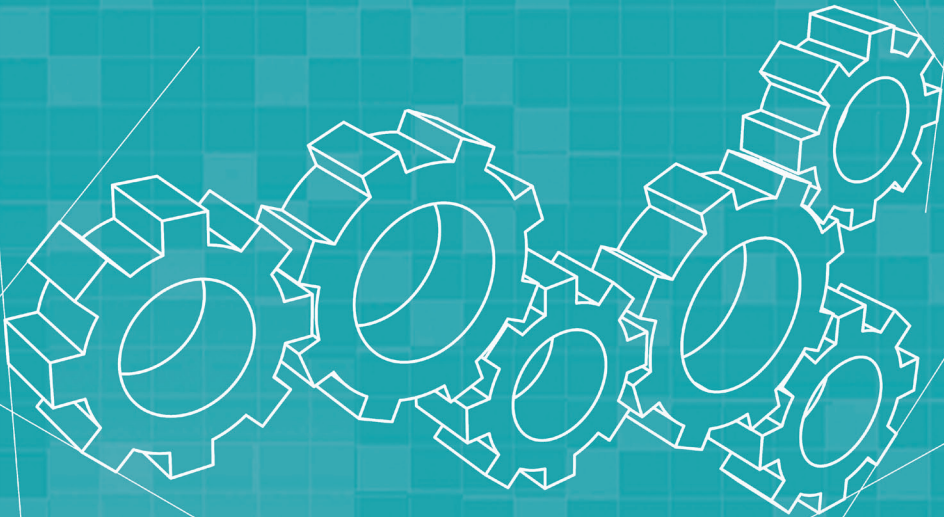# IMMIGRATION ENFORCEMENT IN THE UNITED STATES

THE RISE OF A FORMIDABLE MACHINERY

DORIS MEISSNER, DONALD M. KERWIN, MUZAFFAR CHISHTI,
AND CLAIRE BERGERON

REPORT IN BRIEF

THE PILLARS OF ENFORCEMENT	
Border enforcement	Workplace enforcement
Visa controls & travel screening	The intersection of the criminal justice system & immigration enforcement
Information & interoperability of data systems	Detention & removal of noncitizens

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IMMIGRATION ENFORCEMENT IN THE UNITED STATES

The Rise of a Formidable Machinery

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Introduction

From the early 1970s until the Great Recession that began in 2008, the United States experienced high levels of illegal immigration. Congress first attempted to address the problem in 1986, when it passed the *Immigration Reform and Control Act* (IRCA), which marked the beginning of the current immigration enforcement era. IRCA incorporated the key recommendations of a congressionally mandated commission, although it took more than six years of debate and repeated legislative attempts to enact.

Characterized by its sponsors as a "three-legged stool," IRCA made the hiring of unauthorized workers illegal for the first time in US history. In addition, it called for strengthened border enforcement and provided for legalization for a large share of the unauthorized immigrant population, which then numbered about 3 million to 5 million. The legal status provision, combined with new enforcement measures, was intended to "wipe the slate clean" of the problem of illegal immigration.

Implementation of IRCA's key provisions proved to be disappointing. Employer sanctions — the law's centerpiece — have been ineffective in the absence of a reliable method for verification of work eligibility. And it took until the mid-1990s to mobilize stepped-up border enforcement. IRCA's legalization programs were seen as largely successful, however, having granted legal status to about 3 million individuals, the number estimated to have been eligible.

Illegal immigration and enforcement have been the dominant focus and concern driving immigration policymaking for more than 25 years.

The defects in IRCA, combined with unprecedented growth and job creation by the US economy in the 1990s and early 2000s, as well as deeply ingrained migration push factors in Mexico and, more recently, Central America, enabled illegal immigration to continue to grow. By the mid-2000s, the unauthorized population was estimated to number 11 million to 12 million and affected nearly every part of the country to varying degrees.

As a result, illegal immigration and enforcement have been the dominant focus and concern driving immigration policymaking for more than 25 years. During this time, there has been strong and sustained bipartisan support over successive administrations and Congresses for strengthened immigration enforcement, even as there has been deep ideological and partisan division over broader immigration reform. A decade-long debate over comprehensive immigration reform (CIR) legislation has repeatedly foundered, in part over the question of whether the federal government has the will and ability to effectively enforce the nation's immigration laws.

CIR would increase enforcement but would also provide new avenues for future worker flows and allow for legalization of the existing unauthorized population. Opponents of CIR point to the presence of an estimated 11 million unauthorized residents[1] as proof

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1   Michael Hoefer, Nancy Rytina, and Bryan Baker, *Estimates of the Unauthorized Immigrant Population Residing in the United States* (Washington, DC: Department of Homeland Security, 2012), www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.

of the government's failure to enforce the law and as the reason not to enact broader reform measures, especially a legalization program such as that included in IRCA.[2]

This opposition has been instrumental in preventing passage of CIR and more modest measures, such as the *DREAM Act*, which would provide a pathway to legal status for certain unauthorized immigrants who were brought to the United States as children and who meet certain educational or military service criteria. Some opponents of CIR argue for an "enforcement-first" policy, i.e. that the United States must first establish that it can and will enforce its laws before broader immigration policy measures can be considered. Proponents of CIR contend that effective enforcement is only possible with laws that are enforceable. Thus, the statutory framework that guides the immigration system must, according to this point of view, be reworked to achieve effective enforcement.

This political stalemate has persisted for at least a decade. Meanwhile, the facts on the ground have steadily and dramatically changed. Now, more than ten years after the September 11, 2001 terrorist attacks and 26 years after IRCA — which ushered in the current era of immigration control policies — enforcement first has *de facto* become the nation's singular policy response to illegal immigration.

Immigration enforcement has evolved into a complex, interconnected system administered by multiple Cabinet departments.

Enforcement-first demands have been an important driver in building a well-resourced, operationally robust, multidimensional enforcement system. Immigration enforcement has evolved into a complex, interconnected system administered by multiple Cabinet departments, most importantly the Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Department of State (DOS). The federal government's lead immigration enforcement and policy agency has become DHS, which houses three separate immigration agencies whose core missions are closely aligned with DHS' national security mandate. Today, the combined actions of these federal agencies and their immigration enforcement programs constitute a complex, cross-agency system that is interconnected in an unprecedented fashion. This modern-day immigration enforcement system, which evolved both by deliberate design and by unanticipated developments, is organized around what this report identifies as six distinct pillars.

They are:
- Border enforcement
- Visa controls and travel screening
- Information and interoperability of data systems
- Workplace enforcement
- The intersection of the criminal justice system and immigration enforcement
- Detention and removal[3] of noncitizens

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2   *Immigration Reform and Control Act (IRCA)*, Pub. L. No. 99-603, 100 Stat. 3359 (November 6, 1986).
3   The terms *removal* and *deportation* are used interchangeably in this report. Though *deportation* is more commonly used in public discourse, *removal* is the formal term used by the federal government for the expulsion of a noncitizen, most typically one who is in the country illegally. Prior to the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, removal encompassed two separate procedures: deportation (for noncitizens present in the United States) and exclusion (for those seeking entry to the United States). IIRIRA consolidated these procedures. Noncitizens in and admitted to the United States,

This report in brief summarizes the findings of the full report, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, which lays out the programs and results and the critiques of each of these six pillars. The report, available at www.migrationpolicy.org/pubs/enforcementpillars.pdf, for the first time describes the totality of the immigration enforcement machinery that began with IRCA's enactment. Its findings and conclusions lay out where immigration enforcement stands and future challenges for policymakers and for the nation.

The United States has reached an historical turning point in meeting long-standing immigration enforcement imperatives.

The report demonstrates that the United States has reached an historical turning point in meeting long-standing immigration enforcement imperatives. Despite continued calls from some for greater border control and attrition through enforcement, the evidence shows that the question is no longer *whether* the government is willing and able to enforce the nation's immigration laws. Instead, the question now should be *how* enforcement resources and mandates can best be mobilized to curb illegal immigration and to mitigate the severest human costs of immigration enforcement, thereby ensuring the integrity of the nation's immigration laws and traditions.

I. Overview: A Story of Dramatic Growth in Enforcement Resources

Funding, technology, and personnel growth are the backbone of the transformations in immigration enforcement. They are the products of nearly 20 years of sizeable, sustained budget requests and appropriations made by the executive branch and by Congress, respectively, under the leadership of both parties. They represent a convergence of rising public unease over illegal immigration that sharply intensified after 9/11.

Spending for the federal government's two main immigration enforcement agencies — US Customs and Border Protection (CBP) and US Immigration and Customs Enforcement (ICE) — and its primary enforcement technology initiative, the US Visitor and Immigrant Status Indicator Technology (US-VISIT) program, surpassed $17.9 billion in fiscal year (FY) 2012.[4] This amount is nearly 15 times the spending level of the US Immigration and Naturalization Service (INS) when IRCA was enacted.[5]

In the ensuing 26 years, the nation has spent an estimated $186.8 billion[6] ($219.1

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in other words both unauthorized immigrants and legally admitted noncitizens who have run afoul of US laws, may now be subject to removal on grounds of deportability or inadmissibility.

4   US Department of Homeland Security (DHS), *FY 2013 Budget in Brief* (Washington, DC: DHS, 2012): 85, 99, 134, www.dhs.gov/xlibrary/assets/mgmt/dhs-budget-in-brief-fy2013.pdf.

5   US Department of Justice (DOJ), "Budget Trend Data for the Immigration and Naturalization Service (INS), 1975 Through the President's 2003 Request to Congress," Budget Staff, Justice Management Division, Spring 2002, www.justice.gov/archive/jmd/1975_2002/btd02tocpg.htm.

6   The $186.8 billion estimate includes the fiscal year (FY) 1986-2002 budgets for the US Immigration and Naturalization Service (INS) and the FY 2003-12 budgets of US Customs and Border Protection (CBP), US

billion if adjusted to 2012 dollars) on immigration enforcement by INS and its successor agencies, CBP and ICE, and the US-VISIT program.

