

Despite Rise in Felony Charges, Most Immigration Convictions Remain Misdemeanors

Criminal Enforcement of Immigration Laws

I: [Changes in Re-entry Prosecutions](#)

II: [Misdemeanor Convictions Still The Norm](#)

Convictions for the petty offense of illegal entry (8 USC 1325) continue to dominate the criminal enforcement of federal immigration laws. During the first six months of fiscal year 2014, according to the case-by-case government records analyzed by the Transactional Records Access Clearinghouse (TRAC), two out of three immigration convictions — 24,647 out of a total of 36,256 criminal convictions — were for this offense. This ratio is little changed from the pattern of the last decade, which is striking given a recent surge in the number of people charged with felony illegal re-entry (8 USC 1326). While there was some year-to-year variation during the previous 10 year period from FY 2004-FY 2013, overall 65 percent of all immigration convictions were for illegal entry. During the first six months of the current fiscal year, 68 percent were convictions for the petty offense of illegal entry, which is punishable by up to six months in jail.

Only around one out of every four immigration convictions have been for the more serious charge of illegal re-entry (8 USC 1326), a felony. During the first six months of FY 2014, 9,716 out of the total of 36,256 immigration convictions were for illegal re-entry — or 27 percent. This is little changed from the average of 26 percent during the previous 10 years. See Table 1 for actual numbers. Figure 1 displays illegal entry versus illegal re-entry convictions year-by-year.

Table 1. Criminal Convictions for Illegal Entry or Re-entry

Fiscal Year	Immigration Cases	Illegal Entry (8 USC 1325)	Illegal Re-entry (8 USC 1326)
2004	31,547	18,375	9,044
2005	33,178	17,721	10,409
2006	35,160	17,876	11,953
2007	33,740	16,786	11,372
2008	71,587	49,808	14,911
2009	88,065	62,047	19,372
2010	82,437	54,495	21,916
2011	77,697	49,085	23,186
2012	88,908	61,382	22,342
2013	92,215	68,026	19,898
2014*	36,256	24,647	9,716

*Covers only the first six months of FY 2014 (October 2013 - March 2014).

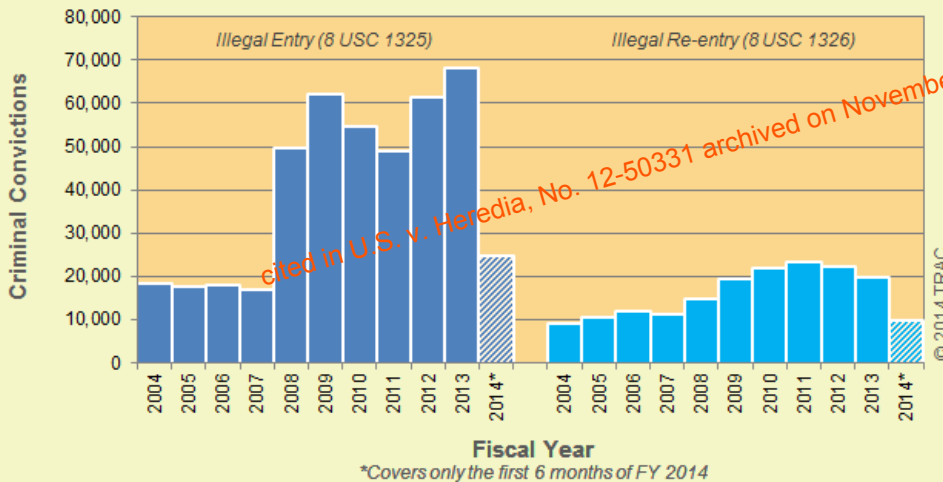


Figure 1. Criminal Convictions for Illegal Entry or Re-entry

The picture that emerges from examining convictions is quite different from the one documented in [TRAC's May 13, 2014 report](#) covering the same period but focusing on the offenses with which noncitizens were being charged rather than convicted. As reported there, during the first six months of FY 2014 prosecutions for illegal re-entry surpassed the number for illegal entry. TRAC's latest analysis, however, shows that the illegal re-entry charge is increasingly pled down to the lesser illegal entry charge, so that the increase in felony charges has not lead to an increase in felony convictions.

