Does Imposing Consequences Deter Attempted Illegal Entry into the United States?

Sarah Burns, John Whitley, Bryan Roberts, and Brian Rieksts

The Problem

For many years, those caught attempting illegal entry across the border between the United States and Mexico were rarely subjected to legal consequence. This situation began to change in the mid-2000s, and, by 2010, most of those caught were subjected to some kind of consequence. Has imposing consequences on those caught deterred them from further attempts to enter the United States illegally? What types of consequences are more effective at creating deterrence?

Enforcement of immigration laws at U.S. national borders is intended to prevent and deter illegal entry. Border enforcement agencies achieve these goals by catching or apprehending someone who is attempting illegal entry and then applying legal consequences to these people. Border enforcement is primarily carried out by component agencies of the Department of Homeland Security (DHS):

- The U.S. Coast Guard, which manages the maritime domain

- The Office of Field Operations (OFO), which is responsible for managing ports of entry where legal entry into the United States takes place

- The U.S. Border Patrol (USBP), which is responsible for managing land borders between ports of entry.

USBP has made most of the apprehensions of those attempting illegal entry across U.S. borders, and most of its historical apprehensions have been Mexican nationals who were attempting entry across the border between the United States and Mexico. For many decades, most Mexicans who were caught were not subjected to any legal consequence but, instead, were allowed to "voluntarily return" to Mexico, usually on the same day that they were caught. Starting in 2005, however, USBP began to apply meaningful consequences to an increasing degree, and, by 2015, almost no apprehended Mexican national received a voluntary return. Figure 1 shows that the application of voluntary return fell from 96 percent of all apprehensions in 2005 to 1 percent in 2015.

USBP has applied three basic types of consequences—administrative, programmatic, and criminal—to Mexican nationals caught in the U.S.-Mexico border region.

> **More than one consequence can be applied to a particular individual... Many different combinations of consequences are applied in practice. The application of consequences also varies along the border.**
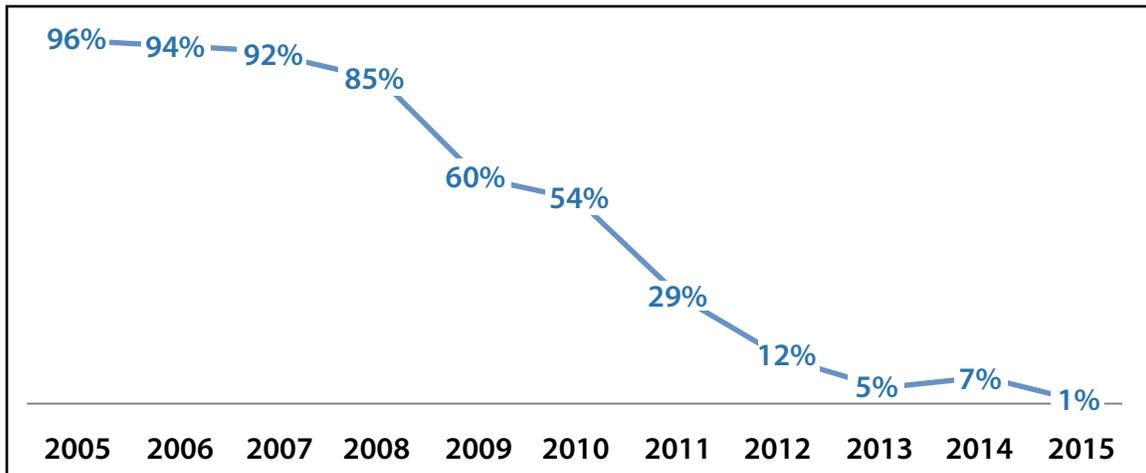
Figure 1. Percentage of Mexican Nationals Apprehended on the U.S.-Mexico Border Allowed to Voluntarily Return

Administrative consequences include expedited removals (ERs) and reinstatement of removals (RRs), both of which impose bans on the ability to migrate to the United States legally in the future and increase the chance of being criminally prosecuted if caught again. Of those apprehended, the percentage subjected to an ER or RR rose from nearly 0 percent in 2005 to almost 100 percent in 2015.

Programmatic consequences include the Alien Transfer Exit Program (ATEP), in which someone is returned to Mexico at a place far away from where he/she was caught, and the Mexican Interior Repatriation Program (MIRP), which identifies Mexicans from the interior of Mexico and flies them to their home towns. MIRP ended in 2012 due to the program's high cost. The percentage of those subjected to a programmatic consequence rose from 15 percent in 2009 to a peak of 45 percent in 2012, followed by a fall to 30 percent in 2015.

