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Swift Frontier Justice for Migrants Brought to Federal Courts

By Miriam Jordan

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TUCSON, Ariz. — They filed into the room seven by seven for a dose of rapid-fire justice: In less than a minute and in quick succession, each migrant pleaded guilty to illegally entering the United States, and was sentenced.

They were overwhelmingly Central American and Mexican men, many of them still in the dusty, sweaty garb they had been wearing when they were caught by Border Patrol agents. They looked dazed, tired and resigned to their fate, many having just completed a harsh trek across the sweltering Mexican desert. Some of their heads drooped as they listened to the judge.

“Good afternoon, my name is Bernardo Velasco, the judge assigned to conduct this proceeding. You are being represented by a lawyer at no cost to you because you are charged with the criminal offense of illegal entry,” the judge told the defendants.

Then he turned to the lawyers: “Counsels, have your clients made a decision to waive their right to a trial and enter guilty pleas?” The lawyers responded in unison, “Yes, your honor.”

The courts near the heavily traveled border in southern Arizona have always trafficked in the immigration, smuggling and narcotics cases that are part and parcel of frontier justice. But President Trump’s new “zero-tolerance” policy calling for criminal prosecution of all those caught illegally crossing the border has swiftly flooded criminal courthouses from Texas to California.

Federal criminal prosecutions of migrants arrested along the southwest border

jumped 30 percent in April over March, according to Syracuse University's TRAC, which monitors cases. Nearly 60 percent of all federal criminal prosecutions in April were for immigration violations, its tallies reveal.

Multiple-defendant immigration hearings have been held for years in Arizona and Texas. The assembly-line justice, known as Operation Streamline, started under President George W. Bush and persisted under President Barack Obama as deportations and other immigration cases were on the rise. But the Trump administration's new policy of prosecuting cases that previously were most often not a priority is pushing thousands of new defendants into the federal court system.

Courtrooms near the border in southern and western Texas have been packed with immigrant detainees. In Pecos, a city about 200 miles from El Paso, a court employee recently snapped a picture of some 40 migrants in handcuffs and orange jumpsuits who filled the juror's box and formed a line that stretched from one end of the room to the other.

In the southern district of Texas, the Operation Streamline caseload is double what it was two months ago. In Tucson, the court so far this year has handled 6,519 such cases, compared with 10,869 in all of 2017.

Judge Velasco, the senior magistrate judge in Tucson, went down the line in his courtroom on a recent Monday, uttering each migrant's name and asking if she or he pleaded guilty. "Sí," responded Wil Yobani, the first in the row, in Spanish; "Sí," said No. 2, Sergio Rafael de Leon; "Sí," said Monica Garcia — all the way down to No. 7, Transito Abel.

No sooner was that group done than the next seven people streamed in, accompanied by federal marshals. The judge, in a deep monotone voice, repeated the script.

This is not the first time a "zero-tolerance" policy has been tried in Arizona. When Operation Streamline was launched by federal immigration authorities in the state in 2008, it resulted in the criminal prosecution of all migrants, including

those caught entering illegally for the first time.

But in recent years, most first-time offenders had been spared, though they might have been sent to the immigration courts for deportation proceedings or asylum hearings. The majority of those taken to federal court for criminal prosecution either had been apprehended at least twice before, or had committed a serious crime.

Now, that's all changed.

“Many are showing up at the border for the first time ever and being prosecuted,” said Raul Miranda, the longest-serving private lawyer paid by the government to represent Operation Streamline defendants in the Federal District Court here in Tucson.

The migrants typically are sentenced to time served in jail, a few days, and are transferred to the custody of Immigration and Customs Enforcement, where they remain in detention until they are deported — unless they submit a claim for asylum and are deemed to have sufficient justification to proceed with a hearing. Repeat offenders are often sentenced to 30 to 75 days in jail.

The stepped-up prosecution policy has proved to be one of the most controversial moves on immigration the Trump administration has made, largely because it has resulted in the separation of many families at the border: Those jailed on criminal charges must have their children taken from them and detained separately.

Those who appeared in federal court on a recent Monday in Arizona included a few adults who had made the journey with their children, only to be separated from them at the border.

One of them was Rocaelino Estrada Ventura, a 38-year-old Guatemalan who had tried to sneak across the border with his 16-year-old son to join his brother, who lives and works in Los Angeles.

“Mr. Estrada, are you a citizen of Guatemala?” asked the judge. “And did you enter this country on June 8 near Nogales without inspection by immigration officers?”

The court interpreter repeated the question in Spanish, and Mr. Estrada responded “Yes,” in Spanish.

