

Enforcement lax, Issa says

Border agents, prosecutors blame lack of resources

09:56 AM PST on Thursday, November 24, 2005

By SHARON McNARY and CLAIRE VITUCCI / The Press-Enterprise

The photos that line some U.S. Border Patrol station walls are like "Wanted" posters that help agents recognize suspected human smugglers among those caught sneaking across the border.

Each display, Rep. Darrell Issa said, is a wall of shame, evidence that human smugglers are too often released to smuggle again rather than held to face criminal charges and a prison cell.

Most Inland members of Congress have joined Issa in calling enforcement of immigration laws too lax. Issa blames the guidelines that federal prosecutors use to manage the number of cases they will bring against suspected immigrant smugglers.

But some who speak for the frontline law enforcers -- Border Patrol agents and federal prosecutors -- say that it's up to Congress to make systemic change by passing the right laws and providing enough money to do a better job.

Issa wants the government to increase the prosecution of coyotes, a slang term for human smugglers. In 2004, he began a letter-writing campaign to administration officials demanding to know why suspected smugglers who repeatedly have been caught and deported have not been prosecuted as criminals.

The prime example in Issa's coyote-crackdown campaign is Antonio Amparo-Lopez, who already had been arrested and deported to Mexico more than 20 times when Border Patrol agents from the Temecula station arrested him in November 2003. Undocumented immigrants were in the car with him but he was not prosecuted, Issa said.

Issa said he has been unable to get the government to explain why Amparo-Lopez has not been charged.

'Case After Case'

"It seems that case after case that I would have felt very strongly needed to be prosecuted, they don't end up being prosecuted," said Issa, R-Vista. His district includes portions of Riverside and San Diego counties. He has been especially critical of U.S. Attorney Carol Lam, who heads the San Diego-area Southern District.

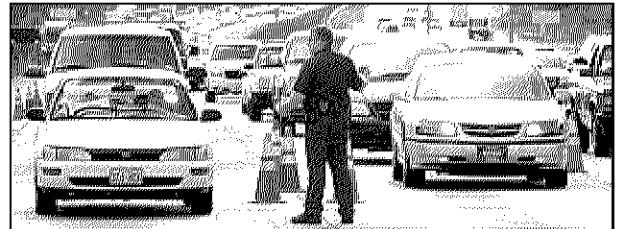
Issa said failure to prosecute coyotes encourages them to keep smuggling people across the border.

"If there's no punishment for being a coyote, other than a couple of hours (incarceration) and the loss of the people in your trust . . . why wouldn't you do it the next day?" he said.

Two spokesmen for Lam's office declined to discuss recent changes in prosecution guidelines that govern which cases result in criminal charges. Guidelines, which vary from district to district, are kept confidential so criminals don't know which cases the government will pursue and which are low-priority.

Issa has proposed giving the U.S. Department of Justice \$5 million a year for four years to prosecute coyotes. His proposal passed the House and is now being considered by the Senate.

It is one part of a stream of immigration legislation flooding Congress. More than 60 bills are pending. One would fence the 2,000-mile border with Mexico, some would ratchet up enforcement, others would allow some undocumented immigrants to remain and work in the United States.



2004 / The Press-Enterprise

A U.S. Border Patrol agent checks northbound traffic at the checkpoint on Interstate 15 south of Temecula. Agents say they are frustrated that many of the suspected human smugglers they apprehend are not prosecuted because their cases do not meet the strict minimum guidelines of federal prosecutors.

Criticism of Issa

"Congressman Issa is doing what every other congressman is doing, and that's ignoring the problem. They're coming up with temporary solutions," said Chris Bauder, president of the San Diego chapter of the National Border Patrol Council, the union that represents Border Patrol agents.

Better to stop U.S. businesses from hiring illegal workers in the first place, Bauder said.

"When you take away the jobs, you take away the pot of gold and secure it somewhere. The people will stop coming because they know the jobs are not there."

