

Backgrounder: Stipulated Removal

Federal authorities are deporting immigrants without hearings, but the public knows very little about the program.¹

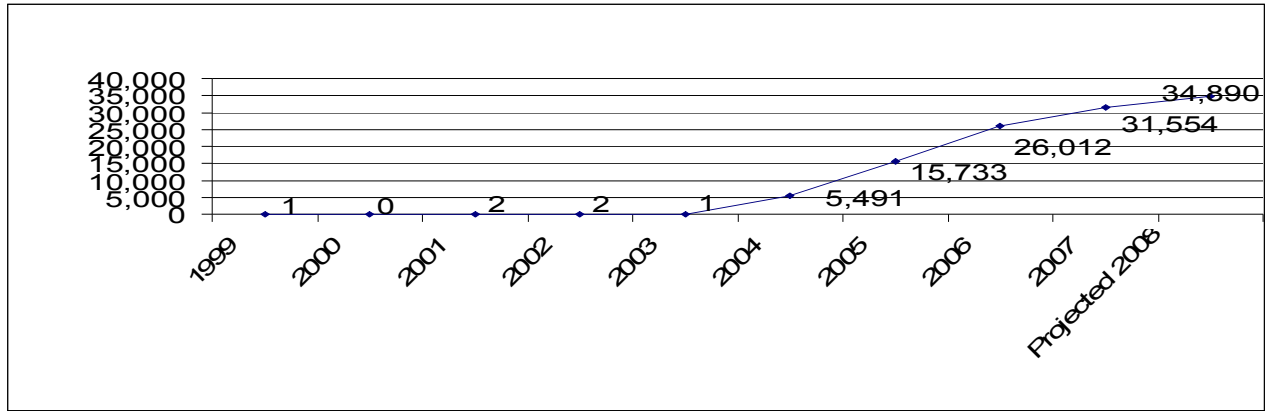
Over the last five years, federal immigration officials have expanded implementation of a program called stipulated removal to deport non-U.S. citizens. This procedure allows the deportation of a noncitizen without a hearing before an immigration judge. Immigrants who sign stipulated orders of removal waive their rights to hearings and agree to have a removal order entered against them, regardless of whether they are eligible to remain in the United States. According to data obtained through a Freedom of Information Act (FOIA) request, federal immigration officials have entered almost 100,000 stipulated removal orders in the past five years.

Despite the rapid expansion of stipulated removal, little is known about when and how these orders are used by immigration officials. Immigrant advocates are extremely concerned about the dramatic rise in the use of stipulated orders of removal. Advocates routinely encounter immigrants who do not understand that they signed these orders, much less the impact these orders have on their right to remain in or reenter the United States lawfully in the future. Worse, immigrants have reported being coerced to sign stipulated orders of removal. According to press reports, federal agents have pressured detained immigrants to sign stipulated orders as a way of getting out of immigration detention. In reality, however, many of these immigrants may have claims to remain in the United States based on a variety of factors, including the length of their presence, their family ties to the country, their status as crime victims, or their fear of being persecuted or tortured if they are returned to their home country.

1. Explosive Use of Stipulated Orders to Deport Noncitizens over the Last Five Years

The use of stipulated orders increased a stunning 535% between 2004 and 2008. (See Table 1.) The government began to implement stipulated removal in earnest in 2004, when 5,481 orders were entered nationwide. In 2005, that number nearly tripled to 15,733. The dramatic growth in the use of stipulated orders continued in 2006 (when 26,012 stipulated orders were signed) and 2007 (when 31,554 stipulated orders were signed). If this growth rate continues, the projected number of stipulated orders that will be entered in 2008 will be 34,890.²