The remainder of this report focuses on the dynamics of charging illegal re-entry more often, while seeing little, if any, change in actual convictions for this offense.

Plea Bargaining and Immigration Offenses

Almost all individuals charged with a criminal federal offense end up convicted. For all federal prosecutions completed during the first six months of fiscal 2014 — from drug offenses to white collar violations, etc. — 91 percent ended with a conviction of one type or another, according to the TRAC analysis. For that subset of individuals criminally charged with immigration offenses, 97 percent ended up convicted, according to TRAC's analysis of Department of Justice data.

Further, very few individuals insist on going through a trial to determine guilt or innocence. For example, in cases where illegal re-entry was the lead charge, 99.8 percent of those convicted pled guilty without going to trial. As an incentive for pleading guilty, the prosecutor can agree to reduce the charge and hence the potential

Table 2. Outcomes for Original Charge of Illegal Re-entry*

Fiscal Year	Charged Illegal Re-entry and Convicted of:			
	Illegal Re-entry		Illegal Entry	
	Number	Percent	Number	Percent
2004	9,044	84%	1,760	16%
2005	10,409	85%	1,767	15%
2006	11,953	76%	3,709	24%
2007	11,372	73%	4,133	27%
2008	14,911	73%	5,625	27%
2009	19,372	75%	6,593	25%

sentence. For example, the prosecutor may charge a non-citizen with illegal re-entry, but be willing to reduce the charge to illegal entry in exchange for a guilty plea.

Figure 2 shows year-by-year numbers for the outcome of those charged with illegal re-entry, and whether the conviction that resulted was for the felony offense of illegal re-entry versus the petty misdemeanor of illegal entry. A decade ago, 84 percent of those charged with illegal re-entry were convicted of that offense. Only 16 percent of the cases pled down to simple illegal entry. Five years ago, the percentages were 75 percent convicted of illegal re-entry versus 25 percent pled down to illegal entry. This percentage has continued to fall. In fact, during the first six months of this fiscal year, only half (51%) of those charged with illegal re-entry ended up convicted of that offense. The other half pled down to the petty offense of illegal entry.

Year	Number	Percent	Number	Percent
2010	21,916	67%	10,834	33%
2011	23,186	68%	10,806	32%
2012	22,342	61%	14,241	39%
2013	19,898	57%	15,012	43%
2014**	9,716	51%	9,179	49%

*Excludes some cases where conviction was for some other offense, the defendant was found not guilty, or charges against the defendant were dismissed.
 **Covers only the first six months of FY 2014 (October 2013 - March 2014).

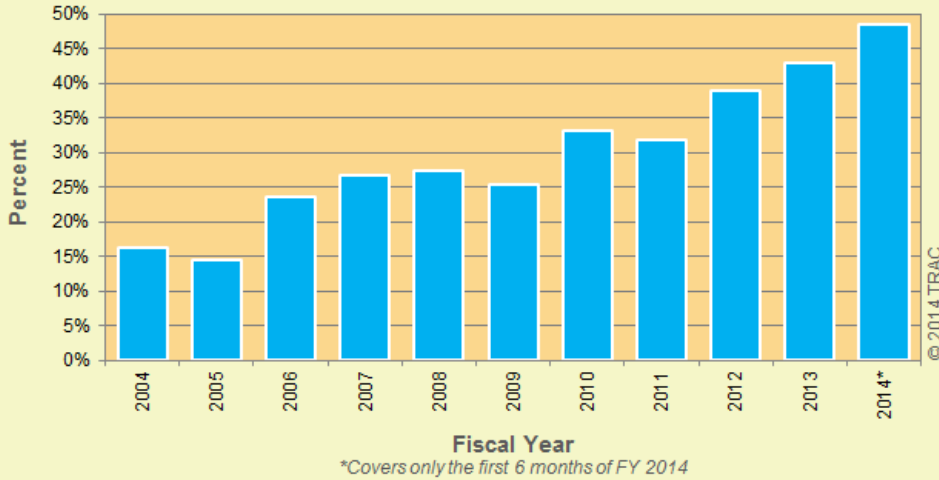


Figure 2. Charged with Illegal Re-entry and Convicted of Misdemeanor Illegal Entry