Figure 1. Immigration Enforcement Spending Adjusted to 2012 Dollars, 1986-2012

Immigration Enforcement Spending Adjusted to 2012 Dollars ($000)
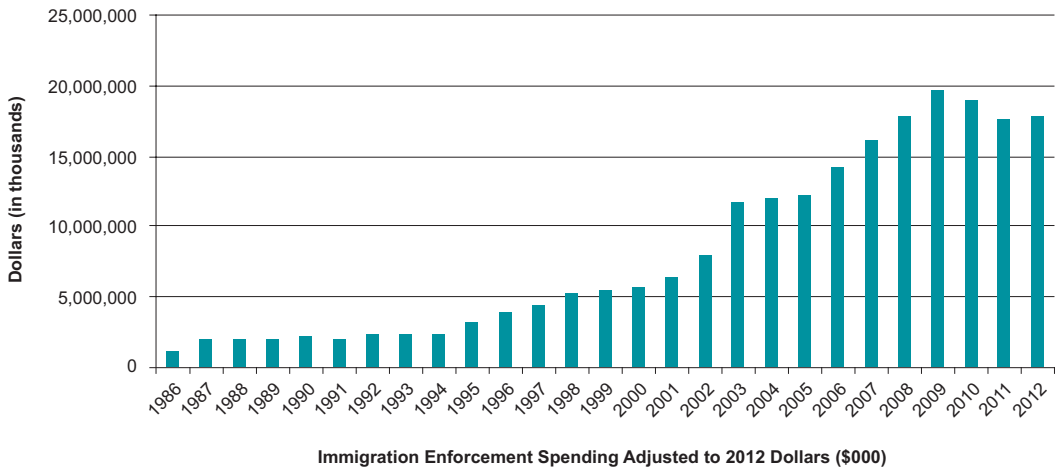
Notes: The funding encompasses the budgets of the US Immigration and Naturalization Service (INS) for fiscal years (FY) 1986-2003, and the budgets of its successor agencies — US Customs and Border Protection (CBP), US Immigration and Customs Enforcement (ICE), and the US Visitor and Immigrant Status Indicator Technology (US-VISIT) program — for FY 2003-12. All figures were adjusted to 2012 dollars to account for inflation, using the Consumer Price Index (CPI) calculator offered through the Bureau of Labor Statistics. Numbers were rounded to the nearest $100,000. To obtain the most accurate statistics, spending figures were taken from the Department of Homeland Security (DHS) *Budgets in Brief* two years after the applicable year. The FY 2012 statistics are from the *FY 2013 Budget in Brief*. *Sources:* US Department of Justice (DOJ), "Immigration and Naturalization Service Budget, FY 1986-2002," www.justice.gov/archive/jmd/1975_2002/2002/html/page104-108.htm; DHS, *DHS Budgets in Brief*, FY 2003-13 (Washington, DC: DHS, various years), www.dhs.gov/dhs-budget.

This investment, which has funded the use of modern technologies and the creation and expansion of new programs, coupled with aggressive use of administrative and statutory authorities, has built an unparalleled immigration enforcement system that rests upon six pillars, detailed below.

I.   Border Enforcement

Effective border control encompasses a broad sweep of responsibilities, geographies, and activities that involve the nation's air, land, and sea entry and admissions processes. Enforcement at US territorial borders — especially the Southwest border with Mexico — represents the most heavily funded and publicized element of border enforcement, and is thus the most prominent pillar of the immigration enforcement system. Historic resource increases have been allocated to CBP for border enforcement. The growth has included dramatic increases in CBP staffing, particularly for the Border Patrol, which has doubled in size over seven years to 21,370 agents as of FY

Immigration and Customs Enforcement (ICE), and the US Visitor and Immigrant Status Indicator Technology (US-VISIT) program. The INS was abolished and its functions absorbed by the new Department of Homeland Security (DHS) that came into operation in March 2003. CBP, ICE, and US-VISIT are the DHS components that assumed most INS functions. DOJ, "Budget Trend Data for the Immigration and Naturalization Service (INS), 1975 Through the President's 2003 Request to Congress;" DHS, *Budgets in Brief, FY 2004-FY 2013* (Washington, DC: DHS, 2003-13), www.dhs.gov/dhs-budget.

2012.[7] Large sums have also flowed to infrastructure, technology, and port-of-entry staffing.

The Border Patrol's strategy of "deterrence through prevention," first introduced in 1994, served as the basis for a multi-year build-up of border resources and enforcement infrastructure. In spring 2012, the Border Patrol announced a new phase in its work, which it calls a "Risk-Based Strategic Plan." The plan states that for the period ahead, the resource base that has been built and the operations that have been conducted over the past two decades enable it to focus on "high-risk areas and flows" and target "responses to meet those threats."[8] The plan depicts an organization that envisions steady-state resources and operational challenges, and seeks to refine its programs and capabilities.

> *In the ensuing 26 years since IRCA, the nation has spent an estimated $186.8 billion ($219.1 billion if adjusted to 2012 dollars) on immigration enforcement.*

In assessing its successes and effectiveness, the Border Patrol has traditionally measured fluctuations in border apprehensions, which reached a peak for the post-IRCA period of almost 1.7 million in FY 2000,[9] and have fallen significantly since. The decreases have been across all nine Southwest Border Patrol sectors and reflect a combination of the weakening of the US economy, strengthened enforcement, and changes in push factors in Mexico. Apprehensions in FY 2011 numbered 340,252, one-fifth of the 2000 level and the lowest level since 1970.[10]

In adopting a risk-management approach to border security, DHS has defined its task as managing, not sealing, borders. Thus, it has rejected the idea of preventing all illegal entries as a goal because it is not an attainable outcome of border enforcement.[11]

A prominent feature of today's border enforcement is significant change in the tactics of enforcement being used along the Southwest border. The Border Patrol has steadily introduced new measures and programs to impose what it terms "consequence enforcement" on those arrested. As a result, voluntary return as the prevailing enforcement response to illegal crossing for many years is now being supplanted by a variety of actions (e.g. criminal prosecution or repatriation into the Mexican interior or at a location elsewhere along the US-Mexico border) that are more consequential, both for the migrant and for the immigration system more broadly. The objective is to increase deterrence by raising the cost — monetary, legal, and psychological — of illegal migration to migrants and smugglers alike.

7   DHS, *FY 2012 Budget in Brief* (Washington, DC: DHS, 2011): 9, www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf
8   US Border Patrol, *2012-2016 Border Patrol Strategic Plan* (Washington, DC: CBP, 2012), http://nemo.cbp.gov/obp/bp_strategic_plan.pdf.
9   The number of apprehensions in 2000 was 1,676,438, slightly lower than the historic peak of 1,692,544 in 1986; Border Patrol, "Nationwide Illegal Alien Apprehensions Fiscal Years 1925-2011," www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/25_10_app_stats.ctt/25_11_app_stats.pdf.
10 Ibid.
11 Statement of Janet Napolitano, Secretary of Homeland Security, "Press Conference with Secretary of Homeland Security Janet Napolitano; Immigration and Customs Enforcement Director John Morton; Los Angeles County, California, Sheriff Lee Baca; Harris County, Texas, Sheriff Adrian Garcia; Fairfax County, Virginia, Sheriff Stan Barry on New Immigration Enforcement Results" (briefing, Washington, DC, October 6, 2010).

Enforcement at ports of entry (POE) complements CBP's between-ports enforcement. POEs are responsible for both facilitation of legitimate trade and travel and for preventing the entry of a small but potentially deadly number of dangerous people as well as lethal goods, illicit drugs, and contraband. As border security improves and border enforcement makes illegal crossing between ports ever more difficult, the potential for misuse of legal crossing procedures increases.

POE inspections functions have been substantially strengthened, both through increased staffing and new tools, especially the US-VISIT program that provides for biometrically-based travel screening and post-9/11 secure identity document requirements for land border crossers from Mexico and Canada. However, physical infrastructure resource needs at ports of entry have not kept pace with advances in screening and documentation technologies.

In adopting a risk-management approach to border security, DHS has defined its task as managing, not sealing, borders.

At present, evidence of significant improvements in border control relies primarily on metrics regarding resource increases and reduced apprehension levels, rather than on actual deterrence measures, such as size of illegal flows, share of the flow being apprehended, or changing recidivism rates of unauthorized crossers. The ability of immigration agencies and DHS to reliably assess and persuasively communicate border enforcement effectiveness will require more sophisticated measures and analyses of enforcement outcomes.

2. *Visa Controls and Travel Screening*

Visa controls and travel screening serve as the first line of defense in many aspects of border control and a critical pillar of the immigration system. Dramatic improvements in the nation's screening systems and capabilities have been fielded since the September 11, 2001 terrorist attacks as part of strengthened border control. Visa and immigration port-of-entry officers have access to and check against cross-government data repositories for every individual they clear for entry into the United States. The result has been to increasingly "push the border out" from US territory, a long-held goal of immigration enforcement strategies.

The inherent tension between tighter screening requirements and facilitation of travel led to a dramatic drop in the numbers of nonimmigrant visas issued after 9/11. FY 2011 figures show that the overall number of nonimmigrant visas issued returned to its FY 2001 peak for the first time since 9/11.[12] There has been growth in some categories of visitor and foreign student visa issuances. However, it has been uneven across countries and regions. In general, predominantly Muslim country visa issuances have not rebounded as quickly as the worldwide levels.

The 9/11 aftermath also brought into view long-standing concerns about the Visa Waiver Program (VWP) as a potential source of vulnerability.[13] Post-9/11 imperatives

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12 US Department of State, "Nonimmigrant Visa Issuances by Visa Class and by Nationality FY1997-2011 NIV Detail Table," http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html.

13 Statement of Michael Bromwich, Inspector General, US Department of Justice, on May 5, 1999, before the House Judiciary Committee, Subcommittee on Immigration and Claims, *Nonimmigrant Visa Fraud*,

led to broad changes that have significantly tightened the program, including require-ments for VWP travelers to submit biographic information for screening in advance of boarding an airplane to the United States.[14]

Dramatic improvements in the nation's screening systems and capabilities have been fielded since the September 11, 2001 terrorist attacks.