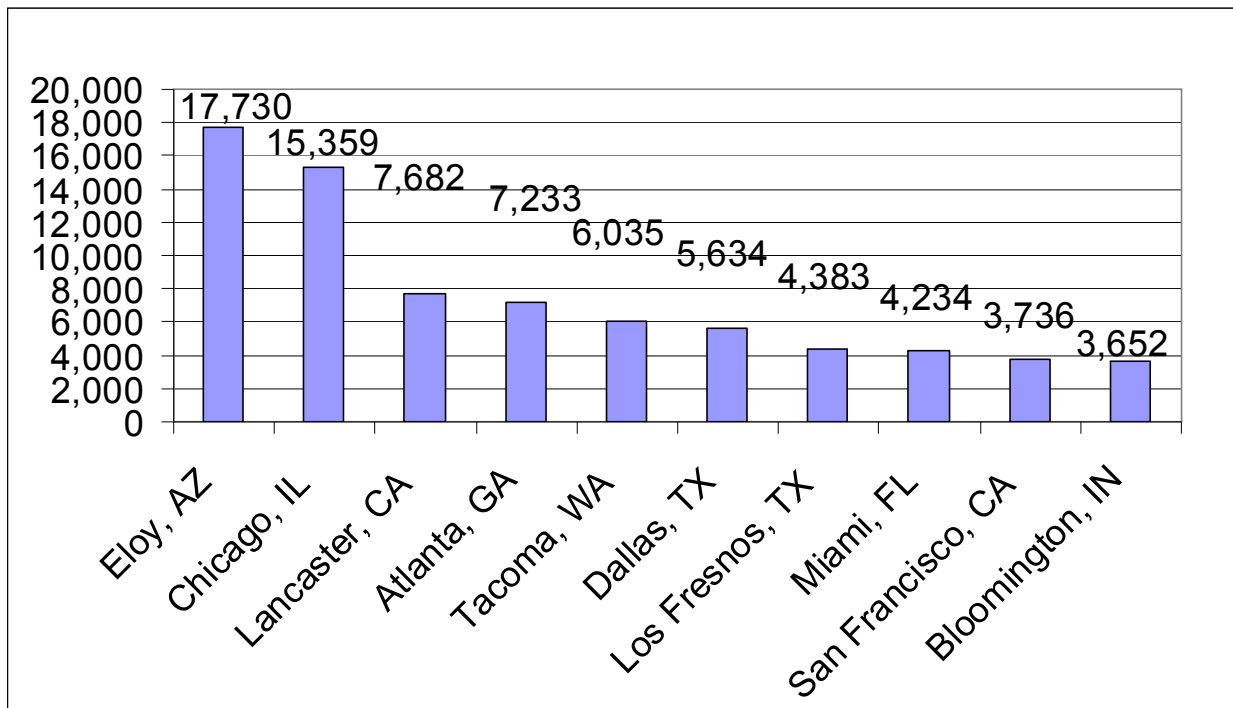
Table 1: Numbers of Stipulated Orders of Removal by Year, 1999-2008



2. Stipulated Removal is Being Implemented in Detention Facilities across the Country

The vast majority of stipulated orders of removal have been entered in a handful of places in the United States—and primarily in locations where immigrants are detained. (See Table 2.) The top ten locations account for two-thirds of the stipulated orders. Nearly half of all stipulated orders entered since 1999 were signed at just three large immigration detention facilities in Eloy, Arizona; Lancaster, California; and Los Fresnos, Texas. Nearly one-in-five (18%) of all stipulated removal orders were signed at the Eloy Detention Facility alone.

