apprehensions a valid metric. But when migrants are prosecuted for immigration crimes, this metric is misleading as migrants may spend more time (months or years) in a U.S. prison than outside the country before attempting illegal re-entry. The time between the date of *deportation* (recorded by ICE or an immigration court and currently unavailable to the Border Patrol) and subsequent reappréhension would be a more useful metric here. In many cases, prison sentences may span more than one fiscal year, lowering the apparent recidivism rate for migrants in Streamline or standard prosecution. Also, calculating recidivism based on the initial apprehension date rather than the deportation date may make Streamline and standard prosecution appear more effective than they are. Similarly, a lack of data on the timelines of immigration court cases and adjudication may make WA/NTAs appear more effective than they really are.

On a policy level, improving the efficiency and timeliness of immigration court decisions—consistent with proper legal protections—could improve the effectiveness of WA/NTAs as a deterrent to illegal migration, decrease the uncertainty surrounding WA/NTA deportation decisions, and reduce the number of deportations ordered *in absentia* (when migrants fail to appear for their hearings). At the same time, migrants' claims for asylum and other forms of deportation relief would be more adequately addressed.

Despite these limitations, CDS is a management tool that helps the Border Patrol establish priorities for enforcement by “separating the wheat from the chaff,” in the words of one agent. For example, the

³⁶ Individuals may remain in the United States legally if they win their appeal of deportation before an immigration judge; alternately, they could remain in the country illegally if they are released from ICE custody and then fail to appear for their immigration hearing.



CDS classification of migrants has greatly improved the Border Patrol's ability to identify dangerous criminals and other public-safety threats who attempt to cross the border illegally. It also allows the Border Patrol to focus prosecution and other resources on priority classifications, and to assess the impact of different consequences (be they remote repatriation, prosecution, or significant prison time) on the behavior of individuals in these classifications.

At the same time, CDS allows the Border Patrol to evaluate how various enforcement strategies might affect distinct migrant populations and to consider, for example, whether relatively less severe consequences might affect the behavior of first- and second-time border crossers. CDS has also introduced uniformity in how sectors process apprehended migrants, while at the same time preserving sector flexibility to adapt to changing conditions or address unique migrant streams, such as families and children.

Finally, CDS helps the Border Patrol assign resources across the sectors of the U.S.-Mexico border, and by station and zone within each sector. CDS can display displacement rates by sector, as well as for smaller areas within sectors. This helps identify patterns that may be influenced by smuggling operations on the Mexican side of the border, as well as projections of future traffic levels. Emerging trends—such as the current flow of unaccompanied children and other Central Americans in the Rio Grande Valley, and high shares of first-time apprehensions and low recidivism among migrants from El Salvador, Guatemala, and Honduras—can be more easily predicted and analyzed with the aid of CDS.

Consequence enforcement as currently deployed is not a viable strategy for addressing these newer, mixed flows.

CDS was designed based on Border Patrol experience of more than four decades. Throughout those decades, most migrants apprehended at the Southwest border were young men from Mexico seeking jobs in the United States. This profile of the typical migrant changed during the Central American migration surge that began in FY 2014, when Mexicans for the first time became a minority of apprehensions. At the same time, family units and unaccompanied children comprised growing shares of the migrant population—a situation not envisioned when CDS was developed. Consequence enforcement as currently deployed is not a viable strategy for addressing these newer, mixed flows. Broad questions regarding deterrence, border control, humanitarian protection, and political asylum policies must be answered to maintain border security in the future. To address these and other key questions, CDS needs data from agencies besides the Border Patrol: deportation data from ICE, asylum petition outcomes from U.S. Citizenship and Immigration Services, and deportation case outcomes from Justice Department immigration courts. Meanwhile, policymakers have begun to generate strategies that combat the root causes of migration from Central America, dismantle smuggling networks that span Central America and Mexico, and provide access to humanitarian relief within the region. Tackling these larger challenges is essential; effective border control requires a broad approach that incorporates governments and civil society across the region.



Appendices: Case Studies of CDS Implementation in the Two Busiest Border Control Sectors

A. Tucson Sector

The Tucson sector includes most of the border between Arizona and the state of Sonora in Mexico. It has historically been challenging to patrol, due to the large amount of land area—mostly deserts and mountains—between populated areas in the United States and Mexico and the lack of rivers or other natural barriers along the border. Nogales is the largest of a handful of towns that span both sides of the border, and the Tohono O’odham Indian Reservation straddles a large border segment. Nogales, the reservation, and several remote, rural areas have been major corridors for drugs and migrant smuggling in recent years.