A further layer of travel screening occurs through US-VISIT, the electronic screening system used to clear foreign-born individuals and visitors as they physically enter the United States at ports of entry. As with visa processing, the system is based on biomet-ric information that enables DHS officials to screen noncitizens, including lawful per-manent residents, against immigration, criminal, and terrorist databases. The broad-based use of biometric screening in visa and immigration processes represents among the most significant technology improvements of the post-9/11 period in immigration enforcement.

3.   *Information and Interoperability of Data Systems*

Executive-branch agencies have significantly expanded, upgraded, and integrated immi-gration, criminal, and national security screening information systems and information exchange as part of government-wide efforts to "connect the dots" in the aftermath of 9/11. New, linked data systems capabilities equip consular and immigration enforce-ment officials with essential information to carry out their immigration enforcement responsibilities.

In addition, with the breakup of INS and creation of DHS in 2003, the organizational machinery for administering the nation's immigration laws has become decentralized. Information and interoperability of data systems serve as the connective tissue tying today's immigration agencies together, and as a critical pillar of the US immigration enforcement system.

Frontline immigration officials have access to all information that the government possesses on dangerous and suspect individuals. This information is, in turn, available at each step of the immigration process (e.g. visa issuance, port-of-entry admission, and border enforcement), as well as removal, political asylum, and myriad other immigra-tion-related procedures applicable to foreign-born persons already in the United States.

US-VISIT, with its IDENT database, stores more than 148 million fingerprint files that grow by about 10 million annually.[15] IDENT is the largest law enforcement biometric da-tabase in the world. It makes vast numbers of records accessible to immigration and other authorized law enforcement officials, for use in programs such as Secure Communities.

106th Cong., 1st sess., www.justice.gov/oig/testimony/9905.htm; Jess T. Ford, US General Accounting Of-fice (GAO), *Border Security: Implications of Eliminating the Visa Waiver Program* (Washington, DC: GAO, 2002): 17, www.gao.gov/assets/240/236408.pdf.

14   DHS, "Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program," *Federal Register* 73, no. 111 (June 9, 2008): 32440 (codified at 8 C.F.R. 217).

15   Email from Robert Mocny, Director, US-VISIT, to Doris Meissner, Senior Fellow and Director, US Immigra-tion Program, Migration Policy Institute, November 29, 2012 (email on file with authors).

Immigration fingerprint records are also compatible with Federal Bureau of Investigation (FBI) criminal background records.[16] This interoperability has enabled criminal information to be readily and systematically cross-checked across government law enforcement agency databases as a routine matter. Further integration is underway with Department of Defense (DOD) biometric information, which will make the federal government's three biometric identification systems — DHS, FBI, and DOD — interoperable for immigration enforcement purposes.[17]

Although significant investments have been made in automating information and linking databases, the investments have been uneven, tilting heavily toward border security, less toward interior enforcement, and considerably less toward legal immigration processes. In addition, DHS agencies have been slow to use new information capabilities for travel facilitation and trusted traveler initiatives.

## 4.	*Workplace Enforcement*

Since 1986, employers have the obligation to verify the work eligibility of those they hire. Because of inadequate statutory mandates, however, employer compliance and enforcement have been weak and largely ineffective as tools for frustrating illegal immigration. Some employers do not comply because they see little risk in noncompliance and anticipate the likelihood of competitive advantages in hiring cheaper labor. However, for many others the primary reason has been the array of documents — many of them easy to counterfeit — permitted for meeting employer verification requirements, in the absence of a secure identifier or automated employment verification system. This requirement, popularly called "employer sanctions," is an essential pillar of immigration enforcement because of the job magnet that draws workers into the country illegally.

As a partial solution, the federal government has developed a steadily improving voluntary electronic employment verification system known as E-Verify. By FY 2011, E-Verify had processed more than 17 million queries.[18] Currently less than 10 percent of the nation's 7 million or more employers are enrolled in E-Verify. But the program has been deployed at a fast pace and is becoming more widely accepted. In addition, E-Verify is now required in varying degrees by 19 states.[19]

Government program evaluations report that DHS has made substantial progress in addressing error rates, a serious deficiency in the program's early years. DHS reduced the percentage of E-Verify cases receiving tentative nonconfirmation notices from 8 percent between 2004 and 2007, to 2.6 percent in 2009.[20]

DHS has also changed worksite enforcement strategies dramatically. It has shifted to targeting employers for their hiring practices, which was the goal of the sanctions provisions of IRCA, rather than mounting large-scale raids and arrests of unauthorized workers. Since January 2009, ICE has audited more than 8,079 employers, debarred 726 companies and individuals, and imposed more than $87.9 million in monetary fines for

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16	DHS, *IDENT, IAFIS Interoperability* (Washington, DC: DHS, 2005), www.dhs.gov/xlibrary/assets/foia/US-VISIT_IDENT-IAFISReport.pdf.

17	US-VISIT, 8th Anniversary Briefing, January 5, 2012. Notes on file with authors; DHS, *IDENT, IAFIS Interoperability*.

18	USCIS, "E-Verify History and Milestones," www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a-3e5b9ac89243c6a7543f6d1a/?vgnextoid=84979589cdb76210VgnVCM100000b92ca60aRCRD&vgnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD.

19	ImmigrationWorksUSA, "At a Glance: State E-Verify Laws," July 2012, http://www.immigrationworksusa.org/index.php?p=110.

20	Richard M. Stana, *Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, But Significant Challenges Remain* (Washington, DC: Government Accountability Office, 2010): 16, www.gao.gov/new.items/d11146.pdf.

violating employer sanctions laws.[21]

5. *The Intersection of the Criminal Justice System and Immigration Enforcement*

One of the most important and potent developments of the last two decades has been the interplay between immigration enforcement and the criminal justice system. The growing interconnectedness, combined with increased resources, congressionally mandated priorities, and broad programs for federal-state-local cooperation are responsible for placing ever larger numbers of removable noncitizens — both unauthorized and authorized — in the pipeline for removal.

Over the last decade, the number of criminal prosecutions for immigration-related violations has grown at an unprecedented rate. Today more than half of all federal criminal prosecutions are brought for immigration-related crimes.[22] (See Appendix B.) The two most heavily prosecuted immigration crimes by US attorneys have been illegal entry (a misdemeanor) and illegal re-entry following removal (a felony).[23] The spike in immigration-related prosecutions can be partly credited to Operation Streamline, a Border Patrol initiative that seeks to deter illegal migration by prosecuting unauthorized border crossers instead of engaging in the traditional practice of granting voluntary return.

> *One of the most important and potent developments*
> *of the last two decades has been the interplay between*
> *immigration enforcement and the criminal justice system.*

Equally important has been a series of enforcement programs targeting the removal of noncitizens arrested or convicted of a criminal offense. These programs include the Criminal Alien Program (CAP), the 287(g) program, the National Fugitive Operations Program (NFOP), and the Secure Communities program. The 287(g) and Secure Communities programs reflect the growing involvement of state and local law enforcement as an extension of federal immigration enforcement. Authorization for such involvement dates back to 1996 statutory changes, but grew rapidly in the post-9/11 environment.

Between FY 2004-11, funding for these programs increased from $23 million to $690 million.[24] They have led to substantial increases in both the overall number of removals, and in the proportion of removals of unauthorized immigrants with criminal convictions. In FY 2011, almost 50 percent of those removed by DHS had criminal convictions.[25]

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21 Testimony of Janet Napolitano, Homeland Security Secretary, before the House Committee on the Judiciary, *Oversight of the Department of Homeland Security*, 112th Cong., 2nd sess., July 17, 2012, www.dhs. gov/news/2012/07/17/written-testimony-dhs-secretary-janet-napolitano-house-committee-judiciary-hearing.

22 Transactional Records Access Clearinghouse (TRAC), "Going Deeper" tool, "Federal Criminal Enforcement, FY 2011," http://tracfed.syr.edu/; (noting that out of 162,997 total federal prosecutions filed in FY 2011, 82,250 were for immigration-related offenses).

23 TRAC, "Going Deeper" tool, "Immigration Prosecutions for 2011," http://tracfed.syr.edu/.

24 Marc R. Rosenblum and William A. Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens* (Washington, DC: Congressional Research Service, 2011): 1, http://digital.library.unt.edu/ark:/67531/metadc83991/m1/1/high_res_d/R42057_2011Oct21.pdf.

25 DHS, *Immigration Enforcement Actions 2011* (Washington, DC: DHS, 2012), www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf.

The expanded use of criminal prosecution and state and local law enforcement programs have drawn heavy criticism from immigrant- and civil-rights advocates and from many law enforcement professionals. ICE has updated and elaborated its enforcement priorities in an effort to ensure that these programs meet their stated goals of identifying and removing dangerous criminal aliens and threats to national security, as opposed to ordinary status violators.

Today more than half of all federal criminal prosecutions are brought for immigration-related crimes.

6.   *Detention and Removal of Noncitizens*

Substantial expansion of detention capabilities to support removal outcomes and the adjudication of cases subject to removal make up the sixth pillar of the immigration enforcement system. As removal of noncitizens has accelerated, two trends have become evident: an increase in the removal of criminal aliens and extensive use of administrative (versus judicial) orders to effect removals.