Table 2: Top 10 Locations for Stipulated Orders of Removal

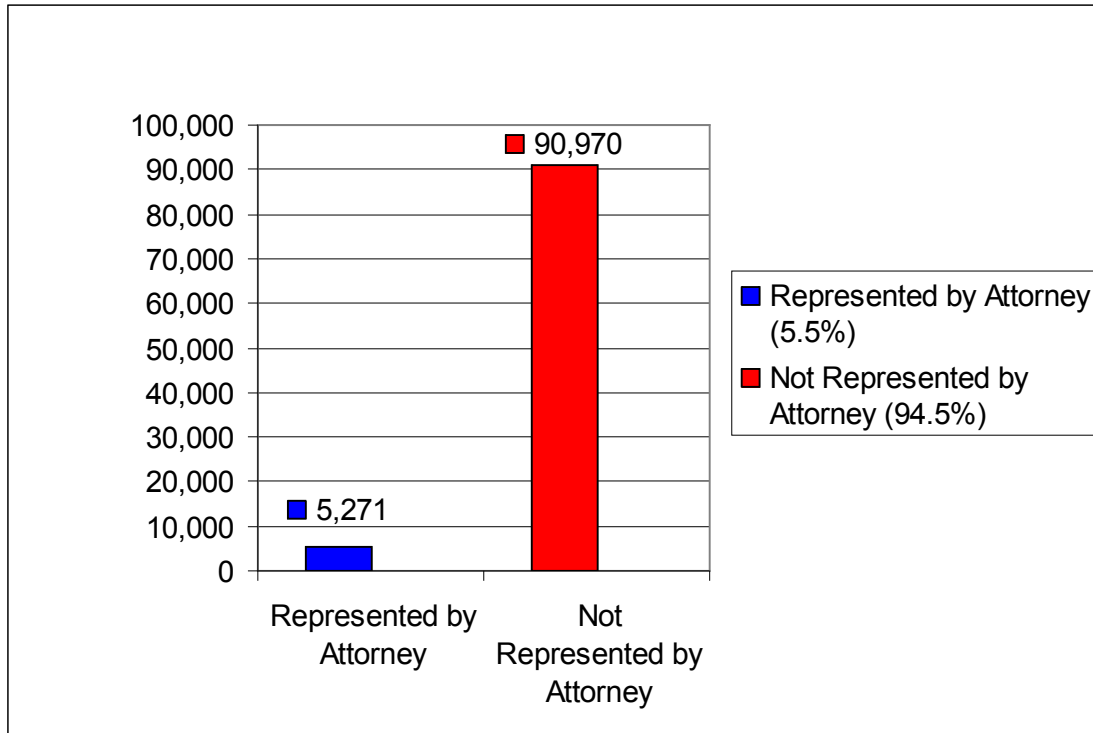


3. Immigrants Subject to Stipulated Removal Lack Legal Representation

The overwhelming majority of noncitizens who signed stipulated orders of removal did so without the benefit of legal representation. Nearly 95% of those who signed stipulated orders

since 1999 were not represented by an attorney in their deportation proceedings. (See Table 3.) The lack of representation is particularly problematic because individuals who sign stipulated orders do so without ever seeing an immigration judge. Immigration judges normally inform immigrants about their eligibility for relief from removal. Without either hearings or lawyers, immigrants may never discover that they have legal claims against deportation, based on factors such as family relationships to U.S. citizens or lawful permanent residents, being a victim of a crime, or fear of persecution abroad.