Apprehensions in the Tucson sector began to rise rapidly in the 1990s, following Border Patrol resource infusions to the largely urban sectors of El Paso, San Diego, and Rio Grande Valley, which pushed unauthorized flows to more remote, lightly patrolled areas of the border. In fiscal year (FY) 2000, Tucson apprehensions peaked at 616,000, prompting the Border Patrol to devote additional resources to the sector. This caused apprehensions to drop over the next several years, most precipitously after FY 2007; these fell to about 120,000 per year in FY 2011 through FY 2013, to 88,000 in FY 2014, and to a 25-year low of 63,000 in FY 2015 with a similar level of 65,000 in FY 2016.³⁷ For five years, between FY 2009 and FY 2015, the sector operated in a steady state with apprehensions falling well below the historic peak but remaining the highest or second highest among sectors. In FY 2013, apprehensions in Rio Grande Valley surpassed those in Tucson for the first time in many years. Mexican nationals comprised the vast majority of the traffic in Tucson, as in the other western sectors, whereas apprehensions of Central Americans and people from other regions were relatively rare.

In the context of high but stable traffic, Tucson fully implemented most of the available consequences. The following sections explain how each consequence operated in the Tucson sector during the fieldwork period in early 2014.

1. Voluntary Return and Warrant of Arrest/Notice to Appear

Voluntary returns and Warrant of Arrest (WA)/Notice to Appear (NTA), ranked by the Migration Policy Institute (MPI) among the least severe consequences, together comprised just 4,800 apprehensions (12 percent of trackable apprehensions) in FY 2014 (see Figure A-1). Almost all voluntary returns were of Mexican youth ages 14 to 18—a population that generally was not subject to expedited removal, reinstatement, or criminal charges. Many of the youth were unaccompanied and by statute could only be offered voluntary returns or given WA/NTAs and placed in removal proceedings. Almost all WA/NTAs were given to Central Americans (primarily family units or unaccompanied children) who were not amenable to voluntary return, expedited removal, reinstatement, or prosecution. Migrants given WA/NTAs were transferred into U.S. Immigration and Customs Enforcement (ICE) custody and often released due to limited detention capacity.

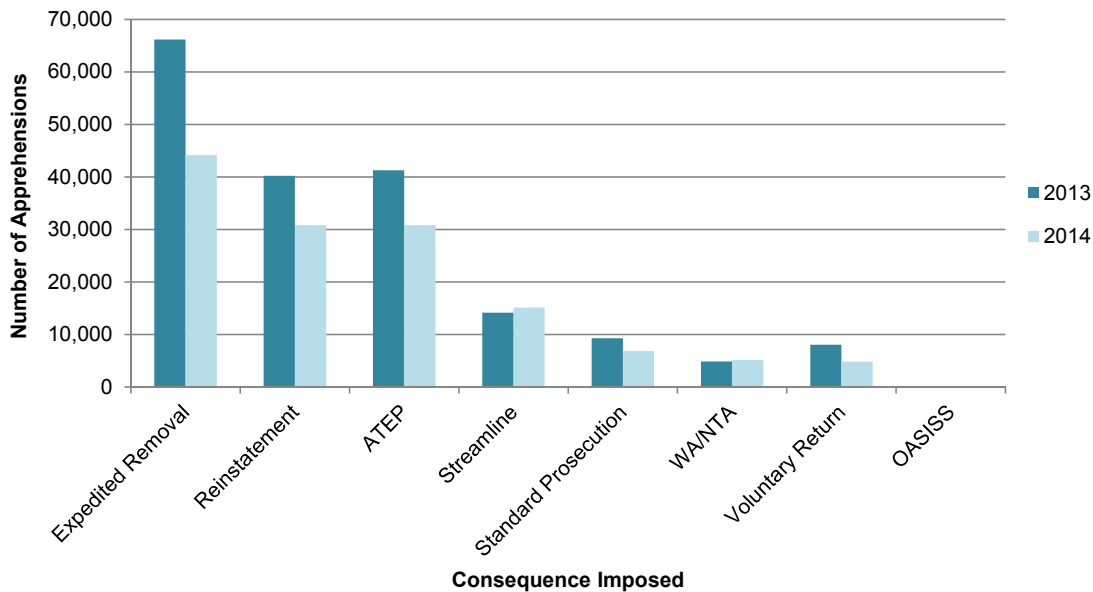
2. Expedited Removal or Reinstatement

The remaining 75,000 (88 percent) of trackable apprehensions were deported via expedited removal or reinstatement. Expedited removal was the most commonly used consequence, at 44,000 apprehensions (52 percent), in Tucson—fitting the pattern for all the U.S.-Mexico border sectors.