Criminal consequences include a standard prosecution, which is a criminal prosecution of a migrant for violation of immigration law and/or any other federal law that DHS can enforce (drug violations, human smuggling, assault, and so forth), and a Streamline prosecution, which is typically a felony illegal entry charge that is pled down to a misdemeanor illegal entry charge. USBP uses a decision algorithm to identify what consequence should be imposed on the people whom they apprehend, given the person's previous encounters with USBP, the availability of resources, and other factors.

An important point to note is that more than one consequence can be applied to a particular individual. For example, someone could receive an expedited removal *and* also be subject to the ATEP. Many different combinations of consequences are applied in practice. The application of consequences also varies along the border. more than one consequence can be applied to a particular

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individual. For example, someone could receive an expedited removal *and* also be subject to the ATEP. Many different combinations of consequences are applied in practice. The application of consequences also varies along the border. For example, criminal prosecutions are rarely carried out in California but are much more common in Texas.

In our research, we use individual USBP apprehension records and take advantage of the fact that USBP collects fingerprints from people whom they apprehend, thus permitting identification in the data of repeat apprehensions of the same individual. We therefore analyze the impact of consequences on recidivism, not deterrence *per se*. After being caught, a person can fail to appear again in the apprehension records either because he/she gave up and returned home (so that his/her consequences created at-the-border deterrence) or because he/she tried again and was successful. Unless the probability of apprehension changes significantly across attempts, there will be close correlation between recidivism and deterrence.

We use apprehension records for the universe of migrants apprehended between Fiscal Year (FY) 2005 and FY 2016, restrict our sample to Mexican nationals aged 18 to 55 to focus on economic migrants, and remove records that have missing or questionable data. Our final sample includes more than 3 million apprehension events. Our analysis of the impacts of administrative consequences is for 2005–2009, of programmatic consequences for either 2009–2016 (ATEP) or 2009–2012 (MIRP), and of criminal consequences

for 2009–2016, depending on when USBP began to record codes for consequence application in apprehension records.

The methodologies that we use to estimate the impact of consequences on deterrence (recidivism) are drawn from the large volume of academic literature on estimating the causal impact of a program on a given outcome, which is termed the *treatment effect*. This approach is based on a counterfactual framework in which each apprehended migrant would have an outcome (reapprehended or not reapprehended) with and without receipt of a treatment (consequence). In particular, we use the propensity score matching (PSM) models to estimate consequence impacts. A complicating factor is that USBP often applies several treatments (consequences) to one person, but research usually estimates the impact of only one treatment. We estimate single-treatment PSM models also a multiple-treatment PSM model based on the multinomial logit specification.

Table 1 gives estimates of consequence impacts under the single-treatment PSM model. Impacts on reapprehension (recidivism) are statistically and quantitatively significant and suggest that USBP's consequence program has been successful in creating significant at-the-border deterrence. If the value of the probability of apprehension is known, then the probability that someone gives up and goes home after being caught and subjected to the consequence can be calculated. Using value for the probability of apprehension estimated in other IDA research, these probabilities

Table 1. Estimated Consequence Impacts

Consequence Program	Impact on Reapprehension[a]	Probability That Migrant Gives Up[b]
Expedited removal (ER)	-12%	26%
Reinstatement of removal (RR)	-14%	31%
ATEP	-3%	7%
MIRP	-14%	35%
Streamline prosecution	-17%	36%
Standard prosecution	-14%	27%

[a] Estimated average treatment effect on the treated.

[b] Probability that the migrant gives up attempting illegal entry after being caught and having consequence imposed on him/her. Requires assumption about the value of the probability of being apprehended, which can be obtained from other IDA research.

range from 7 percent for the ATEP program to 36 percent for a Streamline prosecution.

These results can be used in cost-effectiveness analysis of the consequence program. Some consequences clearly produce higher levels of deterrence than others. If the cost of imposing each consequence is calculated, ranking the consequences in terms of their cost effectiveness would be possible. Interestingly, the two consequences that probably have the lowest cost—ER and RR—produce large deterrence impacts similar in size to those of prosecutions.[1]

To understand better the collective impact that the consequence programs have had since their introduction, we use estimated model parameters to simulate what the deterrence rate would have been if the various types of consequence programs had not been in place. Figure 2 shows the results of this simulation. The blue line shows the actual deterrence rate estimated with IDA's repeated trials model (RTM) (Bailey et al. 2016). The red and green lines show counterfactual deterrence rates— the estimated deterrence rate that would have occurred if administrative consequences had not been used (red line) or if any consequences had not been used (green line) (i.e., no Consequence Delivery System (CDS)). The simulation suggests that consequence could have increased the annual deterrence rate by as much as 30 percentage points by 2015.