Mr. Miranda, a towering figure and former Marine who is partial to bolo ties and sports a bushy silver beard, stepped forward as Mr. Estrada’s lawyer. “Your honor, he has a son he wants to give to his brother, but he can’t do that because he doesn’t have papers,” he said, referring to the defendant’s brother.

The judge didn’t respond. That matter was outside the scope of the criminal case.

The lawyer was explaining yet another difficulty faced by migrant families as a result of recent Trump administration policy changes. Under new regulations, relatives who wish to sponsor migrant children and pick them up from government shelters must be fingerprinted, and that information is shared with the Department of Homeland Security. The authorities say the new rule is intended to protect the safety of the children. But family members who are in the country illegally are often reluctant to comply, fearing it might make them vulnerable to deportation later.

Mr. Estrada was sentenced to time served — three days — and will likely be deported to Guatemala. But lawyers say his son could remain in a shelter for the duration of his own removal proceedings, which could take months or longer, because it is unlikely his uncle will dare to submit to the examination needed to pick him up.



A photo taken by a court employee, which was first published by The Intercept, of a crowd of immigrant detainees during a hearing at the federal courthouse in Pecos, Tex.

All the defendants who appeared in court that day had been arrested in the Tucson sector of the border, which stretches about 260 miles across southern Arizona. Historically, about half of all illegal entries nationally have occurred along that expanse.

Lawyers receive the roster of clients assigned to them on the morning of the hearing and meet with each one for about 20 minutes to explain the charges and the process in Spanish.

The consulate of Guatemala, the only Central American country that has a presence in Tucson, sends a representative to court each day to meet migrants. The official then calls families back home to inform them that their loved one has been detained.

Trump administration officials say the mass prosecutions send a powerful message to potential migrants that they are better off not making the journey over land to the United States. Whether the prosecutions will be an effective deterrent is still an open question.

Public defenders have voiced concern about the pressure the new case volume is placing on federal courts, and question whether due process is undermined by a rush to convict.

In California, where Operation Streamline is set to begin next month, many migrants awaiting a hearing are being held in detention facilities far from the courts, making it difficult for them to have productive consultations with defense lawyers: They must occur by video.

Reuben C. Cahn, the executive director of Federal Defenders of San Diego, said that “providing meaningful representation becomes all but impossible.”

“The court has already begun to reshape itself to accommodate the increase in prosecutions, and these accommodations serve to diminish both the court and the constitutional protections accorded the accused,” he wrote in a June 4 letter to Chief Judge Barry Ted Moskowitz of the United States District Court in San Diego.



Judge Bernardo Velasco in his office at the United States District Court in Tucson. “As a nation, we should all be thinking about what we are doing and how effective it is,” he said.
Deanna Alejandra Dent for The New York Times

Critics like him also argue that prosecuting illegal migrants en masse clogs courts that should be expending resources to prosecute people for serious crimes such as human trafficking, drug smuggling and prostitution.

In the sixth group of migrants before the judge in Arizona that Monday stood Elder Canales, who had lived in New Orleans for more than a decade — long enough to help rebuild the city after Hurricane Katrina and to have a 10-year-old American-born son. The undocumented heavy-equipment operator from Honduras paid taxes in the United States and sent money to his family in his home country, including funds for the burial of two brothers who were murdered by gangs, according to Mr. Miranda, who was representing Mr. Canales. He had had no run-ins with the law.

A few months ago, his wife produced a Honduran passport, rather than United States identification, when she was stopped by officers while driving, Mr. Miranda recounted. They did not arrest her, but they jotted down her address.

About two weeks later, immigration agents staked out their home and arrested Mr. Canales, who was deported in February. Twelve days ago, he sneaked across the border in Arizona, hoping to rejoin his family, only to be caught.

Dressed in a striped polo shirt and slacks, he pleaded guilty to a misdemeanor charge. His felony charge of illegal re-entry was dismissed, and he was given a 30-day prison sentence.

By 2:55 p.m., all 74 defendants had appeared and the hearing, which had started about 90 minutes earlier, was over.

In his chambers, where the walls are adorned with a stuffed javelina he had killed in the wild and a poster of Mae West, Judge Velasco removed his black robe before sitting for an interview.

His role is to uphold the laws of the land, he said. “If the executive branch wants to concentrate on illegal entry, that is what they do,” he said.

But then the judge raised a question of his own. “As a nation, we should all be thinking about what we are doing and how effective it is,” he said. “What are we doing as a country?”

Correction: June 19, 2018

An earlier version of this article erroneously described the javelina as a rodent. It is a hoofed mammal, also known as a peccary.

Manny Fernandez in McAllen, Tex., contributed reporting.

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