³⁷ U.S. Border Patrol, “Total Illegal Alien Apprehensions by Month,” FY 2000-2016; CBP, “United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016.”



Figure A-1. Apprehensions by Consequence, Tucson Sector, FY 2013 and FY 2014



Note: ATEP = Alien Transfer Exit Program; OASISS = Operation against Smugglers Initiative on Safety and Security; W/ANTA = warrant of arrest/notice to appear.

Source: Data provided to MPI by the U.S. Border Patrol, Statistics and Data Integrity Unit.

3. Alien Transfer Exit Program

Repatriation through different sectors via the Alien Transfer Exit Program (ATEP) was also used frequently in Tucson, accounting for 30,000 apprehensions (36 percent) in FY 2014.³⁸ The Tucson sector had the capacity to bus up to 375 people per day in two directions—east to the El Centro sector and west to the Del Rio sector (two sectors with relatively low overall traffic), but the buses were seldom filled except during peak traffic periods. Representatives from the Mexican Consulate interviewed all individuals on the buses before they left Tucson. Transportation provided by Border Patrol or ICE contractors, and to a lesser extent detention space, were the primary resource limitations on ATEP.

4. Streamline and Standard Prosecution

The Border Patrol sought prosecution for 22,000 Tucson sector apprehensions (26 percent) through Streamline and standard prosecution in FY 2014, with Streamline accounting for 15,000 apprehensions (18 percent) and standard prosecution accounting for 7,000 (8 percent).³⁹ The shares of apprehensions that resulted in prosecution remained low in Tucson due to resource constraints in the federal partner agencies—the U.S. district court, U.S. Attorney’s office, and U.S. Marshals Service (USMS) office in Tucson.

Streamline was introduced in the Tucson sector in FY 2008, and was initially used to prosecute almost everyone attempting to cross in the desert west of Tucson—then the busiest part of the sector. First-time border crossers were prosecuted for misdemeanor illegal entry, given the sentence of “time served” (i.e., no additional prison time) and expedited removal, and then bused directly to the border.

³⁸ Note that ATEP is a program that can be used for migrants deported via voluntary return, expedited removal, or reinstatement.

³⁹ Streamline and standard prosecution can also be used for migrants given any form of deportation, but are more likely to be used with expedited removal or reinstatement—as they mostly focus on those with repeat entries and immigration-related crimes.



In early 2014, the Tucson Border Patrol sector limited the use of Streamline to individuals with prior formal removals. Prosecutors brought felony re-entry charges against defendants but offered plea bargains for misdemeanor illegal entry. Defendants, represented by defense lawyers, almost always agreed to the pleas and were sentenced to between 30 and 180 days depending upon their number of prior removals or convictions for illegal entry, possible smuggling charges, and convictions for other crimes—generally misdemeanors such as driving under the influence of alcohol (DUI). Magistrate judges sentenced Streamline defendants based on national sentencing guidelines. After serving their sentences in federal prison, migrants were remanded to ICE custody and removed—often with a reinstatement of a prior removal order. In addition, a magistrate judge operated a half-day “mini-Streamline” hearing once per week for migrants charged with smuggling or with offenses similar to those prosecuted under Streamline.

Standard prosecutions were not formally capped in the Tucson sector, but were limited due to the high level of criminal charges required by the U.S. Attorney’s office for prosecution. As a result, the share of migrants prosecuted individually in the sector was low—and had not risen substantially for two to three years. Standard prosecution cases must be tried individually, by magistrate judges in the initial phases (e.g., bond hearings) and by district judges in the latter phases (e.g., trial and sentencing).