Beginning in the 1990s and continuing today, the removal of criminal aliens — a broad group that includes both authorized and unauthorized noncitizens who have committed crimes that make them removable — has been a high priority.[26] The result has been an increase in the relative proportion of noncitizens in removal proceedings with criminal records. In FY 2011, DHS removed 391,953 noncitizens, 48 percent of whom (188,382) had criminal convictions.[27] This continues an upward trend, rising from 27 percent in FY 2008[28] to 33 percent in FY 2009,[29] and 44 percent in FY 2010.[30]

ICE manages a large, complex and sprawling detention system that holds a highly diverse population in a number of types of facilities.[31] A significantly larger number of individuals are detained each year in the immigration detention system than are serving sentences in federal Bureau of Prisons facilities for all other federal crimes.[32]

26   Testimony of David Venturella, Executive Director of Secure Communities, before the House Appropriations Committee, Subcommittee on Homeland Security, *Priorities Enforcing Immigration Law*, 111th Cong., 1st sess., April 2, 2009, www.aila.org/content/fileviewer.aspx?docid=28622&linkid=200232. ("Secretary Napolitano has made the identification and removal of criminal aliens a top priority for ICE.")
27   DHS, *Immigration Enforcement Actions: 2011*, 6.
28   DHS, *Immigration Enforcement Actions: 2008* (Washington, DC: DHS, 2010): 4, www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_08.pdf.
29   DHS, *Immigration Enforcement Actions: 2009* (Washington, DC: DHS, 2010): 4, www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_2009.pdf.
30   DHS, *Immigration Enforcement Actions: 2010* (Washington, DC: DHS, 2011): 4, www.dhs.gov/immigration-enforcement-actions-2010.
31   Donald Kerwin and Serena Yi-Ying Lin, *Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities?* (Washington, DC: Migration Policy Institute, 2009), www.migrationpolicy.org/pubs/detentionreportSept1009.pdf.
32   The federal prison system is fundamentally different than immigration detention in that it incarcerates individuals serving sentences for committing federal crimes. Nonetheless, the relative size of each system illustrates the challenges of scale embedded in ICE's mission. There were 209,771 prisoners under the jurisdiction of federal correctional authorities as of December 31, 2010. In contrast, ICE detained 363,064 individuals that year, and 429,247 in 2011; Paul Guerino, Paige M. Harrison, and William J. Sabol, *Prisoners in 2010* (Washington, DC: DOJ, Bureau of Justice Statistics, 2012), http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf; ICE, "ERO Facts and Statistics," December 12, 2011, www.ice.gov/doclib/foia/reports/ero-

ICE's considerable detention management challenges have been complicated by rapid growth in the numbers of those removable, and by laws that mandate the detention of some categories of noncitizens, even when they do not represent a danger or flight risk. In addition, ICE treats even its most restrictive alternative-to-detention (ATD) programs as "alternatives to" rather than "alternative forms of" detention.

Detention reform — particularly designing and implementing a civil detention system — has been a goal of the current administration. Accordingly, ICE has made a series of policy changes in the detention system. They include opening the first "civil" detention center, a facility designed for 600 low-security male detainees with a less restrictive environment than penal detention.

The demands on the immigration court system have grown enormously.

Like the detention system, the demands on the immigration court system have grown enormously. The ratio of immigration proceedings completed to the number of full-time immigration judges rose from fewer than 400 per judge during the years 2000-03 to more than 600 per judge in 2008 and 2009.[33] Even with the increased workload for immigration judges, court backlogs have risen and delays increased, sometimes to more than two years.

To reduce the immigration court backlog and ensure that immigration enforcement resources are being used primarily to remove noncitizens who pose a public safety or national security threat, DHS began implementing a new prosecutorial discretion policy in 2011.[34] ICE officers have been advised not to place an unauthorized immigrant in removal proceedings or pursue a final order of removal if that person has been deemed ''low priority."

A preliminary analysis of this prosecutorial discretion policy has found that immigration courts have issued fewer removal orders, and roughly 1,801 cases have been administratively closed pursuant to the policy.[35] Nonetheless, the backlog in cases pending before the immigration courts has increased, and as of March 2012 stood at a record 305,556 cases.[36]

facts-and-statistics.pdf.

33 National Research Council of the National Academies, *Budgeting for Immigration Enforcement: A Path to Better Performance* (Washington, DC: National Research Council of the National Academies, 2011): 51.

34 ICE, Memorandum Re: Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011), www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf.

35 TRAC, *Historic Drop in Deportation Orders Continues as Immigration Court Backlog Increases* (Syracuse, NY: TRAC, April 24, 2012), http://trac.syr.edu/immigration/reports/279/.

36 TRAC, *ICE Prosecutorial Discretion Initiative: Latest Figures* (Syracuse, NY: TRAC, April 19, 2012), http://trac.syr.edu/immigration/reports/278/.
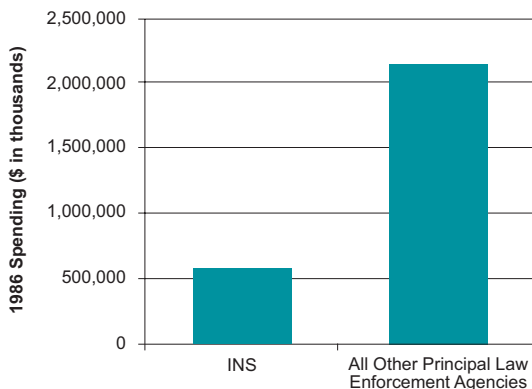
II.   Findings

In all, the full report makes 52 findings (see Appendix A for the complete listing). The report paints a picture of a wide-reaching, multi-layered network of discrete programs that reside within an interrelated system that has not before been described in its totality. It is a system that is unique in both scope and character as a federal law enforcement endeavor. However, to place that totality into context, some of the findings make comparisons with federal criminal law enforcement system metrics. That is because immigration enforcement increasingly embodies enforcement authorities, methods, and penalties that are akin to criminal enforcement, even though immigration is statutorily rooted in civil law.

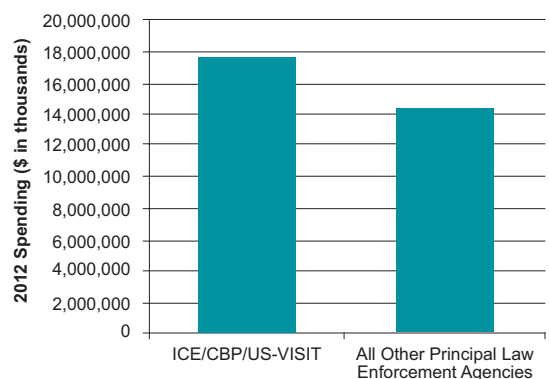Perhaps the most important of the report's findings:

The US government spends more on its immigration enforcement agencies than on all its other principal criminal federal law enforcement agencies combined. In FY 2012, spending for CBP, ICE, and US-VISIT reached nearly $18 billion. This amount exceeds by approximately 24 percent total spending for the FBI, Drug Enforcement Administration (DEA), Secret Service, US Marshals Service, and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), which stood at $14.4 billion in FY 2012.[37]

Figure 2. Spending for Immigration Enforcement Compared to All Other Principal Law Enforcement Agencies, FY 1986 and FY 2012

Notes: The principal federal law enforcement agencies listed here outside the immigration arena are the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Secret Service, US Marshals Service, and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).
Sources: DOJ, "Budget Trend Data, 1975 Through President's 2003 Request to Congress," www.justice.gov/archive/jmd/1975_2002/btd02tocpg.htm; DHS, *Budget in Brief, FY 2013*, "Total Budget Authority by Organization;" DOJ, "FY 2013, Summary of Budget Authority by Appropriation," www.justice.gov/jmd/2013summary/pdf/budget-authority-appropriation.pdf.

Judging by resource levels, case volumes, and enforcement actions, which represent the only publicly available comprehensive measures of the performance of the system, immigration enforcement can thus be seen to rank as the federal government's highest criminal law enforcement priority.

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37   DOJ, "Summary of Budget Authority by Appropriation," accessed November 11, 2012, www.justice.gov/jmd/2013summary/pdf/budget-authority-appropriation.pdf; DHS, *FY 2013 Budget in Brief*, 25.

Among the report's other key findings:

- **Border Patrol staffing, technology, and infrastructure have reached historic highs, while levels of apprehensions have fallen to historic lows.** Today, there is no net new illegal immigration from Mexico for the first time in 40 years. Between FY 2000-11, Border Patrol apprehensions fell from a peak of more than 1.6 million to 340,252, or one-fifth of the 2000 high point. The drop has been 53 percent since just FY 2008.[38]

- **While enforcement between border ports has improved dramatically, enforcement at land ports of entry is a growing border control challenge.** The gap in the numbers apprehended between ports and those denied admission at ports of entry is narrowing. At the FY 2000 peak, between-port apprehensions were nearly three times the 559,000 found to be inadmissible at ports of entry.[39] By FY 2011, between-port apprehensions were only 1.5 times the number denied admission at ports of entry.[40] The gap is likely to narrow further as illegal crossing between ports becomes more difficult and fewer unauthorized entries occur. Despite significant advances, land ports have not experienced improvements on par with between-ports enforcement. The lag is especially evident when it comes to the physical infrastructure needs that are necessary to fully utilize important new technologies such as secure, biometric border-crossing documents and US-VISIT screening.

- **DHS border enforcement data under-report total immigration border enforcement activity.** DHS figures — which are widely used to gauge border enforcement and deterrence — tally the numbers apprehended between ports by the Border Patrol, and those who are found inadmissible by inspections officers at ports of entry. The DHS figures do not include the significant numbers of individuals who arrive at ports of entry but ultimately withdraw their applications for admission because they have been found inadmissible, sometimes for technical reasons. Nevertheless, such actions represent enforcement decisions that add to the scope of border enforcement that is actually taking place.

- **As border enforcement between ports of entry becomes ever more effective, an increasing share of the unauthorized population is likely to be comprised of those who have been admitted properly through ports of entry and overstay their visas.** As a result, the relative share of the unauthorized population from countries other than Mexico and Central America will likely increase beyond the current estimates that 40 to 50 percent of unauthorized immigrants overstayed their visas.[41]

- **Protocols that rely on comprehensive information and interoperability of data systems are now embedded in virtually all critical immigration processes and agency practices.** Today, noncitizens are screened at more intervals, against more databases, which contain more detailed data, than ever before. Thus, when immigration officials do routine name checks, they are able to learn whether an individual re-entering the country or under arrest was, for example, previously deported, has an outstanding arrest warrant, or was convicted of a crime that would make him or her subject to immigration enforcement actions.

