

# NEW MEXICO IMMIGRATION LAWYER BLOG

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## **Criminal Immigration Cases Filed at Record Pace**

Criminal immigration cases are being filed at a record pace. In 2009, over 90,000 such cases were filed in the federal criminal courts accounting for over one half of all new federal court criminal cases. Many of these cases are filed for illegal reentry of immigrants following prior removal and deportation.

The criminal caseload for the U.S. District Court in New Mexico is now second in the nation as a result of these cases. The average criminal caseload for a federal court judge in New Mexico stands at 384 per judge. The national average is only 91.

Federal prosecutors are taking these cases very seriously using these prosecutions as a tool to discourage future illegal reentry. The federal government has determined that simple removal and deportation is insufficient to discourage illegal immigration. As a result, individuals convicted of illegal reentry face significant prison time prior to a subsequent removal and deportation.

Many of the individuals charged with illegal reentry have significant criminal histories and have been targeted for removal under such programs as 287(g), the Criminal Alien Program, and Secure Communities which all seek to remove serious felons from the United States. It is hard to argue with this goal. However, these programs have had the unfortunate result of significant racial profiling, particularly against Hispanics. A Mercury News investigation of 52 immigration cases filed in the San Jose federal district court between January and October found that each case involved a Mexican defendant. Bay Area Federal Public Defender Barry Portman suggested the offenses could be boiled down to "riding and walking while Hispanic."

Though most will not dispute the objectives of 287(g), Criminal Alien Program, and Secure Communities of removing serious felon immigrants from the U.S., the actual implementation in some parts of the country raise serious concerns regarding racial profiling of immigrants. This in turn leads, it is argued, to a conversion of relatively simple cases into federal criminal cases. Kevin Johnson, University of California-Davis law professor, stated that it is like "putting finger in the dike" and suggested that the cases are more gesture than meaningful approach to the immigration problem.

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Gesture or not, these cases are very serious with significant consequences. A simple first conviction carries up to 6 months in jail. A second conviction is punishable by up to 2 years in jail. The offense can carry up to 20 years in prison for those whose prior removal and deportations was the result of an aggravated felony conviction.

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