In FY 2010–11, the courts and U.S. Attorney’s office were overwhelmed by a spike in standard prosecutions (to more than 4,000 in FY 2011, or 600 per district court judge) resulting from investigations by the Border Patrol to identify low-level smugglers (e.g., spotters, drivers, foot guides, and stash house managers).

In January 2013, the U.S. Attorney in Tucson began limiting standard prosecution to migrants with prior convictions for felonies (including violent crimes, sex offenses, and drug-trafficking crimes), migrants on supervised federal release, or migrants apprehended under aggravating circumstances (such as suspected smuggling or flight from a Border Patrol agent). This reduced the standard prosecution workload to manageable levels for the court and prosecutors, but also limited the number of defendants the Border Patrol could present for prosecution. Sentences given under standard prosecution were also far longer than those under Streamline—starting at six months and ranging up to several years, depending upon the offense.

Remote repatriation to the interior of Mexico via the Mexican Interior Repatriation Program (MIRP) had been discontinued at the time of fieldwork.

5. Tucson Coordinating Center

CDS, as a formal system, was implemented in the Tucson sector starting January 1, 2011, and later that year the Tucson Coordinating Center (TCC), a large facility centrally located near the sector headquarters in Tucson, was built. In order to implement CDS consistently, the sector routed all apprehensions through the TCC, which has a holding capacity of 350 migrants but at times has held up to 600. Border Patrol supervisors in the TCC collected data on migrants (i.e., their immigration history from the Automated Biometric Identification System [IDENT] fingerprint database and criminal history from other databases) and monitored processing to ensure consistency. Different holding cells were used for different programs (ATEP, Streamline, and standard prosecution). Agents reported that the standardization of processing through the TCC enabled the Tucson sector to increase the delivery of consequences other than voluntary returns to 70–75 percent of apprehensions.

In FY 2013, the sector began decentralizing processing back to its substations, with agents trained at the TCC checking for consistency. This practice increased the delivery of consequences other than voluntary returns to 90 percent. At the time of the site visit in early 2014, all migrants given ATEP, Streamline, and standard prosecution were still routed through the TCC—the sector’s transportation hub for bus routes to the district court and to the Del Rio and El Centro sectors for ATEP; other migrants not given these consequences were processed at the substations.



B. Rio Grande Valley Sector

Rio Grande Valley is the easternmost sector on the Southwest border, encompassing the border between South Texas and the Mexican states of Coahuila and Tamaulipas, and ending at the Gulf of Mexico. To the south of the sector lie two of the largest metropolitan areas on the Mexican side of the border: Reynosa and Matamoros. These two cities are the end points for railroads that span Mexico from south to north—as of 2014, the most direct and efficient way for Central American migrants to cross the country—and have become major centers for migrant and drug smuggling. While the Rio Grande demarcates the border, the river is narrow in many points, allowing for swift and easy crossing by boat or raft. Urban and rural areas are interspersed on both sides of the border, with public parks operating as staging and landing points in several locations. The proximity of roads and urban neighborhoods to the border on the U.S. side throughout most of the sector complicates border enforcement by making it easy for migrants to disappear into the crowd or reach a stash house relatively quickly after crossing the river.

Rio Grande Valley was one of the busiest sectors—alongside El Paso and San Diego—during the 1990s, but enforcement operations in the mid-1990s drove traffic away from these urban sectors to Tucson and other relatively rural and remote sectors. However, due to a surge in Salvadoran, Guatemalan, and Honduran migrants, apprehensions more than quadrupled from 59,000 in FY 2011 to 256,000 in FY 2014 (see Table 3), making Rio Grande Valley the busiest sector again. In FY 2014, 76 percent of non-Mexican apprehensions borderwide occurred in Rio Grande Valley.⁴⁰ The sector includes the most common crossing points for Central Americans, in particular areas near and west of McAllen. The sector remained the busiest in FY 2015 and FY 2016, albeit with lower total apprehensions of 147,000 and 187,000, respectively in these years.⁴¹ In 2015, Mexican authorities shut down migrant smuggling via the railroads into Reynosa and Matamoros, and more and more Central Americans were apprehended further west in the Laredo and Del Rio sectors. But Rio Grande Valley remained the predominant sector for Central American apprehensions, accounting for 141,000 out of 218,000 apprehensions of non-Mexican migrants in FY 2016.⁴²

In FY 2014, nationals from countries other than Mexico (predominantly El Salvador, Guatemala, and Honduras) accounted for 75 percent of the sector's apprehensions, and a Border Patrol station was dedicated to housing nationals from these three countries before their transfer into ICE custody.⁴³ There were slightly fewer Mexican apprehensions in the sector than in previous years.