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38   US Border Patrol, "Nationwide Illegal Alien Apprehensions Fiscal Years 1925-2011."
39   INS, *Yearbook of Immigration Statistics, FY 2000* (Washington, DC: INS, 2002): 234, 242, www.dhs.gov/xlibrary/assets/statistics/yearbook/2000/Yearbook2000.pdf.
40   DHS, *Immigration Enforcement Actions: 2011*, 1.
41   Pew Hispanic Center, *Modes of Entry for the Unauthorized Migrant Population* (Washington, DC: Pew Hispanic Center, 2006), www.pewhispanic.org/2006/05/22/modes-of-entry-for-the-unauthorized-migrant-population/.

- **CBP and ICE together refer more cases for prosecution than all Department of Justice (DOJ) law enforcement agencies combined,** including the FBI, DEA, and ATF. CBP alone refers more cases for prosecution than the FBI.[42]

- **Over 50 crimes categorized as aggravated felonies carry the automatic consequence of removal.** State-level prosecutions of these crimes have placed an unprecedented number of noncitizens into immigration removal proceedings. In addition, programs involving federal, state, and local law enforcement agency cooperation have become major new forces in identifying such cases and apprehending immigration violators. Between FY 2006-11, the number of Notices to Appear (NTAs) issued through the Criminal Alien Program (CAP) rose from 67,850 to 212,744.[43] In FY 2010, the 287(g) program screened 46,467 noncitizens identified for removal.[44] The same year, ICE reported issuing 111,093 detainers through Secure Communities,[45] a rapid increase from the 20,074 detainers it reported in FY 2009.[46]

- **Since 1990, more than 4 million noncitizens, primarily unauthorized immigrants, have been deported from the United States.** Removals have increased dramatically in recent years — from 30,039 in FY 1990, to 188,467 in FY 2000, and a record 391,953 in FY 2011.[47] The groundwork for this level of removals was laid over many years of congressional mandates, increased detention funding, administrative actions, and improved data systems.

- **Fewer than half of the noncitizens who are removed from the United States are removed following hearings and pursuant to formal removal orders from immigration judges.** DHS has made aggressive use of its administrative authority, when removals without judicial involvement are permitted. In FY 2011, immigration judges issued 161,354 orders of removal, whereas DHS carried out 391,953 removals.[48] (See Appendix C.)

- **The average daily population of noncitizens detained by ICE increased nearly five-fold between FY 1995-11 — from 7,475 to 33,330.** (See Appendix D.) Over the same period, the annual total number of ICE detainees increased from 85,730 to 429,247.[49] Although immigration detention is unique, in that its purpose is to ensure appearances in administrative law proceedings, not to serve criminal law sentences, a significantly larger number of individuals are detained each year in the immigration detention system than are serving sentences in federal Bureau of Prisons facilities for all other federal crimes.

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42 TRAC, "Going Deeper" tool, "Prosecutions for 2011," http://tracfed.syr.edu/.

43 ICE, "ERO Facts and Statistics." ICE, *Second Congressional Status Report Covering the Fourth Quarter Fiscal Year 2008 for Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens* (Washington, DC: DHS, 2008): 2, www.ice.gov/doclib/foia/secure_communities/congressionalstatusreportfy084thquarter.pdf (noting that 67,850 detainers were issued as a result of CAP in FY 2006).

44 Rosenblum and Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, 24.

45 ICE, *IDENT/IAFIS Interoperability Statistics* (Washington, DC: ICE, 2011): 2, www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-feb28.pdf.

46 ICE, "Secure Communities Presentation," January 13, 2010, www.ice.gov/doclib/foia/secure_communities/securecommunitiespresentations.pdf.

47 DHS, *Immigration Enforcement Actions: 2011*, 5

48 Ibid; DOJ, Executive Office for Immigration Review, *FY 2011 Statistical Yearbook* (Falls Church, VA: EOIR, 2012): D2, www.justice.gov/eoir/statspub/fy11syb.pdf.

49 ICE, "ERO Facts and Statistics."

III.   Conclusions

This report depicts an historic transformation of immigration enforcement and the emergence of a complex, modernized, cross-governmental immigration enforcement system that projects beyond the nation's borders and at the same time reaches into local jails and courtrooms across the United States to generate an unparalleled degree of enforcement activity. The system's six pillars have been resourced at unprecedented levels and a panoply of enforcement mandates and programs have been implemented that demonstrate the federal government's ability and will to enforce the nation's immigration laws.

Beginning in the 1990s and intensified since 9/11, Congress, successive administrations, and the public have supported building a muscular immigration enforcement infrastructure within which immigration agencies now define their goals and missions principally in terms of national security and public safety. Immigration enforcement has been granted new standing as a key tool in the nation's counterterrorism strategies, irrevocably altering immigration policies and practices in the process.

From the standpoint of resource allocations, case volumes, and enforcement actions, which represent the only publicly available measures of the system's performance, immigration enforcement can be seen to rank as the federal government's highest criminal law enforcement priority. Those measures tell a dramatic story:

- Current spending for the core immigration enforcement agencies — US Customs and Border Protection (CBP) and US Immigration and Customs Enforcement (ICE) — and the US-VISIT program exceeds that of *all* the other principal federal criminal law enforcement agencies combined.

- In US-VISIT, the United States has built the world's largest law enforcement biometric identity-verification and admissions screening system.

- More than half of all federal court criminal prosecutions are brought for immigration-related crimes.

- CBP alone refers more cases for prosecution than the FBI. CBP and ICE together refer more cases for prosecution than *all* of the Department of Justice (DOJ) law enforcement agencies combined, including the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

- A significantly larger number of individuals are detained each year in the immigration detention system than are serving sentences in federal Bureau of Prisons facilities for *all federal crimes combined*.

- Federal enforcement initiatives and federal-state-local enforcement cooperation have generated rates of removals of noncitizens that are at an all-time high.

- More removals are carried out through administrative orders than by orders issued by immigration judges.

These and other findings tell a story of aggressive enforcement of immigration laws at the borders and in the nation's interior, and of immigration agencies that are utilizing wide-ranging statutory and procedural authorities. Moreover, immigration enforcement is increasingly going global through international agreements, unprecedented cross-border cooperation with Mexico and Canada, and special initiatives that combat transnational crime. Dramatic growth, advanced technology, and new programs have

cohered to constitute a transformed immigration enforcement system that increasingly implicates foreign relations, national security, counterterrorism, trade, labor standards, states' rights, criminal justice, and civil-rights policy realms.

The effects of these new enforcement developments have been magnified by their convergence with statutory changes enacted in 1996 that made retroactive and substantially broadened the list of crimes — including some relatively minor crimes — for which noncitizens (not just unauthorized immigrants) are subject to deportation. These laws placed powerful tools — including authority to engage state and local law enforcement officials in immigration enforcement — in the hands of enforcement officials. Such tools have further extended the impact of dramatic growth in resources.

The nation has built a formidable immigration enforcement machinery.

The worst US recession since the Depression has played an important role in altering decades-long patterns of illegal immigration. Historic changes in Mexico, including significantly lower fertility rates, fewer younger workers entering the labor force, steady economic growth, and the rise of a middle class are changing migration push factors. The numbers leaving Mexico fell by more than two-thirds since the mid-2000s.[50] However, strengthened border and interior enforcement and deterrence have also become important elements in the combination of factors that explain dramatic changes in illegal immigration patterns.

The nation has built a formidable immigration enforcement machinery. The "enforcement-first" policy that has been advocated by many in Congress and the public as a precondition for considering broader immigration reform has *de facto* become the nation's singular immigration policy.

Looking ahead, deep reductions in federal spending are likely, and immigration agencies could be facing straight-line funding or cuts for the first time in nearly 20 years. In the face of these new fiscal realities, DHS and Congress will be forced to look at immigration enforcement return on investment through a more strategic lens. A sharp focus on impact and deterrence — not simply growth in resources — is all but inevitable. Yet few meaningful measures have been developed to assess results and impact from the very significant immigration enforcement expenditures — nearly $187 billion — the country has made since 1986.

How much is needed and where? What is the relative cost-effectiveness among various enforcement strategies? And at what point does the infusion of additional resources lead to dwindling returns or unnecessarily impact other national interests and values?

Today, the facts on the ground no longer support assertions of mounting illegal immigration and demands for building an ever-larger law enforcement bulwark to combat it. Border Patrol apprehensions fell to a 40-year low in FY 2011,[51] bringing the net growth

50 Mark Stevenson, "Mexico Census: Fewer Migrating, Many Returning," *The Washington Post*, March 3, 2011, www.washingtonpost.com/wp-dyn/content/article/2011/03/03/AR2011030303965.html; Institutuo Nacional de Estadística y Geografía (INEGI), "Tasas Brutas de Migración Internacional al Cuarto Trimestre de 2010," (press release, March 17, 2011), www.inegi.org.mx/inegi/contenidos/espanol/prensa/Boletines/Boletin/Comunicados/Especiales/2011/Marzo/comunica32.pdf.

51 Jeffrey Passel, D'Vera Cohn, and Ana Gonzalez-Barrera, *Net Migration from Mexico Falls to Zero—and*

of the resident unauthorized population, which had been increasing at a rate of about 525,000 annually, to a standstill. Economic and demographic forecasts suggest that the changed conditions will persist, with continuing high unemployment in the United States and sluggish economic growth that is unlikely to generate millions of low-wage jobs in the near term that attracted large numbers of young, foreign-born, unauthorized workers in prior years.

The bulwark is fundamentally in place. Its six pillars represent a durable, institutionalized, machinery that is responding to rule-of-law and enforcement-first concerns. The system is imperfect and would benefit from recalibration in many dimensions of its work — from investment in land port-of-entry infrastructure, to shoring up immigration courts and procedures, to systematic evaluation and impact measurement overall. Nonetheless, a fundamentally new, high-performing immigration enforcement system has been built that ranks as the federal government's most extensive and costly law enforcement end is time.