District Practices Differ

The national figures show that prosecutors who charge an individual with illegal re-entry are currently willing about half the time to accept a plea of guilty to simple illegal entry. However, an individual charged with illegal re-entry doesn't have a 50-50 chance of being able to plead down to illegal entry. Rather, this figure reflects an average across offices with quite different policies, so the actual odds for any individual depend on where he or she is apprehended. Some offices rarely accept such a plea bargain, while in others this is the rule rather than the exception.

In fact, as shown in Table 3, plea bargains of this type are rare in all but two federal judicial districts: Arizona and the Southern District of California. In the remaining districts along the southwest border — New Mexico, the Western District of Texas, and Texas's Southern District — virtually everyone charged with illegal re-entry is also convicted of that offense. Similarly, in districts outside the southwest border, 99 percent of those charged with illegal re-entry are convicted of that charge.

Table 3. Outcomes for Original Charge of Illegal Re-entry, by District (October 2012 - March 2014)*

District	Charged with Illegal Re-entry and Convicted of:			
	Illegal Re-entry		Illegal Entry	
	Number	Percent	Number	Percent
SW Border Subtotal	21,683	47%	24,144	53%
Arizona	3,010	11%	23,266	89%
California South	2,576	81%	623	19%
New Mexico	4,338	98%	106	2%
Texas South	5,768	99%	38	1%
Texas West	5,991	98%	111	2%
Rest of U.S.	7,931	99%	47	1%

*Excludes some cases where the conviction was for some other offense, the defendant was found not guilty, or charges against the defendant were dismissed.

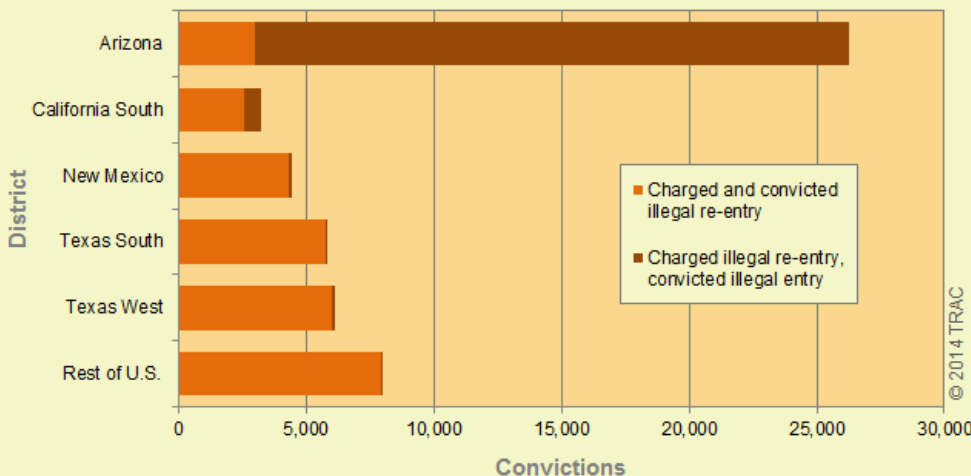


Figure 3. Outcomes for Original Charge of Illegal Re-entry

by District (October 2012 - March 2014)*

(*Excludes some cases where the conviction was for some other offense, the defendant was found not guilty, or charges against the defendant were dismissed.)