Apprehensions of unaccompanied children also more than doubled between 2013 and 2014 in the sector, from 22,000 to 50,000,⁴⁴ and they accounted for 19 percent of apprehensions in the sector during FY 2014. Rio Grande Valley set a goal of transferring all non-Mexican unaccompanied children into Office of Refugee Resettlement (ORR) custody within eight hours, though some were kept in Border Patrol custody slightly longer while ORR made arrangements for them.

Apprehensions of family units also increased rapidly—though from a lower base. In FY 2013 there were slightly more than 7,000 apprehensions of individuals in family units, but this rose to 52,000 in FY

40 CBP, "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016."

41 Ibid.

42 Ibid.

43 Border Patrol, "Illegal Alien Apprehensions from Mexico by Fiscal Year (Oct. 1st through Sept. 30th)," FY 2000 - FY 2016; and "Illegal Alien Apprehensions from Countries Other than Mexico by Fiscal Year (Oct. 1st through Sept. 30th)," FY 2000 - 2016, accessed April 15, 2017, www.cbp.gov/sites/default/files/assets/documents/2016-Oct/BP%20Total%20Apps%2C%20Mexico%2C%20TM%20FY2000-FY2016.pdf.

44 In FY 2015, apprehension of unaccompanied children in the Rio Grande Valley fell to 24,000, before rising again to 37,000 in FY 2016. See CBP, "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016."



2014—accounting for 20 percent of all apprehensions in the sector.⁴⁵ Family units were offered voluntary return to Mexico or, if not of Mexican nationality, given WA/NTAs, transferred into ICE custody, and then usually released. Unaccompanied children and family units were top processing priorities in FY 2014: the sector dedicated two Border Patrol stations to housing them until transfers into ICE or ORR custody could be completed.

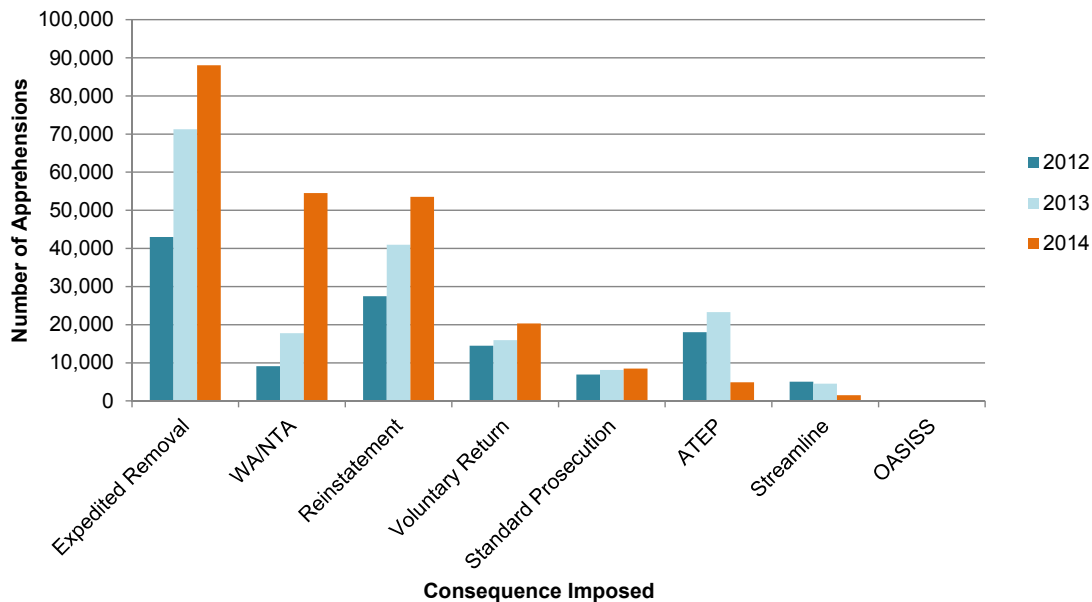
In the months following the surge, the Border Patrol began giving Central American family units expedited removal and reinstatement where applicable, though many claimed asylum and were given WA/NTAs and scheduled to appear in immigration court. Additionally, a small but growing share of adults without children from El Salvador, Guatemala, and Honduras (estimated informally at 10 percent) claimed fear of persecution if repatriated. They requested asylum while in Border Patrol custody or ICE detention or, most commonly, just before boarding the repatriation flight. Credible fear claims rose during FY 2014, and Border Patrol and ICE sought to segregate those with valid claims from others in custody to prevent them from coaching each other on asylum claims.