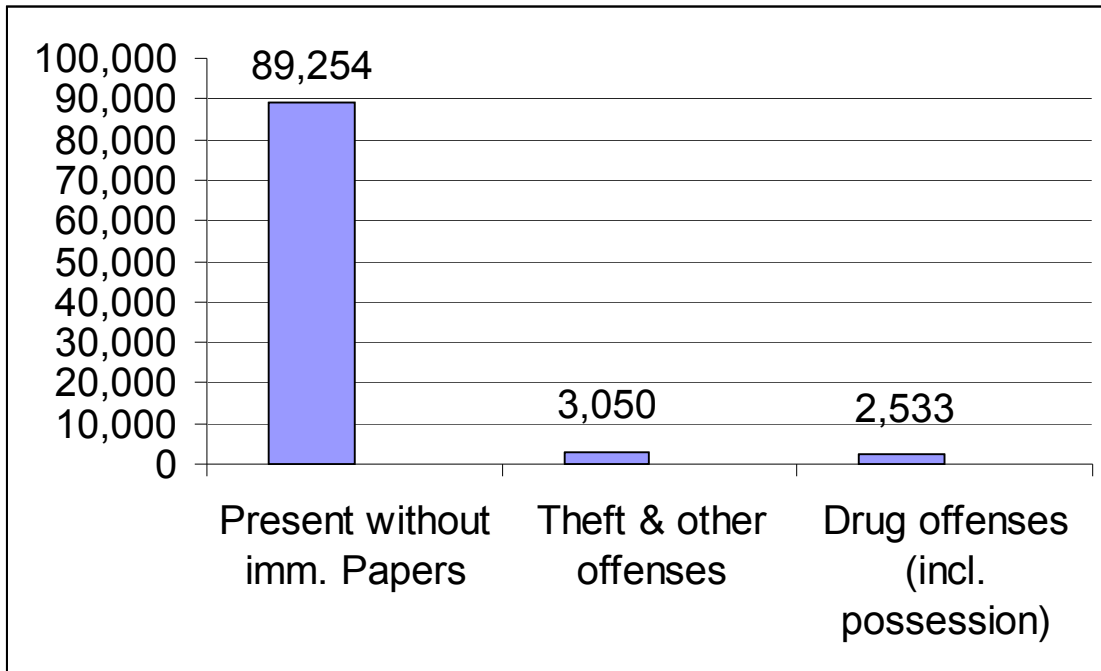
Table 3: Representation by Counsel of Individuals with Stipulated Removal Orders



4. The Government Targets Poor, Nonviolent Undocumented Migrants for Stipulated Removal

The vast majority of noncitizens targeted for stipulated removal (93%) were charged with being in the United States without papers. (See Table 4.) The government put these individuals in removal proceedings because they lacked immigration documentation, not because of any criminal history. Nothing in the immigration laws bars these individuals from applying for asylum or other forms of immigration relief, including relief based on relationships to family members.

Table 4: Top 3 Immigration Charges for Individuals Subject to Stipulated Orders (Total individuals charged: 96,241)