Nevertheless, even with record-setting expenditures and the full use of a wide array of statutory and administrative tools, enforcement alone is not sufficient to answer the broad challenges that immigration — illegal and legal — pose for society and for America's future. At this juncture, answering those challenges depends not only on effective enforcement, but also on enforceable laws that both address inherent weaknesses in the enforcement system — such as employer enforcement — and that better rationalize immigration policy to align with the nation's economic and labor market needs and future growth and well-being.

Today, the facts on the ground no longer support assertions of mounting illegal immigration and demands for building an ever-larger law enforcement bulwark to combat it.

Meeting those needs cannot be accomplished through more enforcement, regardless of how well it is carried out or how much added spending is authorized. Successive administrations and Congresses have accomplished what proponents of "enforcement first" sought as a precondition for reform of the nation's immigration policies. The formidable enforcement machinery that has been built can serve the national interest well if it now also provides a platform from which to address broader immigration policy changes suited to the larger needs and challenges that immigration represents for the United States in the 21st century.

To read the full report, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery,* visit:

www.migrationpolicy.org/pubs/enforcementpillars.pdf

Perhaps Less (Washington, DC: Pew Hispanic Center, 2012), www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/.

Appendices

Appendix A.   The 52 Findings in the Full Report by Pillar of Enforcement

⚙ Border Enforcement

1. The US government spends more on its immigration enforcement agencies than on all its other principal criminal federal law enforcement agencies ***combined.*** In FY 2012, spending for the primary immigration enforcement agencies — US Customs and Border Protection (CBP) and US Immigration and Customs Enforcement (ICE) — and for US-VISIT, reached nearly $18 billion. This amount exceeds the total spending level of $14.4 billion for the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Secret Service, US Marshals Service, and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) combined by approximately 24 percent.

2. With inflation, the spending level for immigration enforcement agencies today represents 15 times the spending for the US Immigration and Naturalization Service (INS) in 1986, when the current era of immigration enforcement began.

3. Border enforcement has seen the largest budget increases. Between FY 2005-12, CBP's budget rose by approximately 85 percent, from $6.3 billion to $11.7 billion in absolute dollars. CBP funding is greater than that for ***all*** the other immigration enforcement and benefits agencies combined.

4. CBP staffing levels have increased dramatically. The largest share has gone to the Border Patrol, which has doubled in the past eight years — from 10,819 agents in FY 2004 to 21,370 in FY 2012. Between FY 2004-11, overall CBP staffing grew approximately 50 percent, from 41,001 personnel to 61,354. That staffing includes growth for air, land, and sea ports of entry, which increased from 18,762 in FY 2010 to 23,643 in FY 2012. Among the increases: 2,237 Border Patrol agents were assigned to the US-Canada border in FY 2011, a 560 percent hike in staffing since 9/11.

5. The ICE budget increased nearly 87 percent, from $3.1 billion to $5.9 billion between FY 2005-12. ICE growth has been particularly rapid for its detention and removal functions. Between FY 2006-12, Congress funded increases in bed space to hold a daily detainee population rising from 27,500 to 34,000.

6. Border Patrol staffing, technology, and infrastructure have reached historic highs, while levels of apprehensions have fallen to historic lows. Today, there is no net new illegal immigration from Mexico for the first time in 40 years. Between FY 2000-11, Border Patrol apprehensions fell from a peak of more than 1.6 million to 340,252, or one-fifth of the 2000 high point. The drop has been 53 percent since just FY 2008.

7. While Border Patrol apprehensions since 2000 have dropped significantly, the drop has been uneven across Border Patrol sectors. The decline has been most dramatic in three sectors: Yuma, AZ (96 percent decrease between 2005-11), El Paso, TX (92 percent drop), and Del Rio, TX (76 percent decline). However, even the Tucson sector, which has had disproportionately high numbers of apprehensions, has experienced a 72 percent drop since 2005, thus becoming increasingly closely aligned with border-wide decreases.

8. The share of repeat border crossers among those apprehended has declined from a peak of 28 percent in FY 2007 to 20 percent in FY 2011. Furthermore, the 340,252 apprehensions made by the Border Patrol in 2011 involved just 269,000 unique individuals. The narrowing of the numerical gap between unique individuals arrested and overall apprehensions points to a decline in repeat border crossings since 2007.

9. Border Patrol enforcement practices that historically relied heavily on voluntary returns have been supplanted by a policy of enforcement actions that have more severe consequences for those arrested. Termed "consequence enforcement," the new policy aims to break smuggling cycles and networks by separating migrants from smugglers. The objective is to increase deterrence by raising the cost — monetary, legal, and

psychological — of illegal migration to both migrants and smugglers. The Border Patrol began implementing the policy border-wide during 2012.

10. The fullest use of consequence enforcement has been in the Tucson sector. Historically, 90 percent of those apprehended there received voluntary return. Today, 90 percent are subject to consequence enforcement. The only exceptions are humanitarian cases.

11. The Southwest border enforcement build-up has led to increasing numbers of deaths among border crossers. Although the death rate fell to an average of 360 deaths per year during 2010-11, from the peak average of approximately 431 during 2005-09, the ratio of deaths to apprehensions is at its highest level since formal counting began in the 1990s.

12. The security features of land border-crossing documents, including the border cross-ing card (BCC) used on the Southwest border, and Western Hemisphere Travel Initiative (WHTI)-compliant enhanced driver's licenses and passport cards, are comparable to the sophistication of "green" cards. They are required of all land border crossers, as are visas and passports at air and sea ports.

13. While enforcement between border ports has improved dramatically, enforcement at land ports of entry is a growing challenge. The gap in the numbers apprehended between ports and those denied admission at ports of entry is narrowing. At the FY 2000 peak, between-port apprehensions were nearly three times the 550,000 found to be inadmis-sible at ports of entry. By FY 2011, between-port apprehensions were only 1.5 times the number denied admission at ports of entry. The gap is likely to narrow further as illegal crossing between ports is increasingly difficult and fewer crossings occur. Despite sig-nificant advances, land ports have not experienced improvements on par with between-ports enforcement. The lag is especially evident in meeting physical infrastructure needs required to fully utilize important new technologies, such as secure, biometric border crossing documents and US-VISIT screening.

14. Department of Homeland Security (DHS) border enforcement data under-report total immigration border enforcement activity. DHS figures — which are widely used to gauge border enforcement and deterrence — tally the numbers apprehended between ports by the Border Patrol, and those that are found "inadmissible" by inspections officers at ports of entry. The DHS figures do not include the significant numbers of individuals who ar-rive at ports of entry but ultimately withdraw their applications for admission, often for technical reasons. Nevertheless, such actions represent enforcement decisions that add to the scope of border enforcement that is actually taking place.

15. As border enforcement between ports of entry has become more effective, an increas-ing share of the unauthorized population is likely to be comprised of those who have been admitted properly through ports of entry and overstay their visas. Thus, the rela-tive share of the unauthorized population from countries other than Mexico and Central America will likely increase.

⚙ Visa Controls and Travel Screening

16. Visa controls and travel screening have been dramatically strengthened in the past de-cade. Visa issuance is now informed by government-wide watch lists, traveler databases, and national security intelligence information. In addition to consular screening, DHS plays an active role in vetting visa applications abroad. The ICE Office of Investigations' Visa Security Program operates in 19 "high-risk" locations in 15 countries. Strengthened visa procedures and further screening at ports of entry through the US-VISIT program are key elements of a layered defense against terrorists, transnational criminals, and other persons who pose a risk to the United States.

17. The Visa Waiver Program (VWP) has been fortified with security screening procedures to check against its being a weak link in the process of admission to the United States. VWP travelers are cleared through the Electronic System for Travel Authorization (ESTA), a new requirement for VWP that screens against terrorist watch lists and other standard visa-processing databases.

18. US-VISIT, the post-9/11 biometric fingerprint system, has proven to be an effective tool in strengthening travel screening and border controls once noncitizens arrive at US ports of entry. US-VISIT screens all foreign-born travelers at air and sea ports of entry, which are the most likely points of access for international terrorists. Since 2009, the program has also become operational in secondary inspection procedures at most land ports of entry.

19. International data-sharing agreements between the United States and foreign countries are increasingly being used as a tool for screening and identifying travelers. Under the Five Country Conference High Value Data-Sharing Protocol, the United States, Australia, Canada, New Zealand, and the United Kingdom each exchange and annually compare a specified number of biometric records on travelers deemed to be high-value subjects. Such measures exemplify a key policy goal, which is to "push the border out" by preventing those who pose threats from ever reaching US territory.

20. Travel to the United States for business, study, tourism, and other reasons plummeted after 9/11 due to new security and screening requirements. Overall, nonimmigrant visa issuances, which reached a peak in FY 2001, have returned to those levels for the first time since 9/11. The number of nonimmigrant visas issued in FY 2011 (7,507,939) is essentially on par with the 7,588,778 issued in FY 2001. The numbers suggest that balance between security and openness to legitimate travel and trade is being regained. Yet there is considerable variation in the issuances of nonimmigrant visas among different countries and visa categories, especially for predominantly Muslim countries.

21. By 2008, both the number of B1/B2 tourist and F1 student visas issued had returned to their pre-9/11 levels. In 2011, the number of B1/B2 visas issued overall was roughly 23 percent higher than in 2001. However, the number of B1/B2 tourist visas granted to individuals from the 24 predominantly Muslim countries designated for the post-9/11 National Security Entry-Exit Registration System (NSEERS) registration program was 11 percent lower in 2011 than in 2001.

22. From FY 2001 to FY 2011, the number of student visas issued for nationals of all countries grew by 53 percent. Almost 35 percent of these visa issuances are to students from China. During the same period, the number of student visas granted to nationals of predominantly Muslim/NSEERS countries increased by a surprising 82 percent. The increase has been driven by student visas issued to nationals of Saudi Arabia, who account for 64 percent of F visas for predominantly Muslim countries. Saudi Arabia is the third largest source country of foreign students who come to the United States, after China and South Korea.