The large numbers of unaccompanied children, family units, and adults requesting asylum from countries other than Mexico limited the options for consequence enforcement in the Rio Grande Valley, as these groups could not be given the same range of consequences as Mexican adults.

I. Voluntary Return

Like Tucson, the Rio Grande Valley sector minimized the use of voluntary return, and used it primarily for unaccompanied children and family units of Mexican nationality. Voluntary returns were used for 11 percent of FY 2013 apprehensions (16,000) and 9 percent of FY 2014 apprehensions (20,000) (see Figure A-2).

Figure A-2. Apprehensions by Consequence, Rio Grande Valley Sector, FY 2012-14



Note: ATEP = Alien Transfer Exit Program; OASISS = Operation against Smugglers Initiative on Safety and Security; WA/NTA = warrant of arrest/notice to appear.

Source: Data provided to MPI by the U.S. Border Patrol, Statistics and Data Integrity Unit.

⁴⁵ In FY 2015, there were 27,000 family unit apprehensions in the Rio Grande Valley sector; in FY 2016, that figure doubled to 52,000. See CBP, “United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016.”



2. Warrant of Arrest/Notice to Appear

The number of migrants receiving WA/NTAs jumped from 9,000 in FY 2012 to 55,000 in FY 2014—due primarily to the rise in apprehensions of unaccompanied children and family units from nations other than Mexico, and individuals requesting asylum. In FY 2014, for instance, 19,000 family unit apprehensions were given WA/NTAs.

3. Expedited Removal

Expedited removals increased numerically from 71,000 in FY 2013 to 88,000 in FY 2014, but as a share of apprehensions, fell from 49 percent in FY 2013 to 41 percent in FY 2014 (mirroring the rise in the share of WA/NTAs). Expedited removals were typically used only for adult apprehensions, but beginning in FY 2014, were also used for some family unit apprehensions (4,000 in FY 2014). In general, however, the share of apprehensions amenable to expedited removal fell as apprehensions of family units and unaccompanied children rose during FY 2014. Nonetheless, expedited removal was the most common form of deportation in the sector, as border wide.

4. Reinstatement

Reinstatements also rose in number over the period, accounting for 54,000 apprehensions in FY 2014 (25 percent) and were the third most common form of deportation in the sector, after expedited removal and WA/NTA.

5. Alien Transfer Exit Program

ATEP was discontinued in November 2013, when the Rio Grande Valley sector started dedicating more detention space to unaccompanied children and family units, as well as to Central American adults awaiting repatriation flights. The sector could no longer afford to devote detention and transportation resources to ATEP, which required flights to transfer migrants to California for repatriation. At the same time, the share of apprehensions composed of Mexicans fell to 25 percent in FY 2014, reducing the need for the program.

6. Streamline

The Rio Grande Valley sector minimized its use of Streamline starting in fall 2013, due to prosecutorial priorities, court sentences, and limitations on the capacity of the district court and U.S. Attorney's office.⁴⁶ As in the Del Rio sector, where Streamline originated, Streamline had been used to prosecute all apprehensions—including many first apprehensions—in high-traffic zones.⁴⁷ But Streamline cases competed with standard prosecution cases on the same docket in Rio Grande Valley, and most judges there gave migrants sentences of less than 30 days if they were apprehended for the first, second, or third time. At the same time, the numbers of migrants with prior criminal violations (including illegal entry and re-entry) or with potential smuggling charges rose. As a result, the Border Patrol minimized the use of Streamline in favor of filling the court docket with standard prosecutions of migrants with criminal or smuggling histories.

7. Standard Prosecution

The Rio Grande Valley is split between two U.S. district court jurisdictions: Corpus Christi (east) and McAllen (west). The vast majority of apprehensions occur within the McAllen district court's jurisdiction,

⁴⁶ At the time of fieldwork in March 2014, Streamline had not been used for several months. In April 2015, however, the Rio Grande Valley sector reported processing 11 Streamline cases.