Yet in Arizona, nine out of every ten (89%) individuals charged with illegal re-entry during the last 18 months were allowed to plea down to the petty misdemeanor of simple illegal entry. In the Southern District of California during the same period, such plea bargains were accepted 19 percent of the time.

Practices in Arizona and Southern California have not always been this way. Looking at the Arizona figures over time, for example, there has been a sharp rise in the number of individuals charged with illegal re-entry along with the acceptance of these plea bargains. In the end, this has resulted in very little change in the number of individuals actually convicted of illegal re-entry. See Figure 4 (for details, see [Appendix Table 4](#)).

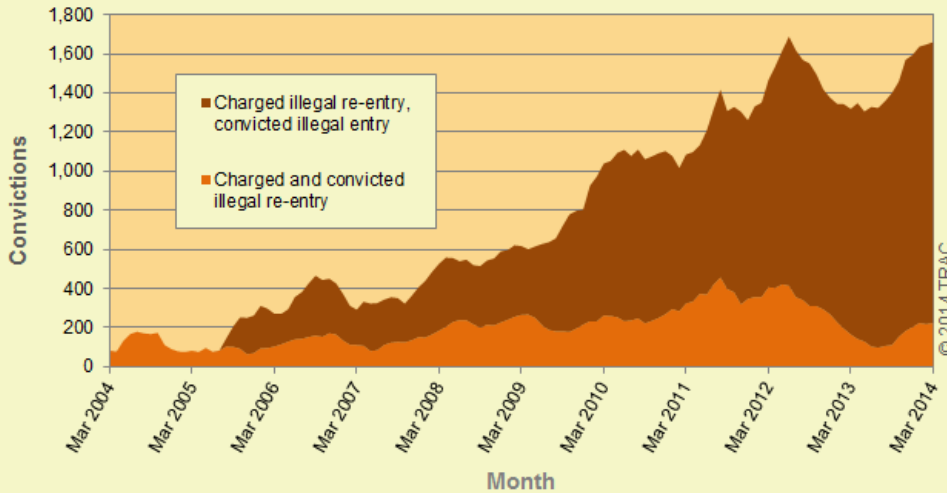


Figure 4. Outcomes for Original Charge of Illegal Re-entry in Arizona over Time (March 2004 - March 2014)

In addition to differences among districts and over time, there are significant variations in charging and plea bargaining practices among offices within the same district. These contrasting practices often reflect how different prosecutors along the southwest border have implemented the Department of Homeland Security's Project Streamline to criminally prosecute those apprehended illegally entering the country.

The next report in this series will examine in greater detail the charging and plea bargaining practices both within and between adjacent districts along the southwest border, as well as what impact these practices appear to have on conviction rates.

Appendix

Table 4. Outcomes for Original Charge of Illegal Re-entry in Arizona, March 2004 - March 2014*
(Click table title to open in new window)

Month	Charged Illegal Re-entry and Convicted of:				
	Illegal Re-entry		Illegal Entry		
	Number	Percent	Number	Percent	
Mar 2004	83	100%	0	0%	
Apr 2004	78	100%	0	0%	
May 2004	134	100%	0	0%	
Jun 2004	168	100%	0	0%	
Jul 2004	180	100%	0	0%	
Aug 2004	171	100%	0	0%	
Sep 2004	168	100%	0	0%	
Oct 2004	174	100%	0	0%	
Nov 2004	112	100%	0	0%	
Dec 2004	91	100%	0	0%	
Jan 2005	79	100%	0	0%	
Feb 2005	77	100%	0	0%	
Mar 2005	83	100%	0	0%	
Apr 2005	76	100%	0	0%	

*To smooth out month-to-month fluctuations, the numbers reported are six-month moving averages based on the dates when the dispositions for these cases were recorded. This table also only examines cases where a conviction for either illegal entry or re-entry was obtained, and excludes a small number of cases where the defendant was found not guilty, the charges were dismissed, or the defendant was found guilty of a different crime.

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