23. While the overall number of visas issued to foreign nationals has rebounded, the United States has lost ground in the share of global travel, which has greatly increased in the past decade. Stringent visa and travel screening requirements may play a role in this shift. However, broad market and competitive forces are also powerful drivers of the change.

⚙ Information and Interoperability of Data Systems

24. US-VISIT and its IDENT electronic fingerprint database rank as the largest law enforcement biometric identity-verification system in the world. The system stores 148 million records that grow by about 10 million per year. More than 2 billion records have been entered since US-VISIT was launched.

25. Protocols that rely on comprehensive information and interoperability of data systems are now embedded in virtually all critical immigration processes and agency practices. Today, noncitizens are screened at more times, against more databases, which contain more detailed data, than ever before. Thus, when immigration officials do routine name checks, they are able to learn whether an individual re-entering the country or under arrest was, for example, previously removed, has an outstanding warrant of arrest, or was convicted of a crime that would make him/her subject to immigration enforcement actions.

26. The integration of IDENT and the FBI's Integrated Automated Fingerprint Identification System (IAFIS) data systems has been a critical development in harnessing the full scope of the federal government's sources of information for immigration enforcement uses. Today, frontline immigration officers at different levels of government, performing the full range of immigration functions, have access to IDENT, which then provides access to the IAFIS criminal histories of 70 million persons and 73,000 known or suspected terrorists. These new data capabilities reach well beyond their original counterterrorism and national security imperatives. They have enabled immigration agencies to advance conventional immigration enforcement goals through significantly expanded cooperative arrangements with states and localities in programs such as the Criminal Alien Program (CAP), Secure Communities, and 287(g).

27. US-VISIT is working with the Department of Defense (DOD) to establish interoperability with DOD's biometric database, which contains the fingerprints of foreign nationals encountered in antiterrorism, combat, and other operations. With this integration, the three core biometric databases of the US government — those administered by the FBI, DOD, and DHS — would be interoperable and accessible for immigration enforcement purposes.

⚙ Workplace Enforcement

28. Though voluntary, E-Verify is being deployed at a fast pace in US workplaces and is becoming more widely accepted. As of April 2012, more than 353,000 employers were enrolled in the program. In FY 2011, E-Verify processed more than 17.4 million queries. Even with this increase in enrollment, the program still covers less than 10 percent of all US employers. Were it to become a universal requirement, the program would have to reach more than 7 million employers, 154.6 million workers, and process more than 44 million hiring decisions each year.

29. Seventeen states have enacted separate E-Verify laws that require all or some categories of employers to participate in the program. Implementation of the *Legal Arizona Workers Act*, the first state statute that mandated participation by all employers, has led to a growth in the underground economy and decreased wages for unauthorized workers. Despite the mandate, just 71.9 percent of firms in Arizona are enrolled in E-Verify.

30. ICE has shifted its employer enforcement strategy from worksite raids that focus on persons working illegally to audits of unlawful hiring violations by employers. Between FY 2008-09, the number of administrative arrests by ICE during worksite enforcement operations fell from 5,184 to 1,647. The number of criminal arrests also declined, from 1,103 to 444. In 2008, ICE conducted 503 I-9 audits and debarred one employer from federal contracts. In comparison, since January 2009, ICE has audited more than 8,079 employers, debarred 726 companies, and imposed more than $87.9 million in monetary fines for violating employer sanctions laws.

⚙ The Intersection of the Criminal Justice System and Immigration Enforcement

31. Immigration enforcement is playing an increasingly dominant role in the federal criminal justice system. Between FY 2001-09, prosecutions for immigration-related crimes rose more than fivefold, from 16,310 to 91,899. Immigration crimes accounted for 17 to 20 percent of total federal prosecutions in FY 2000-03. By FY 2008-11, they represented more than 50 percent of federal prosecutions. Illegal entry (a misdemeanor) and illegal re-entry following removal (a felony) comprise more than 90 percent of such prosecutions.

32. Among federal law enforcement agencies, CBP alone refers more cases for prosecution in federal courts than the FBI. CBP and ICE together refer more cases for prosecution than all of the DOJ law enforcement agencies combined, including FBI, DEA, and ATF.

33. Among immigration agencies, CBP refers more cases for criminal prosecution than ICE. In FY 2011, CBP referred 67,112 immigration cases, while ICE referred 13,007.

34. Since its implementation in 2008, Operation Streamline has been a key driver of increased immigration prosecutions. The five federal districts along the US-Mexico border, which are home to less than 10 percent of the US population, now account for nearly half of all federal felony prosecutions.

35. Over 50 crimes categorized as "aggravated felonies" carry the automatic consequence of removal. State-level prosecutions of these crimes have placed an unprecedented number of noncitizens into immigration removal proceedings. In addition, programs involving federal, state, and local law enforcement agency cooperation have become major new forces in identifying such cases and apprehending immigration violators. Between FY 2006-11, the number of Notices to Appear (NTAs) issued through the Criminal Alien Program (CAP) rose from 67,850 to 212,744. In FY 2010, the 287(g) program identified 26, 871 noncitizens for removal. The same year, ICE reported issuing 111,093 detainers through Secure Communities a rapid increase from the 20,074 detainers it reported in FY 2009.

36. CAP has placed more noncitizens into the ICE detention system than any other federal-state cooperation program. In FY 2009, ICE estimated that 48 percent of detained noncitizens had come through CAP. CAP teams operate in all state and federal prisons, as well as in more than 300 local jails.

37. While removal of fugitive criminal aliens — absconders who are also criminal aliens — is the stated goal of the National Fugitive Operations Program (NFOP), just 28 percent of NFOP arrests in FY 2010 met the fugitive criminal aliens definition. However, the proportion of criminal aliens processed through the program has increased. In FY 2010, 51 percent of those arrested under the program were criminal aliens as compared with FY 2003-February 2008, when 73 percent did not have a criminal history. From FY 2003-10, the number of noncitizens apprehended through NFOP rose from 1,900 to 35,774.

38. Though authorized by Congress in 1996, the 287(g) program experienced rapid growth between 2006 and 2008, when the number of agreements signed grew from six to 61. Since 2009, only two new agreements have been signed, and an estimated 14 were not renewed or were terminated. The number of people arrested through the program has fallen, and the administration has requested reductions in funding for the task force model of the program.

39. Secure Communities is fast replacing the 287(g) program and has become the predominant federal-state-local enforcement cooperation program. Since its launch in seven jurisdictions in October 2008, Secure Communities has grown dramatically. As of August 1, 2012, the program operated in 3,074 jurisdictions across all 50 states, and is expected to be operational in all of the nation's 3,181 jurisdictions by March 2013.

40. During FY 2009, Secure Communities programs submitted 828,119 fingerprints for federal database screening. In FY 2010, the number reached nearly 3.4 million, and rose to 6.9 million in FY 2011. During the same period, Secure Communities-attributed removals rose from 4 percent to 20 percent of all removals.

41. In FY 2010, noncitizens with no criminal convictions and Level 3 criminal aliens (misdemeanants) made up 56 percent of those placed in removal proceedings through Secure Communities, and 60 percent of those ultimately were ordered removed.

42. Targeting transnational criminal enterprises is a high ICE/DHS priority. Many of these efforts now involve cooperation with state, local, and international partners. Since 2005, ICE has expanded its Border Enforcement Security Task Forces (BESTs), which target drug trafficking and other criminal enterprises along the border, to 32 task force units operating in 36 cities across 17 states, Puerto Rico and Mexico, comprised of ICE, CBP, Coast Guard, ATF, and state and local law enforcement agents. In some jurisdictions, Mexican and Canadian officials participate in BEST teams. ICE has also expanded Operation Community Shield, an initiative that targets gangs and noncitizen gang members. In February 2010, ICE launched its first "global" Operation Community Shield Task Force in Honduras.

⚙ Detention and Removal of Noncitizens

43. Since 1990, more than 4 million deportations of noncitizens have been carried out. Removals have increased dramatically in recent years, rising from 30,039 in 1990 to 188,467 in 2000, and reaching a record 391,953 in FY 2011. The groundwork for this level of removals was laid over many years of congressional mandates, detention funding, administrative actions, and improved data systems.

44. Expedited removals have been a big component of the total removal numbers. They grew from 87,888 in FY 2005 to 123,180 in FY 2011 and now comprise 31 percent of all removals. Because of significant decreases in illegal border crossings, the ratio of expedited removals to illegal crossings has also increased.

45. In recent years, ICE has placed high priority on removal of criminal aliens, which has led to an increase in the proportion of those in removal proceedings with criminal records. In FY 2011, 48 percent, (188,382) had criminal convictions, up from 27 percent in FY 2008.

46. The number of noncitizens removed pursuant to an administrative order exceeds the number of removals ordered by immigration judges. This is because DHS has made aggressive use of its administrative authority, when removals without judicial involvement are permitted. In FY 2011, immigration judges issued 161,354 orders of removal, whereas DHS carried out 391,953 removals.

47. The number of noncitizens removed pursuant to formal orders of removal has increased significantly, while the number of those returned without such orders has steadily declined. In FY 2000, for example, the INS removed 184,775 persons, but returned nine times that number (1.7 million) without orders. In FY 2011, DHS removed 391,953 persons, and returned 323,542, marking the first time that removals outpaced returns. This trend is likely attributable to the decline in illegal border crossings, the increase in the number of administrative orders issued, and the increase in the number of border crossers referred by CBP for criminal prosecution.

48. The average daily population of noncitizens detained by ICE increased nearly fivefold between FY 1995 and FY 2011: from 7,475 to 33,330. Over the same period, the annual total number of ICE detainees increased from 85,730 to 429,247. Although immigration detention is for unique reasons under civil, not criminal law, far more noncitizen detainees are held — by a wide margin — than are incarcerated by the federal Bureau of Prisons *for all federal crimes combined*.

49. ICE reports that "fully 90 percent" of the individuals it detains are either subject to mandatory detention or their cases fell into one of the agency's enforcement priorities. During FY 2011, roughly 46 percent of those entering ICE detention had criminal convictions, as compared with 39.1 percent in FY 2001. Forty-one percent were classified as Level 1 (lowest-risk) detainees, while 19 percent were classified as Level 3 (highest-risk) detainees.