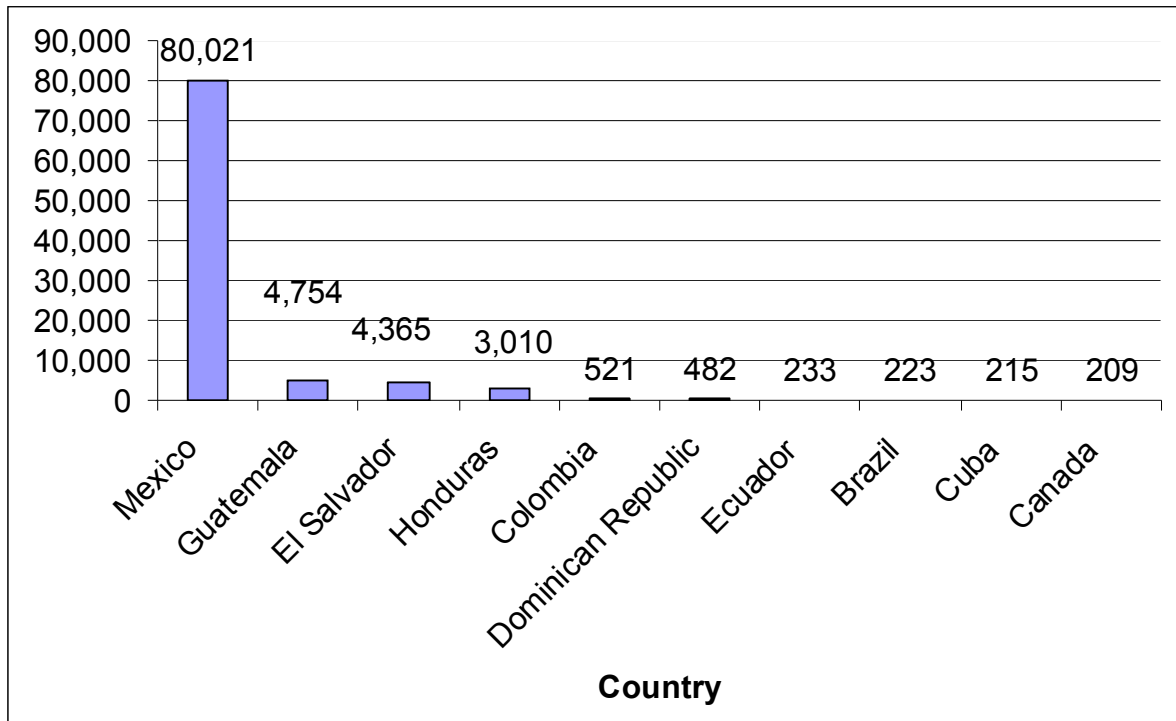


The Pew Hispanic Research Center estimates that there are 11 million undocumented migrants living in the United States.³ Many undocumented noncitizens are members of mixed-status families, with children, spouses, and parents who are U.S. citizens or permanent residents. These individuals may be eligible for relief from deportation based on these family ties.

The government targets undocumented individuals for stipulated removal while they are in immigration detention, most likely because they cannot afford to post thousands of dollars in bond money to obtain release from detention. If these individuals were able to post bond, they could continue to challenge their removal cases instead of simply accepting deportation. Unfortunately, these individuals also are typically unable to obtain or afford legal representation.

It appears that the majority of individuals targeted for stipulated removal based on their undocumented status are from Mexico.

Table 5: Top Ten Nationalities of Individuals Subject to Stipulated Orders



5. What does the public need to know about stipulated removal?

Given that the government's implementation of stipulated removal has expanded rapidly and impacted the lives of so many U.S. citizens, it is surprising how little the public knows about the program. The government has thus far refused to release documents subject to FOIA to provide this information. We still do not know:

- How does the Department of Homeland Security train its agents who select individuals for stipulated removal? We do not know if these agents are trained to screen for individuals who might have claims to relief from removal, such as asylum claims or family-based petitions. How well do agents inform noncitizens that they are accepting an actual removal order, which will make it very difficult for them to reenter the United States legally and subject them to criminal penalties if they reenter illegally?
- How do the various federal agencies involved in stipulated removal coordinate with each other? For example, what have immigration judges been told about the program? How have the Departments of Homeland Security and Justice coordinated on the program?
- Is the government intentionally targeting individuals of certain nationalities for stipulated removal and, if so, why?
- How does the government measure the success of the program? It appears that the government is expanding the program. Is this based on an assessment that it has been

successful? How is success measured? Simply by the number of stipulated orders entered?

- How has the government addressed the due process concerns raised by stipulated removal? Has the government taken steps to ensure that individuals are not pressured into signing stipulated orders? Has the government explained the availability of voluntary departure, an alternative for individuals who have entered without papers that does not subject them to bars to future reentry?
- Our only statistics about stipulated removal are from the Department of Justice. Does the Department of Homeland Security, which is responsible for implementing the program, maintain statistics as well? If not, why not?

Conclusion

Given the due process concerns about the use of the stipulated removal program as well as the program's staggering expansion over the past five years, the government should release information about the program. The public has a right to know how the government is implementing stipulated removal and whether immigrants' due process rights are being violated in the process.

¹ This backgrounder was prepared by Jayashri Srikantiah, Stanford Immigrants' Rights Clinic, and Karen Tumlin, National Immigration Law Center based on data obtained through a Freedom of Information Act (FOIA) request submitted to the Executive Office of Immigration Review by Stanford Immigrants' Rights Clinic, National Lawyers Guild-San Francisco Bay Area, National Immigration Law Center, and ACLU of Southern California.

² This calculation is based on the number of stipulated orders of removal signed between January and June 2008, which was 17,445.

³ Jeffrey S. Passel, Pew Hispanic Center, *Estimates of the Size and Characteristics of the Undocumented Population*, available at <http://pewhispanic.org/files/reports/44.pdf>.