

Backlog At Borders, Cracks in The System

With Detention Sites Full, More Immigrants Avoid Deportation

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Sunday, May 14, 2006; Page A01

Beefed-up enforcement at the U.S.-Mexico border since Sept. 11, 2001, has substantially increased the number of arrests of illegal immigrants, but tens of thousands of captured non-Mexicans continue to be released into the United States because there is no place to hold them, according to experts and immigration officials.

The vast majority simply slip away inside the country after being issued "Notices to Appear" for a deportation hearing -- documents known to Border Patrol agents as "Notices to Disappear." The success of border crossers who stay in the United States through this "catch-and-release" process has encouraged others who hope to enter the country the same way.

In a dozen speeches since October, President Bush has vowed to replace catch-and-release with the "catch-and-return" of 150,000 "other than Mexican" (OTM) immigrants arrested each year. The goal is to deny court hearings to all but asylum-seekers, speed deportations and make the most of limited detention space in jails, prisons and immigration centers.

But as Washington debates the overhaul of the nation's immigration laws and Bush prepares to address the nation tomorrow on border protection, the persistent catch-and-release problem is a reminder of costly and unintended consequences of past enforcement efforts.

Even if authorities overcome operational and legal hurdles to curb the flow of people from El Salvador, Honduras, Guatemala and other countries, experts say they will be addressing only a tiny sliver of the illegal immigration problem. The U.S. Border Patrol arrested nearly 1.2 million people last year -- the vast majority of them Mexicans who were promptly returned across the border -- and estimates that 500,000 others evaded capture.

"What Congress has built is one of the most expensive revolving doors in the world," said Victor Cerda, former chief of staff of the Immigration and Customs Enforcement agency. Without broader changes, he said, "You're going to be here in 10 years, with another 20 million aliens."

Since the founding of the Department of Homeland Security, which sought to deter illegal crossings with a show of force, arrests of non-Mexican border crossers have tripled, from 49,545 in 2003 to 155,000 in 2005. But presidents and Congress for 20 years have not shown corresponding support for detention beds, courts, inland enforcement or diplomatic and administrative changes.

As a result, the spike in arrests backfired, because there was no place to put the tens of thousands of new detainees. Overwhelmed immigration courts have been unable to keep up.

Nor could the Border Patrol immediately send non-Mexicans back to Mexico, which does not accept other countries' nationals, forcing the agency to house them at an annual cost of \$35,000 per bed.

Beset by start-up and coordination problems in the new Homeland Security Department, ICE faced a \$500 million budget deficit in 2004, leaving a fourth of its detention jobs unfilled. As arrests climbed last year, Border Patrol agents released 70 percent of non-Mexicans into the United States. Of those released and later ordered to leave the country, only 18 percent do.

Word soon spread to smugglers and illegal immigrants, who rushed in to learn whether finding work in the United States meant only a short detention at the border.

Federal statistics show the result, which has enraged border communities. Once arrested and released, the number of illegal immigrants who failed to appear in court more than tripled from 29,550 in 2003 to 97,868 in 2005, or 60 percent of cases, up from 32 percent.

The system is broken as we've known it. . . . It's a joke," said Robert C. Bonner, head of U.S. Customs and Border Protection from 2003 to 2005. For those considering entering the country illegally, Bonner said, "it was the opposite of deterrence. It was an invitation."

The new attempt to solve the problem draws critics from the right and left. Of those who want tougher enforcement, the offensive on non-Mexicans tackles only a small portion of the flow of illegal immigration and amounts to "window-dressing" that obscures feckless efforts elsewhere.

"It's not quite as important as the administration would have you believe," said Mark Krikorian, executive director of the Center for Immigration Studies, which wants stronger efforts against employers, foreign national fugitives, illegal immigrants and document fraud inside the United States. "Focusing on just one rivulet of this flood is missing the point."

Among pro-immigration advocates, the changes "put a Band-Aid on a broken leg," said Christina DeConcini, director of policy at the National Immigration Forum. With the estimated number of illegal immigrants in the United States at nearly 12 million and growing, the nation cannot enforce its way out of the problem, DeConcini said.

Bush and Homeland Security Secretary Michael Chertoff propose to reduce the flow of illegal immigration by creating a guest-worker program and a path for undocumented workers to earn citizenship. They would toughen enforcement at the borders and inside the country through new surveillance technology and crackdowns on employers.

They have proposed \$858 million more for 1,500 new Border Patrol agents -- which would bring the total to 14,000, a 62 percent increase since 2001 -- and 6,700 new detention beds, for a total of 27,500.

In September, Chertoff expanded the use of a process known as "expedited removal" to the full southern border, with a goal of applying it to all non-Mexican illegal immigrants this year. Using power granted by Congress in 1996, the department can deport recently arrived non-Mexicans caught within 100 miles of the border without hearings, unless they seek asylum or cite a fear of persecution.

The American Bar Association strongly opposes expedited removal, arguing that it deprives immigrants of due process. The U.S. Commission on International Religious Freedom warned that it also jeopardizes asylum seekers.

U.S. officials want to lower the average detention from 90 days to as few as 15, the time needed to arrange travel documents and home country clearances. If they can accomplish that, the government could remove six times as many people with the same number of beds, said John P. Torres, acting chief of the ICE Office of Detention and Removal.

Results so far are mixed. After seven months, apprehensions of non-Mexicans are down 9 percent from the same period last year. About 55,000 people, 74 percent, are still being set free. But the United States completed expedited removal of 19,324 non-Mexicans, more than the 18,730 it removed all of last year.

"The gap is closing," Chertoff said. "The word on the street used to be, if you were a non-Mexican and you were caught, you would be released and then you were home free. . . . If you are caught at the border, you are going to be detained, and you are going to be detained till you get sent back home."

Former Customs and Border Protection chief Bonner said "100 percent 'Catch, Detain and Remove' will deter the flow of OTMs and actually reduce the amount of detention bed space needed. . . . I guarantee it."

But T.J. Bonner of the National Border Patrol Council called Chertoff's optimism "a false promise," saying that the problem is "as persistent as ever." Bed space is still scarce, immigrants evade officers instead of turning themselves in as they did last year, and those who are caught try to exploit loopholes.

"The sense of the rank and file is, it's smoke and mirrors," said Bonner, president of the agents' union. He is not related to the former Customs and Border Protection official.

Legal and diplomatic hurdles remain. The Homeland Security Department is scrambling to set up a 500-bed detention facility capable of housing entire families, for example, and wants a 1988 court injunction lifted that exempts El Salvadorans from expedited removal. The United States also wants China, for example, to take back 40,000 nationals, beginning with 675 who are in detention.

Federal judges also blame a 2002 decision by then-U.S. Attorney General John D. Ashcroft to "streamline" deportation proceedings, which sparked a huge increase in appeals and an unexpected backlog in federal appeals courts. Deportation appeals grew from a 3.2 percent share of appellate cases in 2000 to 18 percent in 2005.

Some factors are beyond immediate U.S. control. Part of the crisis began in February 2004 when Mexico allowed Brazilians to enter that country without a visa. Smugglers exploited the pipeline until Mexico reversed course in October. Now, smugglers advise illegal immigrants to travel with children or say they are from El Salvador, U.S. officials say.