Recommendations

- Previous research suggests that USBP consequences have had little

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[1] This may be due to the fact that a single-impact PSM model is used. Results from multiple-impact PSM estimation, which are not yet fully mature, suggest that the impacts of the ER and RR consequences are much greater when used together with a programmatic or criminal consequence than when used alone.
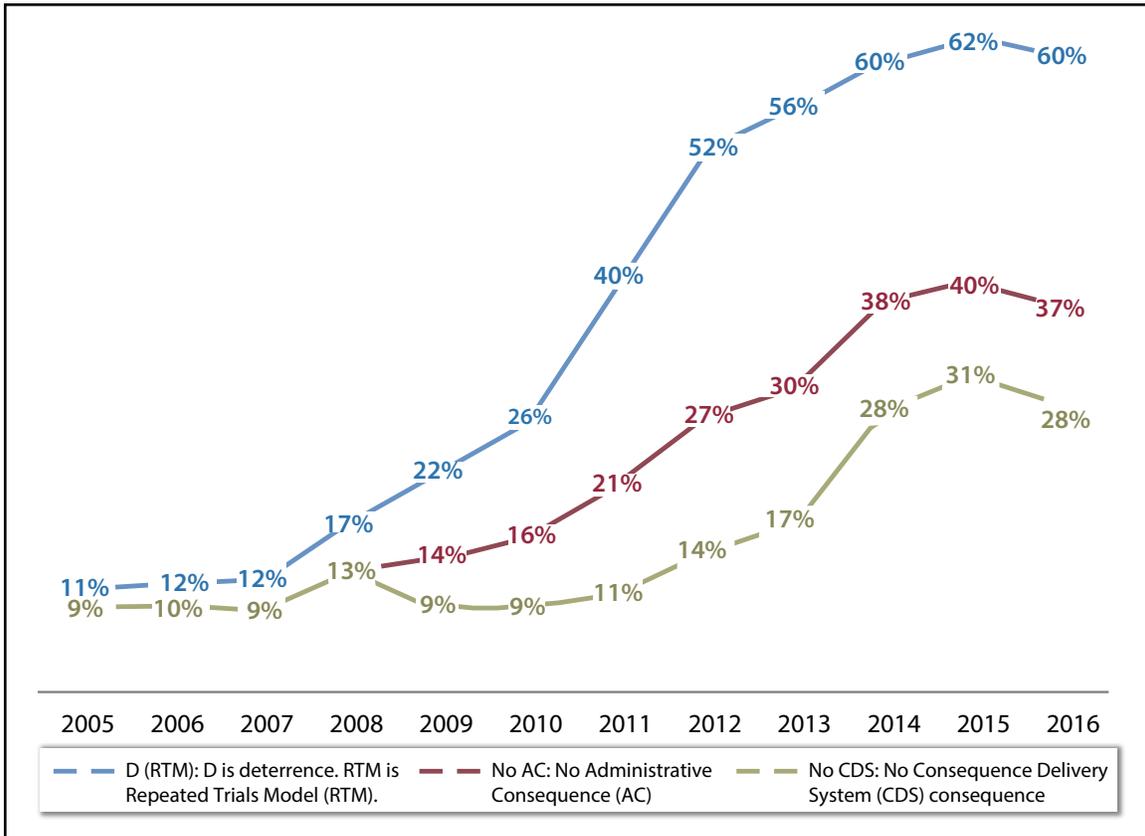
Figure 2. Probability of Deterrence with and without Consequence Buildup

or no impact on migrant behavior and have not deterred illegal entry. IDA's research strongly suggests that this is not the case. Publicizing and disseminating these findings to the broader public might be worthwhile.

• These results can be used to support cost-effectiveness analysis of the USBP consequence program.

• These results can also be used to evaluate enforcement posture along the U.S.-Mexico border and,

in particular, the impact of using or not using particular types of consequences at specific points.

• The estimation results presented here can be developed further and refined. Multiple-treatment estimation, which is a relatively new methodology, is a promising approach. Efforts should be made to identify natural experiments that could improve impact identification. Results can also be evaluated by conducting further sensitivity analysis.

Reference

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Dr. John Whitley *(second from right, facing away) is an Adjunct Research Staff Member in IDA's Cost Analysis and Research Division. He holds a Doctor of Philosophy in economics from the University of Chicago.*

Dr. Bryan Roberts *(third from right) is an Adjunct Research Staff Member in IDA's Cost Analysis and Research Division. He holds a Doctor of Philosophy in economics from the Massachusetts Institute of Technology.*

Dr. Sarah Burns *(third from left) is a Research Staff Member in IDA's Cost Analysis and Research Division. She holds a Doctor of Philosophy in economics from the University of Kentucky.*

Dr. Brian Rieksts *(center in blue shirt) is a Research Staff Member in IDA's Cost Analysis and Research Division. He holds a Doctor of Philosophy in industrial engineering and operations research from Pennsylvania State University.*