⁴⁷ In the Tucson sector, by contrast, the Border Patrol focused Streamline on repeat apprehensions and smugglers, following the Ninth U.S. Circuit Court of Appeals decision mandating a maximum of six defendants per attorney. That decision does not apply to the Border Patrol sectors in Texas, which are not in the Ninth Circuit's jurisdiction.



and so the policies and limitations of that court—as well as the corresponding U.S. Attorney’s office—are binding on the sector’s ability to prosecute migrants.

At the time of the site visit in early 2014, the McAllen district court adjudicated a docket of 50 Border Patrol cases on Monday and 40 each day Tuesday through Friday. The U.S. Attorney’s office was willing to prosecute only cases of migrants for whom a prior criminal conviction could be properly documented. This required the Border Patrol to research cases thoroughly before submitting them for prosecution—by culling information from criminal conviction databases, gathering intelligence on smuggling connections, interviewing migrants in custody, or other means. Standard prosecution was used for about 8,000 apprehensions in FY 2013 and again in FY 2014 (or 8 percent and 4 percent of all tracked apprehensions, respectively).

8. Operation against Smugglers Initiative on Safety and Security

The Operation against Smugglers Initiative on Safety and Security (OASISS) was used for only four apprehensions in FY 2014, but sector leadership hoped to use the program more in the future, particularly to facilitate the prosecution of Mexican smugglers under the age of 18, who could not be prosecuted in the United States. OASISS was the subject of ongoing negotiations between the Border Patrol and the Mexican government.

9. Guatemalan and Honduran Pilot Initiatives

In fall 2013, the Border Patrol signed agreements with the governments of Guatemala and Honduras to increase the frequency of repatriation flights to those countries and ensure a more rapid turnaround of travel documents by their governments. At the time of the site visit in early 2014, there were two to three weekly flights to Honduras, and daily flights to Guatemala (sometimes twice per day). Each flight carried 135 adults (not family units or unaccompanied children), and could stop in both countries if one program did not fill an entire plane. Guatemalan and Honduran adults were repatriated within three to four days (versus 21 days prior to these initiatives), generally through expedited removals as most of them were first-time apprehensions. More rapid repatriation freed Border Patrol and ICE detention space to accommodate the increased flow of traffic. Negotiations with Guatemala and Honduras were also under way to repatriate family units in the same manner, though rapid repatriation is not possible for unaccompanied children under the *Trafficking Victims Protection Reauthorization Act (TVPRA)*. Negotiations on a pilot agreement with the Salvadoran government were under way to address the problem of Salvadorans are being held in detention for long periods while awaiting travel documents and seats on flights.

10. Consolidated Processing Centers

In FY 2014, most apprehensions occurred in the western zones of the Rio Grande Valley sector. The two stations serving these zones—McAllen and Weslaco—operated consolidated processing centers similar to the Tucson sector’s TCC though on a smaller scale. At the center the authors visited in McAllen, apprehended migrants were sorted into unaccompanied children, family units, and adults traveling alone. The children were processed first and quickly offered voluntary return if Mexican; if another nationality (usually Guatemalan, Honduran, or Salvadoran), they were transported to another station where they were held until they could be transferred into ORR custody. Family units were similarly offered voluntary return if Mexican or transferred into ICE custody quickly if another nationality. Adults without criminal records were processed for expedited removal or reinstatement virtually by agents in the El Paso sector. Virtual processing of most adult migrants helped increase the processing rate and repatriate people more quickly, freeing detention space to accommodate the surge in apprehensions during FY 2014.



Adults who appeared to have criminal charges were processed in person and held for a longer period—up to 48 hours⁴⁸—while agents searched a number of databases to confirm their criminal convictions. Finding convictions to support prosecution required considerable staff resources. At the time of fieldwork, the Border Patrol planned to merge its Enforcement Integrated Database (EID) with multiple law enforcement databases to enable automated criminal conviction record checks, with the aim of speeding the processing of criminal aliens and reducing the Border Patrol workload related to standard prosecutions.

⁴⁸ The federal district court in McAllen required the Border Patrol to refer an individual for prosecution within 48 hours of apprehension. The court would not accept cases after the 48-hour window elapsed.



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