

Department of Justice

SHADOW ATTORNEY GENERAL EDWIN S. RUBENSTEIN

The Department of Justice (DOJ) is the nation's chief prosecutor. It is charged with representing the United States in court; seeking just punishment for those guilty of unlawful behavior; enforcing federal civil laws, including those protecting civil rights; safeguarding the environment; preserving a competitive marketplace of integrity; defending the national treasury against fraud and unwarranted claims; and preserving the integrity of the nation's bankruptcy system.

Illegal immigration plays an increasingly large role in DOJ's workload and budgetary needs.

Bureau of Prisons

Criminal aliens—non-citizens convicted of crimes—are an increasing burden on U.S. prison systems. In 1980, federal and state facilities held fewer than 9,000 criminal aliens. But at the end of 2004, approximately 267,000 non-citizens <http://www.gao.gov/new.items/d05337r.pdf> were incarcerated in U.S. correctional facilities, as follows:

- ◆ 46,000 in federal prisons
- ◆ 74,000 in state prisons
- ◆ 147,000 in local jails

Approximately 27 percent of all prisoners in Federal Bureau of Prisons (BOP) facilities are criminal aliens. http://www.vdare.com/rubenstein/050630_nd.htm The majority (63 percent) are citizens of Mexico. Other major nationalities include Colombia and the Dominican Republic 7 percent each; Jamaica 4 percent; Cuba 3 percent; El Salvador 2 percent; and Honduras, Haiti, and Guatemala 1 percent each.

The remaining 11 percent are from 164 different countries. The BOP's budget request called for

spending \$5.4 billion in fiscal year (FY) 2008. Using 27 percent as an allocation factor, we estimate the costs of holding foreign-born, non-citizen inmates in BOP facilities at \$1.5 billion. While this may seem large, it is, in fact, not large enough. A shortage of available prison capacity has forced federal authorities to release criminal aliens prematurely. Nationally an estimated 80,000 to 100,000 illegal immigrants who have been convicted of serious crimes

still walk the streets. (For them, crime pays.)

The DOJ also reimburses state and local prison systems for holding criminal aliens. About \$300 million of such reimbursements are made to state and local governments annually under the State Criminal Alien Assistance Program (SCAAP). But SCAAP funds cover less than 25 percent of the full cost of incarcerating criminal aliens in state and local correctional facilities, according to the Government Accountability Office (GAO).

Still, the public costs of incarcerating aliens are trivial alongside the private costs they impose on their victims. The GAO recently analyzed the rap sheets of more than 55,000 illegal aliens incarcerated in federal, state, and local facilities during 2003. (Source: General Accountability Office, "Information on Certain Illegal Aliens Arrested in the United States," Letter to Congressman John N. Hostettler, May 9, 2005.)

It found:

- ◆ The average criminal alien was arrested for 13 prior offenses.
- ◆ 12 percent were for murder, robbery, assault, and sexually related crimes.
- ◆ Only 21 percent were immigration offenses; the rest were felonies.
- ◆ 81 percent of their arrests occurred after 1990.

Immigration Fiscal Impact Statement

In a word, criminal aliens are not casual lawbreakers. Most are recidivists—that is, career criminals. The economic burden they impose on victims, including loss of income and property, uncompensated hospital bills, and emotional pain and suffering, has been estimated at \$1.6 million per property and assault crime offender. (Source: Anne Morrison Piehl and John J. DiLulio, “Does Prison Pay?”)

So the benefits of incarcerating criminal aliens far outweigh the budgetary costs.

FBI Criminal Alien Database

State-of-the-art information technology is critical to the apprehension, detention, and deportation of criminal aliens. In a recent year U.S. Citizenship and Immigration Service personnel submitted approximately 1.5 million name check requests to the FBI (for prospective immigrants and others facing immigration/removal problems). Of these, 233,000 are still pending. This does not include the 2.7 million names that the FBI had to re-run after the attacks of September 11, 2001, of which 2,600 are still pending.

Border Patrol agents also consult the FBI’s criminal alien database to determine whether apprehended individuals are wanted for crimes committed in the United States. To be effective, there must be instantaneous access to the biometric identifiers (i.e., fingerprints) in the FBI database. Unfortunately, the FBI’s software—called the Integrated Automated Fingerprint Identification System (IAFIS)—was not designed to run on a real-time basis, meaning it cannot be seamlessly integrated into the border entry-exit system.

Thus, a Border Control agent entering an illegal alien’s fingerprints in the Homeland Security database cannot determine the alien’s true identity

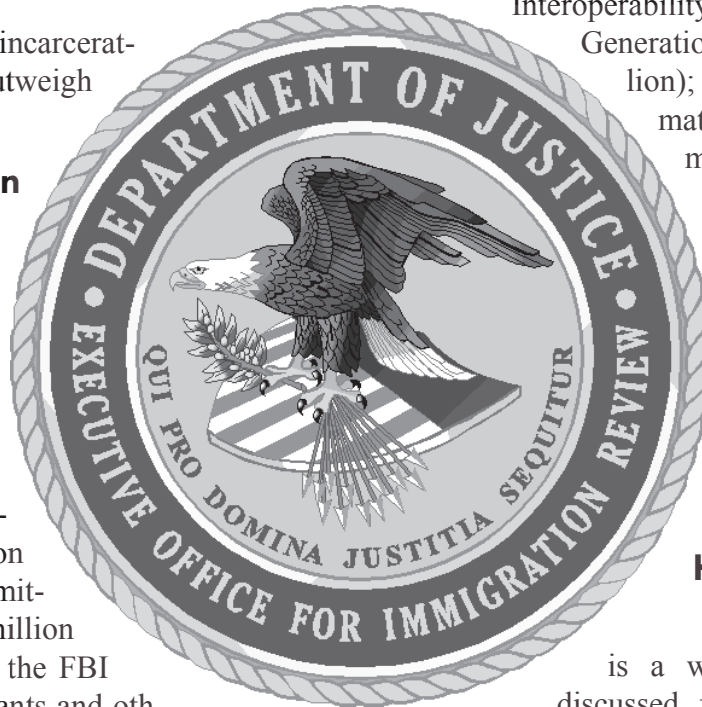
or whether he or she had a prior criminal record in the FBI’s IAFIS system.