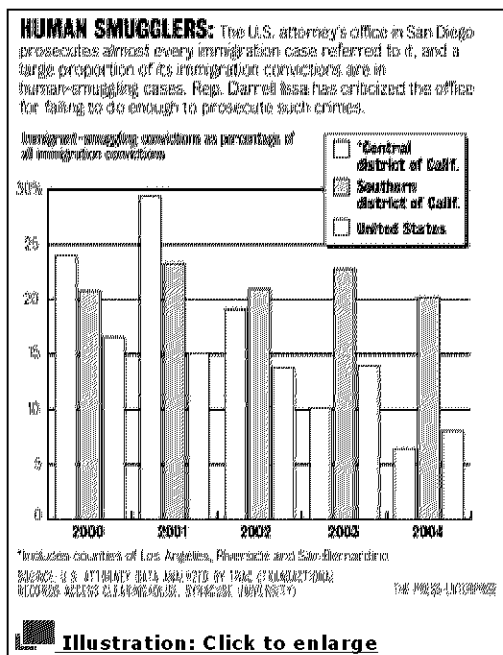
Immigration and Customs Enforcement does workplace enforcement, but it gives top priority to transportation and military sites vulnerable to terrorism, ICE spokeswoman Virginia Kice said.

In April, for example, ICE arrested 18 undocumented immigrants who worked for a contractor hired to maintain U.S. Navy ships in San Diego. The agency pursued 511 different workplace investigations in the fiscal year that ended in September, up from 465 in 2004.

'Demoralizing the Agents'

Steven Camarota, a Washington, D.C.-based researcher, said legislation that tackles just parts of the overall illegal-immigration problem, like increasing penalties for smugglers and extending the border fence, aren't enough.

"Politically, (Issa) doesn't want to anger the chambers of commerce, he doesn't want to anger Hispanic advocacy groups," said Camarota, of the Center for Immigration Studies, which favors stronger enforcement of immigration laws.



Border Patrol agents say they are frustrated that many of the suspected human smugglers they apprehend are not prosecuted in federal court because their cases do not meet the strict minimum guidelines of federal prosecutors.

"It's one of the issues that is demoralizing the agents in the field," said T.J. Bonner, president of the National Border Patrol Council. "It doesn't do wonders for morale when the agents wind up wasting numerous hours doing paperwork to do the case when the prosecutors won't prosecute the case because of the guidelines."

Bonner, while declining to detail the guidelines, said the U.S. attorney's office for the San Diego-area Southern District of California changed them last year to limit the prosecution of smugglers only to those who are bringing in "double-digit" numbers of illegal immigrants.

Bonner said he doesn't understand why the U.S. attorney's office doesn't complain and ask for more funding.

"Don't just sit and mutely go along with the administration," Bonner said. "Make some noise. Take your case to the public because

you work for the public and the public expects you're going to go put people in jail and not give a pass to somebody unless it's egregious."

Prosecution guidelines vary from district to district. They function as valves controlling the number of cases that immigration authorities may present to federal prosecutors, spokesmen for federal court districts in California and Arizona said.

"We just don't have the capacity to handle them all," said Daniel Knauss, chief assistant U.S. attorney in Arizona. He said his office prosecutes the worst cases in which illegal border-crossers, children or law-enforcement officers are put at risk or harmed.

"All prosecutors must make choices based on their own resources and what's going in their districts," said Knauss, a 33-year federal prosecutor. The 186,000-bed federal prison system couldn't possibly hold all the convicts if the government prosecuted every possible immigration lawbreaker, he said.

'You Make Choices'

"What you typically get in Congress is, 'We'll make it tougher,' " Knauss said, adding that such laws don't often come with additional money for enforcement. "It's a systemic problem," he said.

Pete Nunez served as the U.S. attorney for the Southern District under President Reagan. He said that during his watch, between 1982 and 1988, the office prosecuted virtually all smugglers.

But now, Nunez said, "there are so many immigration violations in every category, you can't possibly do it all. You make choices."

He said the emphasis now is on prosecuting criminal aliens -- hammering them with more prison time for immigration violations before they're deported.

But Nunez said many just turn around and come in again.

"Immigration laws are the most flagrantly violated laws in the history of our country," Nunez said. "There are 11 million illegal immigrants here and nobody's even looking for them."

Reach Sharon McNary at (951) 368-9458 or smcnary@pe.com

Reach Claire Vitucci at (202) 661-8422 or cvitucci@pe.com