50. Less than 5 percent of the detainee caseload is in Alternative-to-Detention (ATD) programs. About 94 percent of ATD participants appeared at their immigration hearings in FY 2010.

51. ICE has recently instituted a number of long-urged reforms in the detention system. In March 2012, ICE opened its first detention center specifically designed to reflect civil rather than criminal detention standards. In addition, asylum seekers who establish "credible fear" in their first interview are now generally not detained; an online detainee tracking system has been created, making it possible for lawyers and family members to learn where detainees are held; contracts with for-profit prison facilities have been reduced; medical and privacy protections for detainees have been expanded, and grievance procedures have been strengthened. New risk assessment tools have been developed to increase the pool of those who can be placed in ATD programs. These developments have been welcomed, although critics remain concerned about the pace of reforms.

52. The immigration court system is heavily backlogged, creating severe pressures on immigration judge workloads and case calendars. As of May 2011, a record 275,316 cases were pending in immigration court, compared to 168,830 cases five years earlier. In September 2012, it took an average of 403 days to complete cases, and 781 days where relief to a noncitizen was ultimately granted. In especially high-volume courts, such as Los Angeles and New York, average decision times in cases where relief was granted reached 1,199 and 819 days, respectively. The ratio of immigration proceedings completed to the number of immigration judges nationwide rose from about 400 per judge during 2000-03 to more than 600 per judge in 2008-09.

Appendix B. Criminal Immigration Prosecutions as Share of Overall Federal Criminal Prosecutions, FY 2000-11
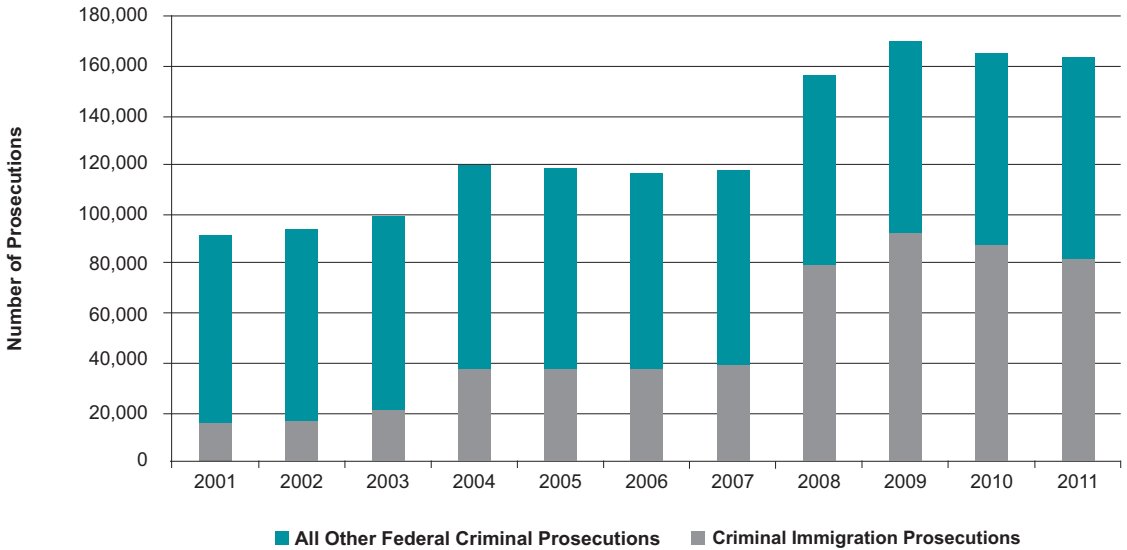
Source: Transactional Access Records Clearinghouse (TRAC), "Going Deeper" tool, http://tracfed.syr.edu/trachelp/tools/help_tools_godeep.shtml.

Appendix C. Overall Noncitizen Removals and Removal Orders, FY 1996-2011
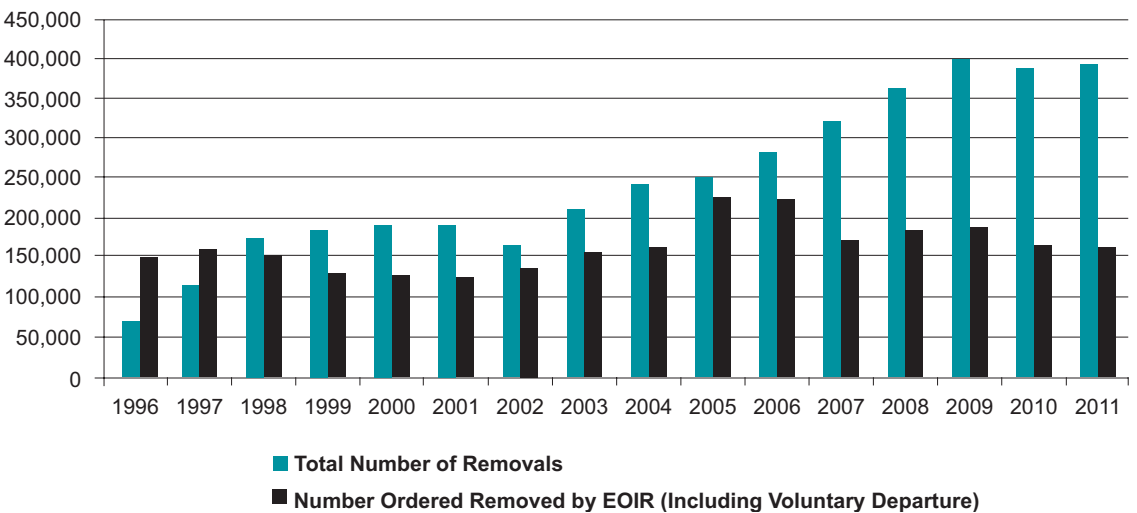
Sources: Department of Homeland Security (DHS), *Yearbook of Immigration Statistics FY 2011* (Washington, DC: DHS, 2012): 102, www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf; EOIR, *Statistical Yearbook, FY 2002-2011* (Falls Church, VA: EOIR, various dates), www.justice.gov/eoir/statspub/syb2000main.htm.

Appendix D. Growth in Number of Immigration Detainees, FY 2001-11
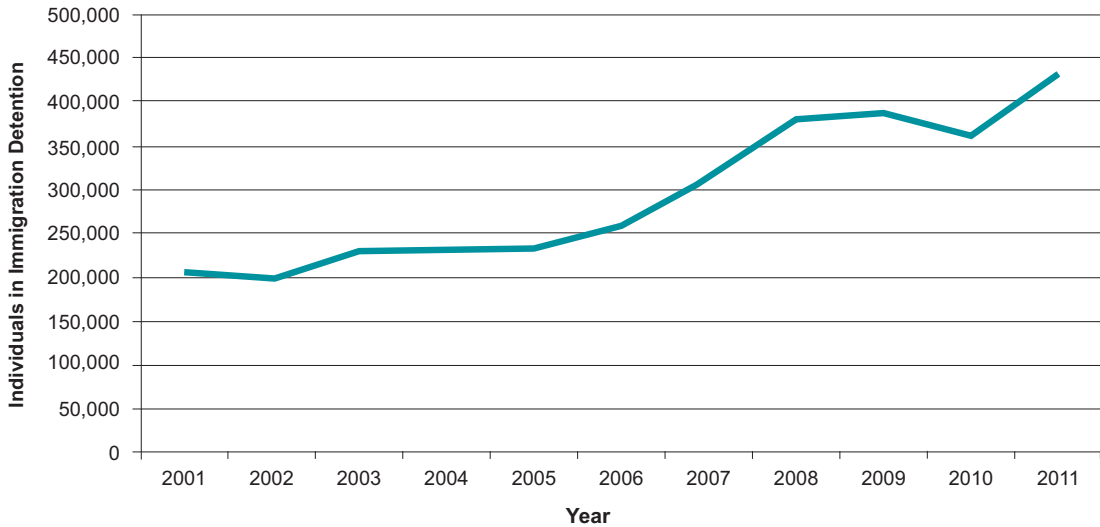
Source: US Immigration and Customs Enforcement, "Report on ERO Facts and Statistics," December 12, 2011, www.ice.gov/foia/library/.

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www.migrationpolicy.org/research/usimmigration.php

About the Authors

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Her responsibilities focus in particular on the role of immigration in America's future and on administering the nation's immigration laws, systems, and government agencies. Her work and expertise also include immigration and politics, immigration enforcement, border control, cooperation with other countries, and immigration and national security. She has authored and coauthored numerous reports, articles, and op-eds and is frequently quoted in the media. She served as Director of MPI's Independent Task Force on Immigration and America's Future, a bipartisan group of distinguished leaders. The group's report and recommendations address how to harness the advantages of immigration for a 21st century economy and society.

From 1993-2000, she served in the Clinton administration as Commissioner of the INS, then a bureau in the US Department of Justice. Her accomplishments included reforming the nation's asylum system; creating new strategies for managing US borders; improving naturalization and other services for immigrants; shaping new responses to migration and humanitarian emergencies; strengthening cooperation and joint initiatives with Mexico, Canada, and other countries; and managing growth that doubled the agency's personnel and tripled its budget.

She first joined the Justice Department in 1973 as a White House Fellow and Special Assistant to the Attorney General. She served in various senior policy posts until 1981, when she became Acting Commissioner of INS and then Executive Associate Commissioner, the third-ranking post in the agency. In 1986, she joined the Carnegie Endowment for International Peace as a Senior Associate. Ms. Meissner created the Endowment's Immigration Policy Project, which evolved into the Migration Policy Institute in 2001.

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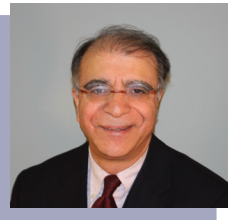
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Mr. Chishti was educated at St. Stephen's College, Delhi; the University of Delhi; Cornell Law School; and the Columbia School of International Affairs.

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