An overhaul of the FBI’s IT capability is essential for border security. This costs money: In FY 2008, the FBI requested a total of \$90.5 million to improve its capacities and capabilities for providing identification services for federal immigration and law enforcement agencies, including IDENT/IAFIS Interoperability (\$10.0 million); Next Generation Identification (\$25 million); Law Enforcement Information Sharing/R-DEX (\$5 million); DNA forensic services (\$14.6 million); Combined DNA Index System (\$7 million); Regional Computer Forensic Laboratories (\$6 million); and Computer Analysis Response Teams (\$22.8 million).

Human Trafficking

Trafficking in persons is a widespread, albeit rarely discussed, form of illegal entry into the U.S. Human trafficking differs from the smuggling of illegal immigrants. In the latter, people voluntarily request a smuggler’s services for fees, and there may be no deception involved in the (illegal) agreement. On arrival at their U.S. destination, the smuggled person is usually free. The trafficking victim, on the other hand, is enslaved, or the terms of their bondage are fraudulent or highly exploitive. Victims are often tricked and lured by false promises, or physically forced. It is a form of modern-day slavery. An estimated 600,000 to 800,000 human beings are trafficked across international borders each year.

The Department of Justice estimates that between 14,500 and 17,500 victims are trafficked into the United States each year. <http://www.usdoj.gov/ag/annualreports/tr2005/agreporhumantrafficking2005.pdf> More than 80 percent of these victims are women and girls, and 70 percent of them are



forced into sexual servitude. In response, the United States has led the world in the fight against this crime.

The centerpiece of U.S. government efforts to eliminate trafficking in persons is the trafficking Victims Protection Act of 2000 (TVPA), Pub. L. 106-386, signed into law on October 28, 2000. TVPA created a new class of forced labor and sex trafficking criminal offenses, as well as protective measures for victims. In the years 2001 to 2005, federal investigations of human trafficking quadrupled from 106 to 420, resulting in 95 prosecutions. But the overall track record is dismal: Of the estimated 14,500 to 17,500 people trafficked into the United States each year, only 1,000 have become liberated through the actions of law enforcement.



Prosecuting human trafficking violations is notoriously difficult.

Because of their distrust of police in their home countries, trafficking survivors usually fear U.S. law enforcement agents. Often, victims come from societies with corrupt authorities. Also, traffickers lie to them about police brutality and deportation; victims begin to believe that U.S. authorities will treat them as criminals, incarcerate them, or deport them. Overcoming this obstacle is important; as one FBI agent told DOJ investigators: “You can’t manufacture evidence—witnesses have to go to trial. It was very difficult gaining the cooperation of the victims so they would testify.” <http://www.fbi.gov/publications/leb/2007/april2007/april2007leb.htm>

Cases where victims have escaped their traffickers and have likely fled the location or even the

country pose challenges for investigators. Most trafficking survivors are immigrants with few economic resources and are relatively excluded from mainstream U.S. society. For that reason, escaped trafficking victims and witnesses can be difficult to locate and interview. A rural non-governmental organization (NGO) assisting trafficked persons is quoted by DOJ investigators: “The biggest problem with working on these cases is catching the people who are all over the migrant farm-worker world—a world that’s the hardest to understand and most difficult to locate people. They must be located by word of mouth. It’s not as if you can just pick up the phone and call people or mail them a letter.” <http://www.fbi.gov/publications/leb/2007/april2007/april2007leb.htm>

Also, human trafficking survivors often do not identify themselves as victims. Therefore, law enforcement agents often have difficulty detecting victims among detainees to separate them from perpetrators. As a result, investigators have treated trafficked persons as illegal immigrants or undocumented workers and prostitutes. Assigning such criminal identities can lead to incarceration and deportation of innocent victims. Ultimately, the investigating agents and prosecuting attorneys must gain their trust to muster cooperation.

In its budget presentation the DOJ says:

Increasing the number of personnel will allow CRT [the Civil Rights Division] to create an effective coordination structure to ensure that these larger, more complex human trafficking cases are investigated and prosecuted efficiently and effectively in a systematic, proactive fashion. Moreover, as the Division brings more complex cases involving trafficking networks, the Division anticipates that the United States will be able to more effectively seize greater assets from these criminal organizations. http://www.usdoj.gov/jmd/2008factsheets/pdf/0806_enforcing_federal_laws.pdf

DOJ’s 2008 budget commits \$4.8 million and 34 positions to the Civil Rights Division’s human trafficking initiative.

Judging from the department’s poor record of prosecuting human trafficking violators, this may be far too small. ■